

(2004) 11 KL CK 0048

In the High Court Of Kerala

Case No : W.A. No's. 466, 645 and 664 of 2004

Anilkumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21
Kerala Abkari Shops Disposal Rules, 2002 — Rule 4(2), 9(10)

Citation : (2005) 2 ILR (Ker) 318 : (2005) 1 KLT 130

Hon'ble Judges : K.S. Radhakrishnan, J; K.M. Joseph, J

Bench : Division Bench

Advocate : V. Giri, K. Jaju Babu and K. Harilal, for the Appellant; Bindu Sreekumar, K.K. Babu, C.V. Antony, K.K. John, S. Sreekumar and M.A. Vahida, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Constitutional validity of Rule 9(10)(b) of the Kerala Abkari Shops Disposal Rules, 2002 is under challenge in these proceedings. Appellants contend that the above mentioned rule violates the fundamental rights guaranteed to them under Articles 19(1)(g) and 21 of the Constitution of India and therefore liable to be struck down.

2. The Kerala Abkari Disposal Rules, 2002 was enacted by the Government in exercise of the powers conferred Under Sections 18A and 29 of the Abkari Act 1 of 1077. Appellants' grievance mainly centres around Rules 4(2) and 9(10)(b) of the Rules which, according to them, not only violate Articles 19(1)(g) and 21 of the Constitution of India but also ultra vires the powers conferred u/s 29 of the Act. For easy reference, we may refer to those provisions at the very outset.

4(2). The shops so notified under Sub-rule (1) above shall be such shops as are retained after abolition of certain existing shops. Grantees of privilege of such retained shops shall undertake to engage the existing workers and such eligible workers of the abolished shops who were registered with the Toddy Workers

Welfare Fund Board as on 31.3.2000 and as are re-deployed to their shops. Grantee of privilege shall also undertake to engage one arrack worker of the abolished Arrack Shops of the State as would be allotted to his shop for rehabilitation, on the basis of district level seniority.

9(10)(b). One Arrack worker who has been remaining unemployed since the abolition of Arrack Shops with effect from 1st April, 1996 shall be absorbed in the shop as may be decided by Government by observing the District level seniority of such Arrack workers.

Section 4(2) obliges the grantee of the privilege to undertake to engage existing workers and such eligible workers of the abolished shops who were registered with the Toddy Workers Welfare Fund Board as on 31.3.2000 and as are redeployed to their shops. Grantee of the privilege shall also undertake to engage one arrack worker of the abolished Arrack Shops of the State as would be allotted to his shop for rehabilitation on the basis of district level seniority. Rule 9(10)(b) also obliges the licensee to absorb one arrack worker who has been remaining unemployed since the abolition of arrack shops with effect from 1.4.1996. On the basis of the above mentioned rules, directions were given to various licensees to absorb one arrack worker in their respective shops. Licensees of the toddy shops are aggrieved by those directions, so also some of the existing toddy workers.

3. The Government thought of rehabilitating arrack workers who were employed in various arrack shops and have issued directions not only to the licensees of toddy shops but to the retail shops of Kerala Beverages Corporation Limited as well. Arrack was being sold in Kerala through licensed retail shops until March, 1996. However, from April, 1996 onwards, the Government of Kerala had prohibited the sale of arrack which led to closure of large number of arrack shops leading to unemployment of large number of arrack shop workers who were working under the licensed contractors in the retail arrack shops. The Government in the year 1997 gave compensation of Rs. 30,000/- to each of the retrenched arrack workers and welfare fund benefits were also granted to those who were in the rolls of the Abkari Workers Welfare Fund. However, the problem of retrenched arrack workers persisted and Government decided to rehabilitate them by providing them with employment in the toddy shops and in retail shops of Kerala State Beverages Corporation Limited. In order to achieve the above objects, the above mentioned Rules were framed. Government have not compelled anybody to employ those workers, but those licensees who avail of the privilege of conducting the toddy shop need only employ them.

