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(2000) 03 GAU CK 0028

In the Gauhati High Court

Case No : WPC (PIL) No''s. 10, 28 and 3393 of 1999 and 9, 10 and 11 of 2000

Rubul Kanti Roy and Others — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:
Assam Excise Act, 1910 — Section 28
Assam Excise Rules, 1945 — Rule 179, 180, 182, 183(2), 183(3)
Constitution of India, 1950 — Article 47

Citation : (2000) 2 GLT 460

Hon'ble Judges : Brijesh Kumar, C.J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B. Banerjee, S.C. Biswas, K. Bhattacharjee, M.K. Majumder, J.C. Barman, R. Begum, N. Choudhury, S.C. Kayal, B.W. Phira, K.P. Pathak, M. Singh, S.K. Sharma, D. Saikia, N.D. Sharma, C.K. Baruah and D. Talukdar, for the Appellant; B.C. Das, Government Advocate, for the Respondent

Judgement

Brijesh Kumar, C.J.—The abovenoted bunch of petitions involves similar point, namely, the grievance is about the issue of licences for retail liquor shops, the opening of new liquor shops, as well as some shops which have already been opened--the grievance has been raised in respect thereof as well.

2. We have heard Shri SC Biswas, Shri KP Pathak and Shri N. Choudhury, learned Counsel appearing on behalf of the Petitioners and Shri BC Das, learned Counsel appearing for the State.

3. It has been vehemently urged on behalf of the Petitioners that licences for liquor shops are being indiscriminately issued, much more in number as may actually be required, as a result of which it is polluting the atmosphere and is also not conducive to the public interest as it lures more and more persons including the youth to the drinking habit, which is bad for their health and the atmosphere in the society in general. It is further submitted that while granting licences, the State Government has kept in mind only its interest about raising

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its revenues, which cannot be an appropriate consideration for grant of licence for vend of liquor through shops. It is submitted that other ways and means should be adopted by the State Government to raise its revenue rather than to resort to issuance of liquor shop licences.

4. Shri S.C. Biswas, learned Counsel for the Petitioner has also drawn our attention to Article 47 of the Constitution, which falls in Part IV of the constitution, namely, "Directive Principles of State Policy". According to Article 47, it is the duty of the State to raise the level of nutrition and the standard of living of the people and the improvement of public health. It further provides that the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health. It is submitted that the State instead of taking steps to achieve the objective as envisaged under Article 47 of the Constitution, is working against it by issuing large number of licences totally unmindful of the provisions contained in the Rules regulating the issue of such licences. Public interest is not at all kept in mind.

5. We called upon the learned state counsel to indicate the state policy in the matter of issuance of such licenced for liquor shop. It has been submitted that the matter is covered and regulated by the provisions of the Assam Excise Act, 1910 (hereinafter referred to as the Act) and the rules made thereunder, namely, the Assam Excise Rules, 1945 (hereinafter referred to as the Rules). The authorities while issuing licences act according to the provisions of the Act and the Rules as a matter of policy. It is submitted that the State Government has not taken any such policy to issue the licences indiscriminately to raise its revenue. It is further submitted that in case any licence has been issued by the authorities in violation of the provisions contained under the Act and the Rules, such matters can always be brought to the notice of the State Government and considered by the appropriate authorities; but, by and large, the licences are issued in accordance with the law as provided under the aforesaid statutory provisions.

6. The learned State counsel has also submitted that in certain area and in some places the number of licences may have no doubt increased and sometimes it is in die public interest to do so. In connection with the above submission it is submitted that in case shops are sparsely located making it difficult to consumers of the liquor to get it, the chances of use of spurious liquor increase. Use of spurious liquor is to be checked in better interest of the society. It is more injurious to the health of the people. It is also submitted mat instead of making it a monopoly of a small number of licensees, issuance of a few more licences would make it competitive. It is also necessary to maintain the quality and price of the item. The above two factors are also kept in mind by the authorities while considering the question of issuance of new licences. It is submitted that it is not correct to say that it is only for die purposes of raising the State revenue that licences are being issued indiscriminately.

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7. Coming to the provisions of the Act and the Rules, we find that Section 28 of the Assam Excise Act, 1910, provides as follows:

20. Ascertainment of local public opinion. Before the licences are granted in any year of the retail sale of any intoxicant, the Collector shall take measures, in accordance with rule to be made by the State Government in this behalf, as may best enable him to as certain local public opinion in regard to the licensing and location of shops.

8. We find mat rules have been framed to provide the details regarding the manner in which me authorities have to act in the matter of issuance of licence. Part VI of the Assam Excise Rules, 1945, deals with "Licences, settlements and fees". Rule 179 provides that the numbers of licences which may be granted for any local area shall be regulated by the needs of the people of that area. It further provides that licences are to be issued either to meet an ascertained demand by the consuming classes or to contract supply through illicit sources. We find that Rule 180 provides that liquor should not be so sparsely distributed as to give any particular lessee practical monopoly over a considerable area. The abovenoted two Rules provide a guideline which are to be kept in mind while issuing licences.

9. Rule 182 provides that in rural areas the distance between excise shops of the same description should not, except for special reasons, be less than five Kms. and so far urban area is concerned, Rule 183(2) provides as follows:

(2) The shops should not be located at sites to which the neighbours object on grounds which upon enquiry appear to be reasonable and free from malice or ulterior motive and should, so far as possible be at a reasonable distance from religious, education and other similar buildings or institutions.

