

(1993) 12 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11834 of 1992

Jagriti

APPELLANT

Vs

The State and others

RESPONDENT

Date of Decision : 31-12-1993

Acts Referred:

Andhra Pradesh (Andhra Area) General Clauses Act, 1867 — Section 12, 15, 5
Andhra Pradesh (Andhra Area) Prohibition Act, 1937 — Section 1(3), 2, 3, 6
Andhra Pradesh Excise Act, 1968 — Section 1(2), 1(2)9, 15, 17, 18
Bangalore Municipal Corporation Act, 1949 — Section 97
Constitution of India, 1950 — Article 134A, 21, 245, 246, 37

Citation : AIR 1994 AP 225 : (1994) 1 ALT 376

Hon'ble Judges : Sivaraman Nair, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Sri A. Ramalingeswara Rao, for the Appellant; A.G., High Court, for the Respondent

Judgement

1. This public interest litigation is filed by Jagriti, a non-political, secular and rural development organisation registered under the Societies Registration Act. It claims that its activities extend to a number of villages in Totapalli, Guduru Mandal and Indukurpet Mandal of Nellore District it claims that it runs 100 non-formal educational centres in 63 villages in Nellore and Kavali Divisions. The relief which the petitioner seeks are -- a declaration that Sub-sec. (3) of S. 1 and S. 2 of the A. P. (Andhra Area) Prohibition Act, 1937 and clause (b) of sub-sec. (2) of S. 1 of A. P. Excise Act, 1968, are illegal and void. It seeks a consequential declaration that G.O.Ms. No. 966 Revenue dt. 6-10-1969 and G.O.Ms, No. 989 Revenue dt. 11-10-1969 are void. A further declaration which it seeks is that Ss. 15, 17, 18, 20, 33 and 67 of the A. P. Excise Act, 1968, and the rules made thereunder in so far as they enable the sale of liquor, are violative of Articles 21, 40 and 47 read with Article 245 of the Constitution of India.

2. The Andhra Pradesh (Andhra Area) Prohibition Act, 1937 had the effect of rendering the Andhra Pradesh (Andhra Area) Abkari Act, 1886, ineffective by

virtue of S. 2 of the former Act. Section 1(3) of the A. P. (Andhra Area) Prohibition Act, 1937, hereinafter referred to as the "Prohibition Act" provides as follows:

"1(3)(a). This section and Sections 3 and 6 shall come into force in the whole of the Andhra area of the State of Andhra Pradesh at once.

(b)The rest of this Act shall come into force -

(i).....

(ii) in any local area in the Andhra area of the State of Andhra Pradesh on such date as the State Government, may, by notification, appoint.

Section 2 deals with "repeals" and reads as follows:

"From the date on which the provisions of this Act other than Ss. 1, 3 and 6 came into force in any local area, the enactments mentioned in the Schedule shall cease to be in force in such area to the extent specified in the fourth column thereof:

Provided that the State Government may, by notification declare that the provisions of this Act other than Ss. 1, 3 and 6 shall cease to be in force in any local area on such dates as may be specified in the notification and thereupon the enactments mentioned in the Schedule with any subsequent statutory modifications thereof shall revive and come into force in such area with effect on and from such date.

Explanation: For the removal of doubts, it is hereby declared that if a notification is issued in pursuance of the foregoing proviso, in respect of any area which formerly formed of the State Banganapalle the enactments mentioned in the Schedule with any subsequent statutory modification thereof shall come into force in such area with effect on and from such date as may be specified in the notification."

The whole of "The Andhra Pradesh (Andhra Area) Abkari Act, 1886 is one of the enact- ments included in the Schedule. The effect of Sec. 1(3)(b)(ii) is that the State Government has got the power to declare that the provisions of the Prohibition Act other than Sees. 1, 3 and 6 shall cease to be in force in any local area on such dates as may be specified in the notification. The State Government is also given the power to provide by notification that the provisions of the Prohibition Act will come into force in any local area on such date as the State Government may appoint. Counsel submits that this power of bringing into force the provisions of a legislation to any local area in the State is a legislative power and the conferment of such power to apply the provisions of the Act by a notification without taking the legislature into confidence is illegal and unsustainable. He submits that it amounts to excessive delegation and also delegating essential legislative powers. He submits that the proviso to S. 2 also suffers from the same infirmity -- in that the Government is given power to

