

(2003) 03 PAT CK 0088

In the Patna High Court

Case No : CWJC Nos. 309 of 1993 and 3525, 3734, 11443 and 13699 of 2002

Basant Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0088

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—All these petitions whether filed as public interest litigation relate to one basic issue about the setting up of retail vendes of liquor shops whether country liquor or foreign liquor.

2. It needs to be placed on record and this aspect has now become relevant that the first of these cases came to the Patna High Court in 1985, almost twenty years ago. This was CWJC No. 323 of 1985 : Basant Yadav v. The State of Bihar and Ors.. This petition came from District of Gaya. The grievance of the petitioner in that petition was that liquor shops are being opened or have been opened indiscriminately in utter violation of the Bihar Excise Act, 1915 and rules under the Acts. There are Rule Nos. 407-F and 471-F of 1919. The petitioners having made out a prima facie case that the grievance indeed had to be looked into by the State respondents received an order that he may file his representation as an objection when fresh licenses are issued and any liquor shops are established in contravention of the Act and the Rules. The order of the Bench dated 10 July, 1985 is reproduced below:

"This writ application has been filed for quashing an order dated 18-12-1982 renewing the licence of Ram Sagar Country Spirit Shop, Gaya, on the ground that the licence is being granted or renewed in respect of the said country liquor shop from time to time in violation of the provisions of the Bihar and Orissa Excise Act and the Rules framed thereunder. It was submitted that the said shop is situated near the places of worship, school, etc. and has been causing inconvenience to the public in general. This statement has been challenged by

respondent No. 3 who is the present licensee.

It is well known that the licence of a country liquor shop is to be granted on the condition prescribed by the provisions of the Act and the Rules and as interpreted by Court That is why law requires the licensing authority hear objection filed in respect of such licence. As the period of licence has expired long ago we are not inclined to consider the question as to whether in the facts and circumstances of the case the license should have been renewed in favour of respondent No. 3 or not However, we direct the petitioner to file objection if a fresh licence is to be granted or renewed in respect of the said country liquor shop. The licensing authority shall hear the petitioner or any other objector and pass necessary orders in accordance with law.

This writ application is, accordingly, disposed of."

3. The same petitioner filed another petition in 1992. This was CWJC No. 2161 of 1992 : Basant Yadav v. The State of Bihar and Ors.. In this writ petition the Division Bench which was seized of the matter expressed its concern that the earlier observation of the Court had not been given its due regard and respect. This Division Bench gave directions to the District Magistrate, Gaya to take immediate action in the matter and see that the orders passed by the High Court are implemented within a fortnight directing the excise department to shift the shop in question before the next settlement.

4. The petitioner came to the High Court the third time. This was CWJC No. 309 of 1993; Basant Yadav and Ors. v. The State of Bihar and Ors.. The petition was presented on 11 January, 1993. The petitioner complained that no regard had been given to the order of the High Court. On 3 August, 1994 another Division Bench, made an observation in the order, to the effect, that it should be understood clearly that if any licence is to be granted in future, the respondent must take leave for that purpose from the High Court. It appears that the direction as were given in the 1992 petition were taken lightly so much so that on 10 May, 1995 in CWJC No. 309 of 1993 the High Court directed that the shop concerned be sealed. The respondents were put under a show-cause as to why they should not be punished for contempt. Thereafter, the petition lay dormant and the hearing proceeded when the matter came up in its turn on 27 November, 2001.

5. While this petition was pending other joined the record of this petition. The issues raised by the petitioner were, in effect, the same. These were CWJC Nos. 3525 of 2002, 3734 of 2002, 11443 of 2002 and 13699 of 2002.

6. All these petitions partake the nature of affirmative action with citizens suggesting and complaining that the location of liquor shops ought to be as prescribed under the Act and the Rules. In the excellence of the matter if the Act and Rules had been adhered to there would have been no occasion for the citizens to complain. Yet, the respondents were at a loss to explain and justify the location of shops. The location, it is accepted, is not in accordance with the

Act and the Rules, The first concern of the Court was expressed in the order of 1 March, 2002. This is reproduced:

"These proceedings were taken up along, with another matter CWJC No. 2837 of 2002. In this case the Court is being reported that there is an onslaught of incidences against women and girls of indecent behaviour which affects public law, order and morality.

Patna is witnessing uncivilised, uncultured and offending behaviour against women and girls on its streets and environs. This is a matter about indiscriminate opening and location and sale of liquor shops and intoxicating products. State Counsel, SC 6, does not disagree that the pattern of the location of the shop is not exactly compatible with the Excise Rules. The table of the location of the shops which was placed before this Court, if read with the rules which control the location and grant of licences, is a total contradiction of the law. Shops have been located where they should not be, not taking into account other intoxicants which are sold under a licence of the State. It is reported to the Court that Patna alone has more than 350 liquor shops. If the location is to be seen in certain localities then one cannot help reaching a conclusion that certain roads and streets may be misunderstood as a drunkards' alley. This affects the society.

