

(2003) 01 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No's. 23550 to 23554, 25265 to 25272, 26975 to 26997 and 28992 to 29016 of 2001

Shridhar and Others

APPELLANT

Vs

Excise Inspector, Dharwad Range and Others

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 19 (6), 301, 47
Karnataka Excise Act, 1965 — Section 15 A, 32

Citation : (2003) 3 KarLJ 578 : (2003) 2 KCCR 917

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Padubidri Raghavendra Rao, in W.P. Nos. 23550 to 23554 of 2001, Mohan Bhat, in W.P. Nos. 25265 to 25272 and 26975 to 26997 of 2001 and B.N. Shetty, in W.P. Nos. 28992 to 29016 of 2001, for the Appellant; N.K. Ramesh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—W.P. Nos. 23550 to 23554, 25265 to 25272, 28992 to 29016 and 26975 to 26997 of 2001.

Since the constitutional validity of amended Sections 15-A and 32 to the Karnataka Excise Act is challenged in all these writ petitions and since the same questions of law are involved, all these writ petitions are disposed of by this common order.

2. All the petitioners are hoteliers running non-vegetarian hotels and restaurants. The petitioners in W.P. Nos. 28992 to 29016 are the hoteliers running non-vegetarian hotels and restaurants at Belgaum City. The petitioners in W.P. Nos. 25265 to 25272 are running their restaurants at Gadag Town, so is petitioners in W.P. Nos. 23550 to 23554 at Dharwad and petitioners in W.P. Nos. 26975 to 26997 at Gadag Town.

3. They all contend in their writ petitions that they have no licence to vend liquor at their restaurants though most of them have applied for grant of excise licences in this regard. Customers who visit their hotels purchase liquors from the licensed shops and consume the same in their hotels while taking non-vegetarian food. On account of this facility being offered, they have been doing good business.

4. The State of Karnataka has amended Section 15 of the Karnataka Excise Act by introduction of Section 15-A and Sub-section (3) of Section 32 by means of the Karnataka Excise (Amendment) Act (Act 16 of 2001), published in the Karnataka Gazette on 19-4-2001 which also received the assent of the Governor on 18-4-2001. By the said amendments petitioners are required to prevent their customers from consuming liquor in their hotels as a result, most of the customers have stopped visiting their restaurants, on account of which their business is severely affected. Such a restriction placed on the customers from consuming liquor in hotels and also directing the hotel owners to prohibit their customers from drinking liquor in their hotels affects the petitioners fundamental right to carry on trade and business within the meaning of Articles 19(1)(g) and 14 of the Constitution of India. The restriction imposed is an unreasonable restriction on their fundamental right to carry on business. Hence, they have prayed for declaring Sections 15-A and 32(3) of the Karnataka Excise (Amendment) Act of 2001 as unconstitutional.

5. The arguments of Sri Mohan Bhat and Sri Padubidri Raghavendra Rao appearing for the petitioners is that Section 15-A of Act 16 of the Amendment Act imposes an unreasonable restriction on the petitioners fundamental right under Article 19(1)(g) of the Constitution of India. It was also submitted there is no power available to the State to prohibit the consumption of liquor in public places. On the other hand, learned Government Advocate defended the validity of the Act and submitted that the State has power to restrict or prohibit sale and consumption of liquor in any public place by a suitable legislation in pursuance of the directive principles of the Constitution.

6. In order to appreciate how for the contention of the petitioners are tenable, I will refer to Article 47 of the Constitution and the decision of the Supreme Court upholding the legislations which introduced partial prohibition to regulate the trade in alcohol. Article 47 reads:

"Duty of the State to raise the level of nutrition and the standard of living and to improve public health.--The State shall regard the 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 medicinal purposes of intoxicating drinks and of drugs which are injurious to health".

7. In furtherance of the policy envisaged under Article 47, various legislations were passed by different States; the legislations including the amendments to it

were subject-matter of repeated attacks before the Courts on the grounds of violations of various provisions of the Constitution, prominent among them being affecting the citizen's "Right to trade and business" and also being hit by the equality clause of Article 14, i.e., on the ground of being discriminative from other categories of trade. Every time the arguments were repelled both by this Court and the Supreme Court on the principle that "Trade and/or business in country liquor has from its inherent nature being treated as a special category requiring legislative control in view of injurious effect of consumption of liquor"; the Courts have ruled:

(i) That a citizen has no fundamental right to trade or do business in liquor being dangerous substances i.e., *res extra commercium*;

(ii) In order to effectuate the policy of prohibition philosophized in Article 47, the State has power to regulate production, sale and possession of liquor (See *D. Cawasji and Company, Mysore and Ors. v. State of Mysore and Ors.* 1969(1) Mys. L.J. 461).

8. But new areas however were searched to bring the trade in liquor within the broad sweep of Article 19(1)(g) and to attack the new legislations or amendments to it as unreasonable restrictions. All such arguments were put to rest in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, where several contentions were taken relying on Articles 19(1)(g), 298, 301 and 304 of the Constitution to contend that a citizen has a fundamental right to trade in potable liquor and the restrictions imposed by the State should be reasonable within the meaning of Article 19(1)(6) of the Constitution and the State's power to create a monopoly in itself or to totally prohibit a citizen from trading in potable liquor or impose restrictions were questioned. The Hon'ble Supreme Court has observed thus:

"55. . . . Prohibition is not the only way to restrict and regulate the consumption, of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the State does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6) of the Constitution".

