

**(1984) 02 KL CK 0021**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 2088 of 1983**

Dr. George Mampilly and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

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**Date of Decision :** 24-02-1984

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 47

**Citation :** AIR 1985 Ker 24

**Hon'ble Judges :** U.L. Bhat, J;M. Fatima Beevi, J

**Bench :** Division Bench

**Advocate :** Govind Bharathan and V.R. Lekha, for the Appellant; K.K. Usha, Govt. Pleader, V. Bhaskara Menon and O.V. Radhakrishnan, for the Respondent

**Final Decision :** Allowed

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## Judgement

Bhat, J.—First petitioner is a medical practitioner in Cochin city. He is the President of the second petitioner-association called the "Legal Forum to uphold Public Causes" formed with the object of upholding public causes through litigation. They have filed this petition under Article 226 of the Constitution of India in relation to an order passed by the State Government G. O. Rt. No. 58/83/TD Taxes(A) Departmentdt. 24-1-1983. under which the Government directed that pending formation of a corporation for supply of arrack in sealed containers with a view to ensure quality and prevent adulteration, supply of arrack in sealed containers will be undertaken by the three public sector enterprises namely, M/s. Mannam Sugars and Chemicals Ltd., The Co-operative Sugars. Chitloor Ltd., and Travancore Sugars and Chemicals Ltd. The Government further directed that the supply of arrack will be either in 750 ML or pint sealed bottles and in 100 ML Polythene bags, with effect from 1-4-1983 (Exts. R1(b) and R3(a). Petitioners have sought for a writ of certiorari quashing this Government Order and writ of prohibition or writ of mandamus restraining the first respondent, State of Kerala and the second respondent. Commissioner of Excise from introducing and/or licensing the sale of arrack in polythene containers/sachets/bags of 100 ml.

capacity or otherwise and from allowing packaging and sale of arrack by third parties and from making available for sale through retail outlets arrack so packed. A learned single Judge of this Court, before whom this O. P. came up, referred the matter to a Division Bench.

2. In C. M. P. 24427 of 1983, two contractors, who have taken contracts for distribution and supply of arrack during the current year through shops in certain areas have been impleaded. In C. M. P. No. 30500 of 1983, this Court had allowed the Co-operative Sugars Ltd., Chittoor to intervene. In C. M. P. 20755 of 1983, this Court has allowed M/s. Samarppan Fabricators Private Limited, Bombay to intervene. This concern is dealing in machinery as well as polythene films for manufacture of polythene sachets. In C. M. P. 31391/83, this Court has permitted intervention of the brother of one of the persons who died in the Vypeen liquor tragedy.

3. In C. M. P. No. 8210 of 1983 and also C. M. P. 6483 of 1983, this Court issued an order of injunction restraining the respondents from taking any steps in implementation of the Government Order referred to above. This Court also appointed an expert, Dr. K. K. Mathew, M.Sc. Ph.D., Retired Professor of Chemistry, to report on some of the aspects of controversy raised in this original petition and he had submitted a report.

4. As mentioned above, what is called in question in this original petition is the decision of the Government to ensure supply of arrack in small polythene containers (100 ml) by the three public sector undertakings to liquor contractors all over the State to enable the latter to supply the same to consumers through licenced shops.

5. The background of the case may be explained thus : The provisions of the Abkari Act, 1077 and the various rules framed thereunder govern the manufacture, import, export, sale and distribution of intoxicating liquors and dangerous drugs. The privilege of selling arrack in different areas is being sold in public auction, subject to various conditions laid down in the relevant rules. Arrack is arranged to be supplied by the State Government to the contractors who are successful bidders. The contractors are to sell arrack to consumers at the rates fixed by the Government through shops licensed for the purpose and whose locations are approved by the Commissioner of Excise or the delegated authority. Till recently, arrack used to be supplied in bulk to the contractors through certain public sector undertakings. There have been complaints that the contractors adulterate the arrack so supplied to them either on account of scarcity of supply or on account of greed for amassing illegal wealth and sell such adulterated arrack to the consumers, whatever it is on and off, there have been deaths attributed to adulterated arrack. The contractors in certain areas (Trivandrum and Punalur for sometime used polythene containers (100 ml.) for supplying arrack to consumers. In February, 1981, there were a quite number of deaths (estimated at 3D and also loss of eyesight and other disabilities attributed to consumption of adulterated poisonous arrack. This was followed by what is

