

(2008) 01 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 1168 of 2006

Smt. Mala Banerjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Bengal Excise Act, 1909 — Section 2, 30, 85, 86
Constitution of India, 1950 — Article 12, 14, 19(1), 21, 226

Citation : (2008) 1 CHN 979

Hon'ble Judges : Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Kalyan Bandopadhyay and Agniswar Dutta Gupta, for the Appellant;
L.K. Gupta, Joydip Kar, Samrat Sen and Siddhartha Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—By this public interest litigation, the writ-petitioner, claiming to be a social worker, has prayed for the following relief:

(a) A writ of and/or a writ in the nature of Mandamus commanding the respondents to forthwith withdraw, cancel and rescind:

(i) The Rule dated 29th July, 2003 which has been published on 30th July, 2003 in the Kolkata Gazette;

(ii) Notification and/or Office Memo No. 2S-30/2003-04/2736 (21)E dated 21st November, 2003 being Annexure ?P-4? hereto;

(iii) Circular/Memo No. 2S-30/03-04/3369(20) dated 20th January, 2004 being Annexure ?P-6? hereto;

and all licences issued through out the State of West Bengal pursuant to and in furtherance of the above mentioned Notifications and Memos since January, 2004;

(b) A writ of and/or a writ in the nature of Certiorari commanding the respondents and each of them, their men, agents and subordinates to certify and

transmit the records relating to the case to this Hon^{ble} Court for doing conscionable justice by quashing:

(i) The Rule dated 29th July, 2003 which has been published on 30th July, 2003 in the Kolkata Gazette;

(ii) Notification and/or Office Memo No. 2S-30/2003-04/2736/(21)E dated 21st November, 2003 being Annexure ?P-4? hereto;

(iii) Circular/Memo No. 2S-30/03-04/3369 (20)E dated 20th January, 2004 being Annexure ?P-6? hereto;

And all licences issued through out the State of West Bengal pursuant to and in the furtherance of the above mentioned Notifications and Memos since January, 2004;

(c) A writ of and/or a writ in the nature of Prohibition commanding the respondents and each of them, their men, agents and sub-ordinates to forbear from giving any effect or further effect pursuant to and in furtherance of:

(i) The Rule dated 29th July, 2003 which has published on 30th July, 2003 in the Kolkata Gazette;

(ii) Notification and/or Office Memo No. 2S-30/2003-04/2736/(21)E dated 21st November, 2003 being Annexure ?P-4? hereto;

(iii) Circular/Memo No. 2S-30/03-04/3369 (20)E dated 20th January, 2004 being Annexure ?P-6? hereto;

And all licences issued through out the State of West Bengal pursuant to and in the furtherance of the above mentioned Notifications and Memos since January, 2004;

(d) An order or direction be issued upon the respondents that the respondents shall endeavour in making any law or rule or policy relating to manufacturing, production and sale of liquor fit for human consumption and they shall strictly adhere to the principles enshrined in Article 47 of the Constitution of India.

(e) Rule NISI in terms of prayers (a), (b), (c) and (d) hereto;

(f) Rule be made absolute;

(g) Injunction restraining the respondents and each of them their men, agents, and sub-ordinates from giving any effect and/or further effect and/or from taking any step or further steps pursuant to and in furtherance of:

(i) The Rule dated 29th July, 2003 which has published on 30th July, 2003 in the Kolkata Gazette;

(ii) Notification and/or Office Memo No. 2S-30/2003-04/2736/(21)E dated 21st November, 2003 being Annexure ?P-4? hereto;

(iii) Circular/Memo No. 2S-30/03-04/3369 (20)E dated 20th January, 2004 being Annexure ?P-6? hereto;

And all licences issued through out the State of West Bengal pursuant to and in the furtherance of the above mentioned Notifications and Memos since January, 2004;

(h) Direction upon the respondents and each of them their men, agents and subordinates to withdraw and/or cancel the licence for opening of new liquor shop and/or to hereof running in new liquor shops pursuant and in furtherance of:

(i) The Rule dated 29th July, 2003 which has published on 30th July, 2003 in the Kolkata Gazette;

(ii) Notification and/or Office Memo No. 2S-30/2003-04/2736/(21)E dated 21st November, 2003 being Annexure ?P-4? hereto;

(iii) Circular/Memo No. 2S-30/03-04/3369 (20)E dated 20th January, 2004 being Annexure ?P-6? hereto;

And all licences issued through out the State of West Bengal pursuant to and in the furtherance of the above mentioned Notifications and Memos since January, 2004;

(i) Ad-interim order in respect of prayer (f) and (g) above;

(j) Costs;

(k) Such further order or orders be passed and/or direction or directions be given as to this Hon?ble Court may deem fit and proper.

