
(2014) 06 MAD CK 0326

In the Madras High Court

Case No : W.P. (MD) No. 8521 of 2014 and M.P. (MD) No. 1 of 2014

M.A. Sudhagar

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(1)(a), 19(6)

Citation : (2014) 4 CTC 721

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Judgement

V. Ramasubramanian, J.—The Petitioner has come up with the above Writ Petition, seeking the issue of a Writ of Mandamus to direct the Respondents 1 to 4 to close the Bar run by the 6th Respondent at No. 9, Sambanthamoorthy Street, Madurai-1. Heard Mr. R. Subramanian, learned Counsel for the Petitioner, Mr. M. Alagathevan, learned Special Government Pleader for Respondents 1 to 3, Mr. M. Muniyasamy, learned Counsel for Respondents 4 & 5, Mr. M. Meenakshisundaram, learned Counsel for the 6th Respondent, Mr. T. Anil, learned Counsel for the Respondents 7 to 12 and Mr. S.S. Sundar, learned Counsel for the 13th Respondent.

2. This Petition has been filed purportedly in public interest to close the Bar run in the 6th Respondent-Club, on the short ground that there are lot of temples, meditation centres and places of religious and spiritual importance in the immediate vicinity of the Club and that therefore, the Licence granted by the official Respondents to the 6th Respondent to run a Bar has become a source of nuisance to the people of the locality.

3. The Writ Petition was first filed during the vacation sitting of this Court during the summer vacation. On 25.5.2014, when the Writ Petition was moved for orders as to admission for the first time, before the Vacation Bench passed the following order:

"Mr. R. Sathishkumar, learned Additional Government Pleader takes Notice for the Respondents 1 to 5. Notice to the 6th Respondent returnable by two weeks. Private Notice is also permitted.

2. Learned Counsel for the Petitioner submitted that the 6th Respondent-Club is located in the Residential area and it is selling and serving liquor to large people and viciou the Residential atmosphere. However, Mr. Sathiskumar, learned Additional Government Pleader submitted that the area is not Residential area. To ascertain the facts, we directed the learned Additional Government Pleader to get instructions by way of an Affidavit from the jurisdictional Inspector of Police about the nature of area.

3. Mr. V. Thangavel, Inspector of Police (Prohibition Enforcement Wing), Madurai, filed an Affidavit giving all the details except the details, which this Court has sought for, whether the area is Residential area or not.

4. Therefore, though there is no interim prayer sought for in the Writ Petition, the facts of the case would disclose that a pucca Bar is being run in the midst of the Residential area as evident from the photographs, which show large number of people consuming liquor. In view of that, there shall be Order of Interim Injunction restraining the Sixth Respondent from functioning the Club. The official Respondents are directed to take action forthwith."

4. Thereafter, the 6th Respondent-Club filed an Application in M.P. (MD) No. 1 of 2014 for vacating the Interim Order. Subsequently, a group of individuals, claiming to be the residents in the locality, filed M.P. (MD) No. 2 of 2014 to implead themselves as parties, for supporting the cause of the Writ Petition. This M.P. (MD) No. 2 of 2014 was allowed by us, by an Order dated 3.5.2014 and those Petitioners were impleaded in the main Writ Petition as Respondents 7 to 12.

5. The Member of the 6th Respondent-Club also filed an Application in M.P.(MD) No. 3 of 2014 for impleading himself as a party to the Writ Petition, so as to support the case of the 6th Respondent-Club. This Miscellaneous Application for impleading was also allowed on 3.6.2014 and the Member of the 6th Respondent-Club has now become the 13th Respondent in the Writ Petition.

6. As stated earlier, the grievance of the Petitioner about the Licence granted to the 6th Respondent-Club for running a Bar is that the street in which the 6th Respondent-Club is located is very thickly populated and that there is an Iyyappan Temple in West Masi Street, which is connected to the West Veli Street by Sambanthamoorthy Street, where the Club is located. Therefore, according to the Petitioner, the deities of Meenakshi Amman and Sundareswarar are taken through West Masi Street, during Chithirai Festival. The Petitioner further claims that there is a Meditation Centre, run exclusively by ladies, belonging to Brahma Kumaris Iswariya Vishwa Vidyalaya, which is opposite to the place where the Club is located. The residents of the locality appear to have resisted atleast on two earlier occasions the attempt made by the Tamil Nadu State Marketing

