

(1980) 08 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Special Appeal No. 185 of 1980

Peerulal	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 22-08-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (1980) WLN 354

Hon'ble Judges : K.D. Sharma, Acting C.J.; Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.D. Sharma, Actg C.J.

1. This is a special appeal filed by Peerulal u/s 18 of the Rajasthan High Court Ordinance against an order of a Single Judge of this Court dated July 14, 1980, by which the writ petition of the petitioner for restraining the Excise and Prohibition Officer, In charge of District Jodhpur from extending the period of licence in favour of respondent No. 4 for sale of country liquor to authorised persons u/s 31 of the Rajasthan Prohibition Act, hereinafter referred to as the Act No 17 of 1969, and for quashing the orders, if any that might have been passed by the respondents Nos. 2 and 3 during the pendency of the writ petition and for issuance of any direct order that might be deemed expedient in the interests of justice, was dismissed.

2. The brief facts leading to the filing of the writ petition, out of which this special appeal arises, may be stated as follows: The petitioner had been dealing in country liquor under a licence issued to him under the Rajasthan Excise Act in the past. At the time of filing the writ petition, the petitioner had no licence to deal in country liquor but he was interested in obtaining the licence for sale of country liquor. Act No. 17 of 1969 (Rajasthan Prohibition Act) came into force in Jodhpur District with effect from April 1, 1978. After coming into force of this Act,

no new permits for the retail sale of the country liquor were granted to any private person. The consumers who were authorised to purchase liquor on the basis of the permits issued in their favour by the competent authority purchased it from the Sale Depot of the Ganganagar Sugar Mills Ltd., only. In April 1980 the Excise Commissioner directed the Prohibition Officer Incharge of District Jodhpur to recommend the names of the persons who had been having licence in 1978 when the Prohibition Act came in to force, for the grant of licence for the retail sale of country liquor to authorised consumers, Accordingly the name of respondent No. 4 was recommended by respondent No. 3 for grant of such a licence. This recommendation was made without inviting applications from the public or from any other person interested in obtaining licence for the retail sale of country liquor to authorised person, On the recommendation of respondent No 3, respondent No. 2 issued a letter of authority to respondent No. 4 authorising the latter to purchase and sell country liquor in retail to persons authorised to purchase the same in Jodhpur City. It was, however, mentioned in the letter of authority issued in favour of respondent No. 4 that the licence would be issued later on. The petitioner came to know on May 1, 1980, that a licence had been granted in favour of respondent No. 4. He thereupon, approached respondent No. 2 through his Counsel and requested him to give a copy of the licence. Respondent No. 2 did not furnish any copy of the licence. The petitioner, therefore, filed writ petition No. 989 of 1980 before this Court which was admitted on May 6, 1980 and prayed for stay of the operation of the licence that was granted to respondent No. 4. This Court issued notice of the stay application to the respondents. Later on, the petitioner came to know that respondent No 2 and 3 were bent upon extending the term of the licence or the authority letters issued in favour of respondent No 4 and for this purpose they have obtained application from respondent No 4 and others. The petitioner apprehended that orders for extending the period of licence or the authorization would be passed by the respondents No. 2 and 3 in favour of respondent No. 4 before June 15, 1980 As according to him, the respondents Nos. 2 and 3 had no jurisdiction to issue any licence for retail sale country liquor to respondent No. 4 or to extend the period of the licence that had already been issued in favour of respondent No. 4, the petitioner had no other alternative remedy except to approach this Court by way of this writ petition, and so he moved this court by way of this writ petition.

3. The writ petition was admitted by the learned Single Judge of this Court on June 18, 1980 On July 3, 1980, the learned Counsel appearing for the parties desired that arguments may be heard on the writ petition as the points involved therein were purely legal and no further pleadings were necessary. It appears that the learned Single Judge acceded to the request of the learned Counsel for the parties and heard arguments on the writ petition and dismissed it, as stated above.

4. Aggrieved by the order of the learned Single Judge Peeru Mal, petitioner, has preferred this special appeal. It will not be out of place to mention that

respondent No 4 entered a caveat and desired to contest the special appeal at the admission stage Hence, the Special Appeal was put for hearing arguments on the admission stage on July (sic) 0, 1980 and then on Aug. 6 1980. Meantime, Mr. B.L. Purohit, learned Counsel for the appellant, filed an application for leave to amend the memo of the appeal, which was accepted by us on August 18, 1980. after hearing the learned Counsel for the respondents. Consequently, the learned Counsel for the appellant filed the amended memo of the special appeal and arguments were heard by us on August 19, 1980, at the admission stage Upon perusal of the record and hearing the arguments of the learned Counsel for the parties, we are of the view that this special appeal is not worth admission and the contentions raised before us by the learned Counsel for the appellant are clearly untenable.