2. The case made out by the writ-petitioner may be summed up thus:

(a) As a social worker, the writ-petitioner had been painfully noticing that the Government of West Bengal have adopted a policy to grant and/or issue liquor licence indiscriminately for establishing new liquor-shops throughout the State of West Bengal in order to augment the revenue. According to the writ-petitioner, the Government of West Bengal had adopted the said policy by totally violating, flouting and ignoring the Constitutional mandate enshrined in Article 47 of the Constitution of India without looking into the health, socio-economic condition, culture and welfare, particularly, of the poorer section of the inhabitants and citizens of the State of West Bengal.

(b) It would appear from the history of the Legislation that it was always the policy of the Government to strictly regulate the production and sale of liquor and to prevent its consumption, particularly, by the younger people by prohibiting the sale in the areas where such people needs to congregate particularly like educational institutions etc. and accordingly, u/s 85 of the Bengal Excise Act, 1909, the State Government had in the past promulgated the Rules from time to time which carry strict stipulations over the sale of such items.

(c) From the Rules of 1993 framed under the Act, it is evident that for opening a new site no licence was granted under Sub-rule (1) of Rule 8 of the Rules of 1993. If the site was situated near the educational institution, hospital etc. and even from the earlier provision, it would appear that if a proposed site for opening liquor-shop was situated in close proximity to an educational institution recognised by the State Government or the Central Government or any College or Institute affiliated to any University established by law or traditional place of public worship, hospital or bathing ghat, licence would not be issued.

(d) As per Clause 9(4) of the Rules of 1993, various public authorities like M.L.A., Sabhadhipati of the Zilla Parisad, Chairman of its Municipality, the Municipal Commissioner or the Chief Executive Officer of each Municipality, Commissioner and the Chief Executive Officer of its notified area were mandatorily required to be consulted by the Collectors before granting any new licence as well as notice intended to invite public objection was also required to be put up for the said purpose.

(e) The respondents now have been trying to use sale of such deleterious products in order to earn additional revenue and according to her, the proposal in the Budget for the year 2003-04 the State has an aim to raise Rs. 100 crore through the sale of those products.

(f) The intention of issuing more licences for opening new liquor-shop with the object of raising revenue would enormously damage the public health and individual economy causing irreparable loss to the society whereby instead of pursuing a policy of regulated drinks-habit, it is going to spread the bad habit to younger generation.

(g) There was an ambiguity as regards the definition of the expression ?Proximity? in the 1993 Rules and it was not specified what would be the area, which would come within the ambit of the expression ?Proximity? and a Division Bench of this Court in the case of Sri Arindam Ghosh and Anr. v. State of West Bengal and Ors. in W.P. No. 17144 (W) of 2001 held that the close proximity would not be less than a distance of at least 300 yards which is equivalent to 1000 ft.

(h) The State Government in order to do away with the impact of the decision of this Court, promulgated a new Rule called West Bengal Excise (Selection of New Sites and grant of License for retail sale of liquor and certain other intoxicant) Rules, 2003 in utter disregard to the corresponding provision of the earlier Rule and has decided to issue licences indiscriminately to both ?ON? and ?OFF? liquor-shops totally disregarding the selection of site Rules by deleting the salutary provision of 1993 Rules and such new provision in 2003 Rule is inconsistent with the directive policy enshrined in Article 47 of the Constitution of India.

(i) By amending the 1993 Rules by way of deletion of the provision inviting objections from the elected representatives of the people of the area, the State has acted in a manner which is against the public policy of the Constitutional

Provision protected in Article 47 of the Constitution and such policies of indiscriminate and illegal growth of liquor-shop by relaxing the corresponding Rules have grown to serious proportions and will have a disastrous effect on social, economy, health and morality of the general people at large in the State of West Bengal.

(j) Under the influence of liquor several families are ruined particularly in the poor and lower middle class group and the workmen and labourers in the factory and workshop, upon receiving their weekly or monthly remuneration, spend substantial amount on the same day in purchasing and consuming liquor with their friends and associates at the cost of their family.

(k) By liberalizing the issue of excise licence, particularly, based on population-parameter, the Government of West Bengal is provoking the people to be addicted to drinking liquor.

