

PRANI MITRA SAMITI Vs. THE STATE OF MADHYA PRADESH

Court :Madhya Pradesh

Decided On :2013-06-26

Appellant :PRANI MITRA SAMITI

Respondent : THE STATE OF MADHYA PRADESH

Judgement:

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR Writ Appeal No.2509 of 2013 (PIL) 1. Prani Mitra Samiti (Pramisha) a registered Society, Through its Secretary, Dr.Vinay Patel Son of Amrit Lal Patel, aged 39 years, near Shankar Temple, Karakbel, District Narsinghpur (MP) 2. Dr.Vinay Patel, son of Amrit Lal Patel, aged 39 years, Secretary Prani Mitra Samiti, near Shankar Temple, Karakbel, District Narsinghpur (MP) Mobile No.094246-43723 .....Petitioner Versus 1. State of Madhya Pradesh Through Principal Secretary, Commercial Department, Mantralaya, Bhopal (MP) 2. Excise Commissioner, Moti Mahal Gwalior (MP) 3. Madhya Pradesh Pollution Control Board Through its Chairman, E-5, Arera Colony, Paryavaran Parisar, Bhopal -462016 PRESENT:- Hon'ble Shri Justice Krishn Kumar Lahoti, Acting Chief Justice Hon'ble Shri Justice M.A.Siddiqui Shri Ravi Nandan Singh, learned senior Advocate with Shri Arpan J.Pawar, for the petitioner. Shri P.K.Kaurav, learned Additional Advocate General for the State of M.P. Shri Rajendra Tiwari, Shri Vivek Tankha, learned Senior Advocates assisted by Shri Rishabh Sancheti and Shri Akshay Sapre, for Association of Industries, M.P. Shri Kishore Shrivastava, learned Senior Advocate with Shri Prem Francis and Shri Kapil Jain, for Associated Alcohols and Beverages Ltd. ...2... W.P.no.2509/13 Shri V.S.Shrotri, learned Senior Advocate with Shri Vikram Johri, for M.P. Pollution Control Board.

JUDGMENT

(Delivered on 26.6.2013) Per:Krishn Kumar Lahoti, Acting C.J.This Public Interest Litigation has been filed alleging that the use of PET bottles for bottling of country liquor is not only harmful for the environment but the country liquor stored therein becomes unfit for human consumption. The country liquor is consumed either in the semi urban areas or in the rural areas. PET bottles after use are thrown here and there by the consumers and are not only harmful for the environment but also for the animals/cattles who eventually eat it and the result is that it is either harmful or hazardous for their life. Apart from this, PET bottles are discarded in roadside gutters, chocking the drainage and also causing the environment policy. These are not cycleable and are being dumped. It is also stated that the large number of steps are being taken in India and also worldwide to ban to use plastic material particularly non-recycleable plastic, so it is not proper for the respondents to permit PET bottles in its policy for storage and sale of country liquor. Mainly on the ground of environment policy and for packaging of liquor in PET bottles is harmful/hazardous to the health of consumers, this petition has been filed seeking following reliefs:- “A) Issue a writ, order or direction in public interest, commanding the respondent No.2 to completely exclude the use of PET bottles/pouches for storage and sale of liquor, both country made liquor and IMFL, in its Policy. B) Issue any suitable writ, order or direction in addition to and in supplement to above, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. C) Award the cost of the writ petition to the petitioner.”

2. The State and interveners, who are mostly PET bottles manufacturers, have opposed this petition. In nut-shell, it is stated by the State:- (i) That the present writ petition is not maintainable and deserves to be dismissed as this PIL does not fall within the categories provided by the Apex Court in the judgment of State of Uttaranchal Vs. Balwant Singh AIR 201.SC 255.in which various guidelines have been framed by the Apex Court for filing of PIL. ...3... W.P.no.2509/13 (ii) The petitioner ought to have approached