declare by notification that provisions of the Prohibition Act other than Ss. 1, 3 and 6 shall cease to be in force in any local area. He submits that such power of annulment tantamounts to a statutory power of repeal and such power cannot be entrusted to the executive and should not be exercised by a declaration contained in the notification of the State Government. His objection to S. 1(2)(b) of the A. P. Excise Act, 1968, hereinafter referred to as the "Excise Act" which provides for extension of the provisions of the Act "to a local area of the State not comprised within the territories referred to in cl. (a), as and when a notification is issued under the proviso to Sec. 2 of the Andhra Pradesh (Andhra Area) Prohibition Act, 1937, declaring that the provisions of the Act, other than Ss. 1, 3 and 6, shall cease to be in force in that local area" is also substantially the same. He submits that the above provision also amounts to usurpation by Executive of the essential legislative power. It was in exercise of the powers under the proviso to S. 2 of the Prohibition Act, that the Government issued G.O.Ms. No. 966 Revenue dt. 6-10-1969 declaring that with effect on and from 1st November, 1969 the provisions of the A. P. (Andhra Area) Prohibition Act, 1937, other than Sections 1, 3 and 6 shall cease to be in force in all local areas of Andhra Pradesh, not comprising the territories referred to in clause (a) of sub-section (2) of Section 1 of the A.P. Excise Act. By another notification issued u/s 1(3) of the A.P. Excise Act, G.O. Ms. No. 989 Revenue dt. 11-10-1969, the provisions of the Excise Act were extended to that area with effect from 1-11-1969. Petitioner submits that the enabling provisions contained in the Prohibition Act and the Excise Act being illegal and ultra vires, Government orders referred to above, viz., G.O.Ms. Nos. 966 and 989 are illegal and have no effect. He also submits that Sections 15, 17 18, 20, 33 and 67 of the Excise Act in so far as the same enable sale of alcoholic intoxicating liquors, are violative of Articles 21, 40 and 47 read with Art. 245 of the Constitution of India. Counsel submits that under Article 37 of the Constitution of India, the Directive Principles contained in Part IV of the Constitution shall be fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws. Reference is then made to Article 47 which states that "the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxication drinks and of drugs which are injurious to health". Reference is also made to Article 40 which provide that -

"The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

According to the petitioner, the provisions enabling sale of liquor runs counter to Article 21 which provides for life or personal liberty of citizens. He submits that under Article 245, laws made by the legislature shall be subject to the provisions of the Constitution, and that in so far as the impugned provisions of the Prohibition Act, the Excise Act and the notifications issued thereunder are violative of Articles 21, 40 and 47, they are unconstitutional by the vigour of the Constitution of India.

3. The Andhra Pradesh (Andhra Area) General Clauses Act, 1867, provides for commencement of future Acts. Section 5 of the Act is in the following terms:

"Where in any future Act of the Governor Fort St. George in Council, no time is mentioned at which the same shall come into operation, such Act shall take effect from such date as the State Government may notify by publication in the official Gazette."

It is clear from the above that the legislature, in its wisdom, may entrust the power to notify the commencement of the Act to the Government. That power may also incidentally include the power to withdraw, cancel or modify the notification in part or fully in terms of Section 15 of the General Clauses Act. These provisions apply by reason of Section 12 of that Act to all Acts of the State of Andhra Pradesh. These provisions of the General Clauses Act apply with all their vigour to the A.P. Excise Act as also the A.P. Prohibition Act. The result is that even if the impugned provisions are absent in the enactment in question, the same powers will be available to the State Government by reason of Sections 5, 12, and 15 of the A.P. General Clauses Act.

4. Counsel for the petitioners submit that Section 1(3) (b)(ii) and the proviso "to Section 2 of the Prohibition Act delegates to the State Government, the essential legislative power to enact the law in respect of any local area and also confers a similar power by reason of a notification to withdraw the provisions of the Act. He submits that the most essential power of the Legislature is the power to make enactments and to repeal or withdraw the same. According to him, such power being essentially legislative, is incapable of delegation. His further submission, in the alternative, is that even assuming that such power can be delegated, it shall only be subject to a "policy" and "guidelines" spelt out in the statute itself. The same is the submission regarding Section 1(2)(b) and 1(3) of the Excise Act, 1968.

