

(1982) 08 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1101 to 1104 of 1982

Nand Lal Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-08-1982

Acts Referred:

Constitution of India, 1950 — Article 37, 47

Citation : (1982) WLN 681

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—Nandlal Sharma, who claims to be the Vice President of the Rajasthan Freedom Fighters Samiti and the President of Prohibition Samiti, Bassi, has filed all these four writ petitions, which are identical in facts as well as in the grounds raised and the prayer made. It is difficult to understand, why the petitioner has filed these four writ petitions as there is no difference between anyone of them.

2. According to the petitioner, Article 47 of the Constitution contains a mandate to the State to introduce prohibition by law. On 11th November, 1967, Rajasthan State introduced prohibition in a phased programme. On 13th March, 1979 the prohibition was introduced in Rajasthan with effect from 1st April, 1980 in three phases. From 1st April, 1979 seven districts were covered by it. On 2nd April, 1980 three more districts were included and three more districts were also included with effect from 2/10/79 According to the petitioner, from 12th August 1981 by an Ordinance, the State of Rajasthan has scrapped prohibition and this Ordinance has now become an Act. Now the prohibition has not only been scrapped but the State of Rajasthan is selling liquor openly and is encouraging sale of liquor. This is all against Articles 37 of the Constitution.

3. Articles 47 & 37 of the Constitution read as under:

37. The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the Country and it shall be the duty of the State to apply these principles in making laws.

47. The State shall have regard to raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicine purposes of intoxicating drinks and of drugs which are injurious to health.

4. The submissions of Shri Sharma, the petitioner, present in person therefore, is that under Article 37, although Art.47 is not enforceable but the principles laid down therein are nevertheless fundamental in the governance of the country introducing the prohibition in a phased programme and, therefore, it is the duty of the State in applying these principles in making the laws.

5. Article 47 of the Constitution is contained in chapter of Directive principles of the State Policy. It was true that the State should make an effort and endeavour to enforce and implement the desires expressed in Article 47 but as clearly mentioned in Article 37, Article 47 is not enforceable,

6. I have dealt in details all the history of the prohibition in India and other nations of the world and dismissed the prayer of the petitioners in those cases to scrap prohibition or some orders passed for introducing partial prohibition in *Ramesh Chandra Paliwal v. The State of Rajasthan and Ors.* S.B. Civil writ petition No. 861/72, decided on 26th October, 1979; *Law Morality & Politics* : By Justice G.M. Lodha P. 49. The relevant portions of the judgment of Paliwal's case extracted in Chapter XIII of book -"Law Morality and Politics", read as under.:

103. Prohibition, and the age old war between "wets" v. "drys" had vivid and divergent complex of interaction of trilogy of morality, law and politics. Brief but pointed and precise depiction of it finds place in, *Ramesh Chandra Paliwal v. The State of Rajasthan and Ors.* SBCW Petition No. 861/79 decided on 26th October, 1979 wherein this Court (per Justice G M. Lodha) observed as under:

These are five "wets". Petitions against "drugs". The dry versus "wets" age old controversies) which has undergone several legal battles; the earliest being fought in *Cooverjee Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, based on *Crowley v. Chirstensen* (1890) 341 ED. 620 & repeatedly referred to and relied upon in latest judgment *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*, pronouncing again & again & broadcasting from house tops i.e. highest judiciary towards that trade of business in liquor is not a fundamental right yet continues on fresh battle fronts every time, "drys" attack the "wets" and try to liquidate and vanish them under the banner of Article 47 of the Constitution.

104. ""Since times immemorial "Soma" and "Sura" which were ancient names of

liquor, were in existence though in the same controversial manner as they exist today. They find place right in Smritis, Sutras. Ramayana; Mahabharata, Bhagwata, Purana, Jatakath, Vedante and many tantras. Even the great Kalidas, ancient poet made references of them, in this classical literature of Shankuntala Kumar, Sambhaya and Raghuvansa.

The prohibition wave and the efforts of the "drys" to liquidate wets, were tremendous in the ancient times. In America the Aztecs of ancient Mexico punished drunkenness among the young with death but tolerated it among the aged and the sick. Manu and Yagnavalkya provided severe Penalties for indulging in drinking in India. Islam had forbidden the use of intoxicating beverages Ancient divines of India and Persia and the hebrews disapproved of drinking whereas Muslims and Budhists enjoined abstinence penalties were provided by the ancient Shastras and prohibition was injected by them

The following quotations from vedas, Manu Smritis and Yagnavalka, would show that wets were condemned in all times and every where.

Mitakshara Section 6 CCLIII describe the evil effects of drinking in the following manner.

