

(2002) 03 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C No. 309 of 1993

Basant Yadav and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Citation : (2002) 2 PLJR 357

Hon'ble Judges : Ravi S. Dhavan, C.J;D.P.S. Chaudhary, J

Bench : Division Bench

Advocate : Ray Shivajee, A. Narayan, S.C. Mitra and Sunil Kr. Singh, for the Appellant; R. Dutta and S.B. Kumar for State and S.N. Biswas, Alok Kumar Sinha and Rajendra Prasad, for the Respondent

Judgement

1. The Excise Laws are a legacy of the British Empire. The earliest attempt to control spirit and require payment of duty in British India begins with legislation passed by the Governor General in Council like the Sea Customs Act (1878). The purpose was primarily to levy duty. The earlier attempt to enable prosecutions in Excise matters began with local government legislations. One of the first of such legislations was the Bengal Excise Act V of 1909. Bengal was soon to be partitioned during the time of Baron Hardinge of Penshurst. A new province was carved out known as Bihar and Orissa. Immediately after the creation of Bihar and Orissa revisions were brought into the Bengal Excise Act V. A select committee was constituted to seek reports on the Bihar and Orissa Excise Bill (1915). Suggestions were invited. The representative character of the quarters from which these suggestions were invited itself shows that a semblance of control was being contemplated on the sale and consumption of alcohol. With about fifty years of Crown rule, the Englishman was learning that the "natives" had their own intoxicants and country stills had to be regulated. Thus, opinions were received from ten sources. Eight were from the "natives", one from the Board of Revenue, and the last was an amalgam of all the opinions. The opinions were received from:

- Paper No. 1. Opinion of Pradhan Bhumi-har Brahman Sabha.
- Paper No. 2. Opinion of the Bihar Provincial Association.
- Paper No. 3. Opinion of the Bhagalpur Muhammadan Association.
- Paper No. 4. Opinion of the Bihar Planters' Association.
- Paper No. 5. Opinion of the Landholders' Association, Bhagalpur.
- Paper No. 6. Opinion of the Bihar Provincial Muslim League, Bankipore.
- Paper No. 7. Opinion of the Bihar Landholders' Association, Bankipur.
- Paper No. 8. Opinion of the Oriya Peoples' Association, Cuttack.
- Paper No. 9. Opinion of the Board of Revenue.
- Paper No. 10. A collection of opinions on the Bill, together with a summary of suggestions for the insertion of new provisions.

2. Mass produced spirit and alcohol as available today was not available then. The controls contemplated were basically restrictions on sale and possession. In the style of colonial administration, the first attempt in Excise Laws had an imprint of the laws which were prevalent in England. A reading of the Excise Manual even today shows that the shadow of the Empire runs through the Excise Laws. The amendments to this enactment have been an exercise which can be called a scissors and paste business.

3. The Select Committee which examined the Bihar and Orissa Excise Bill (1915) was comprised of

E.V. Levinge.

E.L.L. Hammond.

L.C. Adami

A. Ahmad

Khawaja Muhammad Nur.

Dwarka Nath.

Sarat Chandra Sen.

Bishun Prasad.

4. The views in the debate in the Select Committee are on record in the old Excise Manuals printed in the 1920's. Sale of liquor to the youth, temperance, manners in drinking, precautions and restrictions, sensitivity to the people of the locality, prevention on the spirit of drunkenness were the matter which concerned the Select Committee. "Oriental Country Stills" were to be regulated. A new concept was coming in of consumption of alcohol on the premises and sale

of alcohol as a "take out" from retail shops. The Excise Manual was also making provisions to cater to the Sahib, for sale even at the railway stations. The rules which were being framed under the new legislation were making reference to "aborigines" and were considering ways and means to control "temptation in the way of aborigines". The Court is sad to note that these expressions still continue, even in 2002, in the Rules framed under the Act in 1915. The Rules still refer to "Local Government", an expression which was abdicated when the Government of India Act (1935) came in. But the restrictions which applied to "aborigines" were not to apply to consumption and sale to the Sahib, for he was governed by Foreign Liquor Licences. By one legislation, the Empire was now dealing with, clearly, two classes of people, the "natives" and the Sahibs. Today the expression "aborigine" cannot be used. Unfortunately, legislation in use in India carries these insulting labels. Appropriately, if the Constitution of India were to take over, the expression would see change by substitution of "Scheduled Tribes" perhaps, but, the context would still be bad, as in a Republic, a class of people are seen to be monitored, as if they had to be kept away from temptation. The usage of expressions like "local government" shows how out of date the Act of 1915 is. Then there are reference to liquor shops being permitted to open from "sunrise". Shops in England, or even Pubs, which dispense or sell alcohol do not transact business from sunrise.

5. One thing needs to be remembered: what was being controlled in so far as liquor and spirit is concerned, is Foreign Liquor, and Country Stills. What is seen today as distilleries, were basically not available, as they had not been established on that scale. Most of the sugar mills, of which a distillery is an ancillary, in the then United Provinces, and western parts of Bihar were indigo manufacturing plants. Indigo was a natural product and one of the main sources of revenue along with opium, for the British Empire. At the turn of the last century Europe found chemical dyes and virtually, within a very short span the natural product indigo faced competition, and this was the end of the indigo industry. The indigo plants were modified and the hinterland of the manufacturing plant saw new cultivation of the crop of sugar cane. The sugar factories insured that there was a by-product, alcohol, the manufacture of which brought yet another problem. How came the indigenous mass produced potable spirits to be known as Indian Made Foreign Liquor.

