

(2009) 04 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6662 of 2009

K. Bhaya Reddy and Others

APPELLANT

Vs

Prohibition and Excise Superintendent, Kadapa (FAC) and
Another

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 — Rule 17, 59
Andhra Pradesh Excise Act, 1968 — Section 20, 31(1), 34, 36
Constitution of India, 1950 — Article 226, 47
Representation of the People Act, 1951 — Section 135C

Citation : (2009) 4 ALD 253 : (2009) 3 ALT 401

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : K. Rathanga Pani Reddy, P. Sri Raghu Ram, L.J. Veera Reddy and M.A.S. Narasimha Rao, for the Appellant; G.P., for the Respondent

Judgement

N.V. Ramana, J.—Save the petitioner in W.P. No. 7197 of 2009, the petitioners in all other writ petitions are A4-licence holders, and they having been granted the lease of right to sell liquor by shop for the lease years 2008-10 by the Government, are doing business of selling liquor by shop. While so, the Superintendent of Prohibition and Excise, issued notices calling upon the petitioner-A4 licence holders (except the petitioners in W.P. Nos. 6662 and 7050 of 2009) to show cause as to why their A4 licences should not be suspended u/s 31(1)(b) of the A.P. Excise Act, 1968 (hereinafter referred to as "the Act") for violating the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (hereinafter referred to as "the Rules").

2. The petitioner-A4 licencees after submitting their explanations, filed writ petitions questioning the show cause notices issued to them by the Superintendent of Prohibition and Excise. While the writ petitions filed by them are pending, the Superintendent of Prohibition and Excise, after considering their

explanations, passed orders suspending the A4 licences of the petitioners in W.P. Nos. 6971, 6972, 6995 and 6996 of 2009, and therefore, those four petitioner-A4 licencees filed petitions praying to amend the prayer in the writ petitions to question the order of suspension of their licences, which were ordered. The Superintendent of Prohibition and Excise is yet to pass orders on the explanations submitted by the petitioner-A4 licencees in W.P. Nos. 7122, 7125, 7126 and 7197 of 2009, and therefore, the petitioner-A4 licencees in the said writ petitions, are only questioning the show cause notices issued to them by the Superintendent of Prohibition and Excise.

3. While the petitioners in W.P. Nos. 6662 and 7050 of 2009 are questioning the orders passed by the Superintendent of Prohibition and Excise, directly suspending their A4 licences without issuing any notice.

4. The petitioner in W.P. No. 7197 of 2009, who claims to be the General Secretary of an organization called "Consumer Care Centre" filed the writ petition to direct the respondents to stop sale of liquor through their licencees including Bars till 23.04.2009. He mainly contends that on the eve of elections, the sale of liquor through illegal outlets, has increased multi-fold, and that with a view to influence the voters, the contesting candidates are storing the liquor for supplying on the dry days. That with a view to maintain law and order and ensure that free and fair elections are held, it is appropriate that the Government should be directed to close down all the liquor shops till elections are held, particularly when Article 47 of the Constitution, casts duty on the State to make an endeavour to bring about prohibition of intoxicating drinks which are injurious to health.

5. The learned Counsel for the petitioner-A4 licencees, in cases where the Superintendent of Prohibition and Excise issued notices and after considering the explanations of the A4 licencees, either passed orders of suspension or is yet to pass orders submitted that issuance of show cause notices is only an empty formality for the Superintendent of Prohibition and Excise has pre-determined to close down the liquor shops on the eve of general elections to the constituencies of the Parliament and State Assembly at the instance of the Election Commission and the police officials, who are bestowed with the duty of conducting free and fair elections and to maintain the law and order respectively.

6. The learned Counsel for the petitioners submitted that without there being any violations committed by the licencees either of the provisions of the Act or the Rules made thereunder or the licence conditions, the respondents for the purpose of statistics to show to the Election Commission as to the steps taken by them to curb the sale of liquor, are issuing notices for suspension of licences on flimsy and vague grounds, and to strengthen this argument, they submitted that about 100 similar notices are prepared by the respondents for issuance to the licencees in each district, and that insofar as Nalgonda district is concerned, even though the respondents prepared and kept ready about 137 notices for suspension of the licences, but they issued only 30 notices, and dropped the idea

of serving the remaining notices on the licencees since writ petitions are filed before this Court.