(l) The right to health is part of the rights of the Citizens of India has enshrined in Article 21 of the Constitution of India and the Rule of 2003, if given effect to, would severely prejudice the health of the individuals in the State leading to more expenditure on account of medical expenses and starvation of the poor people.

3. The petitioner, consequently, prays for the relief claimed in the writ application as indicated above.

4. This writ-application is opposed by the State of West Bengal by filing affidavit-in-opposition and the defence taken by the State of West Bengal may be summarized thus:

(i) The petition styled as public interest litigation is nothing but a camouflage to foster the disputes of a particular coterie and/or group or existing licence holders. There is neither any real or genuine public interest involved in the litigation nor is there any concrete or credible basis for maintaining any cause before the Court. The proceedings have been invoked by a person set up by the existing licensees or the Association representing the said licensees to further their cause.

(ii) The writ-petitioner has approached the Court with unclean hands and the same does not involve any matter in which public or the community at large has any interest by which their legal rights have been affected. The writ-petitioner has no locus standi or legal capacity in relation to any specific remedy sought for in the petition and really, is an intervener representing a group having private profit and other oblique consideration of mind.

(iii) The writ-petitioner seeks to espouse her purported grievance with regard to Government policy and as engagement in liquor trade is not a fundamental right and is subject to Government control, so long as there is no violation of the fundamental rights guaranteed under Part III of the Constitution and the principles of natural justice are not offended, the writ-petitioner cannot have any

cause of action or locus standi. The State policy with regard to grant of liquor-licences is for the State to determine depending upon its own overall assessment of the requirement of the situation and the legislature and/or the subordinate regulation making body have an affirmative responsibility of evolving policy.

(iv) There is no lack of legislative competence in the matter nor is there any legal infirmity in the sense of its being beyond the scope of the powers conferred by the Statute or its being inconsistent with any of the provisions of the parent enactment or in violation of the limitations imposed by the Constitution. There being no fundamental right to carry on trade or business in liquor, the State formulates its policy for grant of privilege for manufacture and sale of liquor and the trade in liquor is no longer *res extra commercium*. Accordingly, the dispute also involves the economic policy of the State and the legislation, particularly in economic matters, is essentially empiric.

(v) The writ-petitioner is under a misconception that licences are being issued by the State in terms of the Circular dated January 20, 2004 but in fact, the said circular was only in the nature of an initial communication. Ultimately, in recommending the additional sites, the Collectors have made their recommendation strictly according to public demand and realizable revenue potential taking into consideration the trade of illicit liquor prevailing in the districts. The recommendations are strictly in accordance with the Bengal Excise Act and the Rules framed thereunder. The State had decided that it would be to the best interest of the public if licensed outlets were made easily accessible to the intending consumers. In the process, they would avoid illicit liquor as it transpired that in most of the cases in the districts, illicit liquor was flourished due to nonavailability of authorized outlets.

5. By filing affidavit-in-reply, the writ-petitioner has virtually reiterated her stance taken in the writ-application.

6. Therefore, the principal question that arises for determination in this Public Interest Litigation is whether the provisions contained in Rules of 2003 affects any of the legal or fundamental rights of the citizens of this State whom the writ-petitioner is representing.

7. The basic attack of the writ-petitioner is twofold.

8. First, the Rules of 2003 are in conflict with the directive principles of the policy of the State as provided in Article 47 of the Constitution of India and secondly, the guiding principle adopted by the State Government to raise the amount of revenue by indiscriminate issue of liquor-licences based on population and demand of consumption in a particular area is pernicious to the public health in general and thus, violates Article 21 of the Constitution of India.

9. It is true that Article 47 of the Constitution aims at total prohibition of consumption of intoxicating drinks except for medicinal purposes and it is expected that the legislature, at the time of making any law relating to sale and

