

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12704 OF 2023

Parag Agro Foods & Allied Products Pvt. Ltd. ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Vinayak Salokhe with Ms. Sampada Khanolkar and Ms. Megha Jani i/
b. Mr. D. B. Savant, for the Petitioner.
Ms. Shruti D. Vyas, Addl. Govt. Pleader, for the State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : OCTOBER 19, 2023

P.C.:

1. Heard learned counsel for the petitioner and learned Addl. GP for the State.
2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

“(a) this Hon’ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, orders, directions under Article 226 of the Constitution of India calling for papers and proceedings in respect of the licences to be issued under Bombay Denatured Spirit Rules, 1959 to the Petitioner for possession, use, sale, import, export, dehydration of the denatured spirit, and after scrutinizing the validity and legality thereof, the rules regulating the possession, use, sale, import, export, transport, dehydration, storage and manufacture of the denatured spirit after its denaturation be held ultra vires and unconstitutional and kindly be struck down.

(b) this Hon'ble Court be pleased to hold that the Petitioner do not requires any licence under Bombay Prohibition Act for sale, purchase, transport, possession, storage, dehydration, manufacture, import, export, of the denatured spirit under the Bombay Prohibition Act;

(c) this Hon'ble Court be pleased to restrained the officers, their agents, servants, employee or anybody claiming through them from prosecuting the Petitioner for not holding licence under the Bombay Denatured Spirit Rules 1959;

(d) ad-interim relief in terms of prayer clause (c) above kindly be granted.

(e) cost of this Petition be provided for.

(f) such other and further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case that may arise.”

3. Learned counsel for the petitioner has brought to our notice a judgment rendered by the Division Bench of this Court on a batch of petitions (Writ Petition No. 8548 of 2004 M/s. Arss Biofuel Pvt. Ltd. & Anr. Vs. State of Maharashtra & Ors.)¹ in which challenge identical to the issues raised in the petition was raised. The Division Bench allowed the said petitions in terms of the following order:-

“

ORDER

(a) The Bombay Denatured Spirit Rules 1959 to the extent that they regulate the possession, use, sale, import, export and transport of denatured spirit viz. Rules 23 to 62 are ultra vires and unconstitutional and are struck down.

(b) There shall be no licence required under the Maharashtra Prohibition Act for sale, purchase, transport, possession, storage, dehydration, import and export of denatured spirit.

(c) We hereby clarify that the power of the State Government in

¹ 2018(5) ALL MR 541

the case of rectified spirit supplied for industrial purposes is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, is not diverted or misused for potable purpose. The State can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product (rectified spirits) and is entitled to verify their correctness.

(d) The Writ Petitions are made absolute on the above terms with no order as to costs.

Ordered accordingly.”

4. Learned counsel for the petitioner has also drawn our attention to an order dated 23 February, 2018 passed on another batch of petitions (Writ Petition No. 8778 of 2007, *Paresh Vora Proprietor of M/s. Modern Industrial Products Vs. The State of Maharashtra and Others* along with other writ petitions) wherein following the decision of this Court in *M/s. Arss Biofuel Pvt. Ltd.* (supra), the Court allowed the petitions in terms of the following order:-

“1. Parties through their counsel.

2. It is not in dispute that the question involved in these Petitions is covered by the Judgment passed by the Division Bench of this Court in various Writ Petitions including Writ Petition No. 8548 of 2004 in the case of *M/s. Arss Biofuel Pvt. Ltd. vs. State of Maharashtra and Ors.* decided on 13th December, 2017.

3. In the circumstances, for the reasons stated in the judgment passed in the case of *M/s. Arss Biofuel Pvt. Ltd.* (supra) these Writ Petitions are disposed of in terms of the order which reads thus :

“(a) The Bombay Denatured Spirit Rules, 1959 to the extent that they regulate the possession, use, sale, import, export and transport of denatured spirit viz. Rules 23 to 62 are ultra vires and unconstitutional and are struck down.

(b) There shall be no licence required under the Maharashtra Prohibition Act for sale, purchase, transport, possession, storage, dehydration, import and export of denatured spirit.

(c) We hereby clarify that the power of the State Government in the case of rectified spirit supplied for industrial purposes is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, is not diverted or misused for potable purpose. The State can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product (rectified spirits) and is entitled to verify their correctness.

(d) The Writ Petitions are made absolute on the above terms with no order as to costs.”

4. Rule made absolute in the aforesaid terms.”

5. Learned counsel for the petitioner would thus submit that the prayers as made in the present petition would stand covered by the decision of the Division Bench of this Court in *M/s. Arss Biofuel Pvt. Ltd.* (supra) as also the said decision followed in *Paresh Vora Proprietor of M/s. Modern Industrial Products Vs. The State of Maharashtra and Others* (supra).

6. Learned counsel for the respondents would not dispute that the prayers as made in the present petition stand covered by the decision of this Court and the present petition can also be disposed of in terms of the said order passed by the Division Bench. She would, however, draw our attention to the rule in question namely Rule 4 of the Bombay Denatured

Spirit Rules, 1959 to contend that it will be necessary for the petitioner to obtain licence under Rule 4 and that the judgment and order passed by the Division Bench be accordingly read. We are not inclined to accept the contentions as urged on behalf of the respondents. In our opinion, what has been held by the Division Bench needs to be followed in the present petition and if there is any other requirement in law, all contentions of the parties in that regard are kept open.

7. We accordingly dispose of the petition in terms of the orders passed by the Division Bench in *M/s. Arss Biofuel Pvt. Ltd.* (supra) as also followed in *Paresh Vora Proprietor of M/s. Modern Industrial Products Vs. The State of Maharashtra and Others* and other petitions (supra).

8. All other contentions of the parties on any other requirements in law are expressly kept open.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]