5. The power to fix a date of commencement of the Act is ordinarily entrusted to an external authority, in most cases the State Government. That has been the legislative practice in this country for a long time past. That policy is manifest in the provisions of the A.P. General Clauses Act and also Interpretation in General Clauses Act (Central Act). The same policy finds its expression in the provisions of the two enactments in question -- A.P. Prohibition Act and the A.P. Excise Act. Due to complexities in the process of law making, it has been the practice of the legislatures in India, to leave the date of commencement of enactments to be notified by the State Government which is entrusted with the enforcement of the Act. That is why in General Clauses and Interpretation Acts, specific provision is made that wherever specific provision relating to commencement is not made, it shall take effect from such date as the State Government may notify by publication in the Official Gazette.

6. It was held by Courts that -

"The aim of all Legislatures is to project their minds as far as possible into

future," and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specially for all cases and, therefore, legislation from the very earliest times and particularly in modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied."

The above passage was quoted approval in *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, and *Sardar Inder Singh Vs. The State of Rajasthan*, .

7. In *Sardar Inder Singh Vs. The State of Rajasthan*, *Venkaratama Ayyar, j.*, speaking for a Constitution bench held (at pp. 515, 516).

"When an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation and such legislation is valid. It cannot be said that while it may be competent to the Legislature to leave it to an outside authority to decide when an enactment might be brought into force, it is not competent to it to authorise that authority to extend the life of the Act beyond the period fixed therein The reason for upholding the legislative provision authorising an outside authority to bring an Act into force at such time as it may determine is that it must depend on the facts as they may exist at a given point of time whether the law should then be made to operate and that the decision of such an issue is best left to an executive authority. Such legislation is termed conditional, because the Legislature has itself made the law in all its completeness as regards "place, person, laws, powers", leaving nothing for an outside authority to legislate on, the only function assigned to it being to bring the law into operation at such time as it might decide. And it can make no difference in the character of a legislation as a conditional one that the Legislature, after itself enacting the law and fixing, on a consideration of the facts as they might have then existed, the period of its duration, confers a power on an outside authority to extend its operation for a further period if it is satisfied that the state of facts which called forth the legislation continues to subsist."

Two propositions are clear from the above decision -- (1) that a legislature, when enacting a legislation which is otherwise, complete, may leave it to an external authority to decide whether the facts necessary for bringing into force the legislation are in existence; and (2) that the power to extend the period of duration of the legislation can also be entrusted to an external agency to decide as to whether five facts which were in existence, and which justify the enactment continue to subsist. In one sense, both these powers may be legislative in character. But a completed, legislature enactment which contains a provision as to "place, person, laws, and powers" may authorise an external agency both to prescribe the date of commencement of the Act as also to extend the duration of the Act beyond the period statutorily fixed, provided such power has been

entrusted by the legislature to an external agency. In case if such entrustment is present in the statute itself, the enactment is a conditional legislating, and such conditional legislation cannot be assailed as enabling excessive delegation. This point was made clear in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, where the Constitution Bench of the Supreme Court speaking through Kapur, J., brought out the distinction between conditional legislation and delegated legislation in the following words (at p. 566):

"In other words by delegated legislation, the delegate completes the legislation by supplying details within the limits prescribed by the Statute, and in the case of conditional legislation, the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend."

8. In *Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. The Corporation of The City of Bangalore by its Commissioner, Bangalore City*, the Supreme Court held that Section 97(e) of City of Bangalore Municipal Corporation Act (69 of 1949) which specified certain articles and animals to be taxed and left it to Municipal Authority to impose tax on other articles and goods. The Court held that the provision was more in the nature of conditional legislation and could not be assailed as delegation of legislative powers.

9. Even though counsel relied on a number of decisions relating to invalidity of statutory enactments containing excessive delegation of legislative powers, we do not feel called upon to consider those decisions in view of the position of law that conditional legislation leaving it to an external authority to determine the circumstances under which the law shall be applied or to what area its operation shall be extended or the particular class of persons or goods to which it shall be applied.

10. The question of excessive delegation of legislative powers as a ground for invalidating enactments had come up for consideration quite often before the Supreme Court of India on a number of occasions. We do not think it necessary to refer to the whole spectrum of the case law. We propose to refer only to some of the decisions which deal with certain aspects on the same question.