known as the "Vypeen Liquor tragedy", which led to over 70 deaths and loss of eyesight by a large number of consumers of arrack. Supply of arrack to consumers in Vypeen area was made in bottles and not in polythene containers. The State Government is evidently concerned with ensuring quality of arrack supplied and prevention of adulteration. It is stated that the Government took a decision to stop supply of arrack in bulk containers to the contractors to prevent adulteration by the contractors and decided to set up a corporation for supply of arrack in required and handy containers to the contractors. Pending the formation of the corporation, the Government, in the impugned Government Order, decided that arrack will be supplied by the three public sector undertakings to the contractors not in bulk containers but in small containers, that is, in 750 ml. or pint sealed bottles and in 100 ml. polythene bags with effect from 1-4-1983. Petitioners do not challenge the supply in bottles but are very much concerned with the supply in 100 ml. polythene bags.

6. Broadly stated, the objections raised by the petitioners are as follows :

- a) Alcohol contains certain fractional ingredients which may react with the polythene film which itself contains toxic substance and the reaction will render the arrack toxic. Polythene film is totally incompatible as a packaging material for arrack as arrack contains high percentage of rectified spirit.
- b) Polythene is a thermoplastic. It dissolves in organic solvents and the danger of introducing toxicity is present.
- c) Evaporation and inflammability are factors to be considered in connection with arrack. Therefore, packing arrack in polythene sachets is wholly unsafe and a health-hazard.
- d) Under Article 47 of the Constitution of India, prohibition of consumption of intoxicating drinks and injurious drugs is ideal in ensuring the rise in level of nutrition and standard of living and improvement of public health and till the ideal can be achieved, it is the duty of the State to mitigate, if not to prevent, the evil effects of drink by regulating the trade and consumption.
- e) The primary object of holding public auction of the privilege of vending arrack is not collection of revenue but to restrict the sale and consumption of arrack. The Government must always introduce measures for the purpose of discouraging the consumption of arrack and should refrain from introducing measures which tend to proliferation of consumption of arrack. 100 ml. polythene sachets are handy containers which could be carried in pockets of shirts and pants and can be easily taken to educational institutions, cinema theatres, play grounds and other public places. This will lead to proliferation of consumption of arrack and also affect public order. Various organs of State have always stood against making available alcohol in small quantities.
- f) It is very easy to tamper with polythene sachets, extract the contents and substitute adulterated arrack and this is a health-hazard. The closing and sealing

of polythene sachets could not be done satisfactorily, thereby rendering adulteration easy.

g) Used polythene sachets would only be thrown away and there is every danger of used sachets being collected and re-employed for selling adulterated arrack, thereby constituting a serious health-hazard.

At the stage of arguments, learned counsel for the petitioners has been permitted to raise the contention that the impugned order is violative of Article 14 of the Constitution of India. It is contended that the decision in the impugned order is an arbitrary decision, arrived at in an arbitrary fashion without considering the relevant aspects and matters relating to the same and without consulting or taking into confidence either public organisations or scientific opinion and totally ignoring the mandate given to the State under Article 47 of the Constitution of India and totally ignoring the dangerous consequences of introducing sale of arrack in 100 ml. polythene bags from the chemical and the sociological points of view.

7. Learned Advocate General who represented the original respondents and the learned counsel for the interveners challenge the locus standi of both the petitioners to maintain a petition of this nature. Learned counsel representing the Co-operative Sugars Ltd., Chittoor, submitted that when the work was entrusted to the public undertakings they had to invest huge amounts for the purchase of the packaging machinery and polythene film and the entire amount would be wasted and lost if they be prevented from supplying arrack in polythene sachets. Learned counsel appearing for M/s. Samarppan Fabrication Ltd., Bombay contended that the prevention of use of polythene sachets for supply of arrack would lead to annihilation of the trade dealing with supply of packaging machinery and polythene film, that the supply of arrack in polythene sachets is really harmless and the petitioners are evidently instigated by bottle manufacturers and bottling agents who would be adversely affected by the Government decision. The two liquor contractors who intervened also opposed the petition and pleaded for concession in the matter of price which they offered for the privilege of supplying arrack because they could not supply arrack in polythene films on account of the injunction order of this court. There is also a faint suggestion that the petitioners, who are attributing the deterioration in quality of arrack and toxicity in arrack to polythene containers, are indirectly helping the accused in the various criminal cases which arose out of the Punalur liquor tragedy.