Explanation. The word "reasonable" should be interpreted according to the circumstances of the case.

Sub-rules (3) and (4) of Rule 183 would also be relevant, which provides as follows:

(3) In areas frequented by tea garden labour, country spirit shops should be located as far away as practicable from main roads and other conspicuous positions.

(4) As a general rule while fixing location of country sprit shops the vicinity of markets, factories, labour lines, places to worship and other place of Public resort should be avoided.

Rule 189 would also be relevant in the matter of issuance of licence, which provides as follows:

189. Licence for the sale of foreign liquor for consumption on'' or ''off'' the vendor''s premises shall be granted only in places where there is a proved demand on the part of a class of drinkers accustomed to foreign liquor, e.g. in

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large industrial and business centres, or in urban areas where there is a class of consumers specially accustomed to drinking such liquor.

10. We find that provisions have been made for ascertainment of public opinion regarding the number and location of excise shops. Rule 191 reads as follows:

191. The opening, shifting amalgamation and closure of any licensed premises shall be done by the District Collector with the previous sanction of the State Government. Such opening, shifting, amalgamation, and closure shall not be granted (a) unless it has been satisfactorily established by local enquiry that the proposed action is necessary in the interest of Public; and (b) until any objections, which may have been filed on the subject have been considered by the District Collector.

Objections from local bodies and from the following persons will be considered:

(i) In the case of Corporation, Municipality or Town Committee areas-The Corporation, Municipality or Town Committee concerned to which such proposal relates ;

(ii) In the case of areas not situated in a Corporation, Municipality or Town Committee:

(a) The Gaon Panchayat concerned.

(b)The owners or occupiers of the neighbourhood of the premises involved.

(c) Managers of the tea estates or factories in which more than 100 persons are employed.

Provided that the whole or any part of the jurisdiction of the Gaon Panchayat or land owned or occupied by tea estate or factory is situated within 5 Kms. of the site of the shop or any of the shops concerned.

11. We find that the provisions contained in Rule 192 onwards provide the details about the manner in which public opinion is to be ascertained.

12. So far the provisions as stated in Part IV of the Constitution are concerned, more particularly, Article 47 to which our attention has been drawn by the learned Counsel for the Petitioners, suffice it to say that it requires the State to make an endeavour for prohibition. It is a matter of policy in respect of which the State alone would be competent to make laws. So long no law exists imposing prohibition on use of liquor and the matter is regulated by statutory provisions, we feel that such matters are to be regulated in accordance with such provisions; We have already indicated above the relevant provisions of the Assam Excise Act, 1910 and the Assam Excise Rules, 1945. The learned Counsel for the State submits that the authorities take care and issue licences in accordance with the abovenoted provisions. There may be some cases where there may not have been any strict compliance or compliance of any particular Rule may have been ignored. But such matters can always be looked into by the authorities. The main

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consideration, according to the learned State counsel, is to check the use of spurious liquor and to make it a bit competitive to safeguard the interests of the consumers of the liquor. It may, no doubt, result in increase of the State revenue; but it is not the motive behind issuance of licence. We find that on behalf of the Petitioners also, main stress is upon the fact that the authorities must act in accordance with the Rules and while considering the matter for issuing licences for opening of liquor shops, they must take all relevant considerations into account and may also ascertain the public opinion in accordance with the Rules and then alone may proceed to grant any fresh licence, not otherwise.

13. We also take note of Rule 180 of the Assam Excise, Rules which provides that liquor should not be so sparsely distributed as to give to any particular lessee practical monopoly over a considerable area that is to say, under the Rules it is permissible to make it competitive, so as to safeguard the interest of the consumers. We further find that Rule 191 makes a provision that opening, shifting, amalgamation and closure of any licensed premises can be done by the District Collector with the previous sanction of the State Government, in case it is satisfactorily established by local enquiry that such an action would be in the interest of public and any objections which may have been filed in that regard, are considered by the District Collector. That being the position under the Rules as indicated above, we finally dispose of all the petitions providing that the authorities while considering the question of issuance of licence for liquor shop must comply with the provisions of the relevant Rules and the provisions of the Assam Excise Act, 1910. Regard must be had to the fact that the area may not be infested by liquor shops so as to make it arbitrary easily available and may also lure the people or the youth and attract them for its consumption. The fact that there may not be such institutions in the nearby area, like hospital, educational institution and place of worship, etc. is also a very relevant consideration as provided under the rules. The prime consideration in such matters has to be in any case to safeguard the public interest and public health.

14. Therefore, without disturbing any existing licensee, we provide that in the case of issuance of new licence the authorities would strictly act in accordance with the provisions of the Assam Excise Act, 1910 and the Assam Excise Rules, 1945. In cases where licence has not been issued so far and the Rules may not have been considered by the authorities, they would consider such matters in accordance with the Rules before actually issuing licences. So far shops which have already been opened under any licence issued by the authorities, we provide that it would be open to the Petitioners or any other person interested and entitled to move the District Collector under the provisions of Rule 191 of the Assam Excise Rules, 1945 and the District Collector shall, on being so moved, consider the objections in the manner prescribed and if satisfied that it is necessary in the interest of public, pass any appropriate order for shifting, amalgamation or closure of any shop. Needless to emphasise that in case any such petition is moved, the District Collector shall act expeditiously in the matter

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without loss of time so as not to render it infructuous.

15. All the petitions stand finally disposed of in the manner indicated above.

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