11. In *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, a Constitution Bench of the Supreme Court on behalf of which Bose, J., spoke, held (at p. 574):

"An executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms. But this much is clear that it cannot include a change of policy."

The Court found that extension of Section 104 of the Bihar and Orissa Municipal Act, 1922 to the Patna Village by notification dt. 23-4-1951 without complying with the formalities imposed by Sections 4, 5 and 6 of the Act, effected a radical change in the policy of the Act and is therefore invalid.

12. A Constitution Bench of the Supreme Court in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, had to consider the question of validity of Sections 4, 4A, 5, 5A, 5AA, 11 and 29 of the Bombay Agricultural Produce Markets Act, 1939. Under the above provisions of the Act, power was given to the Commissioner, by notification, to declare certain areas as market areas, as a result of which, such areas could not thereafter be used for the purchase or sale of any agricultural produce specified in the notification, except under a licence. Markets were to be established and market committees constituted with power to grant licences for operation in the market. Section 29 enabled the State Government, by notification in the Official Gazette, to add to amend or cancel any of the items of agricultural produce specified in the Schedule to the Act. The challenge to Sections 4, 4A, 5, 5A and 5AA which provided for the declaration of a market area and the establishment of market was on the ground that they placed unreasonable restrictions on their right to carry on trade in agricultural produce. It was stated that the power was essentially legislative in character. It was also submitted that Section 29 enabling the State Government to add to, amend or cancel any of the items of agricultural produce specified in the Schedule to the Act was essentially a legislative power, and conferment of the power on the State Government without mentioning any specific guidelines amounted to excessive delegation of legislative powers. The Court held that the scheme of the Act provided sufficient guidelines, and with the entrustment of the power to add to, amend or cancel any of the items of agricultural produce which was a matter of detail to be worked out in the context of the policy specifically indicated in the statute, did not amount to delegation of essential legislative functions. The court held that in enacting Section 29, the legislature had not stripped itself of its essential powers or assigned to the administrative authority anything in excess but the power to carry out the purpose and policy of the Act. Reliance was placed therein on an earlier decision in The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, with reference to a similar argument assailing the validity of Section 7 of the Minimum Wages Act which gave power to the appropriate Government to add to either part of the schedule any employment in respect of which it is of opinion that minimum wages shall be fixed by giving notification in a particular manner. The Supreme Court held that the provision was constitutionally valid.

13. In B. Shama Rao Vs. The Union Territory of Pondicherry, a constitution bench of the Supreme Court decided by a majority of 3 against 2, held (Para 10):

"The Pondicherry General Sales Tax Act which extended the Madras General Sales Tax Act (1 of 1959) as it stood immediately before the date on which the Pondicherry Act would be brought into force in the territory of Pondicherry by a

notification issued by the Government as provided in Section 1(2) was void and still born, because the Pondicherry Legislature in enacting the Act in that manner had totally abdicated its legislative functions in the matter of Sales Tax Legislation and surrendered it in favour of Madras Legislature."

The Supreme Court held that the power to notify the commencement of the Act with all future amendments was delegation of essential legislative function and with that delegation, the Legislature had abdicated its power and effaced itself so completely with the impugned enactment and the same amounted to excessive delegation rendering the enactment a nullity.

14. In *M/s. Sitaram Bishambhar Dayal v. State of U.P.*, AIR 1972 SC 1168 the question which came up for consideration was whether the power delegated by the Legislature to the Executive by Section 3(D)(1) of the U.P. Sales Tax Act (15 of 1948) to levy tax on goods other than food grains at a rate not exceeding five paise in a rupee did or did not amount to delegation of essential legislative powers ?

Hegde, J, speaking for a two Judges Bench held (at p. 1170):

"Whether a power delegated by the legislature to the executive has exceeded the permissible limits in a given case depends on its facts and circumstances. That question does not admit of any general rule. It depends upon the nature of the power delegated and the purposes intended to be achieved. Taking into consideration the legislative practice in this country and the rate of tax levied or leviable under the various Sales Tax laws in force in this country, it cannot be said that the power delegated to the executive is excessive."