consumption of intoxicating drinks, will bear in mind the abovementioned principles mentioned in Article 47. However, it is rightly contended by Mr. Kar, the learned Advocate appearing on behalf of the State that the Article 37 of the Constitution has specifically declared that the provisions contained in Part-IV of the Constitution (Articles 36-51) shall not be enforceable by any Court. Therefore, a writ-application, just complaining violation of Article 47, is not maintainable for striking down a law. We, thus, find no force in the first branch of submission of Mr. Bandopadhyay, the learned senior advocate appearing on behalf of the writ-petitioner that simply because the Rules of 2003 negate the spirit of Article 47, those should be quashed as unconstitutional. In this connection, reference may be made to the Five-Judges-Bench decision of the Supreme Court in the case of Deep Chand Vs. The State of Uttar Pradesh and Others, where the Apex Court specifically held that the legislative power of a State is merely guided by the Directive Principles of State Policy and the directions, even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation. Even in a subsequent decision in the case of B. Krishna Bhat Vs. Union of India (UOI), , a Public Interest Litigation under Article 32 of the Constitution of India was filed praying for a direction upon the Union of India and the State Governments to enforce the policy of total prohibition as enjoined by Article 47. In that context, the Apex Court held that, as Article 47 is part of Directive Principles of State policy, in view of Article 37, such nature of things could not be enforced in a court of law. According to the Apex Court, to make the State accept a particular policy, howsoever desirable and necessary the policy might be, is not the function of the Article 32.

10. Even in the recent case of Lily Thomas and Ors. v. Union of India and Ors. reported in AIR 2000 SC 1650, the Supreme Court has reiterated that it has no power to give direction for enforcement of the Directive Principles of State Policy and those do not create any judiciable right and are, thus, not enforceable by the courts.

11. The next question is whether the Rules of 2003 violate any of the legal or fundamental rights of a citizen of this State so as to maintain a writ-application under Article 226 of the Constitution of India.

12. Before entering into such question, we should bear in mind that the writpetitioner has not prayed for total prohibition of intoxicating drinks as advised in Article 47 (which she cannot pray in view of the decision of the Apex Court in the case of B. Krishna Bhatt (supra)) but her only grievance is that the Rules of 2003 should be scraped; in other words, she has no grievance against the previous Rules of 1993 and in substance, she upholds such Rules with the prayer of deletion of the Rules of 2003.

13. By taking aid of Article 21, a citizen or even a non-citizen has the right to approach a Court complaining that for the action or inaction on the part of a ? State? within the meaning of Article 12, he is facing health-hazards. Similarly, it

is now a settled law that the right to life enshrined in Article 21 means something more than mere existence or animal existence. Therefore, a person has the right to complain against the action or inaction of a government alleging that such act or failure has made his life miserable to such extent that it amounts to 'live beneath dignity'.

14. Keeping in mind, the aforesaid guidelines, we now propose to examine whether the grant of new licences as per the Rules of 2003 has infringed Article 21 of the Constitution.

15. By merely granting more licences, the State is not compelling a teetotaler or a moderate consumer either to be addicted to a vicious habit or to excess, if they stick to their own convention and are not tempted. It is not a case where a person is forced to drink impure quality of water or inhale polluted air for the imprudent decision or failure of a State nor is it a case where a substance scientifically found to be harmful to health is permitted to be used as one of the components of a drug sold in a trade name endangering the life of ignorant people; on the other hand, we find substance in the contention of the State that to save the citizens from the peril of illicit liquor, which at times proves to be fatal, the Government has decided to grant more licences keeping in view the actual demand of liquor and the number of the existing licences in a particular area. According to the State, for want of adequate number of licensed retailshops, the peoples are forced to purchase illicit liquor at the risk of their life and in the process, the State suffers huge amount of loss of the revenue.

16. We do not find any substance in the contention of Mr. Bandopadhyay, the learned Counsel appearing on behalf of the writ-petitioner that the Rules of 2003 providing selection of new retail shops without consulting the people's representatives as provided in the Rules of 1993 were in any way violative of any provision of law. The Bengal Excise Act does not impose a duty to consult with the people's representative in the matter of grant of new licence and thus, for giving a go-by to the earlier provision of consultation with the representatives of people, the Rules of 2003 cannot be branded as unreasonable or ultra vires any of the provision of law.

17. The law imposes a total ban on the sale of liquor to a minor and therefore, the adequate protection is there to put a stop to the minors from the trap of inducement. Liquor is a substance whose ill effects are well known. A writ-petitioner, in our view, cannot approach a Court complaining that the policy taken by the State is alluring him to a ruinous habit with a prayer that for that reason alone, the policy of the Government should be declared illegal being violative of Article 21 for protecting the citizens from the attraction to the evil lifestyle. Use of tobacco is equally, if not, more harmful and the State sponsored lottery is nothing but a sort of gambling as held by the Apex Court (*M/s. B.R. Enterprises Vs. State of U.P. and Others*,); nevertheless, a writcourt cannot pass direction upon the State to stop the cultivation or sale of tobacco or running of such lottery being violative of Article 21. Position, however, would have been different

if the State compelled a citizen to consume any injurious elements or to undergo a disastrous practice.

