(1997) 09 AP CK 0076

In the Andhra Pradesh High Court

Case No : W.P.No. 12017 of 1995 and Batch

Lakshmi Srinivasa Wines	APPELLANT
Vs	
Commissioner of Prohibition and Excise, A.P., Hyd. and Others	RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 18(4)
Andhra Pradesh Excise Act, 1968 — Section 11, 12, 12(1), 12(2), 12(3)
Constitution of India, 1950 — Article 14, 301, 302, 303, 304

Citation : (1998) 1 ALD 64 : (1997) 6 ALT 685

Hon'ble Judges : Y. Bhaskar Rao, J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : Mr. T. Anantha Babu for A. Veeraswamy, for the Appellant; Government Pleader, for Excise, for the Respondent

Judgement

Y. Bhaskar Rao, J

1. The writ petitions are filed assailing the letter dated 10-5-1995 issued by the Commissioner of Excise of Andhra Pradesh informing the petitioners that their applications for issue of through transport permits will be considered on condition that they should transport liquor in lorries, which are having doors and locking facility, through the State of Andhra Pradesh.

2. The facts of the case are that the petitioners are all dealers in liquor at Yanam of Pondicherry State. The liquor is not manufactured at Yanam. The petitioners purchase liquor from Pondicherry and other States and they obtain export permits from the States where liquor is purchased. They also obtain import permit from the State of Pondicherry. Since they transport the liquor to Yanam through the State of Andhra Pradesh, they apply for issue of through transport permits. The applications are rejected with an endorsement that in future the petitioners have to transport liquor in closed containers to other States through the State of Andhra Pradesh.

3. Learned Senior Counsel, Sri Anantha Babu, contended that the condition that the petitioners have to transport liquor in closed vehicles having locking facility imposed by the Commissioner of Excise for consideration of applications of the petitioners for grant of through transport permits is without authority, since the provisions of the Andhra Pradesh Excise Act, 1968 (for short ''the Act'') and the Rules do not provide for any such condition.

4. The Government Pleader contended that the Commissioner of Excise being the Chief Controlling Authority of administration of the Prohibition and Excise Department, can issue suitable directions to regulate transportation of liquor in the State of Andhra Pradesh.

5. To appreciate the above contentions, it is necessary to refers to the relevant provisions of the Act. Section 11 of the Act provides that the Government may, by notification, prohibit or regulate the transport of an intoxicant or any kind of intoxicants from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State except under a permit issued u/s 12. Section 12(1) empowers any officer not below the rank of an Assistant Prohibition and Excise Superintendent authorised by the Commissioner to issue a permit for the transport of intoxicants. Section 12(2) says that permit under sub-section (1) may be either for general or definite periods and kinds of intoxicant or special and for specified occasions and particular consignment only. Sub-section (3) of Section 12 provides that every permit under this Section shall specify the conditions enumerated therein. Clause (d) of Section 12(3) says that the authority may impose any other condition other than those mentioned in Clauses (a) to (c) of Section 12(3). ''Prescribed'' means prescribed by rules made under this Act, according to Section 2(26) of the Act. Section 72(1) of the Act empowers the Government to make rules for carrying out all or any of the purposes of this Act. Rule 18 of the A.P.Indian Liquor and Foreign Liquor Rules, 1970 deals with issue of transport permits. Rule 18(4), which deals with issue of through transport permit, reads :

"(i) In case of through transport of Indian Liquor Foreign Liquor and Beer, the Commissioner of Excise may after making such enquiry as he may consider necessary and on being satisfied that the movement of the liquor/beer is not in contravention of any law for the time being in force and that it will not be unloaded within the Andhra Pradesh State, issue a permit for transport of the liquor/beer through the Andhra Pradesh State in Form I.L.8(A), bearing machine number in one series after making copies thereof. The original of such permit shall be retained as office copy, duplicate, triplicate and quadruplicate shall be made over to the applicant. The transporter shall surrender the triplicate and quadruplicate to the concerned authority at the check posts of entry and exist respectively to the State of Andhra Pradesh and obtain endorsements in the duplicate copy to that effect.

(ii) Non-compliance of the provisions of clause (i) or the conditions laid down in the through transport permit, shall disqualify the transporter for grant of through transport permit in future. The transporter shall also be liable for penalty under the provisions of the Act."

Form I.L.8(A), which is framed under Rule 18(4) of the Rules, provides that the permit is granted under and subject to the provisions of the A.P.Excise Act, 1968 and the Rules made thereunder subject to the conditions laid down therein.

