

(1980) 02 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 3460 and 3461 of 1980

Nagabhushanam Traders and etc.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1980 Kar 164

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : Murlidhar Rao, for the Appellant;

Judgement

1. In these two petitions, the petitioners who are licensed traders for vending potable liquor in the Districts of Gulbarga and Belgium respectively, being aggrieved, by the directions of the State Government and other authorities under the Karnataka Excise Act, to close down their shops on the first of every calendar month and on -other specified dates by express order, have sought for a mandamus from this Court directing that the respondents are bound as a matter of duty to return to the petitioners the rental charged for the days on which shops have been closed pursuant to the directions as the license issued to them clearly provided for licence being operative throughout the period for which the licence was valid.

2. There are two reasons why this Court in exercise of its jurisdiction under Art. 226 of the Constitution cannot grant such a relief.

3. The first is that the refund claimed of that Part of the rental which relates to the dates on which the shops were asked to be closed by the directions of the State Government and other authorities under the Karnataka Excise Act is in the nature of damages which has to be established after proof in a properly framed suit and filed in a competent court of civil jurisdiction. This court cannot, in that circum. stance, entertain the application under Art. 226 and investigate and

examine the extent of damage that may have been suffered by the petitioners.

4. There is another reason for rejecting the prayer of the petitioners. The Supreme Court has held, and very firmly, that right to trade in liquor is not a fundamental right, (See *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, expressly overruling the earlier ruling of the Supreme Court in *Krishan Kumar Narula's* case AIR 1967 SC 1568. It has been further held that the power of the State under Entry 8 of List 11 in the Seventh Sch. of the Constitution is not merely regulatory, but extends beyond the regulatory power and the State is capable of exercising its police powers as, the intoxicants dangerous commodities in a society. It is, obvious, that the orders issued by the State and its Officers is not only in consonance with the exercise of such police powers, but also in conformity with the directive principles of State Policy to be found in Part IV of the Constitution.

5. For the above reasons, the petitions are liable to be rejected without rule being issued and they are so rejected.

6. Petition dismissed.