18. Mr. Bandopadhyay lastly contended that the Rules of 2003 are *ex facie* arbitrary, irrational, unreasonable and not based on any intelligible criterion and hence, violates Article 14 of the Constitution.

19. We find that the State in clear terms has disclosed the reason for taking new policy. According to the State, the new Rules have been framed based on the study of the demand of the liquor throughout the State after taking into consideration the number of existing licensed shop, the population and the demand in a particular area. It is asserted that in view of paucity of the licensed shop, the consumers are compelled to depend upon the illicit liquor and consequently, the business of illicit liquor has flourished by leaps and bounds resulting in not only serious risk of the life of the public in general but at the same time, there is huge loss of revenue. From the Annexure R-3 to the affidavit-in-opposition filed by the State, we find substance in its contention that there is reasonable basis for increase of licensed shop and therefore, we are unable to hold that the policy of the State behind the enactment of the new Rules is unreasonable. Mr. Bandopadhyay could not place any of the provisions of the Bengal Excise Act, which is inconsistent with the Rules of 2003 nor could he produce any other law for the time being in force, which is in conflict with the Rules impugned.

20. We now propose to deal with the decisions cited by Mr. Bandopadhyay.

21. In the case of *State of Maharashtra and Ors. v. Nagpur Distillers and Anr.* reported in AIR 2006 SC 1986, an appeal was filed against the decision of the High Court by which the High Court by way of an interim order unconditionally stayed the demand of fees for importing rectified spirit for the manufacture of Indian Made Foreign Liquor. While allowing the appeal, the Supreme Court set aside the order of the High Court and ordered that if the respondents paid one-half of the license fee payable by them and gave an undertaking that they would pay the balance 50% of the levy within the time fixed by the High Court, if the writ petition were to be dismissed, the recovery of the licence fee payable as per the impugned notification would be kept in abeyance until the disposal of the writ petition by the High Court. The respondents were given three months' time to file a modified undertaking and to deposit 50 per cent of the license fee payable for the Excise Year 2005-2006. The respondents were further directed to pay 50 per cent of the license fee for the subsequent years on or before the thirty-first of December of that year and to file undertakings in the subsequent years until the Writ Petition was heard and finally decided by the High Court. If the respondents failed to make the deposit and to file the undertaking as indicated above, the Apex Court proceeded, the appellants would be free to take all steps that were permissible under law for recovery of the entire fee due from the respondents as might be demanded from them in accordance with the relevant rules. It was further ordered that in case the respondents succeeded in their

challenge in the writ petition, the State would be liable to refund the amount paid with interest thereon at the rate of 9% per annum from the date of payment till the date of refund. The amount was ordered to be refunded within two months of the allowing of the writ petition unless otherwise agreed to by the parties regarding the adjustment of that sum. While passing the above direction, the Apex Court in paragraph 9 of the judgment made the following observations:

This factual distinction apart, we have to keep in mind that the right to trade in liquor is only a privilege farmed out by the State. Article 47 of the Constitution of India clearly casts a duty on the State at least to reduce the consumption of liquor in the State gradually leading to prohibition itself. It appears to be right to point out that the time has come for the States and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become an obsession with very many. Surely, we do not need an indolent nation. Why the State in the face of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate. The only excuse for the State for not following the mandate of Article 47 of the Constitution is that huge revenue is generated by this trade and such revenue is being used for meeting the financial needs of the State. What is more relevant here is to notice that the monopoly in the trade is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending liquor.

22. The aforesaid observations of the Supreme Court cannot be, in our opinion, construed to be a direction upon the State nor can those observations be cited as a precedent for the purpose of declaring the Rules of 2003 as ultra vires Article 47 in view of the earlier decisions of the Supreme Court referred to above by us while dealing with the first branch of arguments of the writ-petitioner. By making those observations, the Supreme Court merely reminded the State of the duties mentioned in Article 47.

23. In the case of State of Maharashtra Vs. Manubhai Pragaji Vashi and others, , a Bench consisting of two Judges in paragraph 13 made the following observations:

A plea was taken in the High Court that the petitioner has no right to seek a writ of mandamus under Article 226 of the Constitution basing his relief on a directive principle contained in the Constitution. The High Court, rightly in our opinion, repelled this plea relying on the decision of this Court in State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, . The High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution and (b) when there is inaction or slow action by the executive the judiciary must intervene. We have no doubt that the above conclusion of the

Court below is also justified.