7. He further submitted that the Superintendent of Prohibition and Excise has neither considered the explanation submitted by the petitioner-A4 licence holders nor has assigned any reason justifying the suspension of the licences, which is a substantive punishment, and has passed orders suspending the licences, mechanically by merely pointing out the allegation and quoting the provision of law under which the licence is liable to be suspended. He submitted that as it is legally impermissible for the respondents to close down the shops during the election period, they are taking the indirect route to suspend the A4 licences by implicating the licence holders in criminal cases and alleging violations of the provisions of the Act and the Rules made thereunder and also the conditions of licence, and thereby disabling them from doing their business. Hence he prayed that the show cause notices and the orders of suspension issued by the Superintendent of Prohibition and Excise be declared as illegal and arbitrary, and consequently set aside the same.

8. The learned Counsel for the petitioners produced a news paper report and submitted that to avoid criticism from the general public about the sale of liquor from illegal outlets called "belt shops", the respondents are harassing the A4 licence holders and adopting arm-twisting methods by foisting false cases on flimsy grounds, and thereby ensure closure of the shops, without giving any remission in the licence fee, A.P. Wine Dealers Association made representation offering to close down their liquor shops and bars until the elections are over provided the government gives remission of the licence fee for the period they close down the shops or in the alternative the supply of liquor be rationed during the election season so that availability of liquor could be restricted, and that they are ready to be part of the efforts to ensure liquor free elections, but the Government have not taken any action thereon, and is harassing the licence holders by framing cases, which is only for the purposes of statistics to show to the Election Commission that they are taking action against the alleged illegal sale of liquor.

9. The learned Counsel for the petitioner-A4 licence holders, where the licences were suspended without issuing any notice contended that since suspension of licence is a substantive punishment, the Superintendent of Prohibition and Excise, before suspending the licence, is required to provide opportunity of making representation against the action proposed, as provided in the proviso appended to Section 31(1)(e) of the Act, and since the licences were suspended without providing any such opportunity, the orders of suspension are liable to be set aside. In support of this argument, they placed reliance on the judgments in *Madhavi Wines, Mancherial v. Excise Superintendent, Adilabad 1994 (3) ALT 17 (NRC)*, *Pheema Audiseshaiah Vs. Gopalam Venkata Krishnaiah (died) per L.Rs. and Others*, and *S. Venkat Reddy v. Prohibition and Excise Superintendent 1998 (2) A.W.R. 442*.

10. The counsel for the petitioner in W.P. No. 7197 of 2009 contended that the State under Article 47 of the Constitution of India, has a duty to make every endeavour to prohibit intoxicated drinks which are injurious to health. They cannot shut their eyes to the illegal sale of liquor by unlicensed individuals through unauthorized outlets called "belt shops". He submitted that even though Section 135-C of the Representation of the People Act, 1951 prohibits sale of liquor for 48 hours during the period of elections, the same by itself is not sufficient to arrest the illegal flow of liquor, because the past experience shows that the contesting candidates and their agents with a view to influence the voters are indulging in illegal storing of liquor to distribute on the dry days. He submitted that if remedial steps are not taken to arrest the illegal flow of liquor, and the sale of liquor until the elections are conducted, is not prohibited, then there is every likelihood of the law and order breaking down, thereby impacting the free and fair conduct of election. Hence, he submitted that the Government be directed to close down the liquor shops until the elections are over to facilitate and free and fair election.

11. The learned Government Pleader for Prohibition and Excise appearing on behalf of the respondents responding to the submissions of the petitioners whose licences were either suspended without notice or suspended after considering their explanations to the show cause notices, contended that the Superintendent of Prohibition and Excise is empowered to suspend the licence even without notice, if the circumstances so warrant, pending enquiry/investigation, and in support of this argument, he placed reliance on the Full Bench judgment of this Court in Taappers Co-op. Society, Maddur v. Supdt. of Excise 1986 (1) A.W.R. 387 : 1984(1) ALT 66 (NRC) : 1984 (2) APLJ 1 (F.B.). He further submitted that the Superintendent of Prohibition and Excise, having considered the explanations submitted by the licence holders to the show cause notice, and not satisfied with the same, suspended their licences, and no interference is called for therewith, particularly when they were indulging in illegal sale of liquor.