Corporation Limited to open a Retail Vending Shop and a Bar for selling Indian Made Foreign Liquor (IMFL), by filing two Writ Petitions. According to the Petitioner, an Order was passed in the First Writ Petition in W.P. (MD) No. 14101/2010, directing the Tamil Nadu State Marketing Corporation Limited to consider the objections. In the Second Writ Petition in W.P.(MD) No. 8786 of 2011, an Interim Stay was originally granted and the same was subsequently disposed of with similar directions. Therefore, according to the Petitioner, the District Collector inspected the place and rejected the proposal for location of a Retail Liquor Vending Shop in Sambanthamoorthy Street. Hence, it is contended by the Petitioner that the permission given to the 6th Respondent-Club to run a Bar, overruling the objections of the Brahma Kumaris Iswariya Vishwa Vidyalaya, is illegal.

7. The 6th Respondent-Club and the 13th Respondent (who is an individual Member of the Club) oppose the Writ Petition on several grounds, namely:

(i) that the prayer in the Writ Petition cannot be granted, since the 6th Respondent holds a valid Licence in Form FX.2 to run a Bar in terms of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981;

(ii) that the Licence granted to the 6th Respondent-Club is not under challenge;

(iii) that in the main street, connecting the street in question, there are atleast six hotels/TASMAC Shops, where Indian Made Foreign Liquor is sold but, the Writ Petitioner has not objected to the same; and

(iv) that the Public Interest Litigation is instigated by persons involved in the very same business in the adjoining streets.

8. We have carefully considered the rival submissions.

9. It is true that the Petitioner has come up with a Writ Petition only for the issue of a Writ of Mandamus to close the Bar. It is also true that the 6th Respondent has been granted a Licence in Form F.L.2, in terms of the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. Therefore, as on date, the Bar run by the 6th Respondent-Club is in accordance with law. It is too well settled that when an activity not wholly prohibited, but only regulated, is carried on by somebody in pursuance of a valid Licence granted under the statutory provisions, a Writ of Mandamus to close down such activity will not lie. On this well settled position of law, we could have easily dismissed the Writ Petition.

10. But, the case on hand is not an adversarial litigation. It is filed in public interest and hence, the Court has a duty to see that on mere technicalities a genuine cause does not suffer. The Court's power to mould reliefs is too well settled. The power to mould relief is available even to Civil Courts, which are actually bogged down by strict rules of procedure many times. Therefore, to apply the rigours of the Civil Court to a Public Interest Litigation under Article 226 of the Constitution, may not be proper, especially when the Civil Courts themselves have the power to mould the relief. Hence, the first contention of the

contesting Respondents regarding the maintainability of the Writ Petition is rejected.

11. It is true that the Licence granted to the 6th Respondent-Club is not under challenge in this Writ Petition. But, it does not mean that we cannot test the validity of the Licence so granted. This is due to the fact that no fundamental right of the 6th Respondent-Club or its Members is affected, if the validity of the Licence granted to them is tested.

12. As a matter of fact, the Licence to run a Bar, as pointed out earlier, is granted in terms of the Licence issued under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. These Rules are issued by the Governor of Tamil Nadu only in exercise of the power conferred by certain provisions of the Tamil Nadu Prohibition Act, 1937. It will be of interest to note that the Tamil Nadu Prohibition Act, 1937 was enacted primarily with a view to prohibit the manufacture, sale and consumption of intoxicating liquors. This is clear from the Preamble to the Act, which reads as follows:

"An Act to introduce and extend the prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu WHEREAS it is expedient as early as possible to bring about the prohibition, except for medicinal, scientific, industrial or such like purposes, of the production, manufacture, possession, export, import, transport, purchase, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu.

AND WHEREAS it is desirable to give effect to the above mentioned policy by introducing it in certain selected areas in the said State and utilizing the experience gained therein for extending it to the other areas thereof;"

13. But, unfortunately, despite the Directive Principles of State Policy contained in Article 47 of the Constitution of India and despite the very Preamble to the Tamil Nadu Prohibition Act, 1937, all types of Licences, including State monopoly in the marketing of Indian Made Foreign Liquor, are governed by the Rules issued under the very same Act. In other words, the Preamble to the Tamil Nadu Prohibition Act, 1937 speaks a language diametrically opposite to the other provisions of the Act and hits at the mandate of the Constitution "on the rocks". We do not know how a statutory enactment issued for the purpose of prohibiting the manufacture, sale and consumption of intoxicating liquors could mix well with the other provisions of the Act and make it into a valid cocktail.

