
(2017) 03 AHC CK 0140
In the Allahabad High Court
Case No : P.I.L. Civil No. 4272 of 2017

Bhartiya Yuva Shakti Kalyanam Samiti APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 47

Citation : (2017) 3 ADJ 595 : (2017) 3 ALLJ 456 : (2017) 2 AllWC 1526

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Rakesh Pathak, Illigible, for the Petitioner; C.S.C, for the Respondent

Final Decision : Disposed off

Judgement

1. Heard Shri Rakesh Pathak, learned counsel for the petitioner and Shri H.P. Srivastava, learned Addl. Chief Standing Counsel for the respondents.

2. This public interest litigation has been filed praying for a direction that the State should be restrained from permitting sale of liquor and its consumption to the citizens of this State which in effect amounts to a prohibition and consequently, if the State has failed to live up to the ideals of Article - 47 of the Directive Principles of State Policy then the Court should intervene and issue directions in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

Learned counsel for the petitioner has made a two-fold submission. Firstly that prohibition should be made absolute, and secondly even otherwise the State having the power to regulate the sale and consumption of liquor, can introduce regulations in order to ensure that the health and safety of the citizens of this State are secured as has been opined by the Hon''ble Apex Court in its various pronouncements and which also is the dire social need in today's context. He also submits that prohibition has gained prominence and has been successfully implemented in other States of the country, and consequently, this drive of

achieving a constitutional goal should be enforced by calling upon the State to introduce either prohibition or such regulations that may curtail the consumption of liquor, the outcome whereof has resulted in a spiralling of criminal activity as also moral degradation.

3. Learned Addl. Chief Standing Counsel submits that this Court in the exercise of jurisdiction under Article - 226 of the Constitution of India can proceed to adjudicate a lis arising out of violation of any fundamental rights but when it comes to enforcement of the policies that are enshrined under Chapter - IV of the Constitution of India then the same should be left to the hands of the government instead of framing any such policy or issuing any such direction in this regard under Article - 226 of the Constitution of India.

4. Shri Srivastava has, therefore, invited the attention of the court to the Division Bench order passed by this Court in P.I.L. Civil No.3908 of 2017 decided on 20.02.2017 which is extracted herein under:-

"Heard learned Counsel for the petitioner and Sri S. S. Rajawat, learned Standing Counsel for the State.

This writ petition has been filed by a Village Pradhan contending that she along with other women residents of the area are protesting against the license granted to the respondent No.4 for allotment of a country wine shop of the village in question. For this, a resolution has also been passed.

Learned Counsel for the petitioner submits that this being in larger public interest, the matter should be looked into and viewed from the social angle apart from the legal angle as involved in this case.

Sri Rajawat, learned Standing Counsel submits that there being no statutory bar in the grant of such license, the contention of the petitioner, if taken into account as a matter of public interest, would also apply in other villages on the same pattern as well and consequently, this being a matter of policy should be permitted to be agitated only on the administrative side before the Government in the absence of any illegality in the grant of such license according to the existing Rules.

We have considered the submissions raised and the competing interests of the State's Revenue and the applicability of law as against public interest which tends toward enforcing prohibition is a socio-political issue. Even if the law has to be altered the same has to be by way of a policy decision of the Excise Department of the Government and consequently, in the background aforesaid, we are not inclined to entertain this petition without prejudice to the rights of the petitioner or any such public spirited person to raise this issue before the State Government for it's consideration in accordance with law.

Dismissed with the said observations."

5. Shri Srivastava has then invited the attention of the Court to the decision in

the case of B. Krishna Bhat v. Union of India - (1990) 3 SCC 65. He has referred to Para-4 to substantiate the aforesaid submission which is extracted herein under:-

"4. We are unable to entertain this writ petition under article 32 of the Constitution. The petition of the petitioner is that the policy of prohibition is not being implemented as enjoined by article 47 of the Constitution. In our opinion, it is not entertain able. Article 47 of the Constitution, which is part of our Directive Principles of State Policy enjoins that 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. Article 47 is in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It has to be borne in mind that Article 32 of the Constitution gives the Supreme Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, Directive Principles are not. Directive Principles are aimed at securing certain values or enforc certain attitudes in the law making and in the administration of law. Directive Principles cannot in the very nature of things be enforced in a court of law. See in this connection the observations of this Court in Akhil Bhartiya Soshit Karamchari Sangh (Rly.) v. Union of India, (1981) 1 SCC 246. Whether a law should be made embodying the principles of Directive Principles depends on the legislative will of the legislation. What the petitioner seeks to achieve by this application is to inject a sense of priority and urgency in that legislative will. Determining the choice of priorities and formulating perspective thereof, is a matter of policy. Article 32 is not the machinery through which policy preferences or priorities are determined and this Court is not the forum where the conflicting claims of policies or priorities should be debated."