12. Since it was brought to the notice of the Court by the petitioners that to avoid harassment and threat of suspension of the licences, A.P. Wine Dealers Association made representation requesting the Government to permit them to close down the shops, subject to remission of licence fee for the closure period or extension of the lease period proportionately, this Court wanted to know from the learned Government Pleader for Prohibition and Excise as to whether the Government would be considering the request of the Association to close down the shops until the elections are concluded.

13. On the next day, when the matters were taken up, on behalf of the State, the learned Advocate General appeared, and on instructions from the Government, offered stiff resistance and submitted that the Government is not willing to close down the shops as requested by the Association, and contended that if the Government is to close down the shops for ten days, as requested by the A.P. Wine Dealers Association, then the Government would stand to lose Rs. 700.00

crores, thereby causing irreparable loss of revenue.

14. He denied the contention of the petitioners that the respondents are acting at the behest of the Election Commission and the police and foisting false cases against the licencees to close down the shops, and contended that only in cases where the licence holders, are breaching the provisions of the Act, and the Rules made thereunder and the conditions of licence, their licences are being suspended after issuing show cause notices. He also denied the contention of the petitioners that about 100 notices in each district for suspension of the licences have been prepared, and contended that even though there are 6344 liquor shops in the State, only 49 notices have been issued so far to different shop owners, and further contended that if several notices of the kind were issued, then certainly that many writ petitions would have been filed, and the fact that only a few writ petitions are filed, indicates that only few notices were issued and that too for the alleged violations. He further contended that since the petitioners have violated the provisions of the Act and the Rules made thereunder and the conditions of licence, the respondents have either suspended the licences directly or issued notices for suspension of licences and after considering the explanations, suspended the licences, and no interference is called for therewith.

15. He submitted that the provisions of the Act and the Rules do not permit closure of the shops. That except on the dry days, no licencee shall close the shops, and if the licencees choose to close the shops on days other than dry days, then action will be taken against such licencees, and having regard to the provisions of Rule 59 of the Rules, they will not be entitled to any remission or compensation. The running or closure of shops shall only be in accordance with the provisions of the Act and the Rules made thereunder and the conditions of licence. He submitted that except for closure of shops on the directions of the District Collector u/s 20 of the Act, the licencees are not entitled to any remission or compensation. He submitted that closure of the shops and prohibition of sale of IMFL would not be in the financial interest of the State as also the same not only cause financial loss to the State, but would also lead to illegal circulation of illicit liquor, and in which case, given the regulatory machinery at the disposal of the State, it will be very difficult for the State to control and curb the inflow of illicit liquor from other States.

16. He submitted that in our democracy, the electorate is mature enough and they will not be influenced or swayed by the supply of liquor to them by the corrupt and unscrupulous contesting candidates. He submitted that the electorate is wise enough to elect their representatives without being influenced by supply of liquor and contended that personally he cannot say whether supply of liquor has any role to play in the election process and affect the free and fair elections. He however submitted that the Central Government probably with a view to reduce the impact of liquor in the elections, has introduced Section 135-C in the Representation of the People Act, 1951 vide Amending Act 23 of 1996, prohibiting sale of liquor for a period of 48 hours before poll. He produced a copy

of the minutes of the meeting dated 20.03.2008 of the Chief Electoral Officer and other officials with regard to illegal sale of liquor.

17. He submitted that in the guise of larger public interest, the Court cannot pass orders de hors the provisions of the Act or the Rules made thereunder or the conditions of licence and order closure of the shops. That Judiciary being a co-equal organ of the State, just like Legislature and Executive, is also bound by the law and certainly has to make orders within the confines of the law. Hence, he contended that it is not in the interest of the State to prohibit the sale of liquor, and particularly when the availability of liquor may not have any influence on the electorate.

18. Heard the learned Counsel for the petitioners, the learned Government Pleader for Prohibition and Excise for the respondents and the learned Advocate General for the State.

