

(1977) 12 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 372 and 381 of 1977

Devi Lal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-12-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 31, 31C

Citation : (1978) RLW 23 : (1977) WLN 697

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Shrimal, J.—The common questions of fact and Jaw arise in these two writ petitions, as such they are being disposed of by a common judgment.

2. Selling of intoxicants has always been considered as a business attended with danger to the community. To mitigate this evil the State in exercise of its police power have been regulating the business. The State possesses the right of complete control over all respects of intoxicants viz., manufacture, collection, sale and consumption. The reasons are obvious public morality, public interest, harmful and dangerous effect on the edict. loss of hard earned mow v of the undiscerning and in providing common man and thereby lowering his standard of living, driving him into chronic state of indebtedness and eventually distrust the peace and happiness of his humble home,

3. The State having come to the conclusion that the consumption of intoxicating liquor was not in public interest, it enacted the Rajasthan Prohibition Act, 1969 (Act No 17 of 1969) (hereinafter referred to as "the Act"). The Act received the assent of the President on September 18, 1969. The grant of lease and licences for sale and manufacture of intoxicating liquor being the chief course of the revenue of the State, the Act was intended to be brought in force by stages in different areas of the State The respondent in exercise of the powers conferred

by sub Section (3) of Section 1 of the Act issued a notification S.O. No. 90 on September 12, 1977 specifying the areas in which the Act was extended with effect from October 1, 1977 namely, (i) revenue districts of Tonk and Bundi; (ii) Tehsils Kishanganj and Shahabad of Kota district; (iii) Tehsil Pratapgarh of Chittorgath district; and (iv) Tehsil Salumbar of Udaipur district. This was followed by a notification S.O. No. 91 of the same date issued under Sections 13 and 19(4) of the Rajasthan Excise Act, 1950 (Rajasthan Act No. 2 of 19)0) totally prohibiting with effect from October 1, 1977 the possession, import and transport of liquor within the aforesaid areas subject to the conditions specified in the Rajasthan Liquor Prohibition Rules, 1967. The notification further purports to say that this was being issued with a view to implement the Directive Principles of the State Policy as laid down under Article 47 of the Constitution of India. On September 21, 1977 the Excise Commissioner by virtue of the powers u/s 35(1) (a) of the Rajasthan Excise Act, 1950 issued notices to the petitioners referring to the aforesaid two notifications informing them that their licences for selling liquor within their respective areas falling into the revenue districts of Tonk and Bundi shall stand cancelled with effect from October 1, 1977.

4. The petitioners by these writ petitions have challenged the validity and legality of the above notifications and have prayed that they may be allowed to continue the business of sale of liquor in respect of their licences upto March 31, 1978.

5. There is no dispute between the parties that the petitioners were licensees for the sale of country liquor for Bundi and Tonk districts for the financial year 1977-78 commencing from April 1, 1977 and they acquired a right to sell liquor under the terms and conditions as enumerated in the licences issued in their favour. Licences issued under the Rajasthan Excise Act, 1950 have been held to be contracts by Hon"ble the Supreme Court in Panna Lal & ors vs State of Rajasthan & ors. AIR 1975 SC 2098 Thus it is clear that what the petitioners intend to enforce is a contractual right. It is the condition of the contract (licence) that they would be entitled to sell country liquor upto March 31, 1978 on the terms and conditions mentioned in the licence The right, if any arising in favour of the petitioners by the alleged breach of the conditions of the conditions of the licences by the State Government, can be enforced by a civil suit and a writ petition is not an appropriate remedy for enforcing contractual obligations. Reference may be made to Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others,

6. The contention of the learned Counsel for the petitioners that the areas selected by the respondents for introducing of prohibition do not fall on the border areas and no reasonable classification is discernable for the selection of the aforesaid area for prohibition, needs to be mentioned for being rejected. Sub Section (3) of Section 1 of the Act provides that the Act shall come into force in such areas in the State and on such date as the State Government may from time to time notify. It is well settled that a Legislature may delegate the power to determine the conditions or contingencies under which a statue shall be

operative, even though such conditions may be determined by the Government. More over, it stands to reason that when a measure of social reform such as the Prohibition Act which on the one hand denudes the State of a large revenue and, on the other imposes additional dues and expenses for the purpose of preventing and penalising, the law regarding prohibition to be enforced, because promulgation of such law might impose additional duties and expenses for penalising the evasion of such law There is nothing wrong in applying it stage by stage in the light of the experience gained.