(Reference was made to an earlier decision in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*,)

In *Devi Dass Gopal Krishnan* it was held that it was open to the legislature to delegate the power to fix the rate of purchase tax or Sales Tax if the legislature had prescribed a reasonable upper limit.

15. In *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, the question which came up for consideration was whether Section 60 of the Madras Cooperative Societies Act (6 of 1932) which provided that the State Government may, by general or special order, exempt any registered society from any of the provisions of that Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order, was valid. Dealing with the contention that the above provision amounted to abdication of the powers by the legislature and conferment of unguided legislative power on an extraneous agency, the court held (at p. 354):

"The power given to the Government u/s 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions."

16. The entire gamut of the catena of decisions bearing on the question of delegation of legislative power was the subject matter of consideration by the Supreme Court in *Ramesh Birch and Others Vs. Union of India (UOI) and Others*, . The point in issue therein was whether conferment of the power on the Executive to extend any law in any part of country to Union Territory of Chandigarh after Independence, amounted to failure or excessive delegation of legislative powers. Section 87 of the Punjab Reorganisation Act (31 of 1966) conferred power on the Central Government to extend to the territory of Chandigarh, any law in force in any part of India. The Court held that it could not be said that there was no policy or guideline which could be gleaned from the provisions of the statute under which Government exercised the power which was conferred on the Executive Government. The Court held further that there can be no doubt that the power to extend the provisions of other enactments to a particular area is essentially legislative in character just as the power to withdraw such provisions. On an examination of the various decisions beginning from *Her Majesty the Queen v. Burah*, 1878 (5) Ind. App. 178, AIR 1949 175 (Federal Court) , *The Delhi Laws Act case*, AIR 1951 SC 332, *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, and *Brij Sunder Kapoor Vs. I Additional District Judge and Others*, the Supreme Court held:

"These decisions have been interpreted as holding that the power of Parliament to entrust legislative powers to some other body or authority is not unbridled and absolute. It must lay down essential legislative policy and indicate the guidelines to be kept in view by that authority in exercising the delegated powers. In delegating such powers, Parliament cannot "abdicate" its legislative functions in favour of such authority".

The Supreme Court upheld the validity of Section 87 of the Punjab Reorganisation Act, which empowered the Central Government to extend the Union Territory of Chandigarh any law in force in any part of India.

10 17. On a consideration of the relevant decisions bearing on this aspect, we are of the view that the history of the legislation, the legislative practices in the country and the facts and circumstances justifying the enactment are relevant in considering whether the conferment of power on the Executive Government to notify the commencement of the Act or enabling the State Government, in effect to withdraw the provisions of the Act from some portions may in effect be delegation of essential legislative power incidentally resulting in abdication of such powers by the legislature and its effacement. We are of the opinion that conferment of powers on the State Government to notify commencement of the provisions of the Excise Act or the proviso to Section 2 of the Prohibition Act enabling withdrawal of the provisions of the Prohibition Act from such regions in which the Prohibition Act has been brought into force does not amount to abdication of powers by the legislature or delegation of essential legislative powers to the Executive Government. We are also of the opinion that even

assuming that it amounts to delegation of legislative powers, there are sufficient policy guidelines in the preamble and provisions of the enactments in question as to justify such delegation as reasonable and therefore constitutional.

18. The other aspects which are emphasised by counsel are that the A.P. Excise Act and the proviso to Section (2) of the Prohibition Act are contrary to Article 47 of the Constitution of India, which obligates the State to "endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." He invited our attention to Article 37 which provides that the provisions contained in Part IV of the Constitution though not enforceable by any Court, are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws. He invited our attention to the decisions of the Supreme Court in the U.P. State Electricity Board v. Hari Shanker Jain, AIR 1979 SC 65, Jalan Trading Co. (P) Ltd. and Others Vs. D.M. Aney and Another, and Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, . It is far too late in the day now to contend that the State has no obligation to enforce prohibition, nor is it possible to contend that the State is entitled to enact laws contrary to the directives contained in Part IV of the Constitution of India. We do not think it necessary for us to refer to the decisions in any greater detail because the proposition is so well founded, but the extent and the manner in which the State shall comply with its obligation to enact laws to give effect to the directive principles of State Policy is altogether a different proposition. After an exhaustive consideration of the various aspects of abstinence and temperance in the consumption of alcoholic liquors, the Supreme Court in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, speaking through Krishna Iyer, J. upheld the provisions of Punjab Excise Act read with Punjab Liquor Licence Rules 1956 as amended in 1978 holding that "as Abkari law is not a Prohibition Act with a mission of total prohibition. The obvious object is to balance temperance with tax, to condition and curtail consumption without liquidating the liquor business to experiment with phased and progressive projects of prohibition without total ban on the alcohol trade or individual intake. "This is in consonance with Article 47 of the Constitution of India". The court observed "at p. 1470):