8. Learned Advocate General, Sri P. V. Ayyappan. also challenged the locus standi of the petitioners to maintain a petition of this nature. The learned Advocate General also submitted that the State Government passed the impugned order only in their anxiety to prevent further tragedies of the kind which "took place in Punalur area and Vypeen area. The new arrangement, according to learned Advocate General is a practical way of preventing adulteration of arrack either in the hands of the contractors or at the supply end. State Government have taken

the stand in the counter-affidavits, that the use of polythene sachets for packaging arrack is quite harmless, based on Ext. R1(a) opinion given by the chemical examiner to the State Government on 28-2-1979. The learned Advocate General further made it clear that the State Government are not against further examination and investigation into the desirability of using polythene sachets for packaging arrack. The learned Advocate General offered to conduct such examination and investigation with the help of experts and also stated that the State Government would have no objection "if this court gives appropriate directions in that regard and further submitted that till such fresh examination and investigation are conducted, polythene sachets would not be used for packaging arrack. We very much appreciate these submissions of the learned Advocate General and we record our appreciation in this regard.

9. Law, it is said, is dynamic. Naturally our perception of locus standi also has been undergoing transformation. The controversies in this regard have been set at rest by the Supreme Court in three recent decisions. *S.P. Gupta Vs. President of India and Others*, *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and *D.S. Nakara and Others Vs. Union of India (UOI)*, . The traditional conception in regard to locus standi is that judicial redress is available to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or who is likely to suffer a legal injury by such reason. Courts have, during recent years, evolved a number of exceptions to this rule. Courts have now acknowledged that where there has been violation of constitutional or legal rights of persons who, by reason of their socially or economically disadvantaged position, are unable to approach the court for judicial redress, a member of the public could move the court for enforcement of such rights of such persons. Members of the public are enabled, in appropriate cases to come forward to protect the rights of person or persons belonging to a determinate class who, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, are unable to approach the court for relief. This principle has been extended to cases where no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of State or public authority and injury is caused only to public interest. Where there is a public wrong or public injury by an act or omission by the State or a public authority which is contrary to the Constitution or to any law, any member of the public having sufficient interest can maintain an action for redressal of such public wrong or public injury. Courts have begun to recognise that they exist not merely to vindicate individual rights but also to vindicate public rights and therefore permit members of the public to agitate such rights. Any member of the public having sufficient interest can maintain an action for judicial redress of public injury arising from breach of public duty or violation of same provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Of course, it must be ensured that the person who comes forward is acting bona fide and not

for personal gain or private profit or out of political motivation or other oblique consideration. The Supreme Court has affirmed these propositions in the cases mentioned above. Applying these decisions, we have no doubt that the petitioners' locus standi has to be recognised.

10. First petitioner is a medical practitioner, obviously interested in maintenance and promotion of public health and averting any danger to public health. Second petitioner is an association formed for upholding public causes through litigation. The grievance projected by the petitioners, if substantiated, would clearly show that the Governmental action in the instant case is an action resulting in serious damage to public health and public order. The cause sought to be espoused is a public cause. The act sought to be challenged in this case is an act of the State Government seriously affecting public interest. First petitioner, as a member of the public and medical practitioner, has, and the second petitioner, as a relevant organisation, has, sufficient interest in the matter. Apart from vague allegations regarding oblique motives on the part of the petitioners, there is absolutely no material to show that the petitioners are actuated by any oblique motive. Prima facie, they are acting bona fide, we, therefore, reject the challenge against the petitioners' locus standi to maintain the petition.