6. From a reading of Sections 11, 12 and 2(26) of the Act, Rule 18(4) of the A.P.Indian Liquor and Foreign Liquor Rules, 1970 and Form I.L.8(A), it is clear that the authorised officer has to issue the through transport permit in accordance with the provisions of the Act and the Rules. None of the Rules and the conditions mentioned in Form IL 8(A) provide for prescribing a condition that the liquor be transported in closed containers in a vehicle that is having doors with locking facility. When the permit contained in Form I.L.8(A) provides for the conditions to be observed according to the provisions of the Act and the Rules made thereunder, only those conditions and none other shall be prescribed in granting through transport permit. We have perused the Form I.L.8(A) and the Rules, no condition is prescribed to the effect that the liquor has to be transported through the State of Andhra Pradesh in closed containers in a vehicle that is having locking facility and further we do not find any Rule authorising the Commissioner of Excise or any other officer to impose such condition. Unless the provisions of the Act or the Rules authorises the Commissioner of Excise to impose such a condition, the Commissioner is not empowered to do so. Therefore, it is not proper for the Commissioner of Excise for not issuing through transport permits to transport liquor through the State of Andhra Pradesh.

7. The Government Pleader for Excise contended that the Commissioner of Excise, being the Chief Controlling authority as per Section 3 of the Act, can issue orders in connection with the administration of the Act. Even according to Section 3 of the Act itself, the Commissioner of Prohibition and Excise is the chief controlling authority in all matters connected with the administration of the Act. That means, he has to act in accordance with the provisions of the Act and the Rules made thereunder. When the provisions of the Act or the Rules do not clothe him with the power to prescribe a particular condition, he is not entitled to impose such a condition. If he does so, it is beyond the authority of the Act. We, therefore, do not agree with the Government Pleader.

8. In view of the above discussion, we hold that rejection of the applications of the petitioners for issue of through transport permits on the grounds that they have to transport liquor is closed containers in vehicles that are having locking facility, is illegal.

9. It is secondly contended on behalf of the petitioners that the direction to transport liquor in closed containers is issued only to six of the petitioners, that such a direction was not issued to other transporters who are transporting the liquor through the State of Andhra Pradesh and that therefore the letter of the

Commissioner of Excise containing such a direction is discriminatory.

10. The Government Pleader for Excise, once again, contended that the Commissioner for Excise has got power to issue any direction in matter connected with the administration of the Excise Act.

11. It is to be noticed that the impugned letter is issued only to six petitioners. It is not a general Circular to all the transporters, who transport liquor through the State of Andhra Pradesh, under through transport permits and no justifiable reasons are given in the counter-affidavit to support the contention of the Government, On the face of it, leaving all others, directing the petitioners to transport liquor in closed containers in discriminatory, arbitrary and the letter issued by the Commissioner of Excise is violative of Article 14 of the Constitution.

12. It is thirdly contended by the learned Counsel for the petitioners that the State is only empowered to impose restriction on the movement of trade or commerce according to Articles 301 - 304 of the Constitution and that the condition imposed by the Commissioner of Excise, which is impugned in these writ petitions, is violative of Articles 301 - 304 of the Constitution.

13. Article 301 of the Constitution provides that trade, commerce and intercourse throughout the territory of India, subject to other provisions of this Part, shall be free. Article 302 empowers the Parliament to impose restrictions on trade, commerce and intercourse in public interest. Article 303 provides that neither the Parliament nor the Legislature of a State shall have the power to make law giving any preference to one State over another. Article 304 provides that the Legislature of a State may impose any tax on goods imported from other States and any reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest. Thus, it is clear from the above Constitutional provisions that trade, commerce and intercourse throughout India shall be free and the Parliament or the Legislature of a State can impose reasonable restrictions in the public interest. In the present cases, the condition is imposed by the Commissioner of Excise. The A.P. Excise Act prescribes conditions to be imposed while granting through transport permits and the impugned condition is not enumerated in any of the conditions of permit or provisions of the Act. Hence,the impugned condition is violative of Articles 301 and 304 of the Constitution.

14. In the result, the writ petitions are allowed and the Commissioner of Excise, Andhra Pradesh, Hyderabad is directed to consider the applications of the petitioners for issue of through transport permits without insisting upon the condition that the liquor be transported through the State of Andhra Pradesh in closed containers in vehicles with doors having locking facility. However, this will not bar the authorities to frame appropriate Rules. No costs.