6. Apart from this, he submits that the constitution bench judgment in the case of Khoday Distilleries Ltd. and Ors. v. State of Karnataka and Ors. - (1995) 1 SCC 574 also entails the law that has been summarised in relation to such issues including the enforceability of any law on the strength of Article 47 of the Constitution of India. He has referred to Paragraphs - 55 and 58 of the said judgment which is extracted herein under:-

"55. The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the State is also injuncted from carrying on such trade, particularly in view of the provisions of Article 47, though apparently attractive, is fallacious. The State's power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is not the only way to restrict and regulate

the consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the state does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6) of the Constitution.

58. We also do not see any merit in the argument that there are more harmful substances like tobacco, the consumption of which is not prohibited and hence there is no justification for prohibiting the business in potable alcohol. What articles and goods should be allowed to be produced, possessed, sold and consumed is to be left to the judgment of the legislative and the executive wisdom. Things which are not considered harmful today, may be considered so tomorrow in the light of the fresh medical evidence. It requires research and education to convince the society of the harmful effects of the products before a consensus is reached to ban its consumption. Alcohol has since long been known all over the world to have had harmful effects on the health of the individual and the welfare of the society. Even long before the Constitution was framed, it was one of the major items on the agenda of the society to ban or at least to regulate, its consumption. That is why it found place in Article 47 of the Constitution. It is only in recent years that medical research has brought to the fore the fatal link between smoking and consumption of tobacco and cancer, cardiac diseases and deterioration and tuberculosis. There is a sizeable movement all over the world including in this country to educate people about the dangerous effect of tobacco on individual's health. The society may, in course of time, think of prohibiting its production and consumption as in the case of alcohol. There may be more such dangerous products, the harmful effects of which are today unknown. But merely because their production and consumption is not today banned, does not mean that products like alcohol which are proved harmful, should not be banned."

7. He has then cited the judgment in the case of State of Punjab and Anr. v. Devans Modern Breweries Ltd. and Anr. - (2004) 11 SCC 26 to contend that the aforesaid view has been reiterated by a subsequent bench while interpreting Article - 47 of the Constitution of India viz-a-viz the right of liquor traders claiming guarantee under Article 19(1)(g) of the Constitution of India read with the reasonable restriction clause contained in Article 19(6) thereof. The submission, therefore, is that prohibition cannot be enforced through a writ and this matter being of a policy ought to be left open to the State to take appropriate measures in the larger interest of the society as indicated herein above. He submits that the State in its wisdom has framed rules and regulations which has been placed in the form of a gist of instructions tendered by the Deputy Excise Commissioner of Uttar Pradesh i.e. extracted herein under:-

"As per direction of this Hon"ble Court, the additional Instructions regarding Rules governing regulation of retail vend of liquor are produced as below:-

1. That no intoxicating liquor shall be sold without a license. Under section 22 of U.P. Excise Act, 1910, there is a specific provision of prohibition of sale to persons under the age of 21 years. The aforesaid Act is reproduced as below:-

" No licensed vendor and no person in the employ of such vendor and acting on his behalf shall sell or deliver any liquor or intoxicant to any person apparently under the age of twenty one years whether for consumption by such person or by any other person and whether for consumption on or off the premises of such vendor."

2. That it is also stipulated under condition 14 of license C.L.-5C (i.e. the license for the retail sale of "Mild" and "Strong" Country liquor in sealed bottles and container for consumption "On" and "Off" the premises) that the sale should not be made to a person below the age of 21 years or any official in uniform.

3. That section 23 of the U.P. Excise Act, 1910 underlines the following procedure :-

Section 23. Prohibition of employment of persons under the age of twenty one years, and of women -(1) No person who is licensed to sell liquor for consumption on his premises shall during the hours in which such premises are kept open for business, employ or permit to be employed either with or without remuneration, any person under the age of twenty one years in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sale foreign liquor for consumption on his premises shall without the previous permission in writing of the Excise Commissioner during the hours in which such premises are kept open for business, employ or permit to be employed either with or without remuneration, any woman in any part of such premises in which liquor is consumed by the public.