7. As regards the cancellation of the licences being violative of Articles 14 and 19 of the Constitution of India, it would suffice to say that there is no fundamental right to trade or business in intoxicant. The State under its regulatory power, has a right to prohibit absolutely every form of activity in relation to intoxicants its manufacture, storage, export, import, sale and possession In all their manifestations these rights are vested in the State. The power of control is an extent of the societies right to self protection and it rests upon the right of the State to care for the health, morals and well fare of the people. In *Sheoshankar v. State Government of Madhya Pradesh and Ors.* AIR 1951 Nag 58 Hidayatullah J. as he then was, speaking for the Court observed that the C.P. and Berar Prohibition Act, 1938 did not violate Article 19 of the Constitution, because the Legislature having come to the conclusion that the consumption of intoxicating liquor was not in public interest, intoxicating liquor must be regarded as noxious object and it closed to be a legitimate object of "property" or of "commerce" for what had been rendered contraband could not be the object of property in this case the Court cited with approval American decision which fully established this proposition. The ratio decidendi of this case squarely applies to the facts of the cases on hand In *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, the Supreme Court of India concurred with the observations in *Crowley v. Christensen* (1890) 34 Law Ed 620. These observations indicate that the sale of liquor has been at all times considered as the proper subject of legislative regulation. A licence may be exacted and restrictions may be imposed as to sale of liquor There may be absolute: prohibition of sale of liquor. Thus *Cooverjee's* case (*supra*) negatives the contention of the petitioners regarding their inherent light to carry on trade in intoxicating liquor.

8. In the *State of Bombay and Anr. v. F.N. Balsara* AIR 1951 SC 318 the Supreme Court of India after making reference to Article 47 of the Constitution of India said that the idea of prohibition was connected with public health; that absolute prohibition of manufacture or sale of liquor was permissible and only exception could be for medicinal preparation.

9. It will not be out of place to mention that from the day the provisions of the Act were extended to Bundi and Tonk areas under the impugned notifications, the possession and sale of liquor became an offence. The word "business" or "trade" does not include crime. The activities which are criminal or dealing in

articles or goods which are *res extra commercium* could not have been intended to be permitted in the first instance by Article 19 and (g) of the Constitution relating to the fundamental rights to property, trade or business or by Article 14 of the Constitution of India. Article 47 of the Constitution of India provides that it is the primary duty of the State to raise the level of nutrition and the standard of living and to improve public health and in order to do with, the State is required to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs. Article 31C of the Constitution further lays down that no law giving effect to the policy of the State towards securing the principles as laid down in Part IV of the Constitution, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. How the Prohibition Act, as already mentioned above, has received the assent of the Resident and is, therefore, a legislation protected against Articles 14, 19 or 31 of the Constitution of India.

10. In SB Civil Writ Petition No. 375 of 1977 (*Bajrang Lal v. The State of Rajasthan and Ors.* decided on December 15, 1977) similar points were raised but the same was dismissed in limine. The second part of Article 31C of the Constitution was held severable and was struck down by the majority decision in *Ketananda v. State, of Kerala* (7), Article 31C of the Constitution as introduced in 1971, protected laws giving effect to the Directives in Article 39(b), (c) from unconstitutionality on the ground of contravention of Articles 14, 19 and 31 of the Constitution. By the 42nd Amendment Act, 1976, this protection has been extended to legislation for implementation of any of the Directives enumerated in Part IV of the Constitution. In spite of the decision in *Kesavanda's case* (*supra*) it is no longer necessary to invoke the rule of construction and examine whether the notification put reasonable restriction or fell within reasonable classification. Even otherwise a close examination of the Rajasthan Prohibition Act, 1969, impugned notifications and the order reveal that the nexus between them and the Directive policy relied upon is real and not colourable. Examined from whatever angle the petitioners are not entitled to any relief under Article 226 of the Constitution.

11. For the foregoing reasons the writ petitions are dismissed in limine.