to the National Green Tribunal under the provisions of National Green Tribunal Act, 2010 as the subject matter falls within the jurisdiction of the aforesaid Tribunal. (iii) That the PET bottles used for packaging of alcoholic beverage have been found safe and suitable material by various national and international agencies and regulatory authorities. The Bureau of Indian Standards (in short 'BIS') established under the Bureau of Standards Act, 1986 has prescribed standard for the use of PET bottles with specification for use of packaging and sale of alcoholic beverage. The PET bottle with specification not IS14537-1998 has been specified for packaging of alcoholic liquor. The PET bottles are also permitted under the Food and Safety Standards Act, 2006 and the regulations made therein for packaging of alcoholic beverage. The PET bottles are being used worldwide for this purpose. The Food and Drug Administration (FDA) of USA has certified after diligent research that PET bottles are not harmful for use, sale and storage of alcoholic product. The PET containers are not harmful to the environment as these are recycleable. The PET bottles are used for other food material packaging including juice, cooking oil, milk, ketchup, honey, candies, confectionaries and pickles etc. The pharmaceutical product like cough syrups, anta acids and vitamins are permissible in PET bottles packaging. (iv) Raising these contentions, it was submitted that since 1999 when the Bureau of Indian Standards has permitted packaging of alcoholic product in PET bottles, these bottles are being used for the aforesaid purpose. In the Excise Policy of 2011-12 (of M.P.), such PET bottles were permitted to be used for packaging and sale of country liquor. In the Excise Policy of 2012-13 and 2013-14, the said has been reiterated. It is submitted that in absence of challenge to the policy, India Standard provided under the Indian Standards Act which specifically permits PET bottles for the use of alcoholic beverage, this petition may be dismissed.

3. The Interveners have also filed much or less same objections which are raised by the State. It is also submitted by the interveners that a similar issue was raised in respect of excise policy of 2011-12 before this Court in Writ Petition No.1510/2011-Mohammend Iqbal Vs. State of M.P. and on 3.2.2011, a Division Bench of this Court dismissed such an objection. So the present petition which has been filed for the same relief also deserves to be dismissed. ...4... W.P.no.2509/13 4. Shri Vivek Tankha, learned senior counsel appearing for the intervener also submitted that these petitions have been filed though in the name of Public Interest Litigation but with ulterior motive and by the same person. It is submitted that with much or less same allegations, grounds and similar relief clause, petitions were filed before the Karnataka, Bombay, Chandigarh, Hyderabad and Allahabad High Courts. Copies of the same are filed by the interveners from page 33 to 187 in which he has read over the contents of the petitions and in particular relief clause which appears to be verbatim same. It is also submitted by him that these petitions were filed in the month of February, March, 2013 and it appears that the person/party behind these petitions is one who had filed petitions at various High Courts. That, identical matters were considered by the Division Bench of High Court of Karnataka at Bangalore in Writ Petition No.12847/2013 and on 24.4.2013, the writ petition was dismissed. Similarly, a Public Interest Litigation filed at High Court of Judicature at Allahabad registered as Public Interest Litigation No.54857/12- Parivartan Foundation and others Vs. State of U.P. was dismissed on 9.5.2013. It is also submitted that the present petition which has been filed for issuance of a writ of mandamus is also not maintainable as there is no failure to perform mandatory duty on the part of the respondent/State and the mandamus can be issued to compel the authority to do something for which it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its purpose. It is submitted that the present petition filed for the aforesaid relief may be dismissed.

5. Shri Kishore Shrivastava, learned senior counsel in addition to his similar arguments, most of which are referred hereinabove, also submitted that though a writ of mandamus has been sought in the present case which is not permissible. In the alternative, even if it is assumed that the present case is of a case in which the petitioner is seeking a writ of prohibition, such relief also cannot be granted. He has placed reliance to a judgment of the Apex Court in Isha BEEVI Vs. Tax Recovery Officer (1976) 1 SCC page 70.

6. The respondent No.3 in Para 4 of the return has specifically submitted that so far as the grievance of petitioner regarding sale of liquor in PET bottles is concerned, there is no material available to demonstrate that such stored liquor in PET bottles would be harmful to the consumers. The ...5... W.P.no.2509/13 petitioner has not filed any research data particularly on this point. Another objection of the petitioner has been replied in Para 4(b) of the return that PET bottles are 100% recycleable. The PET

bottles used for sale of alcoholic beverage have to be of the standards prescribed by the Bureau of Indian Standards.

7. To appreciate the rival contentions of the parties, it would be appropriate to refer some of the facts. In the policy of 2011-12, 2012-13 and 2013-14 by the Excise Department, packaging of country made liquor in PET bottles is permissible to certain percentage, but the policy has not been challenged by the petitioner. Apart from this, the Parliament has enacted the Bureau of Indian Standards Act, 1986, under which, Bureau of Indian Standards has permitted use of PET bottles for alcoholic beverage. Even in the year 1999, the Bureau of Indian Standards had found PET bottles suitable for packaging of alcoholic beverage and since then the aforesaid standards have been recognized by the Bureau of Indian Standards which appears to be a technical institution in this regard. The aforesaid standards fixed by the Bureau of Indian Standards have not been challenged by the petitioner in this petition. Though it is stated by the petitioner that there are chances of leaching and migration, if alcoholic liquor is packed in PET bottles, but it appears that to a certain limit, aforesaid is permissible. Even if such leaching and migration is not permissible then some technical institution has to look into the matter but it appears that the petitioner before filing of this petition had not approached to the State/Central for examination of the aforesaid issue. The main contention of the petitioner is that it is hazardous for the environment and for human consumption but under the Food and Safety Act, such PET bottles are permitted under the regulations for the use of food which includes alcohol. Aforesaid provision is also not challenged. Though it is argued by Shri R.N.Singh, learned Senior Advocate appearing for the petitioner that in the Regulations under the Food and Safety Act, such packaging of alcohol has not been provided, but in the absence of any prohibition for the use of PET bottles by the aforesaid Act, aforesaid contention cannot be accepted. Apart from this, aforesaid issue has been examined by two High Courts and a Division Bench of this Court considering the similar question in W.P.No.1510/2011-Mohammed Iqbal Vs. State of M.P. held thus:- "It has further been alleged in the writ petition that for the first time in the State of M.P. the country spirit shall be bottled in PET (Plastic Empty Bottle) of 750 ml., 350 ml. and 180 ml. ...6...