6. The Constitution of India suffers consumption of alcohol, and does not encourage it. Such are the sentiments and guidance under the Directive Principles of State Policy. But this is a matter for the Legislature of the States. But one aspect is clear that when consumption is of intoxicants there is a lot more which has to be taken care of by the State and all matters civic have to be attended to. The word "civic" has a very deep meaning, and is part of the fabric of the Republic. It implies a concern for the welfare and needs of every citizen.

7. Alcohol must not be permitted to become so institutionalized that the boorishness of it is felt in every sphere and walk of life. Revenues may be earned

as a measure of control, but the theme of the Excise Act was not boorish business. Thus it is the concern of the Court that there is much to be looked into in a legislation which perhaps needs to be thoroughly revised. This is not the job of the Court.

8. It reflects on the character of a society if alcohol will be sold from sunrise, unendingly, beyond sunset to midnight, that alcohol will be sold in retail shops which are side by side and virtually available every hundred yards, if alcohol will be available around public institutions, whether the Legislature, seats of administration, Court houses, Universities, schools, colleges or long established religious institutions, and if alcohol will be available to youths. If in 1915 the Raj was consulting "ethnic" opinion, and the opinion of religion-based communities, then are not the people who have now received institutions of self government (in Bihar this circle was never complete and is still in the process of formation) entitled to have a say if induction of intoxication may take over and prevail over their own localities? The people are entitled to be consulted. Today one of the Senior Counsel of the Petitioners brought to the notice of the Court a media report, to the effect, that one kiosk is selling alcohol adjoining the Government Primary School Khathpur, Mandiri and that the customers from this retail outlet used the school veranda to consume "the booze" at their leisure. These drinkers or drunkards do not even leave the school despite request of the school staffs to vacate the veranda. The liquor shop and the children's school exist side by side. Who planned this?

9. The Court here is not going into details that sale may be for consumption on vendors' premises, off-premises or on and off premises (expressions used in the 1915 legislation), or such details. People's participation is a theme of the Act and the spirit of the Constitution. Otherwise the apprehensions are that like the Opium trade in the century before the last, a legal and regulated trade at that time, addicts may be made out of whole nations. The vested interests made revenues out of the trade. Free and indiscriminately dispensed alcohol brings civic problems. Law, order and public morality are among the areas affected. Thus, it is the suggestions of the Court that the State of Bihar may consider the obligations of a civic society which imposes a duty on every citizen in this matter of the consequential effects of alcohol, so as to contemplate on the following:

(a) Stricter control on the sale of alcohol so as to regulate the timing and the periods of sale. Selling alcohol from sunrise reflects upon the society and the people of Bihar. Spirits certainly should not be sold before the commercial world attends to its business, and the business of alcohol must also cease with other business. Should alcohol be sold even as children are going to school?

(b) If the Constitution suggests discouragement as a semblance of respect to the sections which refer to prohibition, should not the State contemplate a dry day in a week, apart from public holidays?

(c) Should alcohol be available to youths out of their teens? Some States of the

nation have amended the laws to prohibit sale even below 25 years. Should the age be 18, or any other?

(d) The law discourages blatant advertisement of sale of spirits and so much of it that the entire street could be classified as alcohol sellers' alleys. The law obliges the State to spread out the shops. Even the 1915 laws required this. Any distance given in 1915 should now be enlarged. Ignoring the law on this aspect affects all citizens in the area of the shops.

(e) The location of the shops is planning which requires people's participation. The State of Bihar must take heed that institutions of self government, and people who reside in areas affected are entitled to participate so as to be permitted to have their say on the location of the sale and consumption of spirits. The Court is not going into the phenomenon that this business has passed into powerful hands and people are afraid to speak, the Government will have to find ways to solicit their opinion.

10. The atmosphere in these proceedings, though this is a public interest litigation, was not exactly congenial. From the state side it was as volatile as evaporating alcohol. It is not necessary for the Court to record the details as it diverts the attention from the main theme of reforms as a participatory exercise as opposed to an adversary litigation. A PIL is a participatory exercise, not an adversarial one.

The Court is not identifying Al Capones, for looking for an Elliot Ness to catch the likes of them. But, whether such forces are present or not, the phenomenon itself is identifiable when business is made out of alcohol. The licence of such business should never be misunderstood to be a liberty which affects the fundamental liberties of other people who are citizens. The business of alcohol is a matter which affects society. The State may notice the suggestions of the Court while implementing its policies in the State of Bihar. The State will need to re-examine the entire Excise legislation as applicable to Bihar as it has become an anachronism and out of touch with present realities. For this the State will need to consider a special committee, composed of legislators, civil servants, judges, lawyers, teachers and others, so as to ensure the business of alcohol does not affect life and liberty and the licence to deal with this product strictly remains a licence. The State needs to be reminded that this exclusive privilege of the State to vend alcohol was parted with on a licence with conditions and controls attached.

11. The formation of such a committee should be intimated to the Court after the Holi vacations. This theme is no different than when the 1915 Act was being enacted, and such a Select Committee was submitting a report which went a long way towards making the 1915 Act itself.

12. Put up during the week of 15 April 2002.

13. The Registrar General will send a copy of this order to the Chief Secretary,

Bihar who was kind enough to be present at these proceedings.