24. In making the aforesaid observations, the Supreme Court solely relied upon its earlier decision in the case of Umed Ram Sharma (supra). However, after going through the decision in the case of Umed Ram Sharma (supra), we find that in the said case, the Public Interest Litigation was filed complaining violation of Articles 19(1)(d) and 21 of the Constitution and in such a case, the Supreme Court made the following remarks:

It appears to us that in the facts of this case, the controversy lies within a short compass. It is well-settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the absence of road. The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.

25. Therefore, the observation of the Two-Judges-Bench in the case of State of Maharashtra (supra), was made by overlooking the fact that in the case of Umed Ram Sharma (supra), the Supreme Court gave direction for alleviating the grievance of violation of fundamental right and the same was not a case of mere non-compliance of directive principles of state policy and consequently, the said decision cannot be treated as a precedent.

26. In the case of U.P. State Electricity Board v. Hari Shankar Jain and Ors. reported in AIR 1979 SC 65, while considering the scope of Article 37 of the Constitution of India, a Three-Judges-Bench in paragraph 4A made the following observations:

Before examining the rival contentions, we remind ourselves that the Constitution has expressed a deep concern for the welfare of workers and has provided in Article 42 that the State shall make provision for securing just and humane conditions of work and in Article 43 that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of

work ensuring a decent standard of life and full enjoyment of leisure etc. These are among the "Directive Principles of State Policy". The mandate of Article 37 of the Constitution is that while the directive Principles of State Policy shall not be enforceable by any Court, the principles are "nevertheless fundamental in the governance of the country" and "it shall be the duty of the State to apply these principles in making laws". Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy.

27. The aforesaid observations make it clear that this Court cannot direct the State to legislate law in tune with Article 47 nor can it invalidate a law on the ground that the same is in conflict with the said Article. The Courts should, according to the Supreme Court, while interpreting Statutes, bear in mind that their interpretation of Statute should not frustrate the goals set out in the Directive Principles of the Policy of the States. The above-mentioned decision, therefore, does not help the writ-petitioner in any way.

28. Several other well-known decisions of the Supreme Court were placed in support of the contention that a Rule must conform not only to the provisions of the parent Statute but also to the provisions of the other subsisting Statutes. We do not for a moment dispute the aforesaid proposition of law. However, Mr. Bandopadhyay, as pointed out earlier, could not draw our attention to any of the provisions of the Bengal Excise Act or any other statutory provisions, which can be said to be in conflict with any of the Rules of 2003. We, therefore, do not find any necessity to deal with those decisions.

29. On consideration of the entire materials on records, we, therefore, do not find any merit in this Public Interest Litigation and the same is, accordingly, dismissed.

30. In the facts and circumstances, there will be, however, no order as to costs.

Later:

31. After we delivered the above judgment, Mr. Bandopadhyay, the learned senior advocate appearing on behalf of the writ-petitioner, submitted before us that although he specifically argued that the Rules of 2003 are in conflict with Section 30 of the Bengal Excise Act and for that reason the Rules of 2003 should be struck down, we have not dealt with the aforesaid argument in our judgment.

32. We did not deal with the aforesaid argument as no such point was taken in the four corners of the writ-application and secondly, although Mr. Bandopadhyay argued such point, the same was, on the face of it, such a preposterous one, that we did not feel it worthy of reference.

33. However, to disperse the grievance of Mr. Bandopadhyay, we give the following reason for not accepting the said point:

According to Section 30 of the Bengal Excise Act, the State Government may subject to such conditions and restrictions as may be prescribed, determine, from time to time, the number of licences which may be granted at new sites or in the vicinity thereof in any local area for the retail sale of spirit having due regard to public demand. Section 2(a) of the Bengal Excise Act defines the word 'prescribed' as 'prescribed by the Rules made under the Act'. The Rules of 2003 have been enacted by virtue of the powers conferred under Sections 85 and 86 of the Act and in Sub-rules (iii), (vii) and (viii) respectively, the terms 'existing sites', 'local area' and 'new sites' are defined. Therefore, the new definitions of 'existing site', 'local area' and 'new site' are in no way conflict with Section 30 of the Act which itself recommends that the grant should be subject to such conditions and restrictions as may be prescribed by the Rules framed under the Act.

35. We, therefore, find no substance in the contention of Mr. Bandopadhyay that the Rules of 2003 are in any way at variance with Section 30 of the Act.

36. Let the aforesaid reason be made part of our judgment already delivered.