5. The first contention put forward before us by the learned Counsel for the appellant is that the Rajasthan Liquor Prohibition Rules, 1967 hereinafter referred to as the 1967 Rules, were amended by the State Government vide the Rajasthan Liquor Prohibition Amendment Rules, 1980, which were published in the Rajasthan Raj Patra dated February 22, 1980, and this amendment was not applicable to the areas in which the Rajasthan Excise Act, 1950, was not in force on the date of the amendment and as the State Government was not empowered to grant permit to any person for sale of country made liquor in the areas in which the Rajasthan Excise Act was not in force. According to the submission of the learned Counsel for the appellant, the learned Single Judge of this Court did not consider this argument at all in his judgment. Mr. H M Parekh, learned Counsel for the respondent No. 4 on the other hand, argued that u/s 31 clause (f) of the Act of 1969, the Prohibition Commissioner or any Prohibition Officer empowered by him in this behalf may grant licences to persons for the sale of liquor to those authorised to possess it subject to the rules made by the State Government in this behalf and as the State Government did not frame any Rules in this behalf under the Act, of 1969 and as Rule 57 of the Rajasthan Excise Rules, 1956, continued to be in force by virtue of the second provision to Section 76 of the Act of 1969, the licence for retail sale of the country liquor could be granted either by or in accordance with the procedure prescribed in the Rajasthan Excise Rules, 19(sic)6, in the Chapter on Auction, or on the commission basis or on any other system sanctioned by the Government from time to time for instance (the guarantee system). Mr. Parekh further argued that after coming into force of the Rajasthan Liquor Prohibition Amendment Rules 1980, the Prohibition Commissioner or the Prohibition Officer empowered by him in this behalf could grant licences for the sale of liquor to those person authorised to possess is, subject to Rule 8 of the 1967 Rules which after having been amended by Rule 4 of the Amendment Rules 1980 reads as follows:

He may grant a licence for sale of country liquor in such form and subject to such terms and conditions as may be determined by him with the previous sanction of the State Government.

We have carefully considered the above rival contentions. It is not disputed before us that the State Government did not frame any rules for granting licences to persons for the sale of liquor to those authorised to possess it after coming into force of the Act, of 1969. Section 76 of the Act of 1969 contains a second provision so which clearly lays down that subject to the first proviso any appointment, notification, notice, order, rule or form made or issued under any enactments specified in the Schedule as in force in that area, shall continue to be in force in and deemed to have been made or issued under the Act of 1969, unless and until, it is superseded by anything done or any action taken under the said Act. The Rajasthan Liquor Prohibition Rules, 1967, were in force on the date on which the Rajasthan Prohibition Act, 1969 had come into force in the area covered by Jodhpur District and so these Rules of 1967 continued to be in force and were deemed to have been made or issued under the Rajasthan Prohibition Act, 1969 unless and until they are superseded by anything done or any action taken under the said Act. It is no doubt true that prior to the coming into force of the Rajasthan Liquor Prohibition Amendment Rules, 1980, the Excise Commissioner could grant a licence in Form R P. No. 3 for retail vend of brandy only under Rule 8 of the Rules but by Rule 4 of the Amendment Rules, 1980. Rule 8 of the Rajasthan Liquor Prohibition Rules, 1967, was amended and the Excise Commissioner was empowered to grant a licence for sale of country liquor also in such form and subject to such terms and conditions as may be determined by him with the previous sanctions of the State Government, Hence, it cannot be safely held that u/s 31(f) of the Act of 1969 the Prohibition Commissioner or the Prohibition Officer empowered by him in this behalf cannot grant licence for sale of country liquor in the area covered by Jodhpur District to those authorised to possess it. Mr. B.L. Purohit, learned Counsel for the appellant, however, contended that the Rajasthan Liquor Prohibition Amendment Rules, 1980 were enacted by the State Government under the Rajasthan Excise Act, 1969, in areas covered by Jodhpur District and, therefore, any amendment made in the Rajasthan Prohibition Rules, 1967, Under the repealed Rajasthan Excise Act cannot legally empower the Prohibition Commissioner or any Prohibition Officer empowered by him in this behalf to issue licence to persons for the sale of country liquor to those authorised to possess it in the aforesaid area, The above contention has no force for the simple reason that the validity of the amendments made by the Rajasthan Liquor Prohibition Amendment Rules 1980 cannot be challenged on the ground that wrong source of power was mentioned in the notification. The Rajasthan Government had the necessary power to make rules for the purpose of carrying into effect the provisions of the Act of 1969, u/s 68 of the said Act, clause (f) of which clearly provides for making rules for prescribing the authority by which the form in which the terms and conditions subject to which the licence or permit shall be granted. The mere fact that in notification No. F 37 FD Ex. 1/77 GSR 78 dated February 22, 1980, published in the Rajasthan Raj Patra Part 4 G A. dated February 22, 1980, it was mentioned that the amendments were made under the Rajasthan Excise Act, does not, in our opinion, invalidate the amendments made. Reference in this