(3) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified or withdrawn.

4. That condition No.12 of the license C.L. -5C (i.e. the license for the retail sale of "Mild" and "Strong" Country liquor in sealed bottles and container for consumption "On" and "Off" the Premises) contemplates that the Licensee shall not employ any person as salesman who is below 21 years of age or is suffering from any infectious and/or contagious diseases, or has criminal background.

5. That condition No.08 of the license C.L.-5C (i.e. the license for the retail sale of Mild" and "Strong" Country liquor in sealed bottles and container for consumption "On" and "Off" the Premises) regulates the timing hour of sale liquor from licensed excise shops. The aforesaid condition is cited as below:-

"The licensed premises shall remain open for sale on all days from 9.00 am to 11

p.m., except on 14th April (Ambedkar Janyanti), 15th August (Independence Day), 2nd October (Gandhi Jayanti), 26th January (Republic Day) and upto 3 more days as notified for closures by the Licensing Authority. Licensing Authority may also order closure of shop on account of law and order or General Election related activity etc. under the provisions of relevant laws. No Consideration fee shall be given for the closure of shop on above dates/days."

6. That number, location and site of excise shops are determined in accordance with the Uttar Pradesh number and location of excise shop rules, 1968 (As amended from time to time).

7. That sub rule (c) of Rule 338 of the Excise Manual stipulates the following provisions:-

338. Persons to whom license may be granted- Licensed should only be granted to persons approved as suitable vendors. In particulars they should not be granted to :-

(c) Persons below the age of eighteen years.

At present aforesaid age of license holder has been enhanced above twenty one years since 2001 under different Rules framed separately for country liquor, foreign liquor and beer for example under rule-8(b) of The Uttar Pradesh Excise (Settlement of licenses for retail sale of Country Liquor) Rules, 2001 (as amended from time to time) eligible applicants for license of a retail country liquor shop must be above 21 years of age.

8. That under section 34 (1) (b) of U.P. Excise Act, 1910 license of any excise shop is liable to be cancelled in the event of any breach of terms and conditions as setout in the form of license. The aforesaid section is reproduced as below:-

Section 34 - Power to cancel or suspend licenses, etc. - (1) Subject to such restrictions as the State Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it:-

(b) In the event of any breach by the holder of such license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission of any of the terms or conditions of such license, permit or pass; or

9. That Rule 117 of Excise Manual Khand-1 enjoins upon inspectors to make inspections of shops. If any shop is found to be running in contravention of rules and terms and conditions of license during regular and periodical inspection made by the inspector, license of the shop shall be liable to be suspended or cancelled in accordance with the relevant rules pursuant to section 34 of the U.P. Excise Act, 1910.

10. That this Hon"ble Court has already dismissed an identical writ petition 2076(M/B) of 2013 Urmila Pandey (PIL) v. State of U.P. vide order dated 12.03.2013 by way of the aforesaid PIL, the petitioner prayed for the following relief:-

To issue a writ or mandamus directing the concerned respondents to impose a ban on the manufacture, sale, and consumption of Alcohol.

In view of the aforesaid judgment dated 12.03.2013 delivered by the Division Bench of this Hon''ble Court, the present PIL is also liable to be set aside in the limine."

(G.C. Mishra)

Deputy Excise Commissioner

(Licensing)

Office of the Excise Commissioner,

Uttar Pradesh

8. Shri Srivastava Submits that the State has introduced effective regulatory measures and is enforcing them so as not to adversely affect the population at large and consequently providing for reasonable regulations that can still be taken care of and enforced in order to achieve the object of Article - 47 of the Constitution of India.

We have considered the submissions raised and there can be no dispute with the proposition that regulations have to be provided for by any legislation or executive act that may be necessary in order to curb such malady as is being pointed out by the petitioner. The Hon''ble Apex Court has dealt into this issue when it came to sale of liquor and its trade and commerce in Para-235 of the decision in the case of State of Punjab (Supra) which is extracted as follows:-

"235. In order to determine whether total prohibition would be reasonable the Court has to balance the direct impact on the fundamental right of the citizens thereby against the greater public or social interest sought to be ensured. Implementation of directive principles contained in Part IV is within the expression of restrictions in the interest of the general public."