On the power of State to completely or partially prohibit sale and consumption and the harmful effect of alcohol, it was ruled in para 58 as;

"58. We also do not see any merit in the argument that there are more harmful substances like tobacco, the consumption of which is not prohibited and hence there is no justification for prohibiting the business in potable alcohol. What articles and goods should be allowed to be produced, possessed, sold and

consumed is to be left to the judgment of the legislative and the executive wisdom".

9. After referring to all its earlier decisions on the said question, it has summarised its conclusion at para 60. Para 60(d) is extracted omitting the other clauses:

"Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes".

10. Thus, by the extracted paragraphs in particular para 55 stated above, it is now concluded that the State has power to restrict and regulate, prohibit partially or completely the consumption of intoxicating liquor.

11. Reverting to the facts and contentions of the case.--Karnataka Excise Act, 1965 as the preamble suggests, is meant to regulate production, manufacture, import and export and purchase or sale of liquor. Sections 15 and 32 of the Karnataka Excise Act, 1965 was amended by Act 16 of 2001. By the introduction of a new section called as Section 15-A and adding Sub-section (3) to Section 32. Section 15-A and inserted Section 32(3) are extracted herein omitting to extract Sections 15 and 32 as being unnecessary and as having no bearing to the amended section, in order to appreciate the arguments submitted by the learned Counsel.

Section 15-A and Sub-section (3) of Section 32 reads;

After Section 15 of the Karnataka Excise Act, 1965 (hereinafter referred as the "principal Act"), the following section shall be inserted, namely.--

"Section 15-A. Consumption or allowing consumption of liquor in unlicensed public places.--No person being the owner or in charge of the management or control of any public place shall allow consumption of liquor or no person shall consume liquor in any public place unless consumption of liquor in such place is permitted under a licence granted by the Excise Commissioner or Deputy Commissioner".

Section 32: In Section 32 of the principal Act, after Sub-section (2), the following sub-section shall be inserted, namely.--

"(3) Whoever, being the owner or in charge of management or control of any

public place allows consumption of liquor or whoever consumes liquor in any public place in which consumption of liquor is not permitted under a licence granted by the Excise Commissioner or the Deputy Commissioner, in contravention of the provisions of Section 15-A, shall on conviction be punished with fine which shall not be less than Rupees two hundred but which may extend to one thousand rupees".

12. An analysis of Sections 15-A and 32(3) shows that the legislature intends to prohibit the consumption of liquor in public places by any person. Firstly, by prohibiting the consumer and to make it effective it also casts a duty or legally obliges the owner, manager or whoever in charge of the public place to prevent the user of public place to consume liquor. In other words, what the legislature intends to do is only to prohibit in public places the consumption of liquor and the prohibition is only directed against the consumer and not against any other person like the petitioners.

13. Section 32(3) is only a consequence of Section 15-A which seeks to make the consumption of liquor in public places or allowing consumption in a public place an offence. These measures are introduced in order to prevent citizens by harming themselves or ruining their families. The evil effects of liquor on human mind and body is too well-known and highlighted by the Supreme Court which does not bear repetition here. Besides, Section 15-A is only giving effect partially to the directive principles of State policy.

14. Regarding the contention that Sections 15-A and 32(3) affects the fundamental right to trade and business of petitioners.--In the first place, petitioners admittedly are not carrying on the trade or business of liquor in any form and they are only hoteliers carrying on the business of serving food items and eatables to their customers. Section 15-A in no way affects in any manner their right to carry on their business as hoteliers. Therefore, they cannot make any grievance that Section 15-A affects their right to business. They are only required to prevent their customers from consuming liquor in their hotels. Being in charge of a public place, they also owe a duty to prevent offences being committed in their place (as consumption of liquor is made an offence u/s 32(3). This cannot be held by any stretch of imagination to be a restriction on their trade.

15. Secondly, even if it were to be contended that prohibiting their customer from consuming liquor will indirectly affect their business, as already held by the Supreme Court in Khoday Distilleries Limited's case, supra, there is no fundamental right in the matter of dealing with liquor in any form and the State has always the power to prohibit completely or partially the consumption of liquor. Even on this reasoning, the argument has to fall.

16. It was nextly contended by Sri Mohan Bhat, learned Counsel that the State lacks legislative power to enact Section 15-A of the amended Act. This contention also deserves to be rejected as without any merit.

17. Entry 8 to List II of VII Schedule give the power to the State Government to make laws regarding "intoxicating liquors i.e., to say the production, manufacture, possession, transport, purchase and sale of intoxicating liquors". This entry is wide enough to cover the restriction for sale or consumption of intoxicating liquor imposed as is sought to be done under the amended Section 15-A of the Act.

18. No other question has been urged. For the reasons stated above, I do not find any merit in these petitions. Accordingly, they are dismissed. No costs.