

KARAN DILEEP NEVATIA VS. THE UNION OF INDIA (UOI)

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[MANU/MH/0001/2010: 2010 SCC OnLine Bom 23: (2010) 1 Bom CR 588: (2010)
2 AIR Bom R 18: 2010 AIHC 2844]

The following case is extremely important pertaining to the feasibility of international treaties in the Indian scenario, their constitutional validity and holds considerable and precedented role in the privy of trans-national relations and Indian interpretation.

RELEVANT LEGISLATIONS

The petitioner has filed a case in the light of the state of Maharashtra's statues of Bombay Prohibition Act, 1949[, Entry 8 of List II of the VIIth Schedule pertaining to intoxicating liquors and Entry 51 thereof pertaining to excise duty, Sections 139(1) (d-1) and 143(2)(b) of the Bombay Prohibition Act, 1949] Bombay Foreign Liquor and Rectified Spirit (Transport) Fee Rules, 1954; Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 2009.

The case can be entertained in a court of law [either a high court or the supreme court] due to the substantial questions regarding the validity of the below enumerated constitutional provisions under the head of a writ petition.

CONSTITUTIONAL PROVISIONS DISCUSSED

- Article 14, which prescribes the right to equality which forbids "class legislation" but not reasonable classification [Soni India Limited v. The Commercial Tax Officer, The State of Tamil Nadu (2007) 5 MLJ 881]

- Article 13¹ and its convention on doctrine of eclipse²
- Article 19 [1][g] which professes freedom to practice any trade or occupation within the privy of legal limits.
- Article 51³ which holds a persuasive value in implementation or inculcation of international treaties into the country's legislation.
- Article 73[b] which extends the executive authority to legislation in matters established by treaties unless the parliament has already provisioned for legislation.
- Article 226 [statement of jurisdiction] under which the writ petition was admitted.
- Article 246 which enumerates the power of the central government to discover legislations within the boundaries of the union list, the state governments within the state list and both governments within the concurrent list. [all the aforementioned categories mentioned in schedule VII of the Indian constitution.
- Article 253 of the Indian constitution which provides the parliament of India to make legislations for the entire domain of India or an isolated portion of it if seeks to indulge in implementing international measures as applicable law of land.

BACKGROUND OF THE CASE

One Karan Dileep, who was invested in the import of foreign trade and import of liquor and wines filed a case against the said respondents on the eve of his import being subject to additional taxes, set part from domestically produced wine and spirits. The petitioner opined that any tax regulation must follow the ideology of the GATT [general agreement

¹ Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) **In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas**

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality

² The Doctrine of Eclipse says that any law inconsistent with Fundamental Rights is not invalid

³ Promotion of international peace and security The State shall endeavour to

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) **foster respect for international law and treaty obligations in the dealings of organised peoples with one another;** and encourage settlement of international disputes by arbitration.

[and directive principles of state policy]

on tariffs and trade] which enumerates the principle of “national treatment” in line for international equality with respect to the taxes and duty levied.

India was a signatory to the GATT agreement and had ratified it and followed the same course with subsequent amendments and even when it took the face of world trade organization [WTO] that would be now engaged in “overseeing and regulating the functioning of the multilateral trading system. A complaint against supposed unfair trading practices /special taxation was lodged by the government of Maharashtra in the dispute settlement understanding [DSU] forum of the WTO.

MAIN ISSUES RAISED IN THE COURT OF LAW

1. WHETHER THE STATE OF MAHARASTRA HAS INDULGED IN AN ARBITRARY ACT WITH REGARDS TO THE IMPUGNED LEGISLATION
2. WHETHER ARTICLE 51 ENFORCEABLE TO PROMOTE THE IDEALS OF GATT [NATIONAL TREATMENT]?
3. WHETHER ARTICLE 253 CAN ENFORCE NATIONAL TREATMENT?

ARGUMENTS RAISED BY THE PETITIONER

WHETHER THE STATE OF MAHARASTRA HAS INDULGED IN AN ARBITRARY ACT WITH REGARDS TO THE IMPUGNED LEGISLATION?

1. The learned counsel for the petitioner opined that the state of Maharashtra has violated the convention of evoking fairness, as opposed to an arbitrary nature with respect to article 14 of the Indian constitution that promotes a right to equality as there is a discrimination between locally produced wines and imported wines.
2. The principle of national treatment as mentioned in the GATT which believes in an equal position for goods produced at a national scale and imported or foreign produced goods in terms of taxes or tariffs levied.
3. The doctrine of eclipse can be invoked in the arguments of the petitioner, who opine that such an uneven levy of taxes in contradictory to the right to equality and hence in the true spirit of the doctrine, the part of the Bombay prohibition act that prescribes excess of taxation is overshadowed by the fundamental and unimpeachable right to equality.
4. The standing of the legislation that is made by the state is compared with that of the central government i.e. parliament and the sub-ordinate nature of the state legislation to it i.e. as witnessed in the case of Indian Express Newspapers (Bombay) Private Limited and OR's. v. Union of India – a sub-ordinate legislation can be subject to more scrutiny that that of a higher legislation and may have to endure the accusations of unreasonableness and arbitrariness [which can again be traced back to the right to equality]

WHETHER ARTICLE 51 ENFORCEABLE TO PROMOTE THE IDEALS OF GATT [NATIONAL TREATMENT]?