4. The Apex Court in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, held that citizen has no fundamental right to carry on trade or business in liquor. State can prohibit completely trade or business in potable liquor since trade or business in liquor as a beverage is *res extra commercium*. State can also place restrictions and limitations on such trade or business in *res commercium* and such restrictions and limitations under Article 19(6) can be

placed by subordinate legislation or even by executive order. The Apex Court in *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, held that each State has the authority to formulate its own liquor policy bearing in mind the welfare and interests of the citizens. In *Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy*, the Apex Court held that no citizen can claim to have any inherent right to sell intoxicating liquor by retail, and that restrictions or limitations, if any, placed by the State on such sale must be reasonable and reasonableness of restrictions would differ from trade to trade and no hard and fast rule concerning all the trades can be laid down.

5. The rule making authority in its wisdom thought it necessary to rehabilitate those persons who lost employment due to the Government's policy decision to do away with the sale of arrack in the State. Several arrack shops were to be closed down due to the Government policy resulting large scale unemployment. Government felt they have got obligation to rehabilitate those persons who are in the lower strata of the society. Under such circumstances Rules 4(2) and 9(10) (b) were introduced in the Kerala Abkari Shops Disposal Rules, 2002. We have already indicated there is no compulsion on the part of any citizen to conduct toddy shops. Only those persons who are agreeable to comply with the statutory rules, agreements and licence conditions need only employ displaced workers. Section 18A which also lends support to the Government policy and the rules framed. Section 18A is extracted below.

18 A. Grant of exclusive or other privilege of manufacture etc on payment of rentals.

(1) It shall be lawful for the Government to grant to any person or persons, on such conditions and for such period as they may deem fit, the exclusive or other privilege -

(i) of manufacturing or supplying by wholesale; or

(ii) of selling by retail; or

(iii) of manufacturing or supplying by wholesale and selling by retail any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration of the grant of such privilege. The amount of rental may be settled by auction, negotiation or by any other method as may be determined by the Government, from time to time, and may be collected to the exclusion of, or in addition, to the duty or tax leviable Under Sections 17 and 18.

(2) No grantee of any privilege under Sub-section (1) shall exercise the same until he has received a licence in that behalf from the Commissioner.

(3) In such cases, if the Government shall by notification so direct, the provisions of Section 12 relating to toddy and toddy producing trees shall not apply.

Section 18A provides for the grant of licence. Section 18A has to be read with

Section 24(c) and (d). While Section 18A provides for the grant of licence Section 24(c) and (d) stipulates that licence granted shall be subject to such conditions and restrictions and in such form and should contain particulars as the Government may direct either generally, or in any particular instance in that behalf.

6. We are in agreement with the learned Single Judge that Section 18A read with Section 24 of the Act gives abundant power to the Government to prescribe conditions for the grant of licence to sell liquor. Government is also entitled to prescribe in exercise of its power u/s 29(1) read with Sections 18 A and 24 conditions for the grant of licence to sell toddy. One such condition prescribed is that every toddy shop licensee should absorb one displaced arrack worker. State Government has got the power to lay down conditions and limitations even through subordinate legislation or through executive orders. This being the legal position, we find no infirmity in Rule 4(2) or Rule 9(10)(b) of the Abkari Shops Disposal Rules, 2002 and we uphold those rules and the contention that rules violate Articles 14 and 19(1)(g) of the Constitution is without any merits since there is no fundamental right to carry on trade in liquor.

7. Counsel appearing for the appellants in W.A. No. 664 of 2004 contended that even assuming that the rules are valid, authorities of the Excise Department have violated the procedure. We are of the view this is a matter which the appellants could have taken up before the authorities concerned. Counsel made specific reference to notices Exts.P49 and P50 and pointed out that there is some infirmity in those notices. Such infirmities in our view could have been brought before the authorities concerned in the event of which the authorities would consider whether there is any procedural irregularities in implementing the rules. In such circumstances, we find no reason to interfere with the judgment of the learned Single Judge. The appeals lack merits and they are accordingly dismissed.