19. The main ground on which the Superintendent of Prohibition and Excise, either issued notices for suspension of A4 licences or suspended the licences directly, are that the petitioner-A4 licence holders had sold liquor to unlicensed individuals in quantities more than permitted by the Rules, and by selling so, they have violated the provisions of the Act and the Rules made thereunder and also the conditions of licence, and as such, their A4 licences are liable for suspension or stand suspended.

20. Though the petitioners in W.P. Nos. 6662 and 7050 of 2009 contend that the Superintendent of Prohibition and Excise, before suspending their licence, was under an obligation to give them an opportunity of making representation against the action proposed, the fact remains, pending investigation of case or crime registered against the licensee, the Superintendent of Prohibition and Excise, has the incidental and ancillary power to suspend the licence pending enquiry, if the circumstances so warrant. The fact whether the authority vested with the power of investigation can exercise incidental and ancillary power to suspend a licence pending enquiry without issuing any notice was considered by a Full Bench of this Court in *Tappers Co-op. Society, Maddur v. Supdt. of Excise* (supra). The Full Bench, per majority, while upholding the incidental and ancillary powers of the authority to suspend licence pending enquiry or passing final orders, observed that whether suspension of licence should be preceded by an opportunity of making representation or not, depended upon certain factors, and that suspension of licence cannot be for unduly long period and that it should be concluded as early as possible, and held as under:

However, it must be made clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licencing authority is bound to exercise discretion reasonably bonafide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step the licencing authority is bound

to afford opportunity as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry. Further the suspension pending enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the orders liable to be set aside. Whether the suspension of licence must be preceded by notice of opportunity must depend upon various factors such as degree of urgency involved the duration of suspension the nature of the breach, public danger to be avoided and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give opportunity to the holders of the licences before passing interim orders of suspension. Hence, the licencing authority has got ancillary and incidental powers of suspending a licence or permit pending enquiry in a given case, if the circumstances clearly warrant and taking into account the urgency in the case.

21. In *S. Venkat Reddy v. Prohibition and Excise Superintendent* (supra), it was held by this Court that there is no need to issue any notice or opportunity for keeping the licence under suspension pending enquiry. To the very same effect is the law laid down by this Court in *Ramesh Vs. Prohibition and Excise Superintendent*, wherein it was held as follows:

Suspension pending enquiry need not be preceded by a notice. Suspension referred to in proviso relates to substantive punishment after enquiry for inflicting which opportunity of representation be given to licensee. Observation made in the impugned order that petitioner-licensee has indulged in acts of adulteration is only provisional and not to be treated as final. It is a matter to be decided and after consider explanation which petitioner may submit in response to show cause notice. Impugned order be treated as show cause notice.

22. Though in the above cases, it has been held that no notice is required to be given when an order of suspension is passed pending enquiry, but a reading of the impugned suspension order indicates that it is for an indefinite period, and in view of the law laid down by the Full Bench of this Court in *Tappers Co-op. Society, Maddur v. Supdt. of Excise* (supra), wherein it was held that suspension of licence cannot be for an unduly long period, and since the suspension is in the nature of a substantive punishment, I am of the considered opinion that the impugned orders of suspension, impugned in W.P. Nos. 6662 and 7050 of 2009 should be treated as notices to the petitioners calling upon them to submit their explanation within one week, and after considering the explanations, if any, that may be submitted by them, the Superintendent of Prohibition and Excise, shall pass appropriate speaking orders, within a period of one week thereafter, in accordance with law.

23. As stated above, the petitioners in W.P. Nos. 7122, 7125, 7126 and 7127 of 2009, even though submitted their explanations to the show cause notices, yet have filed the writ petitions questioning the show cause notices, and as of now, the Superintendent of Prohibition and Excise, has not passed any orders. The law

is well settled that the Courts normally would not interfere at the stage of show cause notice, for the recipient of the show cause notice is given opportunity to put forth his case against the proposed action. In *K.M. Safiullah Vs. A.P. State Wakf Board and Others*, , this Court held as follows:

The writ Court would not ordinarily interfere at the stage of show cause notice for it favours the quasi judicial authority vested with the power to exercise and discharge its statutory functions, with a free hand, independent from outside control.