"The temperance movement leaves the door half-closed, not wide ajar; the prohibition crusade banishes wholly the drinking of intoxicants; So it follows that the limited temperance guideline writ large in the Act will monitor the use of the power. Operation, temperance leading later to the former, may be a strategy within the scope of the Abkari Act."

19. We are of the opinion that the provisions contained in the two enactments impugned before us have their objective and anxiety to combine temperance with tax. The Prohibition Act envisages total prohibition and the Excise Act provides for restrictions which may gradually lead to the same result. We are therefore of the opinion that the submission that Section 1(3)(b)(ii) and the

proviso to Section 2 of the Prohibition Act and Section 1(2)(b) of the Excise Act do not contravene the provisions of Articles 47 of the Constitution of India. It is obligatory on the part of the State to introduce prohibition. An enactment or its introduction cannot be the end-all. Enforcement of prohibition of consumption of alcohol cannot be achieved by sanctions alone. People have to be educated about the evils of alcohol and have to be prepared to accept the same as one of the curative and ameliorative measures to reduce the miseries of the poor and the addicts from the entire strata of society. Prohibition cannot be introduced and enforced as if by a magic wand all on a sudden or by incantation of formulae. Preparing the people for accepting prohibition, by temperance gradually introduced and dutifully enforced is one of the strategies to be adopted as was observed in *P.N. Kaushal and Others Vs. Union of India (UOI) and Others*, . We are satisfied that such attempts are now being made, though we are in entire agreement with counsel that it should have been done decades ago and the State has no moral or constitutional justification to hold that it had good enough reasons to cash in the miseries of the poor and the addicts.

20. Counsel has referred to us a number of Articles relating to the State of prohibition in India. We do not think it necessary for us to refer extensively to that literature, because the basic theme of all the learned dissertations is either that the State has failed in its efforts all over the country to implement the constitutional mandate to introduce prohibition or that such efforts as were made gradually were wrecked by the State not putting its heart in obeying the imperatives of the constitutional mandates. It is true that prohibition was enforced in the State at the time of its initial formation as the State of Andhra in 1954. It continued to be in force in part of the re-organised State of Andhra Pradesh, till 1969. Advocate General submits that prohibition had to be withdrawn as a matter of policy due to various compulsions. We find considerable force in the submission that the State has embarked, after a reversal of policy, to introduce prohibition in gradual stages. He referred us to the total prohibition of production, distribution and consumption of arrack in Nellore District with effect from 15-4-1993 and the prohibition of consumption of arrack in the remaining parts of the State with effect from 1-10-1993. Reference is made to Act 15/93 whereby the State took over the wholesale and retail trade in Indian made Foreign Liquor and Beer for the purpose of more effective monitoring of the liquor industry. He also referred us to the A. P. Excise (Lease of Right to Sell Indian Liquor and Foreign Liquor in Retail) Rules, (hereinafter referred to as the Indian Liquor and Foreign Liquor Retail Sale Rules) which were promulgated by notification dated 28th of August, 1993 which were enacted for the purpose of more closely regulating the business in intoxicating liquors. Reference is also made to the Indian and Foreign Liquor Rules, which are amended by G.O. 948 dated 30-9-1993. These two set of rules have introduced further regulations and restrictions by prescribing hours of work, dry days, the strength of liquor to be sold, the quantity and the manner in which liquor should be stocked and sold and the minimum age limit of persons who can purchase and consume intoxicating