11. In the nature of the subject-matter of this case and the contentions raised, it would be difficult for this Court to arrive at a definite finding on some of the questions raised. But if we are satisfied that questions raised are serious and require consideration at the hands of the Government and these questions were not considered by the Government and the Government took a decision ignoring the constitutional mandates and adopted an arbitrary procedure to arrive at an arbitrary decision, we will certainly be justified in issuing appropriate directions to the State Government. We may once again advert to the submissions made by the learned Advocate General that the Government are prepared to have a second look at the whole question.

12. We will first advert to the argument that using polythene sachets for packaging arrack is a serious public hazard. This argument has three limbs. It is contended that certain fractional ingredients in alcohol may react with polythene film and produce toxic substance, that polythene dissolves in organic solvents, thereby inducing toxicity and that the qualities of evaporation and inflammability attributed to arrack render the use of polythene sachets wholly unsafe. This Court appointed an expert to study these aspects and the expert has submitted the report. The expert conducted certain experiments in the chemistry laboratory attached to the Maharajas College, Ernakulam, evidently not eminently suited for intensive and extensive experiments of the nature required for the purpose. Arrack packed in 100 ml. polythene sachets, arrack packed in sealed glass bottles as well as polythene film material used for packaging were supplied officially to the expert. He identified the packaging material as polyethylene film. According to the relevant rules, arrack is supposed to have concentration of 40% proof. Arrack in the glass bottle contained 34.8% by weight of alcohol while the

arrack in the sachet contained only 33.6% by weight of alcohol, thereby suggesting, according to the expert, loss of alcohol. The sachets were subjected to several days' free exposure and were thereafter found to contain 32.4% by weight of alcohol. The experimentation also showed that alcohol was slowly passing through the film. The expert has referred to a text book which states that polyethylene has high permeability to organic vapours. A quantity of film was kept in contact with bottled arrack and was found to suffer slight loss in weight, thereby indicating a degree of dissolution, though not of a significant order. The material available being of an insignificant quantity, the expert could not undertake studies relating to toxicity. The expert found the mode of sealing of the sachets unsatisfactory, thereby indicating possibility of pilferage and adulteration. The expert also was fair enough to state that in view of the limited time available for investigation, the experiments devised were necessarily of short duration and actually long term experiments were called for in the case. We do not feel that the expert's report is sufficient to establish the propositions enunciated by the petitioners. But we are satisfied that the report of the expert is sufficient to show that further enquiry and investigation are called for in regard to these matters in controversy.

13. In this connection, we would advert to certain other materials presented before Court by the petitioners. Ext. P5 is a letter received by an institution in Thripunithura from the Central Food Technological Research Institute, Mysore in reply to a query regarding the suitability of polyethylene packing materials for alcoholic beverages. The letter indicates that such materials are not efficient containers for packing alcoholic beverages and the experiments carried out in connection with some studies for the Defence Department showed that even rigid H2P containers are not suitable for packing alcoholic products and therefore flexible packaging using polyethylene film may not be an ideal packaging choice. The letter also indicates that according to the health Ministry regulations, virgin grade packaging materials with extracts and limits within ISI specifications alone can be used and compatibility problems have to be investigated. Ext. P6 is a letter received from the Indian Institute of Packaging, Bombay in reply to a query regarding the use of polythene type packaging for alcoholic liquid products. The letter emphasizes the care and caution required in the case of such packaging as primarily the compatibility of the packaging material and the product will have to be established. The letter indicates that a few organic solvents have a tendency to soften the polyethylene material and therefore the latter is not commonly used as packaging medium for such products. The letter mentions that available technical literature also indicates that normally polyethylene based containers are unsatisfactory for packaging of alcoholic beverages. It is mentioned that the use of re-processed and inappropriate grade of material can cause health problems. It emphasizes need to take specific precautions regarding sealing, avoidance of leakage and inflammability.