The law was made to regulate public order and morality. The Constitution does not encourage an intoxicated society but discourages it.

Thus, let information be placed before the Court when the matter is taken up on Tuesday next, on the location of liquor shops and shops selling intoxicating products on a State granted licence within the meaning of Rules 47 and 48 and Rules 512 and 513 of the Excise Act,

Put up on Tuesday, i.e., 5 March, 2002."

7. By this time the media has also blown up the information that educational institutions were less educational institutions and more a bar. The petitioners were submitting that virtually every road and street is a drunkards' alley. They pointed out to the Act and reiterated the rules, as a reminder, of the manner in which the shops ought to be located. The basic situation on the ground level was not denied. But as the administration has to look into this part of planning, what this Court did was to reiterate the law and bring it into the notice of the administration which it did by an order of 19 March, 2002. The Court also intimated the State that Excise Laws as they stand are a legacy of British Empire and if truly the law is to be looked into them expressions, like natives, "aborigine" and looking into certain matters of location of liquor shops has to be planned with citizens sensitivity in mind. At that time, for instance Rai Sahibs or Rai Bahadurs may have mattered, but today with self-Government people matter. But the petitioners contend that the situation continues and is no different than in 1985 when one of the petitioners brought the first petition to the Patna High Court and thereafter, the second petition in 1992 and yet another petition in

1993 followed by others.

8. In so far as the law is concerned, even though enacted more than 90 years ago in 1915, there was recklessness in locating liquor shops. Today, they re installed regardless of the law. In so far as the sale of intoxicants is concerned whether it is liquor or in its various variations or psychotropic substance (like, Ganja, Bhang and opium) even in 1915 by a legislative intent the power of the Government had been curtailed to regulate and modulate its activities "relating to the excise revenues". Two sub-clauses of Section 89, in so far as they give power to State Government to make the rules to control the business of vending liquor and confine it within the law, it amply clear there is an obligation of the State in parting with its privilege for granting such licences only by regulating this business. Two Sub-sections (f) & (g) of Section 89 are re-produced:

(f) for prohibiting the grant of licenses for the retail sale of any intoxicant at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed;

(g) for prohibiting the grant to specified classes of persons of licenses for the retail sale of any intoxicant.

9. The details for carrying out the administrative part, the Board of Revenue had been vested with powers to make rules. This is in Section 90. For instance in Sub-clauses (8) & (9) of Section 90, there must be a regulation on the sale of intoxicants, the manner in which it is to be sold, the days and the hours when the premises will conduct business, the place from where these products are sold.

10. Before the Court goes into aspects of the rules and the manner in which they regulate the sale of liquor or intoxicants, it is necessary to take into account very relevant and pertinent changes which have come since 1915. The most drastic change, which has come, has come after the coming of the Constitution in 1950. If the directives of State Policy had their way and if future legislation was to be enacted, the State will find it very difficult to ignore the provision of Article 47, which is reproduced :

"Duty of the State to raise the level of nutrition and the standard of living and to improve public health--The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

11. Yet, the State today can hardly ignore the Constitution of India. It is not for nothing that Article 47 refers to the raising of the "level of nutrition" and "standard of living of its people" and "the improvement of public health", Article 47 speaks of the "primary duties" of the State, The Article refers to an "endeavour" by the State to bring about prohibition of the consumption (of

intoxicants) except for medicinal purpose. The consumption itself consumes and excess of it destroys, Can alcohol be an exception?

12. What the Article is suggesting is that the Constitution of India does not want to see addicts the like of which were seen at the turn of the last century and led to opium wars and, thereafter, drastic efforts were made to discourage the production of opium except under a strict license. Opium raised its own problems. It gave revenues to the colonial empire but intoxicated a whole nation. The sale of alcohol unless regulated, and strictly, breeds its own problem in industrial areas in a nation afflicted with rampant unemployment. Excess consumption degenerates the society. In this regard, the phrase in Article 47 referring to the standard of living of its people and the improvement of public health can hardly be ignored by the State of Bihar, other States not excluded. Regulation is the least which the State Government is obliged to undertake in controlling the business of liquor. Free trade of liquor, uncontrolled and unregulated, is anti Constitution. The citizens have a right to object.

13. While the Court has no comment to make whether there should be prohibition or not as these are matters of policy, but the State of Bihar will also need to reconcile itself that between 1915 Act and 47 in the Constitution of India due regard will have to be given to the provisions of the Constitution of India and if it is a matter of edging out one particular piece of legislation then truly hardly anybody will resist the proposition that the Constitution of India will edge the offending provisions. Liquor is licensed. The Constitution suffers it, but does not encourage it. The license to business in this trade has to be strictly regulated. Not to do so will be public nuisance and disrespect to the Constitution.