When a statutory authority issues a show cause notice, the recipient of the show cause notice has ample opportunity to approach the quasi-judicial authority and place his/her case before such authority that will decide in accordance with law. If an order passed by the quasi-judicial authority goes against the person, it is always open to such person to avail the remedy of appeal or approach this Court under Article 226 of the Constitution, if it is permissible under law. A writ petition against a show cause is, ordinarily, not maintainable.

24. In view of the above, the writ petitions filed by the petitioners in W.P. Nos. 7122, 7125, 7126 and 7127 of 2009 are not maintainable and are liable to be dismissed. However, since the petitioners have already submitted their explanations to the show cause notices, the Superintendent of Prohibition and Excise, shall consider the same and pass appropriate speaking orders in accordance with law, expeditiously.

25. The petitioners in W.P. Nos. 6971, 6972, 6995 and 6996 of 2009 have questioned the orders of suspension passed by the Superintendent of Prohibition and Excise after considering the explanations submitted by the petitioners. The petitioners have filed copies of the orders of suspension, and a perusal of the same would make it clear that the licences stand suspended for an indefinite period. Though the petitioners pointing to the orders of suspension contended that there is no consideration made by the Superintendent of Prohibition and Excise to the explanations submitted by the petitioners to the show cause notices, I am not inclined to go into the merits or otherwise of the same, for suspension of licences of the petitioners is pending enquiry/investigation into the cases registered against him for the alleged violations, and though it is not stated in the suspension orders that the suspension is pending enquiry/investigation, but given the fact that cases are registered against the petitioners for alleged violations of the provisions of the Act and the Rules made thereunder and the conditions of licence, is implicit in the order that the suspension of licences is pending enquiry, and in fact, the learned Government Pleader for Prohibition and Excise has fairly admitted that suspension of licences is only pending enquiry. Though the orders of suspension do not state the period for which the licences stand suspended, but as held by the Full Bench of this Court in *Tappers Co-op. Society, Maddur v. Supdt. of Police* (supra), suspension of licence pending enquiry, cannot be for an unduly long period, and that enquiry/investigation has to be completed as early as possible, else it would constitute

abuse of power, thereby making the orders liable to be set aside. In that view of the matter, I deem it appropriate to dispose of the writ petitions in W.P. Nos. 6971, 6972, 6995 and 6996 of 2009 directing the Superintendent of Prohibition and Excise to complete the enquiry/investigation into the crimes registered against the petitioners for the alleged violations of the provisions of the Act and the Rules made thereunder and the conditions of licence and pass appropriate orders expeditiously, at any rate, not beyond the period of one week from today.

26. There can be no quarrel with the proposition of law that the Judiciary being one of the organs of the State, is bound by the laws of the land and it has to act within the confines of law, but what the law is, is to be declared by the Judiciary and none else, and it not surprising to hear such a statement from the respondents.

27. Be that as it is, apart from denial of the allegations, based on which the show cause notices for suspension of licences or orders of suspension of licences are issued, it is the general refrain of the petitioners that large scale suspension of licences is being resorted to by the respondents without a factual justification with a view to curb the accelerating growth of liquor sales in the State during the campaign period preceding the polling days at the instance of the Election Commission, and it is also their case that there are large clusters of illegal liquor vending points colloquially known as "belt shops" against which no serious and concerted action is being taken by the excise officials and that sales through such illegal shops is being attributed to harass the honest licencees like the petitioners, by issuing show cause notices for suspension of licences or suspending the licences directly without any show cause notices.

28. Apart from the allegations as made above, this Court took judicial notice of the contents of the material papers filed in W.P. No. 7248 of 2009 (listed for hearing subsequent to the reserving of the present writ petitions for orders) as also the news item that appeared in the Times of India dated 05.04.2009 and other news papers wherein it has been reported that liquor is flowing freely in the State in blatant violation of the Election Commission's directive requiring the officials to check its illegal sales during the elections, through illegal vending points.

