
(2014) 04 JH CK 0083
In the Jharkhand High Court
Case No : W.P. (PIL) No. 894 of 2013

Shivdhari Ram

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Citation : (2014) 3 JLJR 27

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Delip Jerath, Rajesh Kumar and A. Kumar, Advocate for the Appellant; Rajesh Kumar, G.R.V, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner claiming himself a farmer belonging to a Scheduled Caste, has filed the present writ petition seeking a direction upon the respondents not to sale or allow to sale country liquor in sachet and for a further direction to the respondents to adhere to order dated 30.04.2008 in W.P. (PIL) No. 1166 of 2005 in its letter and spirit.

2. The brief facts stated in the writ petition are that, on the recommendation of the Excise Advisory Committee, resolution dated 18.10.2003 was issued prohibiting sale of country liquor and spiced country liquor in sachet and it was provided that it would be sold in sealed bottle with effect from 01.04.2004. Consequently by Notification dated 22.03.2004, Jharkhand Country Liquor Bottling Rules, 2004 was promulgated. Rule 18 of the 2004 Rules provided that country liquor will be bottled in cent-percent new white and transparent bottle with round bottom and long neck manufactured through automatic machines and sealed by leak proof aluminium with "Jharkhand Utpad" embossed on the bottle. By Notification dated 29.12.2004, specification of bottles as provided under Rule 18 was amended and substituted to the effect that the requirement of cent-percent white and transparent bottle was deleted and it was provided that any white and transparent bottle can be used for bottling the country liquor. In view

of the amendment/substitution provided by Notification dated 29.12.2004, a Public Interest Litigation being W.P. (PIL) No. 1166 of 2005 was filed in which by order dated 08.04.2005, the respondents were directed not to give effect to Notification dated 29.12.2004. By order dated 19.05.2005, the interim order dated 08.04.2005 was modified to the extent that the bottles manufactured by semi-automatic machines were also permitted to be used for bottling country liquor and spiced country liquor. The writ petition being W.P. (PIL) No. 1166 of 2005 was finally disposed of by order dated 30.04.2008 by confirming the interim order dated 19.05.2005. Since the Government of Jharkhand came out with Jharkhand Liquor (country liquor/spiced country liquor, foreign liquor, beer and wine) Wholesale Rules, 2012 which permitted sale of country liquor and spiced country liquor in bottles/sachet, the present writ petition has been filed.

3. The State of Jharkhand has filed a counter-affidavit questioning the bona fide in filing the present writ petition stating that it seems to be a camouflage for foster personal gains of the glass bottle manufacturers and thus, it is a private interest litigation. It is stated that the prayer in the writ petition seeking a direction for bottling of country liquor and spiced country liquor in glass bottles is itself a sufficient indication of the intention and purpose for which the present writ application has been filed. It is further stated that in exercise of powers u/s 90 of the Act the Board is empowered to make Rules for regulating the bottling of liquor for the purpose of sale. It is also stated that the right of the State to change its policy under the changed circumstances can not be questioned unless the said policy is demonstratively arbitrary, irrational, discriminatory or violative of the constitutional or any statutory provision. In so far as, the trade in liquor is concerned it is different from other trade and business. In the year, 2004 the State Government took a decision to permit bottling of country liquor and spiced country liquor in bottles by enacting Jharkhand Country Liquor Bottling Rules, 2004 which was subsequently partially amended. However, the State Government decided to permit sale of country liquor and spiced country liquor in low density polythene (LDPE-film) having a density of 100 microns of ISI specification IS 9845181 and IS 10146182 besides, bottling in glass bottles. The decision of the State Government was notified in official gazette on 28.12.2007 and 26.02.2011. It is lastly submitted that the change in policy was necessitated for protecting the interest of the consumers and at the same time to augment the revenue of the State.

4. We have heard the learned counsel appearing for the parties and perused the documents on record.

5. Mr. Delip Jerath, the learned counsel appearing for the petitioner, has submitted that in complete violation of the interim order dated 19.05.2005 which was affirmed by order dated 30.04.2008 in W.P. (P.I.L.) No. 1166 of 2005, the State Government has permitted sale of country liquor and spiced country liquor in plastic sachet which produces serious health hazards and environmental problems. Since liquor is necessarily acidic in character, if it is packed in plastic

sachet, leeching would take place posing grave and serious risk to the life of the consumers. Leeching becomes faster in hot conditions and also as the packaging becomes older. It is claimed that the leached elements can cause several diseases including cancer and physical infirmities.