14. On the right of persons to carry on the trade or business of sale of liquor, the Supreme Court has already made a categorical pronouncement in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, . Paragraph 60 of the said decision, where the principles of law are summarised, can be usefully extracted as follows:

"60. We may now summarise the law on the subject as culled from the aforesaid decisions:

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by Clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink, which is dangerous and injurious to health and is, therefore, an Article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the Directive Principles, which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the Licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination

of others and/or to preserving to itself the right to sell Licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens, who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the Licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage...."

15. Therefore, it is clear that the 6th Respondent cannot actually claim any violation of any fundamental right, if the FL2 Licence granted to them is found to be violative of statutory provisions and set aside. The 6th Respondent has one more disadvantage. The 6th Respondent is only a Recreation Club and the supply

of liquor to the members of the Club and their guests cannot even be said to be part of their right to carry on any trade, profession or calling. Hence, the technical objection as raised by the 6th Respondent that the FL2 Licence granted to them is not under challenge, does not really take them anywhere. Even without a formal challenge to the FL2 Licence granted to the 6th Respondent, it is always open to the Court, especially in a Public Interest Litigation under Article 226 of the Constitution, to summon the files and satisfy itself as to whether the statutory provisions for the grant of Licence have been duly and properly complied with or not. Therefore, we reject the second objection of the 6th and the 13th Respondents.

16. As we have pointed out earlier, the main grievance of the Petitioner is that the local people had successfully prevented the opening of a TASMAL retail vending shop in the same street by filing two Writ Petitions. According to the Petitioner, the District Collector had earlier visited the locality and rejected the proposal to locate the TASMAL shop. Hence, it is contended that the present Licence has been granted without actually considering the earlier rejection.

17. In addition, the Petitioner claims that the conditions prescribed in sub-clauses (a) & (b) of Clause (A) of Rule 19 and the conditions prescribed by Rule 19(B)(2) are not satisfied. Rule 19(A) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, reads as follows:

"19. Conditions to be satisfied before a privilege is granted and the Licence is issued and the procedure to be followed in dealing with Applications.--

(A) On receipt of the Application, the Licensing Authority shall verify the particulars furnished in the Application In the case of Application of all kinds, he shall satisfy himself in general after due enquiry--

(a) that the local needs, justify the grant of the Licence; and

(b) that public interest shall not suffer by the grant of the Licence applied for and that the privilege is not likely to be misused."

Rule 19(B)(2) reads as follows:

"(2) In the case of an Application for a Licence in Form FL2.--

(i) that the Club in respect of which the Licence has been applied for is a nonproprietary character; and

(ii) that at least five of the members of the Club have signified their willingness to obtain liquor from the said Club or that the Club should have functioned with a Bar in the pre-prohibition days and have on its rolls not less than 30 persons:

Provided that in the case of a non-proprietary Club run by the officers and staff of the Departments of Government of India (or) the Government of Tamil Nadu or the undertakings and Statutory Boards under the control of Government of India or the Government of Tamil Nadu to which a part of the fund is constituted

by the Government of India or the Government of Tamil Nadu, the conditions that the Club shall function for more than three years shall not apply."

18. The fact that the conditions stipulated in Rule 19(A) & 19(B)(2) are to be satisfied for the grant of FL2 Licence is not denied by the Respondents. Therefore, we directed the learned Special Government Pleader to produce the file relating to the grant of FL2 Licence for the 6th Respondent-Club and perused the same, to satisfy ourselves as to whether or not the Licence has been granted in accordance with law. We made it clear in the course of hearing that we would not decide the issue on moral foundations but only on statutory foundations.

19. A perusal of Rule 19(A) would show that upon receipt of an Application for the grant of an FL2 Licence, the Licensing Authority should satisfy itself in general, after due enquiry, that three preliminary conditions are satisfied, namely (i) that the local needs justify the grant of Licence; (ii) that public interest shall not suffer by the grant of Licence applied for; and (iii) that the privilege is not likely to be misused.

20. The third condition indicated above is something on which any authority can only arrive at a subjective satisfaction. But, the first two conditions, namely, the justification of the grant on account of local needs and the possibility of sufferance of public interest by the grant are conditions with respect to which an objective assessment can always be undertaken and should be undertaken by the Licensing Authority. Therefore, we should actually see from the file whether the Conditions 1 & 2 were satisfied and as to how the Licensing Authority found the first two conditions to be satisfied in the case on hand.

21. Coming to sub-rule (B)(2) of Rule 19, it is seen that whenever an Application for a Licence in Form FL2 is submitted by a Club, the Licensing Authority should see whether (i) the Club is of a nonproprietary character; (ii) whether atleast five members of the Club have signified their willingness to obtain liquor from the Club or whether the Club had functioned with a Bar in the pre-prohibition days and have on its rolls not less than 30 persons.

