

(1986) 07 KAR CK 0011
In the Karnataka High Court
Case No : W.A. No's. 1299 and 1300 of 1986

State of Karnataka

APPELLANT

Vs

Mandya District Wine Merchants Association

RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 — Rule 12, 12 (1), 12 (2), 12 (3)
Karnataka Excise (Sale of Indian and Foreign Liquors) Act, 1968 — Section 15 (2), 71 (1) (e)

Citation : (1986) ILR (Kar) 2943 : (1986) 2 KarLJ 299

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; K.R.D. Karanth, for A. Jagannatha Shetty, for R-1 and R.N. Narasimha Murthy for Hegde Associates for R-2, P. Vishwanatha Shetty and Thipperudrappa Advs. for Intervenors, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—These two Writ Appeals are presented by the State of Karnataka, the Excise Commissioner and the Deputy Commissioner (Excise), Mandya, against the order of the Learned Single Judge allowing the Writ Petitions presented by the respondents holding that Sub-rule(3) of Rule 12 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 (for short "the Rules") was mandatory and consequently the licences granted by the third appellant in excess of the ratio prescribed in the said clause was illegal.

2. The facts of the case in brief are as follow : By a notification dated 27-9-1983 issued under Sub-rule(1) of Rule 12 of the Rules by the Excise Commissioner, with the previous approval of the State Government, inter-alia, the maximum number of retail licences for liquor shops which could be granted in respect of Mandya Taluk had been fixed at 22, Appellant-3, the Licensing Authority, however, during the last Excise year ending with 30th June, 1986 had granted as

many as 26 retail licences in favour of individuals. Questioning the legality of the grant of the licences in excess of the number fixed under Rule 12(1) of the Rules, the respondents presented the Writ Petitions. The contention of the respondents in the Writ Petitions was that the grant of more licences than the number fixed under Rule 12 of the Rules was illegal. The Writ Petitions were allowed and a Writ of Mandamus was issued to appellant-3 to strictly conform to the ratio as between rural and urban population and the number of retail licences fixed under Rule 12 of the Rules. Aggrieved by the said order, these appeals have been presented.

3. Sri M.R. Achar, Learned Government Advocate appearing for the appellants; Sri R.N. Narasimha Murthy, Learned Counsel for persons who have made applications for intervention in the matter and Sri K.R.D. Karanth, Learned Counsel for the respondents have addressed arguments in support of their respective cases, Sri P. Vishwanatha Shetty and Sri Thipperudrappa, Learned Counsel appearing for some of the appellants in some of the pending Writ Appeals in which similar question is involved who intervened with permission have also addressed arguments in support of the submission made by Sri R.N. Narasimha Murthy.

Rule 12 of the Rules which comes up for interpretation in these appeals reads :

"Number of licences to be fixed :

(1) The "maximum number of licences to be granted in an area shall be determined from time to time by the Excise Commissioner with the previous approval of the State Government.

(2) The number of retailers licences to be granted in a taluk for the year shall be determined with reference to the population of such taluk and the probable demand.

(3) In Taluks having an urban population exceeding 10,000 or a rural population exceeding 20,000 as per the last preceding census, one additional retail licence may be allowed for each 10,000 of the urban population or 20,000 of the rural population. The maximum number of licences determined on the basis of the population of a taluk shall be rounded off to the nearest whole number.

(4) The number of wholesale licence shall be so determined that there shall be one wholesale licence for five retail licences. In the event of there being applicants, one wholesale licence shall be granted for each district, even if the number of retail licence in the district is less than five".

(underlining by us)

4. With reference to the interpretation of the above Rule, Sri M.R. Achar, Learned Government Advocate, submitted as follows :-- Section 15(2) of the Karnataka Excise Act, 1965 (for short "the Act") confers powers on the Deputy Commissioner and the Excise Commissioner to grant licences for the sale of

liquor. There was no restriction imposed in the said provision to the effect that the licensing authority was bound by the Rules, Therefore, though the Rule is framed in exercise of the powers conferred on the State Government u/s 71(1) (e) of the Act, the maximum number fixed under the Rules cannot be regarded as mandatory. Therefore, the licensing authority had the discretion to exceed the number fixed in an order made under Rule 12(1) of the Rules and that if, in its discretion, it granted more licences than the number of licences prescribed u/s 12(1) of the Rules, they could not be regarded as illegal. Sub-rule(3) of Rule 12 also indicates that the number of licences fixed under Rule 12(1) was not mandatory. Learned Counsel for the interveners supported the submission of the Government Advocate.