liquors. It is true that these provisions do not introduce prohibition at a stretch, but they are atleast gradual steps aiming at prohibition or atleast introduce effective restrictions in the consumption of alcoholic liquors. A Division Bench of this Court, of which one of us (Sivaraman Nair J.) was a member, had occasion to consider the validity of Act 15/93 and the A.P. Excise laws in the judgment in W. P. No. 10820/93 and batch dated 30-9-1993. It held that those provisions are in aid of prohibition and should not be treated as contrary to the directive principles contained in Article 47 of the Constitution of India. Another Division Bench of this Court of which one of us (Sivaraman Nair, J.) was a member, in W.P. No. 15503/93 and batch had considered and upheld the validity of Indian made Foreign Liquor Rules as amended by G.O. 948 dated 30-9-1993, where again it was held that the restrictive provisions were in effect, meant to reduce inebriation and were therefore relatable to the constitutional objective contained in Art. 47 of the Constitution of India. We are of the opinion that the enactments in question do not run counter to Article 47 of the Constitution of India, which enjoins upon the State to introduce prohibition of consumption of alcoholic liquors except for medicinal purpose.

21. It is not that prohibition of consumption of alcoholic liquors can be realised or will be achieved by the enactments in question. The State has to put its heart into serious efforts for educating and preparing the people to accept prohibition. As far as sanctions are concerned, now, they are more or less, dead letters in the statute book. No serious efforts have been or are being made to break the nexus between the greedy brewers and pedlers of liquor and the political and bureaucratic machine which is the factor which really promotes alcoholism in our country in the open or on the sly. Unless that nexus is broken, no effort to introduce or implement prohibition even partially, will succeed. Even in States like Gujarat, where prohibition is in force, mass casualties of the poor, who fall victims to the insatiable greed of the pedlers of the illicit liquor and their outwardly gentlemen sponsors and promoters is not an infrequent happening. In almost all the States including Andhra Pradesh, the poor are driven to the tragedy which in reality, may be massacres by the criminals who operate with the connivance of officials who are supposed to enforce the sanctions. The experience of the last 40 years has shown that mere existence of statutes is not all-curative. Even if the legislature passes an Act and the Court upholds it, the policy of prohibition can be frustrated unless the people are prepared to accept the same and the sanctions are sincerely and seriously enforced. The Division Bench of this court in Messrs. Sona Liquors Limited (W.P. No. 10820/93 dt. 30-9-1993) and W.P. 15503/93 and batch sounded the caution that statutory sanctions, by themselves, will not solve the problem. Though we see force in the submission that there should have been greater anxiety on the part of the State to enforce prohibition by legislative and administrative measures, we are still firmly of the view that if the existing provisions of the A.P. Excise Act are enforced as they are expected to be, in the light of the constitutional mandate contained in Article 47 of the Constitution, greater result in leading the people to

temperance culminating in abstinence and prohibition can be achieved.

22. The next submission of counsel is that the A.P. Excise Act is contrary to Article 47 of the Constitution of India in so far as it promotes and encourages trade in intoxicants by the State as well as private individuals for profit at the peril of destroying the health and morals of the people and it shall be held to be contrary to Article 47 of the Constitution of India. We understand the A.P. Excise Act to contain a number of provisions introducing regulations and restrictions, which fetter free trade in intoxicating liquors. Though the principal objective of Sections 17 and 28 of the Act is to enable the State to monopolise the liquor trade and to sell its exclusive privileged with the object of enhancing public revenue, the licencing provisions really introduce restrictions in the conduct of the trade of production, transport, import, export, distribution, sale and consumption of alcoholic beverages. In the expressive phraseology Krishna Iyer, J., the effect of the enactment is to combine temperance with taxation and increase public revenue by atleast an indirect effort to control, regulate and curtail production, distribution and consumption of intoxication liquors, while the Prohibition Act introduces complete prohibition of all those activities. The restrictive provisions contained in the A.P. Excise Act enable the State to effectively control these various aspects of the liquor trade. For the only reason that successive governments had ignored their duty to respect and implement the constitutional directives, we are not in a position to hold that the Excise Act is entirely antithetic to the Prohibition Act, in that the former promotes the production, manufacture, distribution and consumption of alcoholic beverages whereas the latter prohibits such activities altogether. As a matter of fact, the Excise Act contains many provisions which, if intelligently devised and implemented, will result in prohibition atleast partially. The rules restricting hours of work, the location of outlets for sale of alcoholic beverages, dry days on which no sale can be conducted the prescription of age limit of persons to whom alone liquor can be sold, the strength of the beverages and other such provisions were introduced by the Retail Sale Rules, 1993 and the Indian and Foreign Liquor Rules and the amendment introduced by G.O. 948 dt. 30-9-1993 which were enacted in exercise of the rule making-power under the Excise Act. It is therefore idle to contend that the Excise Act only encourages and enhances inebriation of people and is in that sense," contrary to the provisions of the Prohibition Act. We understand the A.P. Excise Act to contain provisions enabling the State to gradually control and monitor liquor trade if the provisions thereof are intelligently and honestly enforced. The promise of the total prohibition may be a distant dream, but we cannot but hold that steps which were being taken under the A.P. Excise Act do regulate and control the trade and also the production, distribution, sale and consumption of liquor. In that sense, though there may not be complete realisation of the directive principles contained in Articles 47 of the Constitution of India, the Excise Act does contain provisions which enable effective Control of all activities related to alcoholic liquors.