There are eight evils in this jar: inebriety, madness, strike, stupefaction deterioration of intelligence perversion of righteousness, happiness in ruins and path of hell".

^^ en izekn% dy?"p; funz A lq[kLFk dU;k ujdL; iUFkk A

cqf){k;ksa /kze foi;"; AA v"VkouFkkZ% djds olfUr AA

Penalties were provided by the ancient Shastras and prohibition was injuncted by them. Manu XI- 90,92,93.

lqjka iksRok f}tks eksgnfXuo.kkZ lqjkaficsr A

rFkk ldk;s funZX/ks eqP;rs fdfYok"kkRrr% ?90?

A Twice-born man who has (intentionally) drunk, through delusion of mind. (the spirituous liquor called) Sura drink that boiling hot, when his body has been completely scaled by that, he is freed from his guilt.

d.kkUok Hk{k;snCn fi.;kad ok lDrfUuf"k A

lqjkikukiuqR;FkZ okyoklk tVh/oth ?92?

O, in order to remove (the guilt of drinking sura, he may eat during a year once (a day) at Nightgrains (of rice) of oilcake, wearing clothes made of coir and his own hair in braids and carrying (a wine cup as) a flag".

lqjk oS eyeUukuka ikI;k p eYeqP;rs A

r"iknczg.k jktU;ks osS"p"; u lqjka ficsr ?93?

According to the Bhagwata Purana, when questioned by his brother Yudhishtira as to what the Yadavas, were doing, Arjuna is reported to have said:

O, kind, our friends, of whom you are inquiring losing through a Brahman's curse on the house of our well wishers, their senses by over indulgence in varuni liquor, have without recognising each other exchanged blows and destroyed themselves. Now only four or five are left alive to tell the "tale"

The views of some of the distinguished Romans are not without interest.

Drunkenness is nothing but a condition of insanity purposely assumed. "Seneca, in his Eighty third Epistle. "A sensual and intemperate youth hands over a worn out body of old age.

So boundless the cost which we lavish and to the commission of a thousand times so exquisite is the cunning of mankind in gratifying their vicious appetites that they have thus invented method to make water itself produce intoxication.

The prohibition is contained in Vedas as follows:

^^ gRlq ihrklq iFk;Urs nqnanklh u lqjk;K A m"kua uEuk tjUrs AA

People after drinking the liquor, fight, Their health is deteriorated and they become old and infirm at young age, liquor drinking should, therefore, be prohibited. In Manu Smriti vice of drinking has been similarly condemned.

^^ lqjk oS eyeUukuka] iKI;k p eyeqP;rs A

r"ekn czkgk.k jktU;ks o osS"p"; u lqjka ficsr AA

Manu Smriti has further condemned this in the following manner:

^^ ;{kj{k% fi"kkpkUua e/k ekals lqjkole~ A

rn czkgk.ksu ukRrrO;a nsokuke"urk gfo % ?95?

Yagnavalkya in his Smriti has taken note of vice of drinking liquor and condemned it in the following terms:

^^ifryksda u lk ;fr czkg.kh ;k lqjka ficsr A

bnso lk "kquh xz`/kh "kwdjh pksi tk;rs AA

Both by a series of judicial pronouncements and constitutional and legal legislations the "drys" have won major part of the battle of their crusade and was against the "wets". The Parliament legislated and the judiciary interpreted the parliamentary mandates and proclaimed it time and again by judicial orders, that "drys" would have it: analogous to the Speaker's verdict in a legislature proclaiming that "Y's" would have it, when either a bill is passed or a motion is voted by the House after a sharp debate, uproarious scenes and sharp divisions marred the legislators.

The judicial battle of "Drys" v. "wets" commenced from Cooverjee b Bharushac's

case (Supra) containing the weighty pronouncement of eminent Judges in Fiftys and repeated in Hari Shanker's case (AIR 1976 SC 296) when A.N. Ray, Chief Justice, K.K. Mathew, Y.V. Chandrachud, and A.C. Gupta Justices proclaiming again that "no fundamental rights exists by what Justice Iyer has termed as amber" observations of Subha Rao, C. J. in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, that liquor trade is also a right. This battle was ultimately won for the time being by historical and classical pronouncements by Justice Iyer, Desai J. and Chinnappa Reddi J. in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, and Desai and Sen JJ., in Sat pal's case (Supra).

