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## STATE OF MADHYA PRADESH &amp; ORS.

v.

TIKAM DAS

April 22, 1975

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[V. R. KRISHNA IYER, R. S. SARKARIA AND A. C. GUPTA, JJ.]

*Madhya Pradesh Excise Act (2 of 1915)—General conditions of Licence made under the Act, r. 26 and Foreign Liquor Rules made under the Act, r. 4—Balance of stock on expiry of licence—Enhancement of licence fee for next year—If balance of stock liable to enhanced fee.*

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*Delegated legislation—When rule can be made retrospective.*

The respondent had a licence for sale of foreign liquor issued under the Foreign Liquor Rules made under the Madhya Pradesh Excise Act, 1915. On the date of the expiry of the licence (March 31, 1964), he had a large quantity of unsold foreign liquor, which had to be surrendered by him to the authorities. As the Government was contemplating enhancing the licence fee, he gave an undertaking to pay the difference and he was allowed to keep the excess stock. He also obtained a fresh licence for one year commencing on April 1, 1964.

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On April 25, 1964, the Foreign Liquor Rules were amended. The scale of licence fees was enhanced with retrospective effect from April 1, 1964; and r. IV was amended providing that the licensee shall be liable to pay the difference in the event of the enhancement of the scale of fees on the *balance of stocks* during the currency or on the expiry of the licence.

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But the State's demand for the difference was successfully challenged by the respondent, in the High Court, on the ground that the balance of stocks on March 31, 1964, was covered by the licence fee already paid and could not be subjected to enhanced levy.

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Allowing the appeal to this Court,

**Held :** (1) Subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf. But s. 63 of the Act does contemplate not merely the power to make rules but to bring them into force from any previous date. It states that all rules made under the Act shall have effect from the date of publication in the official gazette *or from such other date as may be specified in that behalf*. Therefore, the enhanced levy of licence fees operates from April 1, 1964. [236F, H 237A]

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(2) Rule XXVI of the General Licence Conditions provides that if there is enhancement of *duty*, the licensee shall pay the difference of duty on the 'balance of stocks' as on the date preceding the expiry of the licence. The rule also provides for refund by the State if there is a reduction of duty. Reading this rule with the amended r. IV of the Foreign Liquor Rules, the 'balance of stocks' is the surplus stock held by the licensee immediately before the expiry of his licence. Therefore the quantity held over on March 31, 1964, became

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liable to the enhanced licence fee on April 1, 1964. [238E-F]

(3) (a) If the respondent's contention is accepted persons who have huge stocks left over will not have to pay the enhanced licence fee while fresh licensees would be so liable; and [238-G]

(b) If the respondent had surrendered his stock as he should have but for his undertaking he would have had to pay the enhanced rate for such left-over stock. [238H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 668 of 1968. A

From the Judgment and Order dated 2nd March 1965 of the Madhya Pradesh High Court in Misc. Petition No. 348 of 1964.

*Ram Panjwani, I. N. Shroff and H. S. Parithar*, for the appellants. B

*B. N. Lokur and A. G. Ratnaparkhi*, for the respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The claim of the appellant, the State of Madhya Pradesh, to levy enhanced license fee on the spill-over stock of intoxicating liquor held as on April 1, 1964 by the respondent who runs a bar, was successfully challenged in the High Court. So the State has come up in appeal, by certificate, under Art. 133 and disputes the correctness of the view accepted by the High Court. C