23. In view of the above, we are not in a position to accept the submission that

Section 1(2)9(b) and 1(3) of the A.P. Excise Act and Section 1(3)(b) (ii) and the proviso to Section 2 of the Prohibition Act are ultra vires the Constitution of India or are bad for excessive delegation of legislative powers. We also hold that the petitioner is not right in his submission that the above provisions run contrary to Article 47 of the Constitution of India. We hold further that the provisions of the A.P. Excise Act can be and are being used, atleast to some extent, for the purpose of regulating and controlling the trade in alcoholic liquors.

24. We do not find any substance in the challenge raised by the petitioner against Sections 15, 17, 18, 20, 33 and 67 of the A.P. Excise Act. Section 15 prohibits the sale or purchase of any intoxicant except under the authority and in accordance with the terms and conditions of a licence to be granted by designated authorities. In so far as it regulates the sale or purchase of intoxicants, it contains the salutary provisions. The submission of counsel that it indirectly promotes such activities as the State is not entitled to undertake by reason of Article 47 of the Constitution of India seems to us to be dogmatic devotion to the ultimate (prohibition), ignoring pragmatic intermediate measures. The same is the position regarding Section 17 which enables grant of exclusive privilege of manufacture, supply or sale of any liquor or other intoxicants. Section 17 provides for the grant by State Government of its exclusive privilege of all activities of manufacture, supply and sale of liquor or any other intoxicant in the State. It enables grant of lease or licence or both either jointly or severally subject to conditions. The provision enables the State to collect revenue, but the salient feature is that it can be used for effective control of the various activities related to intoxicating liquors. Section 18 provides for duties on licences in relation to measurement and testing. Section 20 provides for closing of shops for preservation of public peace and is a restrictive provision which enables the District Administration to close down the liquor outlets for the purpose of ensuring preservation of peace. The petitioner cannot have any objection to that provision. Section 33 provides for surrender of licences by a holder thereof on issue of the one month's notice subject to the condition that the licence fee proportionate to unexpired portion of the licence for which it would have been current but for such surrender, shall not be refunded. This relief seems to be jarring. The public interest litigation is not expected to promote the cause of the licensee for the purpose of enabling him to claim that in the event of surrender he shall obtain refund of the licence fees for the unexpired portion of the validity of the licence. The same thing has to be said about the challenge against Section 67 which provides for recovery of amounts due by lessees u/s 17. The purport of that section is to enable the lessee u/s 17 to recover from his sub-lessee any money due in respect of such sub-lease as if it were an arrear of rent recoverable under the law of the time being in force with regard to landlord and tenant subject to the condition that the lessee may, nevertheless, recover such money by civil suit. The challenge against such a provision in a public interest litigation is not understandable.

25. We refuse to grant any relief in relation to specific challenge raised by the

petitioner against Sections 15, 17, 18, 20, 33 and 67 of the A.P. Excise Act.

26. For all the foregoing reasons we dismiss the Writ Petition, subject to the observations contained above. There will be no order as to costs.

Immediately after the judgment is pronounced, counsel for the petitioner sought oral leave to file an appeal before the Supreme Court under Article 134A of the Constitution of India. We have based our decision almost entirely on the decisions of the Supreme Court bearing on the questions. We do not, therefore, find that any question of law or public interest which requires to be decided by the Supreme Court arises in this case. We, therefore, refuse leave.

27. Order accordingly.