connection may be made to *Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another*, and *Afzal Ullah Vs. The State of Uttar Pradesh*, wherein it was held that the mere mistake in the notification in mentioning the wrong source of power does not invalidate the amendments made if the Government had the necessary power to amend the Rules. In *Hukumchand Mills* (1 supra), their Lordships were pleased to make the following observations on this point:

It is not disputed that the amendments could be validly made u/s 5 of the Act 1 of 1948. We are therefore of opinion that the mere mistake in the opening part of the notification in reciting the wrong source of power does not effect the validity of the amendments made. It is urged that the Government knew that it could only make regulations, u/s 5 and it made regulations u/s 5 of Act 1 of 1948 in certain cases. Even if that be so there can in our opinion be no doubt about the validity of the amendments made if the Government had power to make them, even though there was a mistake in the opening part of the notification publishing the amendment.

Likewise, in *Afzal Ullah's* case (2 supra) it was observed as follows in para 14:

It is true that the preamble to the bye-laws refers to Clause A (a), (b) and (c) and J (d) of Section 298 and these clauses undoubtedly are applicable; but once it is shown that the impugned bye laws are within the competence of respondent No. 2, the fact that the preamble to the bye-laws mentions clauses which are not relevant, would not effect the validity of the bye-laws. The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye laws. If the power is otherwise established, the fact that the source of the power, has been incorrectly or inaccurately indicated in the preamble to the bye-laws, would not make the bye laws invalid (vide *P. Balakotaiah Vs. The Union of India (UOI) and Others*,

It may be observed that even prior to the amendment of Rule 8 of the 1967 Rules, by the Rajasthan Liquor Prohibition Amendment Rules, 1980, the Prohibition Commissioner or the Prohibition Officer empowered by him in this behalf could grant licences to persons for sale of country liquor to the authorised to possess it under Clause ((sic)) of Section 31 of the Act of 1959, subject to Rule 57 of the Rajasthan Excise Rules, 1956 which by virtue of the second proviso to Section 76 of the Act of 1969 were continued to be in force and deemed to have been made or issued under the Act of 1969, unless and until they were superseded by anything done or any action taken under this Act. Rule 57, as stated earlier lays down that licences for the retail sale of excisable articles may be granted either by auction in accordance with the procedure presented in the Rules on Chapter for auction or on commission basis or under any other system sanctioned by the Government from time to time, (for instance guarantee system).

6. Apart from this, we may further add that in our opinion, even in the absence of any rules made by the State Government under the Act of 1969, the

Prohibition Commissioner or the Prohibition Officer authorised by him in this behalf could grant licence to prisons for sale of liquor to these authorised to possess it u/s 31 Clause (1) of the Act of 1969. The contention of Mr. B.L. Purohit that in the absence of Rules made under the Act of 1969, no licence can be issued for sale of country liquor u/s 31(f) of the Act of 1969, is not well-founded, because the existence of Rules is not a condition precedent or *syna-quanon* for issue of licence of sale of country liquor u/s 31 of the Act of 1969. This very contention was raised before the learned Single Judge of this Court, who elaborately discussed it and repelled it for reasons, with which we fully agree, and the learned Judge came to a conclusion that the words Subject to rules made by the State Government used in Section 31 of the Act cannot be interpreted to mean that the intention of the Legislature was that the licences should not be issued at all in the absence of such rules. The learned Single Judge, while relying on the authorities of *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, and *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, held that the words "subject to the rules made by the State" used u/s 31 of the Act do not necessarily suggest that powers of issuing licence for sale of country liquor cannot be exercised by the Prohibition Commissioner or the Prohibition Officer authorised by him in this behalf in the absence of my rules made by the State Government. Consequently, we are unable to hold that licence for the sale of country liquor is in violation of the provision of the Rajasthan Prohibition Act or the Rajasthan Prohibition Rules 1967.