As is obvious, the facts are brief and beyond dispute, the issue of law straight and simple and our decision, on a careful study of the alternative constructions of the relevant provision, is that the State is entitled to collect the fee on the revised scale. The respondent runs a cafe at Indore and a foreign liquor bar booths expensive sales and attracts affluent addicts. Naturally, as a profitable proposition the respondent obtained a licence for the sale of foreign liquor (in Form F. L. 3) issued under the Foreign Liquor Rules framed under the Excise Act, 1915<sup>(1)</sup>. The licence which he held was for one year from April 1, 1963 to March 31, 1964. At that time, under the extant rules the fee payable was 37 paise per quart bottle of malt liquor and different rates for other kinds of foreign liquor. On the date of expiry of the licence, viz., 31st March 1964, the respondent had with him a large quantity of unsold liquor which was already in the licensed premises, having been brought earlier. He obtained a fresh licence for a further period of one year commencing from April 1, 1964. Meanwhile Government was entertaining the idea of enhancing the scales of licence fee for the various kinds of foreign liquor. The balance quantity left over with the respondent at the end of the licensed period, viz., March 31, 1964 was checked by the concerned Excise Officials and a *panchnama* prepared in that behalf. Ordinarily, the surplus stock has to be surrendered by the licensee but, on an undertaking to pay the difference in the event of an enhancement of the rates, the bar owner was permitted to keep on his premises the balance quantity so ascertained. Apparently the State Government had decided on the increased rate because we find from Annexure B a demand being made by the Excise Inspector on the licensee to pay the difference of fees consequent on the enhancement of the scale of fees, as worked out on the stock which remained in hand with the owner of the bar on the night of March 31, 1964. Despite the undertaking given to comply with such enhanced demand, the hotelier resisted it and took up the stand that the balance stock had already been subjected to licence fee when it was brought in and that the subsequent raising of the rate of licence D  
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(<sup>1</sup>) Madhya Pradesh Excise Act, 1915 (Act II of 1915).

A fee could not be applied validly to such stocks. Since the State insisted on levying at the larger rate even on the balance stock held on March 31, 1964 the respondent moved the High Court for the issuance of a writ quashing the demand as illegal. The legality of the levy depends on the applicability of the enhanced scales of licence fee to the balance of foreign liquor stock held by the licensee on the midnight of 31/3—1/4/1964.

The facts being thus plain, we will straight go to the law relied on by the State in support of its claim. The Excise Act and the Foreign Liquor Rules made thereunder govern sales of these intoxicants and Form F.L.3 applies to bars which sell foreign liquor for consumption on the premises.

On April 25, 1964, the Government, by virtue of its powers under the Act, amended in certain respects the Foreign Liquor Rules. One such amendment concerns the scale of fees in respect of licence in Form F.L.3, an upward revision having been effected. The rule itself, although promulgated on April 25, 1964 was given effect retrospectively from April 1, 1964. Apart from raising the rates, Rule IV was also amended by the addition of the following provision at the end of it :

“The licensee shall be liable to pay the difference of fees per bottle on the balance of stocks of foreign liquor in the event of the enhancement of the scale of fees during the currency or on expiry of the licence.”

Based on this modification of the rules, the State made the demand for the difference.

Let us examine the rival contentions and test the soundness of each briefly. First of all, we have to ascertain the scope and area of the rule-making powers, the limitations thereon and the retro-active operation of such rules. There is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf. Our attention has been drawn to ss.62 (g) and (h) and 63 in this connection, by counsel for the State. The State Government may make rules for the purpose of carrying out the provisions of the Act (s.62). Such rules may regulate the amount of fee, the terms and conditions of licences and the scale of fees and the manner of fixing the fees payable in respect of such licences [62 (g) and (h)]. This provision, by itself, does not expressly grant power to make retrospective rules. But s.63 specifically states that ‘all rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf.’ Clearly the Legislature has empowered its delegate, the State Government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. This provision regarding subordinate legislation does contemplate not merely the power to make rules but to bring them into force from any previous date.

Therefore antedating the effect of the amendment of Rule IV is not obnoxious to the scheme nor *ultra vires* s.62. A

The focus must now turn on the disposal of the balance stocks with licensees held on the expiration of the period. Rule XXV<sup>(1)</sup> regulates the disposal of such balance of intoxicants left with vendors after the expiration of their licences; if they get new licences on the expiry of the old in respect of the same premises, they are allowed to retain the balance of stock for the purposes of the new licence [r. XXV (a)]. In the event of the fee or duty being enhanced or reduced, r. XXVI makes such change applicable to the balance of stock. It is useful to reproduce r. XXVI here : B

