
(1995) 01 OHC CK 0006
In the Orissa High Court
Case No : O.J. No's. 1114 and 2489 of 1992

Anukul Chandra Pradhan and etc.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 27-01-1995

Acts Referred:

Constitution of India, 1950 — Article 166, 226, 227, 47

Citation : AIR 1996 Ori 36

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : A.C. Pradhan and P. Palit, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—These two cases involve common questions of fact and law; the relief claimed in the cases is same. As such, with consent of learned counsel for the parties they were heard together and they are being disposed of by this judgment.

2. The petitioners have filed these applications under Articles 226 and 227 of the Constitution of India challenging the excise policy of the State Govt. for the year 1992-93 (Annexure 2 in O. J. C. No. 1114/92) in general and reintroduction of the crude out-still system for preparation of country liquor in particular. They have prayed for quashing the said decision of illegal and unconstitutional.

3. The gist of the case of the petitioners is that the outstill system of preparation of country liquor is unhygienic and harmful for health of the consumers. According to the petitioners country liquor made out of mohua flowers is immensely harmful for health of the consumers who mostly belong to tribal section of the population. This system which was previously prevalent in different parts of the State was given up in the excise policy for 1991-92 as it was harmful for the health of consumers. The petitioners allege that due to pressure exerted

by certain influential liquor manufacturers, the State Government re-introduced the said system in the policy for 1992-93. According to the petitioners the State Govt. has become insensitive to the public criticism and protects against re-introduction of the system and has succumbed to the pressure of the influential lobby supporting country liquor manufacturers. The petitioners have also challenged the Government decision to open more country liquor shops with a view to augment government revenue. Such decisions, the petitioners contend is against provision of Article 47 of the Constitution. By increasing the number of outlets for country liquor people in the locality will be encouraged to consume more liquor which will be harmful for their health and detrimental to social life. It will also affect the prosperity of the people and economy of the area who are largely dependent on agriculture. The petitioners have averred that if the State Government desires to help the tribal people then it should have found other ways of utilising mohua flower collected by tribals which would have benefited them without affecting their health and their family life. The State of Orissa represented by Secretary in the Revenue and Excise Department and the Excise Commissioner are impleaded as opposite parties in the writ petition.

4. In the counter affidavit, the opposite parties have denied the allegations and the insinuation made in the writ petitions. The stand taken by them, shortly stated, is that the policy formulated by the State Government is not justiciable and therefore, this Court has no jurisdiction to declare it illegal or invalid, that wisdom of the State Government in formulating the policy decision cannot be subject matter of judicial scrutiny. The opposite parties have denied that the outstill system of preparation of country liquor is unscientific or unhygienic that the product is harmful for health of consumers. The opposite parties have stated that the entire district of Sambalpur was under outstill system which continued till 31-8-90; similarly the districts of Kalanandi (except Saspure sub-division) and Paulbani (Bendh Sub-division only) and Balagir were under the said system till 31-8-90. According to the opposite parties provisions have been made and executive instructions have been issued from time to time for regulating the process of manufacture of country liquor by outstill system to ensure scientific process of manufacture and quality of the product. While formulating the excise policy the State Government has kept in view the necessity for augmentation of revenue and for making provision for increased utilisation of mohua flowers collected by the tribal people, so that their economic condition may improve.

5. It is an accepted position that the correctness of a policy decision or wisdom of the State Government in formulating the same cannot be the subject matter of judicial scrutiny. It is to be presumed that before a policy is formulated by the State Government, all relevant aspects and the prevailing fact situation, attending circumstances and the public interest are taken into account. Unless a policy decision ex facie conflicts with a constitutional or statutory provision, or is apparently against public interest it cannot be struck down merely "on the ground that the decision is not a prudent and" wise one. As noted earlier, the main ground raised by the petitioners is that the out still System of manufacture

of country liquor is harmful for health of consumers. No specific material or data is placed before us in support of the contention. All that the petitioners state is that this system was given up in the excise policy for the year 1991-92 as it was considered to be harmful for the consumers and therefore it should not have been re-introduced in the policy decision for the succeeding year. This ground in our considered view, is not sufficient to quash the policy decision as illegal or unconstitutional. Further, in the meantime the excise policy of the State Government for the year 1994-95 has been notified in which it has been decided that no manufacture or sale of country liquor would be allowed in the State with effect from 1-4-1994. Therefore the challenge raised in the cases has been rendered infructuous. Viewed from any angle, no interference in the matter is called for.

6. Accordingly the writ petitions are dismissed, but in the circumstances of the case without any order for cost.

S.K. Mohanty, J.

7. I agree.