29. Though the learned Advocate General and the learned Government Pleader appearing on behalf of the State denied that the respondents are resorting to issuance of notices for suspension of licences or suspending the licences at the instance of the Election Commission, but such stand taken by the respondents appears to be not correct. In fact, almost all the news papers reported that taking a serious flow of liquor in Andhra Pradesh ahead of the elections, the Election Commission of India had asked the State Government to furnish on daily basis the details of production and supply of liquor in the State and also ordered closure of all belt shops or the illegal outlets of licenced liquor shops. The fact that the respondents are acting on the dictates of the Election Commission of India and resorting to issuance of notices for suspension and also indulging in

suspension of licences, is evident from the material papers filed by the petitioner in W.P. No. 7248 of 2009, particularly the Collector's note dated 26.03.2009 to the Deputy Commissioner, Excise, Kurnool and the Excise Superintendent, Nandyal, based on which his licence was suspended. The said note reads:

It has already been instructed to the Deputy Commissioner of Excise, Kurnool and Excise Superintendent of Kurnool and Nandyal that as per the instructions of the Election Commission of India all the belt shops of unauthorized sale points of liquor have to be removed. In continuation of those instructions it was ordered by the Collector that if these type of activities or storage of liquor is detected in places in the area of particular licensed shop more than notified quantity then action will be initiated against the owner of the licenced shop of that area or licensed shop from which that quantity of intoxicant is purchased.

It was brought to the notice of the undersigned by the SDPO, Nandyal through his C. No. 344/SDPO-NDL/09, dated 24.03.2009 that Surivipalli Moksheswara Goud S/o. Balanaganna Goud of Polur village of Nandyal Mandal was arrested and on further investigation it was revealed that one Sri. A.V. Nageswara Reddy S/o. Bala Veera Reddy of licenced Chakra Wine Shop at Polur has supplied him 24 quarter bottles, out of which 14 quarter bottles have sold already. 10 are remaining with him which were seized and a case in Cr, No. 78/2009 u/s 34(a), 36(c) of A.P. Excise Act of Nandyal P.S., was registered. Further it was reported that the bottles were brought from Sri. A.V. Nageswara Reddy S/o. Balaveera Reddy of licensed Chakra Wine shop at Polur having licence bearing No. 25/2008-10. This act of licence shop owner is against condition No. 1 of the licence given in Form A4 under Rule 17. Hence, it is necessary that the licence of this wine shop to be suspended till further detailed enquiry to ensure compliance of the instructions of the ECI and to send a message to all the licence holders that violation of condition will be dealt with seriously. Please take necessary action and report compliance within 24 hours.

(emphasis supplied)

30. It is based on the above note of the District Collector, Kurnool, the Deputy Commissioner of Prohibition and Excise, Kurnool, has suspended the licence of the petitioner in W.P. No. 7248 of 2009 until detailed enquiry to ensure compliance of the instructions of the Election Commission of India. Thus from the above note of the District Collector, Kurnool, it becomes clear that the respondents are resorting to issuance of notices for suspension of licences and also suspending the licences though for alleged violations of the provisions of the Act and the Rules made thereunder and the conditions of licence, but obviously on the instructions from the Election Commission of India, to ensure free and fair elections.

31. Liquor, according to the Election Commission, as reported in all the news papers, plays a vital role in inducing the electorate in casting their vote in the elections, and therefore, it is determined to check illegal flow of liquor in Andhra

Pradesh, which is considered next to Bihar and Uttar Pradesh in use of money and liquor by various parties to influence the voters. The news papers further reported that the excise officials had stated that if the belt shops are closed down, the liquor sale would drop by 35-40 per cent, but that has not happened and on the contrary, the sale of liquor has shot up, which implies that more number of belt shops have sprung up, and in fact, as is reported by the print media and the electronic media, day in and day out, the belt shops are mushrooming and flourishing in complete violation of the directive given by the Election Commission.

32. Illegal liquor vending points, which are colloquially known, as "Belt shops" are nothing but unlawful extension of the licenced shop in an area. In recent times, belt shops have mushroomed all over. The mushroom growth of the "belt shops" in the State is squarely attributable to the inaction on the part of the authorities entrusted with the power to curb the illegal sales of liquor. They appear to be either insensitive or co-operating with unscrupulous dealers indulging in illegal sales through belt shops. These belt shops do operate without any valid permit and with impunity. The excise officers turned a nelson's eye against persons operating the belt shops in gross violation of the Rules and in abdication of their statutory duty and constitutional obligation. It is obvious that the alarming spurt of liquor sales in licenced premises and "belt shops" as well appears to be proportionate to the rising tempo of election campaigns in the run up to the polling day. This phenomenon not only adversely impacts the health and well-being of the populace, particularly the poor and helpless citizens, but has also serious ramifications on free and fair elections, a fundamental premise of democratic governance which forms part of the basic structure of our Constitution.

