

(2018) 04 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition Nos.101601 of 2018

**Shri.H.R. Krishnamurthy @APPELLANT@Hash The State of Karnataka and
Ors**

Date of Decision : 13-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2018) 04 KAR CK 0016

Hon'ble Judges : KRISHNA S.DIXIT, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The Petitioner a grantee of CL-2/7 license has been carrying on the liquor business at Anantpur village in Athani Taluk of Belagavi District.

2. The State Government with intent to increase its revenue promulgated a policy decision vide Notification dated 07.11.2016 at Annexure-B to the

Writ Petition to carry on the liquor business through its agency namely the 3rd Respondent M.S.I.L in various places in the State by establishing liquor

outlets with CL-11C licenses.

3. In furtherance of the said policy decision, the Petitioner contends, the jurisdictional authorities have after survey and study identified various places

proposing to establish the liquor shops therein. A list of feasible places is at Annexure-C to the Writ Petition.

4. The learned counsel for the Petitioner submits that, in the said Feasible List, the village of Shiraguppi does not figure apparently because the place is

not feasible for establishment of Liquor-Shop.

5. The Petitioner contends that, now the several villagers have opposed the proposed establishment of M.S.I.L outlet in Shiraguppi village having a

population of 8,000 or so for selling the liquor. Despite that the Respondent-Authorities are making all out efforts at the instance of the local M.L.C for establishing a liquor shop. It is also stated that, the sitting M.L.A of Kagawad Constituency has notified to the 3rd and 6th Respondents about the public resentment against the proposal.

6. The learned counsel for the Petitioner contends that, he has been running the liquor shop with the license duly granted and without any objection and complaints at any time till now. The village is small going by the population size. If one more liquor shop is established, that virtually amounts to striking the deathknell of Petitioner's business. He further contends that, the proposed action is in gross violation of his fundamental right to carry on the business guaranteed under Article 19 (1)(g) of the Constitution of India.

7. I have heard the learned counsel for the Petitioner and also the learned AGA Sri.Ravi Hosmani. I have also carefully perused the notification dated 07.11.2016 which expresses the policy decision of the State Government which lays down certain guidelines to be followed while issuing license for establishing the liquor outlets through the MSIL in various places in the State. The said policy decision is issued by the State for the purpose of its own trade and business.

8. The provisions of the policy notification mentioned above does not create any choate right in favour of any private liquor shop owner at all.

Therefore, the reliance of the counsel for the Petitioner on the provisions of the said notification is ill founded.

9. Similarly, the contention of the counsel for the Petitioner that the said notification infringes his Fundamental Right to carry on the business in liquor is also ill founded in as much as there is no Fundamental Right for trading in liquor, as held by the Apex Court in the case of Chakravarti Vs. Collector of Excise 1972 (2) SCWR 340.

10. The learned author Dr. Durga Das Basu in his magnum opus SHORTER CONSTITUTION OF INDIA, 15th Edition, Volume I, page 332 states as under:

Â 1.(6) (ii) 1. xxxx

2. The State may enter into a trade or industry causing a partial or complete elimination of private traders, not only for reasons of administrative policy,

e.g., manufacture of salt or alcohol; or for mitigating the evils arising from the competitive system, e.g., for the better control of prices or quality of products or for the administration of public utility services, but also simply for the making of profit just as a private trader would do, e.g., carrying on the business of motor transport. There is no infringement of the right guaranteed by Art. 19(1)(g) where the State enters a trade merely as a competitor.â??

11. â??Of all the forms of human society the greatest is the Stateâ? says the great Jurist William Guthrie Salmond. It owns immense wealth and performs functions akin to a Corporate body. The age old tradition that the State/Government has no right to carry on trade or business for earning profits has withered away since long. The State is competent to enter into any trade or business like a private individual without a specific legislation sanctioning such activity. Art. 298 has been amended vide Constitution (7th Amendment) Act, 1956 to make it clear that the right to carry on a trade or business is included in the â??executive powerâ?? of the Union or a State. It is thus competent for the Government to take up the business of banking or the exploitation of mineral resources in the exercise of its executive powers, and as a competitor of private traders.

12. When the State or an instrumentality of the State ventures into the Corporate world or undertakes some activity of Trade or Business it assumes to itself the ordinary role of a Trader or a Businessman. In the modern world it is open to the State to adorn the mantle of a maga corporation, subject of course to the legislation.

13. The contention of the learned counsel for the Petitioner that, establishment of one more liquor shop in his area will result into diminishing of his business that is being carried on with the license and therefore he has suffered damage is a classic case of *damnum sine injuria*. In *Gloucester Grammar School case*, (1410) YB 11 Hen IV, fo. 47, pl. 21, 23, the Defendant, a schoolmaster, had set up a rival school next door to the plaintiffâ??s and boys/students from the plaintiffâ??s school flocked to defendantâ??s, it was held that no action could be maintained for injunction or damages. Competition is no ground of action whatever damage it may cause, provided nobodyâ??s legal rights are infringed. The counsel for the Petitioner has not brought the notice of this Court any instrument having force of

law under which he has a legal right to exclude any competitor establishing or running the liquor business.

14. Thus, there is absolutely no merit in this Writ Petition and therefore the same is dismissed at the admission stage. However, this order shall not come in the way of Petitioner making representation to the concerned authorities for the redressal of his grievance in accordance with law.

15. Since the main matter itself being dismissed, there is no need to consider the application for impleadment because the applicant too does not have no justiciable right.