6. Per-contra, Mr. Rajesh Kumar, the learned Government Pleader appearing for the State of Jharkhand has submitted that the country liquor and spiced country liquor can be packed only in LDPE-film having plastic density of 100 microns with I.S.I. specification and it is not hazardous to health as alleged by the writ petitioner. It is further submitted that as the country liquor and spiced country liquor packaged in plastic sachet are normally consumed within a month of its manufacture, the assertion that it causes leeching etc. is totally misconceived. Moreover, no authentic material has been brought on record in support of the claim that it causes serious health hazards. It is further submitted that in view of the higher cost when country liquor and spiced country liquor are supplied in bottles, illegal supply of country liquor has been seen to be on rise to cater the demand of consumers belonging to the lower income group. Further, two hooch tragedies occurred during August, 2004 and November, 2007 in the Dhanbad district. It is thus submitted that the change in policy was necessitated for protecting the interest of the consumers.

7. The right to deal with each and every aspect of exercisable articles namely manufacture, storage, export, import, sale and possession is within the exclusive privilege of the State Government and it exercised its regulatory power over the same. The State has power to frame, reframe, change, rechange, adjust its policy decisions for sale of liquor in sachets; the Court cannot interfere with such policy decisions. The petitioner failed to point out any infirmity in the current policy as provided by Rules to frame packing and sale of country liquor in sachets.

8. In State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , it has been held by the Hon''ble Supreme Court that the power given to the Government to sale the exclusive privilege in such a manner as it thinks fit, is a very wide power.

9. In the case of K. Ramanathan Vs. State of Tamil Nadu and Another, , Hon''ble Supreme Court held that the power to regulate carries with it full power over the subject matter of regulation and in the absence of restrictive words, the power must be regarded as plenary power over the entire subject.

10. It is further noted that the petitioner though claimed that the people of their own caste are by and large addicted to consume country liquor and he counsels alcoholics about the harm caused by drinking and also holds de-addiction camps, no reference of any de-addiction camp organised by the petitioner has been disclosed in the writ petition. It is not conceivable that if the country liquor and spiced country liquor are sold in bottles, it would discourage the use of liquor among the consumers. We also do not find any substance in the contention that sale of country liquor if permitted in sachet would cause serious environmental

problems.

11. A Public Interest Litigation, being Writ Appeal No. 2509/2013 (Prani Mitra Samiti v. State of Madhya Pradesh) was filed in the High Court of Madhya Pradesh alleging use of PET (poly ethylene terephthalate) bottles for packing of country liquor as harmful/hazardous to the health of the consumers and it was dismissed. An appeal in Hon''ble Supreme Court being SLP (Civil) No. 31833/2013 was filed, which was also dismissed by Hon''ble Supreme Court on 25.10.2013. According to the respondents, the contention raised by the present petitioner in the instant case is similar to those raised in the aforesaid case and therefore, the ratio in "Prani Mitra Samiti v. State of Madhya Pradesh" is squarely applicable to the present case.

12. The petitioner has alleged violation of order dated 30.04.2008 passed by this Court in WP. (P.I.L) No. 1166 of 2005 and sought a direction upon the respondents for adhering to order dated 30.04.2008 by them. The writ petition being W.P. (P.I.L) No. 1166 of 2005 was filed challenging the Notification dated 29.12.2004 whereby the glass bottles manufactured through automatic machines only were permitted to be used for bottling country liquor. By the earlier Notification dated 22.03.2004 the glass bottles of any category that is, manufactured through automatic and semi-automatic processes were permitted to be used and thus, it appears that the glass bottle manufacturers who were manufacturing the glass bottles through semi automatic processes were aggrieved by the subsequent Notification dated 29.12.2004 and therefore, Interlocutory Application being I.A. No. 1435 of 2005 was filed and by order dated 19.05.2005 this Court modified the interim order dated 08.04.2005 to the extent that the bottles manufactured by semi-automatic processes were also permitted to be used for bottling country liquor. From the aforesaid facts it is clear that the issue before this Court in W.P. (PIL) No. 1166 of 2005 was a limited question of validity of use of glass bottles manufactured through automatic process only. We find no substance in the contention of the petitioner that by order dated 30.04.2008 the State Government gave an undertaking before this Court that they would continue to permit packaging of country liquor and spiced country liquor only in glass bottles and an undertaking was given to this Court that packaging of country and spiced country liquor in plastic sachet would not be permitted.

13. In view of the aforesaid discussion, we find no merit and accordingly, this writ petition is dismissed.