22. The fact that the 6th Respondent-Club is of non-proprietary character cannot be disputed, in view of the fact that it is registered under the Tamil Nadu Societies Registration Act, as a Society. The fact that atleast five members of the Club have signified their willingness to obtain liquor from the Club cannot also be disputed in the light of the records produced by the Respondents. Therefore, what is to be focused is as to whether the twin conditions prescribed in Rule 19(A)(a)& (b) are satisfied in this case or not.

23. The file produced by the learned Special Government Pleader contains 525 pages. Pages 509 to 525 contain only photographs of the various sections of the Club. Office Note, running to about seven pages found in the first part of the file produced before us, contains the recommendation made by the Assistant Commissioner (Excise), after inspection of the premises and the approval granted by the Collector. This Office Note shows that the Reporting Authority and

the Approving Authority have taken into account the following, namely (i) ownership of site and building; (ii) report about the validity of registration of the Club with the Registrar of Societies and the subsistence of the registration with the Commercial Taxes Department for the purpose of sales tax; (iii) the correctness of the Licence fee and privilege fee remitted by the 6th Respondent; (iv) payment of taxes to the local bodies by the Club; (v) authenticity of documents; (vi) actual measurement of the proposed permit room; (vii) provision for fire extinguisher; (viii) Income-tax Assessment of the Applicant; (ix) chance of misuse of privilege if granted; (x) possessional limit to be fixed at the time of grant; (xi) Police Report to show that there are no adverse cases; (xii) the list of names and addresses of the members; (xiii) particulars required under Rule 19(B); (xiv) copy of Bye-laws; (xv) names and addresses of the President and the Secretary; (xvi) genuineness of the List of members willing to consume liquor in the Club; (xvii) Structural Soundness Certificate; (xviii) proof to show the functioning of the Club uninterruptedly for more than three years; (xix) copy of the approved Building Plan; (xx) Local Body Licence; (xxi) individual statement from each Member of the Club agreeing to consume liquor; (xxii) report of the District Registrar of Societies; and (xxiii) the boundaries of Permit Room, Store Room and Bar Counter.

24. A careful perusal of the Office Notice shows that the Licensing Authority has applied its mind to the requirements of Rule 19(B)(2) of 1981 Rules that the Club is of a non-proprietary character and that the requisite number of members have agreed to buy liquor from the Club. The Licensing Authority has also satisfied itself that there is no chance for misuse of privilege, in Column No. 9 of the Report, thereby satisfying the third condition under Rule 19(A)(b). As against Column No. 13 of the Report, which forms part of the Office Note, the Licensing Authority has stated as follows:

"Public interest shall not suffer by the grant of this Licence to the Applicant and that the privilege will not be misused."

25. In other words, atleast on paper, the Licensing Authority has repeated the contents of Rule 19(A)(b).

26. But, insofar as the condition stipulated in Rule 19(A)(a) is concerned, there is nothing on record to show that the Licensing Authority satisfied itself about the same. The contesting Respondents have taken a stand that the street is a busy commercial area surrounded by congested streets which have become the commercial hub of Madurai According to the 6th Respondent, there are atleast six hotels and two TASMAL Shops in the vicinity, though not in the same street. If this is true, we do not know why the Licensing Authority did not apply its mind to the requirement of Rule 19(A)(a) to see if the local needs justified the grant of the Licence. When the Authorities have ensured that liquor is available in abundance in the locality, by granting Licences to the Tamil Nadu State Marketing Corporation Limited and to a few hotels, it is not known as to how Rule 19(A)(a) would stand satisfied. There is nothing in the file to indicate the application of

mind of the Licensing Authority or the Inspecting Authority to the requirements under Rule 19(A)(a).

27. Even in respect of the second requirement, namely, the sufferance of public interest, the report merely contains a repetition of the language of the rule. For the Court to come to a conclusion that there is application of mind on the part of the Licensing Authority to the requirement of statutory Rules, it must be borne out by records that there were some facts which enabled the Licensing Authority to arrive at such a satisfaction. Unfortunately, the Licensing Authority has not indicated as to how they arrived at the satisfaction with regard to the second condition. A mere reproduction of the contents of the Rule in the Office Note leading to the grant of Licence is not sufficient compliance with the statutory requirement. Therefore, we have no alternative except to conclude that the Licensing Authority failed to record the satisfactory compliance of Rule 19(A)(a) & (b) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. Therefore, it should follow as a necessary corollary that the FL2 Licence granted to the 6th Respondent is invalid in the eye of law.