14. Pending this case, the Government referred the question to the Industrial Toxicology Research Centre, Lucknow. Three samples of arrack collected on

13-4-1983, 25-4-1983 and 21-7-1983 and packed in polyethylene sachets along with polyethylene sheets, arrack stored in bottles and water used for dilution were also forwarded. Government received a report, a copy of which is marked Ext. R1 (c). The contents of the report are sought to be explained in the additional counter-affidavit filed on behalf of the first respondent and sworn to by the Chemical Examiner, Government of Kerala. The last of the samples was found satisfactory in regard to all tests but the first two samples were not found uniformly satisfactory. The first two samples were found unsatisfactory on account of excessive total residue after migration and from the point of view of UV absorption. For samples A and B, UV absorption indicated were 250, 277 and 382. According to learned counsel for the petitioners, who referred to several textbooks on organic chemistry and spectroscopy, this reading would indicate the presence of some benzoid compound which is said to be a poisonous and unwholesome substance. Arrack in these two sample sachets were filled on 13-4-1983 and 25-4-1983. It may be that this result was obtained on account of the fact that the samples were older than the third sample which was filled only on 21-7-1983. These are all matters which, we are satisfied, require serious consideration. We are not expressing any opinion on the question why these samples gave these results. But the fact that these samples gave such results would provide ample justification for the State Government to have a second look at the entire question after obtaining expert advice. We may also refer to the fact that Ext. R1(c) report shows that mice were fed with quantities of arrack to the extent of 15 ml. and no mortality was reported. This, according to learned Advocate General, would clearly indicate absence of any toxic material in the sachets. The answer of the learned counsel for the petitioners is that the petitioners have no case that by reason of arrack being filled in Polyethylene sachets arrack would become instantly fatal. According to them, on account of chemical reaction and other reasons, toxic substances in small quantities would be produced and such arrack consumed over a substantial period would lead to very serious health problems. We are of opinion that the validity of this contention also would have to be examined by the authority concerned. As already indicated, we are not expressing any definite opinion in regard to any of these matters.

15. What remains for consideration is Ext. R1(a) dt. 28-2-1979. a report submitted by the Chemical Examiner to the State Government. This was a letter sent by the Chemical Examiner to the Additional Secretary, Excise, Board of Revenue, Trivandrum in reply to the latter's letter dt. 28-2-1979. The Chemical Examiner's file was placed before us. That file contains a copy of the letter sent to the Chemical Examiner. The query put to the Chemical Examiner was "whether the transport of arrack in heavy duty polythene containers will cause any change in quality" and the answer in Ext. R1(a) given by the Chemical Examiner was "I may inform you that polythene being highly resistant to acids and alkalies and cold organic solvents, will not cause any change in the quality of arrack. Hence Polythene containers can be used for the transportation of arrack." According to



the counter affidavit filed on behalf of the first respondent, the decision in Ext. R1(b) was based mainly on Ext. R1(a) opinion.

16. We find that neither the query nor the opinion has any relevance to the question whether polyethylene sachets is a safe container for arrack from the point of view of public health. The query put by the Additional Secretary was whether transport of arrack in heavy duty polythene containers would cause change in quality. The query has three aspects. The query related to the question of transport of arrack and not storage or distribution of arrack in collapsible polyethylene containers. The containers referred to in the query are heavy duty polythene containers. Learned counsel would clarify that heavy duty polythene containers are rigid or non-collapsible or thick polythene containers. Evidently, the question related to the use of such containers for the purpose of transport from the premises of the public sector undertakings to the premises of the contractors, and what was in question was only the effect of transport of arrack in such containers on the quality of arrack. Evidently, the query had very little to do with problems affecting public health. In Ext. R1(a), the Chemical Examiner only stated that there will be no change in the quality of arrack and heavy duty polythene containers can be used for transportation of arrack. Evidently, the opinion was with reference to the question whether the quality or the strength of arrack would or would not be affected. We find that Ext. R1(a) opinion has absolutely no relevance to the questions which actually should have received consideration from the point of view of public health. Respondents 1 and 2 have no case that besides considering Ext. R1(a) opinion, the Government consulted any other authority or any other expert in regard to the matters in controversy here. There was certainly no debate on the question. We, therefore, find that Ext. R1(b) decision was arrived at on the basis of an irrelevant opinion found in Ext. R1(a) and without considering relevant matters having a bearing on the question. We, therefore, find that the decision arrived at was a wholly arbitrary decision, arrived at on the basis of an irrelevant expert opinion and extraneous consideration and in an arbitrary manner. We wish to make it clear that by expressing this view we do not intend to express any opinion on the questions in controversy in this case. We are only indicating that serious matters having a bearing on the question involved do arise for consideration and these matters did not receive consideration at the hands of the State Government. Apparently, it never occurred to the State Government that certain scientific and other aspects of the question required consideration. That was why, evidently, the Government did not address themselves in regard to these questions.