“XXVI. *Procedure to be followed when duty is enhanced or reduced.* C

If it is notified by the Collector that from any particular date the duty leviable on any intoxicants is to be enhanced, all licensed vendors in possession of such intoxicants shall, on the evening preceding that date, deposit their stock with such persons as the District Excise Officer may appoint for the purpose. Such stocks shall remain in deposit until verified and the District Excise Officer may order that the difference of duty be levied on the balance of the stocks, and the licensee shall then pay such duty within thirty days of the date on which the enhanced rate of duty comes into force : D

- (a) Provided that if such stock, or part of such stock, be destroyed, the difference of duty shall not be levied on the stock destroyed; and E
- (b) Provided also that if the balance of stock so deposited is transferred to another licensed vendor, the difference of duty shall be levied from the transferee before the transfer is completed. F

The above procedure regarding the deposit and verification of stock of intoxicants consequent on the enhancement of duty shall also apply when duty leviable on any intoxicants is reduced. Refund of the difference in duty consequent on the reduction in its rate may be sanctioned by the Excise Commissioner on receipt of an application from the licensee through the Collector of the district.” G

A fair reading of this rule yields only one result. The licensed vendor in possession of surplus intoxicants on the date preceding expiry of his licence should ordinarily deposit such stock with the appointed Excise Officer. On verification of the actual quantity of such stock, the District Excise Officer ‘may order that the difference of duty be levied on the balance of stocks, and the licensee shall then pay such duty.....’. Of course, the above procedure primarily visualizes enhancement of duty but is made applicable to reduction of duty when H

(<sup>1</sup> Under the General Licence Conditions under s. 62.

**A** refund of duty shall be made by the State. Rule IV virtually extends this kind of dealing with balance of stocks when the subject matter is license fee as distinguished from duty. Moreover, licensees are bound by the general licence conditions (vide condition No. 6 of the license) and the general licence conditions with which we are concerned are set out in rr. XXV and XXVI already adverted to.

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In this background of the law, the short question is whether the respondent is liable to pay enhanced fee brought about by amendment of the rules on April 25, 1964.

**C**

The first contention that has been raised by the respondent in support of the judgment of the High Court is that in any case subordinate legislation cannot be retrospective and the State Government cannot therefore make rules and give effect to them retroactively. We have already set out the provisions of ss. 62 and 63 bearing on the subject and have no doubt that, in the present case, the statute does authorise the State, as its delegate, to make retroactive rules. Therefore we negative the contention that the enhanced levy of licence fee cannot operate as from April 1, 1964.

**D**

The second contention which has found favour with the High Court is that the balance on hand on March 31, 1964 is covered by the license fee already paid and cannot therefore be subjected to the enhanced levy on April 1, 1964. There is a measure of absurdity in the rule, if this be the construction. Indeed, the High Court itself notices that the words used to tax at a higher rate the balance of stocks would become redundant in r. XXVI. A fair reading of the rule giving full effect to the words used in r. XXVI of the Excise rules and the explanation added to r. IV (of the Foreign Liquor Rules already extracted) leave us in no doubt that the balance of stocks envisioned by the rules and subjected to enhancement or reduction of duty is such surplus stock as is held immediately before the expiry of the previous license. So construed, in this case the quantity held over on March 31, 1964 becomes liable to enhancement of license fee on April 1, 1964 and that is precisely what the State has claimed.

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Indeed, commonsense suggests no alternative construction. For, otherwise, some persons who by accident have huge stocks left over will not have to pay the enhanced rate of licence fee while others with 'virgin' licences for that year and begin with no stock-on-hand have to pay at a higher rate. Again, if only the respondent had surrendered his surplus stocks on 31-3-1964, as ordinarily he would have had to, had he not been permitted to retain that quantity in view of his getting a fresh licence for the same premises, he would have had to pay the enhanced rate for such left-over stock. Thus, both law and logic, correct construction and commonsense, coincide in the conclusion that the Eagle Cafe Bar owner (the respondent) had to pay the higher fee on the balance of stock as on April 1, 1964. The High Court erred in its interpretation of the rules as applicable to the present situation.

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We allow the appeal but, having regard to the fact that the sum involved is unsubstantial although the High Court regards the question of law involved as substantial, we direct that the parties do bear their costs. A

V.P.S.

*Appeal allowed.* B