

A

STATE OF KARNATAKA AND ORS.

v.

V.S. NARAYANA SWAMY

AUGUST 21, 1991

B

[RANGANATH MISRA, CJ, M.H. KANIA AND
KULDIP SINGH, JJ.]

C

Mysore Excise Act, 1965/Karnataka Excise (Sale of Indian & Foreign Liquors) Rules, 1968: Section 23(d)/Rule 8(1): Manufacture and sale of excisable articles—Imposition of licence fee thereof under the Act—Licence fee for the authorised shop—Imposition of under the Rules—The relevant rule—Whether supported by the Act and had the authority of law.

D

The Respondent, a licensee under the Karnataka Excise Act for selling liquor at an approved shop, filed a Writ Petition before the High Court challenging the vires of Section 23(d) of the Mysore Excise Act, 1965 and Rule 8(1) of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 as being beyond the legislative competence of the State.

E

The High Court negatived the contention of the Respondent in respect of Section 23(d) of the Act but held that Rule 8(1) authorising the levy of licence fee for retail shop was without authority of law and directed refund of the levy collected for three years prior to the filing of the Writ Petition.

F

Aggrieved by the High Court's decision, the appellant-State has preferred the present appeal by special leave.

Dismissing the appeal, this Court,

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HELD: The High Court rightly did not accept the challenge to Section 23(d) of the Mysore Excise Act, 1965. What is authorised under Section 23(d) is imposition of a fee of licence in respect of manufacture or sale of any excisable articles. Rule 8(1) of the Karnataka Excise (Sale of Indian & Foreign Liquors) Rules, 1968 has obviously gone beyond the enabling provision in the section by requiring a licence fee to be paid for the premises where the licensed shop is located. Such a fee would not have the support of Section 23(d). It is unnecessary to refer to precedents for support for this conclusion. It may be possible for the Legisla-

H

ture to make a statutory provision for a licence fee of the type contemplated under the Rules but without authority of the statute a rule of this type should not have been made. [702E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1801 of 1974.

From the Judgment and Order dated 20.3.1974 of the Karnataka High Court in W.P. No. 1956 of 1971.

R.N. Narasimhmurthy, Novin Singh and M. Veerappa for the Appellants.

The Judgment of the Court was delivered by

RANGANATH MISRA, CJ. The appeal is by special leave. Challenge is to the Judgment of the Karnataka High Court declaring Rule 8(1) of the Karnataka Excise (Sale of Indian & Foreign Liquors) Rules, 1968 in so far as it relates to levy of licence fee for retail vending of authorised Indian and foreign liquors and directing refund of such levy collected within three years prior to 2.8.1971 when the Writ Petition was filed.

Respondent, an excise contractor, had taken in auction the exclusive privilege to sell liquors in retail at an approved shop premises. He was issued the appropriate licence under the provisions of the law on payment of licence fee in terms of Item 2 of Rule 8(1) of the aforesaid Rules. Respondent filed a writ petition before the Karnataka High Court challenging the vires of s. 23(d) of the Mysore Excise Act, 1965 (hereafter 'Act' for short) and Rule 8(1) as being beyond the legislative competence of the State Legislature. The High Court did not accept the contention of the respondent in regard to s. 23 but held that Rule 8(1) authorising the levy of a licence fee for the retail off shop was without authority of law.

Section 23(d), as far as relevant, provides:

"23. Ways of levying such duties—

Subject to such Rules regulating the time, place and manner, as may be prescribed, excise duty and countervailing duty under section 22 shall be levied in one or more of the following ways, as may be prescribed, namely:

- A (a)
- (aa)
- (b)
- (c)
- B (d) by fees on licences in respect of manufacture or sale of any excisable articles.”

Rule 8 made under the rule making powers, under the Act, *inter alia*, provides:

- C “8. Fee to be paid—
- (1) The licence fee for the several kinds of licences shall be as follows, namely:
- 1
- D 2
- 3

The High Court rightly did not accept the challenge to s. 23(d) of the Act. What is authorised under s. 23(d) is imposition of a fee of licence in respect of manufacture or sale of any excisable articles. Rule 8(1) has obviously gone beyond the enabling provision in the section by requiring a licence fee to be paid for the premises where the licensed shop is located. Such a fee would not have the support of s. 23(d). It is unnecessary to refer to precedents for support for this conclusion. It may be possible for the Legislature to make a statutory provision for a licence fee of the type contemplated under the Rules but without authority of the statute a rule of the type impugned should not have been made. We find no merit in this appeal and it is, therefore, dismissed.

Respondent did not appear inspite of service of appeal notice. We make no order for costs.

G G.N.

Appeal dismissed.