
(1982) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1125 of 1982

Nand Lal Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 47
General Clauses Act, 1897 — Section 6

Citation : (1982) RLW 631 : (1982) WLN 676

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—This writ petition under Article 226 of the Constitution of India has been filed by Shri Nand Lal Sharma alleging himself to be the President, Dakshan Block Prohibition Committee and Vice President of Rajasthan Freedom Fighters Association.

2. The grounds raised in the petition are that Notifications were issued under Rajasthan Excise Act, 1950 (hereinafter called "the Act of 1950") bringing prohibition into effect in various districts of Rajasthan as time bound phased programme. The first notification which came into force on 1st April, 1979, applied to the district Jhunjhunu, Sikar, Bhilwara, Jhalawar, Sawai Madhopur, Alwar and Bharatpur. The second notification dated 2nd October, 1979. was brought into force on 2nd October, 1979 in the districts of Chittorgarh, Ajmer and Kota and the third Notification which came into force on 1st April, 1980 covered the districts of Ganganagar, Jaipur and Udaipur, and thus the total prohibition was imposed through out the State of Rajasthan. It is contended that on 11th August, 1981, the Governor for Rajasthan promulgated on Ordinance No. 7 of 1981 by which the Rajasthan Prohibition Act (Act No 17 of 1979) has been repealed but according to the petitioner the above mentioned notifications issued under the Excise Act, 1950, which had come into force on 1st April, 1979, 2nd

October, 1979 and 1st April, 1980, were not repealed and as such it may be declared that the prohibition as brought into force by the aforesaid notifications still continues to remain in force in the State of Rajasthan.

3. A show cause notice was given to the State of Rajasthan. In the return filed by the State of Rajasthan, it has been urged that to implement the directive principles of the State Policy regarding prohibition as laid down in Article 47 of the Constitution of India, Prohibition Act, 1969, was enforced in certain areas from 1st April, 1979. After this notification and to avoid the ambiguity between the Rajasthan Prohibition Act and the Excise Act of 1950 notifications u/s 19 read with Section 13 of the Excise Act were also issued. The purpose of issuing the Notifications u/s 19 read with Section 13 was to implement the policy of prohibition. This policy of prohibition was changed by the State and the Prohibition Act has been repealed by the Governor by promulgating the Madhya Nished Nirshankari Ordinance No. 7 of 1981 on 11th August, 1981. Thereafter an act has been passed by the Rajasthan Vidhan Sabha No. 13 of 1981. By virtue of the aforesaid Ordinance and the Act the Notifications issued u/s 19 read with Section 13 of the Act of 1950 were also impliedly repealed by virtue of Section 6 of General Clauses Act. It has also been urged that when the Rajasthan Prohibition Act, 1969, was in force, the Excise Act in that area was automatically repealed in relation to liquor and the notifications if any issued u/s 19 read with Section 13 of the Excise Act were redundant and were never in force. Learned Government Advocate in this regard placed reliance on Section 76 of the Rajasthan Prohibition Act, 1969, which laid down that from the date this Act came into force in any area of the State of Rajasthan under Sub-section (3) of Section 1, the enactmeat specified in the Schedule as in force in that area stood repealed in such area, to the extent specified in the third column thereof. In the Schedule annexed to the Prohibition Act, the Act of 1950 has been repealed in whole in relation to liquor. It has been further stated in the reply that the intention of legislature was to scrap the Prohibition Act and to revive the Act of 1950, so that the trade in liquor could fetch revenue to the State which had gone in an over draft budget of more than 300 crores It has also been pleaded as an alternative argument that even if the notifications u/s 19 read with Section 13 of the Act of 1950 be treated to be in force then the Ordinance and the Act repealing the Prohibition Act will prevail over the notifications issued under the Act of 1950. The intention of the Legislature as expressed in the Act repealing the Prohibition Act makes its intention clear to scrap the Prohibition Act and the question of enforcing notifications issued under the Act of 1950 is out of question.

4. Learned Government Advocate also pressed the preliminary objections that the writ petition was not maintainable under Rule 381 of the Rules of High Court of Judicature for Rajasthan, 1952, under which a petition under Article 226 of the Constitution of India can only be made by an advocate and not by the party personally. It has also been urged that the petitioner has no right to file the writ petition as none of his legal rights are affected and no relief can be sought by him under Article 226 of the Constitution of India.

5. I shall first deal with the preliminary objection raised by the learned Government Advocate. As regards the non-maintainability of the writ petition under Rule 381 of the High Court Rules, it lays down that an application under Chapter XXII which deals with the writ petition under Article 226 of the Constitution of India other than a writ in the nature of habeas corpus shall be made by an advocate and not by the party personally. In my view this rule can only be applied in a case where an advocate is engaged by a party while filing a writ petition under Article 226 of the Constitution of India. It cannot apply to a case where a party does not engage an advocate and wants to file the petition himself. In such a case obviously the question of submitting such application by an advocate cannot arise. In my view there is no rule prohibiting party himself to file a writ petition under Article 226 of the Constitution of India. In these circumstances if a petitioner himself files a writ petition with out engaging an advocate then the presentation of the petition can also be made by the party himself. Thus, I find no force in this preliminary objection raised by the learned Government Advocate.