7. Another contention (sic) forward by Mr. B.L. Purohit, learned Counsel for the appellant before (sic) that selling of liquor is a business and the appellant has a right to do business in this commodity, of course subject to reasonable restrictions that may be imposed on the said right by any law made by the State in the public interest. It was further urged that grant of license to respondent No. 4 by the Prohibition Commissioner u/s 31 (f) of the Act of 1969 for sale of country liquor to those authorised to possess it violated the principle of equality before the law and in this manner contravened the provisions contained in Articles 14 and 19(1)(f) and (g) of the Constitution of India, because the licencing authority had not conducted himself in accordance with the provisions of law and had acted either in excess of its jurisdiction or without jurisdiction in granting licence to a person of his choice, i.e. respondent No. 4. In support of his contention, Mr. B L Purohit relied upon *Ganri Lal and Magan Behari Lal v. State of Rajasthan 1978 WLN 651*, *Gahlot Engineering Wine Store etc. Vs. State of Rajasthan and Others*, *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, and *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, Mr. H. M. Parekh, learned Counsel for the respondent N. 4, on the other hand, contended that the appellant had neither a natural, nor a fundamental right to carry on trade or business in liquor and the State is empowered to prohibit trade in liquors which are injurious to public health and welfare and so no question of Articles 14 and 19(1)(f) and (g) does arise in this

case. It was further urged by Mr. H. N. Parekh that the Prohibition Commissioner was empowered to grant licence for exclusive privilege of selling country liquor by retailers within the area of Jodhpur District to respondent No. 4 on commission basis by negotiations and in fact he issued licence to respondent No. 4 for sale of country liquor to persons authorised to possess it on commission basis as envisaged by Rule 57 of the Rajasthan Excise Rules which continued in force even after coming into force of the Rajasthan Prohibition Act, 1969, by virtue of the second proviso to Section 76 thereof.

8. We have given our earnest consideration to the above rival contentions. In our opinion, the State has the power to prohibit trade in liquors which are harmful to the public health and welfare and therefore no person has an absolute right to deal in liquor. Hence, the contention of Mr. B. L. Purohit that the appellant has a natural or a fundamental right to carry on trade or business in liquor is liable to be rejected. The trade in liquor is excluded from the preview of Article 19(1)(g) of the Constitution of India on the ground of its having adverse and reprehensible moral and social effects and, therefore, it cannot be safely held that by issuing licence to non-petitioner No. 4 for sale of country liquor to the persons authorised to possess it, the Prohibition Commissioner violated the principles of equality before the law and in any manner flouted the provisions contained in Articles 14 and 19(1)(f) and (g) of the Constitution of India. Reference in this connection may be made to *Nashivari v. State of M.P.* (supra 7), wherein the following observations were made by their Lordships on the right or the privilege of the State of manufacturing and selling liquor:

35. Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible in other trades are lawful & reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest as harmful & dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants, viz, manufacture, collection, sale and consumption. The State has exclusive right to manufacture and sell liquor and to sell the said right in order to raise revenue. That is the view of this Court in *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, and *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*. The nature of the trade is such that the State confers the right to vend liquor by forming out either in auction or on private treaty. Rental is neither a tax nor an excise duty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is the consideration for the agreement for grant of privilege by the Government.

In *Har Shanker's* case (8 supra), their Lordships further observed as follows:

There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale

and possession. In all there manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of vicious forms of activities in relation to intoxicants. In "American Jurisprudence" Volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to Governmental control, (page 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people Liquor traffic is a source of pauperism and crime. (Pp. 539, 540, 541)

In this connection, it was further held by the Supreme Court that the judgment in in K K Narula's case cannot be interpreted to negate the right of the State to prohibit absolutely all forms of trade in relation to intoxicants. Id their Lordship's view the right to prohibit absolutely is a wider right which would include the narrower right to allow dealing in intoxicants.

9. Consequently, the contention of Mr. B L. Purohit that the Prohibition Commissioner or the State Govt. created a monopoly in the business of retail sale of country liquor in favour of non-petitioners No. 4 is devoid of substance because exclusive right or privilege to manufacture and sell liquor is possessed by the State and such right and privilege can be granted by it to any person or under the form of licence either on public auction by or private negotiations or on commission basis or by adopting any other method such as guarantee system) Hence, the exercise of the discretion by the Prohibition Commissioner in issuing licence to non-petitioner No. 4 on commission basis by negotiations for sale of country liquor to person authorised to possess it u/s 31(1)(f) of the Prohibition Act cannot be challenged by the petitioner on the ground that such an exercise of discretion created or purported to create monopoly in one person for selling country liquor. The simple reason for holding the above view it that the petitioner has no fundamental right or inherent right to do business in intoxicating liquor which, being intoxicant, is injurious to public health, morality and welfare.

10. The Special Appeal filed by the appellant Peeru Lal has, therefore, no force and hereby dismissed in limine.