9. As to what should be the nature of regulations or restrictions has also been discussed in the succeeding paragraphs of the same decision and there are indicators as to what regulations can be framed in this regard. However, the Hon''ble Apex Court acknowledged that such laws can be saved by invoking the principles of Article - 47 of the Constitution of India for which the Hon''ble Apex Court relied on the earlier decision in the case of State of Bombay and Anr. v. F.N. Balsara - AIR 1951 SC 318 and went on to quote the observation made by the said constitution bench in Para-247 of the State of Punjab's (Supra) case, which is extracted herein under:-

"247. In State of Bombay v. F.N. Balsara [AIR 1951 SC 318], this Court held :

(i) A provision of law, which provided for permitting certain persons to drink and prohibited certain others from drinking, would not violate Article 14, provided such classification was reasonable.

(ii) Permitting the use or consumption of foreign liquor among members of the Military and Naval Officers does not offend Article 14, as the members of such Force could be regarded as a class by themselves, and such classification was reasonable.

(iii) Restrictions, which are imposed for securing the objects, which are enjoined by the Directive Principles of State Policy in the Constitution, may be regarded as reasonable restrictions within the meaning of Clauses (2) and (6) of Article 19 of the Constitution.

(iv) When restrictions imposed by a law on the exercise of Fundamental Rights are reasonable in respect of certain items and unreasonable in respect of certain other items, the law as a whole will not be void when the offending provisions are severable; the provisions of the law imposing unreasonable restrictions alone would be void, and those provisions which impose reasonable restrictions will be valid.

(v) Prohibition of possession, consumption, buying or selling of wines by a law is a reasonable restriction upon the right to "acquire, hold and dispose of property" conferred by Article 19(1) (f) having regard to the Directive Principles in Article 47. "

10. While delivering the judgment, the Constitution Bench in the case of State of Punjab (Supra) also observed that the arena of framing policies has to conform to the changing social circumstances and also the need of the hour.

11. After referring to several decisions and authorities as well as the prevalent practices in other countries globally, the Court also referred to the national policy of globalisation of trade and while dealing with the issues presently raised in Para-301 observed as follows:-

"301. Can we shut our eyes to the fact that except the State of Gujarat, no other State has imposed a complete prohibition. In fact, the States are encouraging liberalization to such an extent that in the near future alcohol beverages may be allowed to be sold in the small grocery shops. The executive authorities are contemplating to grant permission to open liquor shops at the Airports. The society has accepted pub culture in the metros. A view in the matter, therefore, is required to be taken having regard to the changing scenario on the basis of ground reality and not on the basis of the centuries" old maxims. "

12. Thus, the Hon"ble Apex Court has found rationality in the framing of restrictive policy in matters of liquor consumption and the State therefore is not absolved of its responsibility in re-visiting such policies from time to time keeping in view the social needs of the public in larger public interest. However, how such policies are to be framed, the Hon"ble Apex Court relying on the judgment of Murlidhar Aggarwal v. State of U.P. - (1974) 2 SCC 472 in Para-318 of the judgment in the case of State of Punjab (Supra) observed as follows:-

"318. This Court in Murlidhar Agarwal and Anr. v. State of U.P. and Ors. while

dealing with the concept of "public policy" observed thus:-

"...Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

...The difficulty of discovering what public policy is at any given moment certainly does not absolve the judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze. The judges are to base their decision on the opinions of men of the world, as distinguished from opinions based on legal learning. In other words, the judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results. The point is rather this power must be lodged somewhere and under our Constitution and laws, It has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere."

13. Consequently, what we find is that as per the decisions of the Hon"ble Apex Court and the view taken by it viz-a-viz particularly Article - 47 of the Constitution of India, the State is under an obligation to review its policy and to take appropriate steps in order to achieve the objective and goals as enshrined under Article - 47 of the Constitution of India. Consequently, the enforcement of Article - 47 may not be a remedy under Article 226 of the Constitution of India but the State is under an obligation to frame laws in order to achieve the goal of Article - 47 of the Constitution of India as observed in the decisions aforesaid.

14. We, therefore, grant liberty to the State Government and its authorities that while framing the excise policy in the coming year, the State government shall take into account this issue which has been raised in the present writ petition and take a policy decision in the matter keeping in view high ideals and principles that have been spoken of and are referred to by the Hon"ble Apex Court while interpreting Article - 47 of the Constitution of India.

Disposed off with the said observations and directions.