Even then the "wets" are still making fresh advances and opening new fronts sizable number of judicial, political and constitutional battles. They may win the war ultimately and finally. They get their inspiration from the fact that even when in the ancient age Aztecs of Mexico, Chinese, Hammurabi Law provided death penalties to a young becoming after three consecutive waves of temperance in America from 1798, resulting in ultimate passing of the National Prohibition Act and the 18th amendment of the constitution of the United States marked the high tide of the prohibition movement, but the three waves of 1798, 1850 and 1920 ultimately subsided by President Roosevelt repealing the Prohibition Act and the 18th Amendment Act by Section 1 to 21st Amendment and the President proclaimed as follows:

I ask the whole hearted co-operation of all our citizens to the end that this return of individual freedom shall not be accompanied by the repugnant conditions that obtained prior to the adoption of the Eighteenth Amendment, and those that have existed since its adoption.

I ask specially that no State shall by law or otherwise authorise the return of the saloon either in its old form or in some modern guise.

Well of course, there are no saloons in the United States, Instead, there are Bars, taverns, grills, and cocktail lounges but, by the large, the same old rose with the same old smell.

Historical battle of "Drys versus Wets" was reviewed by Asbury; then of course on the basis of the American experiment, in his famous book, "The Great Illusion". At page 832, he referred to 14 years of prohibition and concluded, it must be remembered, however, that the 14 years now 1920 to 1934 not only the era of unparalleled crime and corruption, they were also the era of the big lie. The drys lied to make prohibition good, the wets lied to make it look bad, the Government / officials lied to make themselves look good and to frighten congress into giving them more money to spend, the politicians lied through force of habit.

The judgments of eminent Judges of this country are also very revealing and through provoking Justice Iyer in the judgment of PN Kaushal's case (supra) a classic judgment which he commenced with a question mark to all and sundry "what are we about"? After having a comprehensive survey of the historical,

political and judicial developments and decision in the war between "dry versus wet" ultimately concluded by observing "We have reasoned enough to justify the ways of the constitution and the law to the consumers of social justice and spirituous protions. The challenge fails and the writ petitions Nos. 4108-4109 etc., of 1978 are hereby dismissed with costs (one hearing fee). Maywe hope fully expect the state to bear true faith and allegiance to that constitutional orphan, Art 47 ?

It is not worthy that a judicial verdict of the highest court of this country regarding (Art. 47 being orphan, after the founding fathers enacted it in 1949 and enshrined it in the directive principles of State policy, is a matter of concern and should be so of the three wings of the State, Executive, Legislative and Judiciary. To this, 1 may add a rider, that the judiciary can only interpret the law and act as watch dogs of the constitution adjudicating from time to time, the validity of law made by legislature and to ensure that the other two wings act within the four corners of the Constitution and the rule of law.

Neither Article 47 is justiciable and enforceable by courts, nor it can be treated as a fundamental right through by virtue of Art, 37, it is fundamental in the governance of the country, and it is the duty of the Stale to supply these principles in making law".

I had traced out historical, sociological development elaborately about this unending war no different fronts between "Dry versus Wets" and the above is only a gilmpse of what I have surveried in Hurprasad's case (Supra).

The above extracts of my judgment would amply show that "temperence" and prohibition "based on Morality repeatedly influenced the law of the land, though impaired from time to time by politics. But even then in this field, Morality influenced politics, Gandhi, Vinoba Bhave and Gokulbhai Bhatt's, movements being nearest living examples of it, conclusively prove that at the cost of economics, prohibition laws are being enacted and extended, in India, at least. The danger of these being scrapped is also imminent, due to political economic lobbies, but that provides real test of Moralists. It all depends.

7. In Chapter 13 of the Law, Morality & Politics treatise, at para 120(a) I have anticipated the danger of the prohibition being scrapped, and said that that provides real test of Moralists, and that apprehension has come out to be true also so early before even the ink of writing of the above warning has not dried.

8. In P.N. Kaushal's case (supra), Justice Krishan Iyer appealed for prohibition for ensuring social justice and in the end he observed as under:

May we hopefully expect the State to bear true faith and allegiance to that constitution orphan, Article 47 ?

9. But, it is settled law that neither Article 47 is justiciable not it is enforceable by courts. True, it is, that it is the duty of the State under Article 37 to treat it as fundamental in the Government of the country but all said and done, inspite of

44th amendment of the Constitution even best petronogist of the prohibition holding the office of Prime Minister at that time 44th amendment put Article 47 in Chapter 3 of the Constitution on and gave it prime place of fundamental right.

10. That being so, this Court is helpless to give any relief to the petitioner whose claim may be based on laughty ideals and social justice also.

11. The realisation of helplessness and the handicap of this Court in enforcing Article 47 of the Constitution cannot result in any other termination except dismissal of the writ petition.

12. Hence realising the constitutional frontier limits of jurisdiction of this Court, I have got no option but to dismiss all the four writ petition as mentioned above, and consequently the same are dismissed summarily.