W.P.no.2509/13 capacity which would not only be unhygienic but also would be hazardous to the environment. The respondents in their preliminary objection regarding maintainability of the petition has averred that though the petitioner has raised this technical and scientific issue but no material whatsoever has been given in support of the submissions. It has further been averred that the Excise Commissioner vide its order dated 25.1.2011, a copy whereof is enclosed as annexure R/3, has stated that the specification of bottles mentioned in the aforesaid letter of the Excise Commissioner confirms to IS-14537 fixed by the Bureau of India Standards for packaging of Alcoholic Liquors for PET bottles and it is thus contended by the learned Additional Advocate General that the specification of bottles being as per BIS specification, the petitioner cannot question the same without there being any basis or material in support thereof. The learned Additional Advocate General further submitted that the petitioner not being engaged in the liquor business is neither a trader nor a manufacturer of liquor and therefore cannot challenge the policy on the ground that the same is violative of Article 19(1)(g) of the Constitution and thus this Public Interest Litigation being a sponsored petition at the behest of some-one deserves to be dismissed as none of his fundamental rights are infringed or violated giving cause to approach this Court. Learned counsel for the petitioner during the course of submissions confined his submissions only in respect of the criteria fixing the manufacturing capacity of distillers and in fact has not urged other points, though raised in the writ petition, therefore, we need not to address the same. He, however, further submitted that in view of the statement of learned Additional Advocate General and the affidavit filed on behalf of the State Government, this petition may be disposed of by recording the same. Besides that we are of the view that the scope of judicial review in the matter of policy decision being limited and permissible only to cases where it is found to be capricious, arbitrary or against the statutory provisions or suffers from the vice of discrimination or is unconstitutional, which is not the case here, no interference is warranted in this petition filed as Public Interest Litigation. Reference is made to the apex court decision in Delhi Development Authority N.D. and another Vs. Joint Action Committee, Allottee of SFS Flats and others AIR 200.SC 1343. In view of the above discussion and also as agreed to by the learned counsel for the parties, this petition is disposed of in terms of the statements and affidavit given on behalf of the State Government."

8. From the perusal of the aforesaid facts, we find that the question in respect of use of PET bottles for packaging the alcoholic beverage has already been examined by the Bureau of Indian Standards and it has

permitted use of such PET bottles. There is no specific study by any recognized institution to show otherwise that such packaging is hazardous to the health of consumers or for the environment. No interference in the policy ...7... W.P.no.2509/13 decision can be made. Apart from this, it is stated by the intervener that all the PET bottles are recycleable as per standards fixed by the Bureau of Indian Standards and every bottle is marked by the prescribed sign that the bottle is recycleable, so it is not affecting the environment. As per return of respondent No.3 M.P. Pollution Control Board has specifically stated that PET bottles are recycleable and are not harmful if alcoholic liquor sold in the PET bottles is consumed by human being. To this, there is no denial on the part of the petitioner. Under the M.P. Country Spirit Rules, 1995, a provision has been made under rules 4, 10 and 11 for examination of such bottle and if bottle used for packaging of alcoholic beverage is not according to the Standards, the Commissioner has power to reject the bottles. In view of aforesaid discussion, we find that this petition which has been filed for the aforesaid relief, is without any merit. If the petitioner after due research and with the opinion of some experts in the field submits a representation to the Union of India/Central Government that the standard fixed by the Bureau of Indian Standards permitting the PET bottles for alcoholic beverage deserves to be modified, then the Union of India shall be free to consider the aforesaid representation in accordance with law.

9. With the aforesaid liberty, this petition is dismissed, with no order as to costs. (Krishn Kumar Lahoti)  
(M.A.Siddiqui) Acting Chief Justice Judge C.

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