1. Articles 51 gives India an obligation to abide by international treaties and conventions and foster respect for it, hence we must align our legislation by it.

WHETHER ARTICLE 253 CAN ENFORCE NATIONAL TREATMENT?

1. The learned counsel has also submitted that the impugned sections of the statute that asks for additional levy of taxes is in contravention to article 253⁴ of the Indian constitution as well as the GATT agreement i.e. in respect to the GATT agreement which is an international treaty, the parliament has a discretion in altering a state's legislation to abide by customary international law.

2. The petitioner urged the court to read article 73⁵ of the Indian constitution with article 253, where in the absence of any legislation on part of the state, the central government or executive exercising legislative powers can legislate in matters of the state list in contravention to the principles of article 246 which clearly demarcates the boundaries within state and central governments.

ARGUMENTS BY RESPONDENT

In response to the arguments put forth by the petitioner, the respondent humbly submitted

1. WHETHER THE STATE OF MAHARASHTRA HAS INDULGED IN AN ARBITRARY ACT WITH REGARDS TO THE IMPUGNED LEGISLATION?

1. The state of Maharashtra has not exercised arbitrariness in prima facie violation of the right to equality as there is a fixed rate of taxes levied based on empirical calculations and

⁴ Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body

⁵ **Extent of executive power of the Union**

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
 (a) to the matters with respect to which Parliament has power to make laws; and
 (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers

data, with an intent and purpose for classification [supported by Soni India's case⁶ which allows for reasonable classification between domestic wines and imported wines based on rational decidendi, appropriate reasoning and "intelligible differentia"]

2. Hence the doctrine of eclipse cannot be availed in this case as the section of the Bombay prohibition act does not violate any fundamental right and hence the legislation cannot be overshadowed by the right to equality.

3. Furthermore, there cannot be any arbitrary nature in the legislation of the state as there was no standing legislation from the parliament that the sub-ordinate might deviate from, i.e. there is no arbitrary nature of the state legislation as there is no central legislation, on GATT to deviate from or take heed from, hence cannot be subject to scrutiny.

WHETHER ARTICLE 51 ENFORCEABLE TO PROMOTE THE IDEALS OF GATT [NATIONAL TREATMENT]?

1. Article 51 holds a persuasive value in the court of law as directive principles are not enforceable in the court of law. GATT is an international convention and although India is its signatory and has ratified the treaty and in accordance to article 51, has an option to enforce it in appropriate legislation, the courts cannot direct legislation nor was there any prevalent legislation existing at the time being, hence the principle of national treatment is not enforceable by law.

WHETHER ARTICLE 253 CAN ENFORCE NATIONAL TREATMENT?

Article 253 is enforceable in the court of law, where the parliament can legislate in any matters pertaining to the state list, for promotion of international treaties in that respective isolated area but there was no legislation by the parliament in the line of GATT which could overturn the tax levying sections/impugned section. The court does not have authority to direct either branches legislature [parliament in article 253] or the executive [73] to make or repeal laws, even if they lie in contravention to the international principles but have to enforce the given laws, as long as they don't infringe upon fundamental rights, which was established in issue 1, they don't.

RATIO DECIDENDI AND RULING OF THE COURT-

The hon'ble reaffirmed the agreements of the respondents, the counsel consisting of Ranjana Prakash Desai and A.A. Sayed, JJ., where the part of the petition regarding article 51 was seen as a persuasive part of the agreement, the supposed arbitrary nature of the state in respect to the levying of taxes as improbable. The reasoning clause of the judgement also lies with the provision of article 253 of the Indian constitution. The matters in the state list can assume the pseudo-position of a matter in the concurrent list, meaning, when the parliament, in all its glory seeks to implement some international treaty or customary international law as a legally enforceable act, it can forgo the limitations of the clearly

⁶ (2007) 5 MLJ 881

demarcated boundaries of article 246 and make laws for the pertaining area[state] or the entirety of India and any state provisions or sections of the state legislation that might potentially clash with the central law would be considered repugnant and void up to a certain extent. But in the given case there is no activity in the part of the parliament with respect to the national treatment policies of GATT and hence the impugned provision stands, levying extra taxes and the case is ruled in favour of the respondent and petition dismissed.

MISCELLANEOUS FACTS

1. A special leave petition for this case to the supreme court was not admitted into the said highest hierarchy of court. Studies on the trends of special leave petition admittance under article 136 has revealed that they are issued on the discretion of the supreme court where there is gross injustice or mass outrage or cases such as criminal cases where quick action even against the interim orders issued by the lower courts is required.

It can be hypothesized that the case at hand does not meet any of the requirements, and both high courts and supreme courts are courts of law that deal with substantial questions in the pertaining field.

2. Even if there is a policy issued by the central, it is their duty to follow it up with an appropriate legislation and acting on the contrary would be “manifest arbitrary.”

Even if there was a policy document at play [as disputed by both sides of the party], following or not following up with helps determine the arbitrary nature of the nation as a whole not a particular state alone. [Secretary, Ministry of Chemicals & Fertilizers, Government of India v. Cipla Limited⁷]

⁷ (2003) 7 SCC 1