6. As regards the other preliminary objection, the petitioner has mentioned in the writ petition that he is President of Dakshan Block Prohibition Committee and Vice-President of Rajasthan Freedom Fighters Association and the aforesaid facts have not been denied by the State. The petitioner being vitally interested in enforcing prohibition in the State of Rajasthan has, in my view, a right to urge before this Court by filing a writ petition under Article 226 of the Constitution of India that the Madhya Nished Nirshankari Ordinance No. 7 of 1981 does not repeal the notifications issued under the Excise Act. The matter of enforcing prohibition or its withdrawal is of vital interest to every citizen of this country specially when it has been contained in Article 47 of the Constitution of India as one of the directive principle. The petitioner is also a President of Dakshan Block Prohibition Committee and Vice President of Rajasthan Freedom Fighters Association & as such has a legal right to bring this petition, for the relief sought by him.

7. The docks are now clear to consider the main controversy raised in the petition. The State Government in exercise of the powers conferred by Sub-section (3) of Section 1 of the Rajasthan Prohibition Act, 1969, issued a Notification bringing the said Act into force. However, different dates were notified for bringing the said Act into force in different areas. It was brought into force in revenue districts Jhunjhunu Sikar, Bhilwara, Jhalawar, Swai Madhopur, Alwarand Bharatpur on 1st April, 1979. It was brought into force on 2nd October, 1979 in revenue districts Chitorgarh. Ajmer and Kota. Lastly it was brought into force on 1st April 1980, into revenue districts Ganganagar, Jaipur and Udaipur. The State Government also issued notifications on March 31, 1979 by S.O. No. 238, 241 and 244 in exercise of the powers conferred by Sub-section (4) of Section 19 of the Rajasthan Excise Act, 1950 read with Section 13 thereof prohibiting the possession by all persons in, import into or transport within the areas of the State of Rajasthan liquors subject to the conditions specified in the

Rajasthan Liquor Prohibition Rules, 1967. The aforesaid notifications under the Excise Act were also made applicable to the different districts in the State of Rajasthan on 1st April, 1979, 2nd October, 1979, and 1st April, 1980 as applied in respect of the Prohibition Act. The Rajasthan Prohibition Act, 1969, deals with the prohibition of the manufacturing, sale, and consumption of liquor in the State of Rajasthan. This Act was a self-contained Act with regard to prohibition of manufacture, sale and consumption of liquor and contained detailed provisions with regard to the establishment and control prohibitions, of penalties, and exemption of licence and powers, duties and procedure of offices. It also contained the provisions for appeals and revisions and other legal proceedings. Section 76(1) deals with repeal and savings and which lays down as under:

76. Repeal and Savings (1)--From the date this Act comes into force in any area of the State of Rajasthan under Sub-section (3) of Section 1, the (enactment) specified in the Schedule as in force in that area shall stand repealed in such area to the extent specified in the third column thereof :....

schedule to the above Act laid down as under:

SCHEDULE	(See	Section	76)
Extent of repeal	S.No. Enactments		
1. The Rajasthan Excise Act, 1950	The whole in relation to (Rajasthan Act 2 of 1950). liquor		
2. The Bombay Prohibition Act, 1949	" " (as in force in Abu Area)		

8. A perusal in Section 76 along with the Schedule makes it clear that the Act of 1950 was repealed as a whole in relation to liquor on the coming into force of the Rajasthan Prohibition Act under Sub-section (3) of Section 1 in the areas in which the Prohibition Act had come into force. Thus, I am in agreement with the argument of the learned Government Advocate that any notification issued u/s 19 read with Section 13 of the Excise Act were redundant and had no force under the law after the Prohibition Act had come into force in the respective areas The Prohibition Act has now been repealed by the Rajasthan Madhya Nished Nirshankari Ordinance No. 7 of 1981. The validity of this Ordinance is not under challenge in this writ petition and it has been held as a valid piece of legislation by Hon''ble G.M. Lodha J. in S.B. Civil Writ Petition No. 1101/1982 Nand Lal v. State of Rajasthan decided on 26th August, 1982. Thus, I am clearly of the View that the notifications issued u/s 19 read with Section 13 of the Act of 1950 and brought into force on 1st April, 1979, 2nd October, 1979 and 1st April, 1980 in the various districts of Rajasthan have no force and cannot be given effect to after repealing the Rajasthan Prohibition Act.

9. I also agree with the contention of the learned Government Advocate that the notifications issued u/s 19 read Section 11 of the Excise Act have been impliedly repealed as a consequence of the Prohibition Act itself being repealed as these notifications were issued only in order to implement the policy of prohibition.

10. The petitioner Mr. Nand Lal was not present at the time when the same was called onto hearing and the arguments of the learned Government Advocate were heard in his absence and after the conclusion of the arguments of the learned Government Advocate, the judgment was reserved. Mr. Nand Lal appeared half an hour late and submitted that his bus failed in the way from Bassi to Jaipur and as such he was permitted to submit arguments in writing. The petitioner has submitted his argument in writing and the same have been taken into consideration.

11. In view of the discussion made above I find no force in this writ petition and the same is dismissed with no order as to costs.