33. Be that as it may, there is a duty cast on the State and the Election Commission to conduct elections in an atmosphere of peace, in a free and fair manner. As in my considered opinion, intoxicating liquor, would have a corrosive influence and cause wide spread inducement for electoral gains, and thereby impact free and fair elections. In view of the representation made by the A.P. Wine Dealers Association that they are willing to close down the liquor shops in the State on the eve of elections to avoid harassment at the hands of the excise officials until the conclusion of elections, and given the fact that closure of shops is impermissible beyond a stipulated period, since under the Act and the Rules made thereunder, closure is permitted only on dry days and u/s 20 of the Act, by an order of the District Collector, for breach of public peace, and u/s 135-C of the Representation of the People Act, 1951 for a period of 48 hours till the poll is concluded, this Court, aware of its power and limitations under Article 226 of the Constitution of India, required the Advocate General to inform the Court, the stand of the State whether they are ready and willing to permit closure of the shops for the period till the conclusion of the elections, as requested by the A.P. Wine Dealers Association in their representation to the Government. But the learned Advocate General on instructions from the State has emphatically

submitted that the State is not willing to close down the shops as requested by the A.P. Wine Dealers Association in their representation as it will stand to lose revenue to the tune of Rs. 700.00 crores and would also be forced to give remission to the licencees for the closure period, in which case, the financial interest of the State would be seriously affected.

34. Since the number of cases being registered, as reported in the news papers, are a testimony to the fact that illegal liquor is flowing freely, which if not curbed, would not only be injurious to the health of the general public, but also impact free and fair elections, thereby denting the very democratic process, this Court, with a view to strike a balance between the paramount public interest and the State's preferred interest in income from liquor sales, suggested to the Government whether they can close down the shops till the conclusion of the elections as requested by the A.P. Wine Dealers Association in their representation. This Court, however, received a negative response from the State. The Government felt that the financial interest of the State is greater than that of the public interest. That public interest (health and well being of the subjects of the State and free and fair elections, fundamental premise of the democratic process) is subservient to the financial interest. The choice among the transient economic gain by sale of higher quantities of liquor during elections on the one hand, and the health and well being of the people of the State and the need for free and fair elections on the other, depends upon the thinking of the Government. When the State is of the opinion that the immediate money gain (by way of increased sale of liquor) is more important than public health and their well being and free and fair elections, which is a fundamental premise for the governance and basic structure of the Constitution, then this Court has no option but to leave the matter to the wisdom of the State and its people to take corrective measures.

35. Though the petitioner in W.P. No. 7197 of 2009 sought to project a good cause, but given the legal regime, as indicated above in the preceding paragraphs, and the disinclination of the State to part away with the income which it may gain by the sale of liquor, it may not be possible for this Court to order closure of liquor shops until elections are concluded. Given the fact that a duty to conduct free and fair elections is vested in the State and the Election Commission, if the petitioner feels that free flow of liquor would influence the voters and impact the free and fair elections, then it is open for him to approach the Election Commission and make a request for closure of shops. If any such approach is made, the Election Commission, shall take into consideration the law and order problem that would result by the availability of liquor during the election period, pass appropriate orders.

36. Further, it is for the Government at their highest level to take appropriate decision on the representation of the A.P. Wine Dealers Association at the earliest, if not, at once. If the Government takes up the representation of the A.P. Wine Dealers Association, then this Court hopes and trusts that while

considering the same, the Government shall bear in their mind the well settled constitutional principles that any financial gain by the State by the increased sale of liquor at the cost of the health and well being of the general public, would be of no consequence and certainly not in public interest, even if the object sought to be realized, is laudable.

37. Accordingly, W.P. No. 7197 of 2009 is disposed of. No costs.