14. If not controlled, business in alcohol brings in the Mafia and liquor syndicates. It is no use talking these concerns in the privacy of one's drawing rooms and brood that indiscriminate retail of alcohol is playing up havoc with the law and order situation. When the State parts with its privilege to vend by selling licenses, the control on this privilege is retained and cannot be thrown to the wind.

15. If colossal amounts are to be taken on the auction of licenses to vend liquor then the first thing which anybody who pays the highest bid is to make up the price of the auction paid as revenues to the State. Law regulates the liquor business. But not at the expense of compromising law and order and regard to other citizens feelings. But, in practice there is more breach and the administration watches. In the opening of liquor shops the selection of its location and duration of open hours are prescribed by law. On the breach of the conditions the State Government is responsible. The citizens have a right of say in these matters.

16. The rule, law and regulations now exist on paper only. It was necessary for the Court to voice its concern encouraged by what has been mentioned in the Constitution of India and the law which exists, which in no uncertain terms

requires regulation and monitoring on the sale of intoxicants of which liquor is only a part. After the Excise Act, 1915, there are many new laws which prohibits even the possession of some intoxicants. Some of these are Narcotic Drugs and Psychotropic Substances Act, 1985.

17. In the circumstances, let no doubting Thomas doubt that there is no regulation to regulate intoxicants. There are several instances in the rules known as Rule No. 471-F. For instance, Rule 47 clearly lays down where a liquor shop may not be put and regulates the establishment of it elsewhere. Rule 48 has regard to other peoples' feelings on the location. Today, in a republic no administrator can say he will not regard the feeling of a citizen nor under the ordinary law can a rate payer's objection be waived so easily. This rule clearly mentions that when neighbours object their objections will be considered. Rule 53 prohibits the grant of license to any person who has been convicted by a Criminal Court of non-bailable offence; to former licensees who are in arrears to Government; others whose conduct has been found to be unsatisfactory or who have been found guilty of any serious breach of conditions of their licenses.

18. Thus, by law the criminals are not to be in business for the sale of intoxicants and those who have caused loss to the Government in not having paid past revenue no matter how they may camouflage their personalities are not to be granted license either. In 1919, Rule 470-F dated 15 January, 1919 received further regulations. Some of these rules were amended in 1937 by order No. 4278 LSG dated 25 October, 1937. As new municipal legislation was giving a right to rate payers, such of those citizens who have owned property and paid municipal rates, were also permitted to object on the placement and the manner of sale of liquor. These are contained in Rule 63-A.

19. The only difference is that today under the Constitution in a republic a citizen has as much right as a property holder which the common law called "rate payer" to participate in the planning of this envoirens. Placement of liquor shops is a subject on which citizens can object. For a citizen to seek regulation so that there is a semblance of civility in society and to avoid the disruption of peace and tranquillity of the area where he lives is the theme of the law.

20. The right to trade in intoxicating liquor (or for that matter intoxicants) is not a fundamental right. Trade and business in intoxicating liquor can be restricted, severely curtailed. (State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.,).

21. In the circumstances there is hardly any doubt that regard being had to the Constitution of India there is an obligation on the State to regulate those who trade in intoxicants. Civility, public morality, public health, raising the standard of living, due regard to other peoples feelings are matters which are even mentioned in the colonial rules. May be those rules had been made to show regard to persons with property, the Zamindars and the moneyed class. Today, the Constitution gives terms of equality to citizens to have their say in matters

referred to above and the State can hardly turn a blind eye. In the present circumstances, the Court needs to repeat that these issues have been pending at the High Court since 1985, repeat 1985.

22. These matters only remind the State that there is an obligation upon it as provided in law; that Act 1915, the rules framed thereunder and the Constitution of India. There is need to bring certain provisions of the law up to date and modulate them to the needs of a republic and not the colonial empire. Some of the rules are archaic and out of date. This is the job of the legislative department not for the Court to suggest where changes are required. The Court has sufficiently mentioned this in its earlier order. The Court has only reiterated the law which exists on the statute book. The citizen expects the State will function within the framed work of these laws and the rules.

23. Before parting the Court appreciates the efforts of Mr. A.N. Singh, SC 8, who fairly acknowledged and brought to the notice of the Court the rules, the regulations and the provisions of the Act which do provide for regulation; may be that some of the provisions may be out of date.

24. These public interest litigations succeed in showing concern that the location of shops and the conduct of business of liquor shops is more in breach of the law than in its adherence. The people have a right to object within the law.

25. A copy of this order be sent to the Secretary, Law and the Legal Remembrancer of the State of Bihar.