17. In passing, we advert to the other contentions" raised on behalf of the petitioners. According to petitioners, polythene sachets can be easily tampered and the contents adulterated. This again is a matter for investigation and consideration. Of course, we are conscious that there cannot be a fool-proof system against such abuses. But, nevertheless the matter deserves consideration at the hands of the State Government. The other contentions raised which we would characterise as sociological also may have to be considered by the

authority concerned. In view of the statement made by the learned Advocate General, we do not want to go into these questions, lest even inadvertently we should express any opinion in regard to these matters.

18. The importance of these questions cannot be overemphasized, particularly in the light of Article 47 of the Constitution of India. Article 47, no doubt, embodies a directive principle of State policy which is quite different from a fundamental right which is judicially enforceable. Nevertheless, a directive principle of State policy is fundamental in the governance of the nation. The ideal proclaimed is prohibition of consumption of intoxicating drinks and that ideal has relevance in regard to the rise in the level of nutrition, standard of living and improvement of public health. In the light of practical realities, it may not be possible for the State at a given point of time to achieve the ideal. But, nevertheless, the ideal should always be retained as a prospective and a goal to be achieved, however hard the path is. The essence of Article 47 is raising of level of nutrition, standard of living of people and improvement of public health. Naturally, the State is not expected to do any act which will not only not promote this directive principle of State policy but go against the directive. The matter arising for consideration in a case like this deserves serious consideration particularly in the light of Article 47 of the Constitution of India.

19. Judicial approach to this subject has not been different. In *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , Mahajan C. J., speaking for the five Judge Bench, quoted with approval the following observations of Field J. in *Crowley v. Christensen* (1890) 34 Law Ed. 620 :

"..... By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying.

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The police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely.... As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils."

The need to treat the trade and business in intoxicating liquor differently from other trades has been repeatedly recognized by the Supreme Court in several decisions. (See *Balsara's case* AIR 1951 SC 318 , *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, ; *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, , *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, , *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, ; *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, and *Har Shankar v. Deputy Excise and Taxation Commr.* AIR 1975 SC 121. Two among the reasons

mentioned in Nashirwar's case to hold that there is no fundamental right to a citizen to carry on trade in liquor are :

"There is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods..... There is power of the State to enforce an absolute prohibition "of manufacture or sale of intoxicating liquor."

The court further added :

"Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants namely, manufacture, collection, sale and consumption."

In Har Shankar's case, the Supreme Court quoted with approval the following statement at page 539 of Vol. 30 of American Jurisprudence :

"This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people....."

The approach discernible in the above observation is consistent with the principles laid down in Article 47 of the constitution and renders relevant support to the arguments advanced on behalf of the petitioners.

20. We therefore find that a decision like the one embodied in Ext. R1(b) could have been arrived at only on serious consideration of all the scientific and other questions arising from the proposed use of polythene containers for packaging arrack; that none of these questions was actually considered by the State Government before arriving at the decision; that the decision rested mainly on Ext. R1(a) opinion which had no relevance to any of the questions involved and for these reasons the decision is held to be an arbitrary one violative of the principles in Article 14 of the Constitution of India. Therefore, we strike down Ext. R1(b) Government order. This does not mean that the State Government will be inhibited from arriving at a fresh decision on the subject on a proper and adequate consideration of all relevant factors including the scientific and sociological factors already indicated and after consulting persons of unimpeachable expertise in regard to these matters. We also indicate the desirability of public organisations being consulted or involved in the decision-making process, for, after all what is involved is something fundamentally affecting public health and public interest. Of course, until such decision is arrived at we make it clear that 100 ml. polythene sachets will not be used for distribution and sale of arrack.

The original petition is allowed in this manner.