28. There is one more interesting aspect which we cannot resist taking note of the establishment of Retail Liquor Vending Shops by the Tamil Nadu State Marketing Corporation Limited is actually governed by a separate set of Rules known as "The Liquor Retail Vending (In Shops and Bars) Rules, 2003". These Rules were also issued only in exercise of the powers conferred by the Tamil Nadu Prohibition Act, 1937. Rule 8 of these Rules contains certain prescriptions with regard to the location of a Retail Liquor Vending Shop, which reads as follows:

"8. Location of Shop.-- (1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or Educational Institutions:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:

Provided also that if any place of worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this Rule shall not apply:

Provided also that no Liquor Shops shall be established in any tribal areas covered under Integrated Tribal Development Project and Hill Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanyakumari Districts.

(2) Every shop shall be housed in a Pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3) The shop shall be in the location approved by the Collector before commencing the business in the shops."

29. Apart from the restrictions placed with regard to the location of a Shop under Rule 8 of the 2003 Rules, Rule 10 also stipulates certain restrictions with regard to the location of the Bar. It is under Rule 10(5) of these 2003 Rules that every Shop is required to put up a sign board reading "Liquor ruins country, family and life". No one could have ever contemplated that a statutory Rule can actually contain a cruel joke. But, nevertheless, it forms part of the statutory Rules, perhaps in view of the fact that though a person may happen to notice it while entering the shop, he is certainly prone to ignore it while returning from the Shop. The working hours of such shops are regulated by Rule 11 of these 2003 Rules.

30. But, unfortunately, these restrictions are not imposed while granting FL2 Licence to Clubs, Hotels, etc. The only logic, if it can be called a logic, is that while a Retail Liquor Vending Shop is opened to all members of the public, a Bar in a Club is thrown open only to its Members and guests. But, this discrimination appears to be driven by class inequalities and is based on a belief that persons who belong to higher echelons of society who are members of such Clubs, would behave well and may not cause hindrance to Educational Institutions and places of worship.

31. But, if the non-application of the restrictions found in Rule 8 of the 2003 Rules to the grant of FL2 Licence in terms of 1981 Rules is on this basis, then it would offend Article 14 of the Constitution of India. This has been held so by the Supreme Court in *State of Maharashtra and Another Vs. Indian Hotel and Restaurants Assn. and Others*, . In Paragraph 103 of the said decision, the Supreme Court rejected an argument that the very same kind of dances performed in exempted establishments would not bring about sexual arousal in male audience, as opposed to the male audience frequenting the banned establishments meant for the lower classes having lesser income. The Supreme Court commented that such a presumption was elitist which cannot be countenanced under the egalitarian philosophy of our Constitution.

32. Therefore, the discrimination sought to be maintained between TASMAL Shops and Clubs, by prescribing a distance for TASMAL Shops alone from Educational Institutions and places of worship but not for Clubs from the very same Educational Institutions and places of worship, is discriminatory and is founded upon on elitist presumption.

33. It is not in dispute that the Meditation Centre run by the Brahma Kumaris Movement is located at Door No. 40, just opposite to Door No. 9, where the 6th Respondent-Club is now located. It is also admitted by the 6th Respondent themselves that the Brahma Kumaris Ishwariya Vishwa Vidyalaya lodged an objection to the grant of FL2 Licence to the 6th Respondent. But, they could not pursue the matter and come-up to this Court as the institution is run exclusively

by ladies and their work is primarily confined to the field of spirituality and not to the field of spirit. The question of public interest incorporated in Rule 19(A)(b) of 1981 Rules has not been tested by the Licensing Authority with reference to the objection raised by the people visiting the Meditation Centre located opposite to the premises of the 6th Respondent-Club. Therefore, the grant of Licence to the 6th Respondent is completely vitiated.

34. Though it is contended by the 6th Respondent that the Writ Petition is instigated by persons, who have competing business, there is no proof to show the same. The people of the locality appear to have always opposed the establishment of a Liquor Vending Shop in the street. Therefore, it is impossible to think that they have been set up by other people. Hence, the Writ Petition is allowed and FL2 Licence granted to the 6th Respondent is directed to be cancelled. The 6th Respondent shall forthwith stop running the Bar. But, we make it clear that there can be no objection to the other healthy activities of the Club continuing. Connected M.P. (MD) No. 1 of 2014 is closed. There will be no order as to costs.