5. Sri K R.D. Karanth, Learned Counsel for the Respondents submitted as follows:-- Sub-rule(1) of Rule 12 provides for fixing the maximum number of licences to be granted in any particular area, by the Excise Commissioner with the previous approval of the Government and Sub-rules (2),(3) and (4) have been incorporated in the said Rule only for the purpose of regulating the exercise of the power conferred under Sub-rule (i). While Sub-rule (1) confers power for fixing the maximum number of licences to be granted in any particular area, Sub-rule (2) provides for determination of the number for every Taluk having due regard to the population and the probable demand, though Sub-rule (3) has not been happily worded. The clearest indication available under the sub-rule was that the retail licences have to be granted in respect of every Taluk on the basis of the population in that there could be only one licence for every 10,000 urban population and one licence for every 20,000 rural population and if the population in a given case was more than half of 10,000 or 20,000 as the case may be, one additional licence may be granted. The last sentence in Sub-rule (3) of Rule 12 clearly indicates that the object of Clause (3) was also to furnish a basis for fixing the maximum number of retail licences in exercise of the power under Sub-rule(1). Sub-rule(4) provides the basis for fixing the number of wholesale licences. According to that provision, there shall be one wholesale licence for every five retail licences and if there were applicants, one wholesale licence shall be granted for every district even if the number of retail licences in the district was less than five. No part of Rule 12 confers power on the licensing authority and in any event the power to exceed the maximum number of licences fixed under Rule 12 (1).

6. In view of the rival contentions urged for the parties, the following question of law arises for consideration viz.,

"Whether the licensing authority has the power to grant more licences than the maximum number of licences fixed for an area by the Excise Commissioner with the approval of the State Government, under Rule 12(1) of the Rules, on the ground that the Rule 12 is not mandatory ?

6A. Section 15(2) of the Act on which the learned Counsel for the State relied reads :

"15(2), A licence for the sale under Sub-section (1), shall be granted :

(a) by the Deputy Commissioner, if the sale is within a district, or

(b) by the Excise Commissioner, if the sale is in more than one district :

Provided that subject to such conditions as may be determined by the Excise Commissioner, a licence for sale granted under the Excise Law in force in any other State may be deemed to be a licence granted under the Act."

According to the above provision, the Deputy Commissioner of the District and the Excise Commissioner for the State are the authorities who are empowered to grant the licences. Section 71 of the Act confers powers on the State Government to frame Rules. The relevant part of the said Section reads :

"71. Power to make Rules : (1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules -

xxx xxx xxx

(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area."

xxx xxx xxx

(underlining is ours)

The above Section expressly authorises the Government to frame Rules regulating the periods and localities and person or class of persons to whom licences for the wholesale or retail sale of liquor may be granted. It also expressly authorises the Government to regulate the number of such licences which may be granted in any local area. It is in exercise of this power, the State Government has framed the Rules.

7. In our opinion, there is no room for doubt that Rule 12(1) requires the Excise Commissioner to fix the maximum number of licences with the previous approval of the State Government which is meant to be obeyed by the Licensing Authority. The Notification issued by the Excise Commissioner dated 27th September 1983 reads :

NOTIFICATION DATED : 27TH SEPTEMBER, 1983.

No. EXE. IML. II. K/82-83. In pursuance of the Government letter No. HD 2 EFL 82, Bangalore, dated: 6th August, 1983, under Rule 12(1) of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, and in exercise of the powers vested under the said rule, I, J. Alexander, Excise Commissioner in

Karnataka, Bangalore, do hereby notify and fix the number of Indian made and Foreign Liquor Retailers Licence to be granted in each Taluk in all the Districts in Karnataka State on the basis of population and the probable demand. The number of Retailers Licences that can be granted in each taluk in addition to the existing licences is shown in column No. 5 to the Annexure to this Notification. This is in supersession of this office Notification No. EXE.IML.II. 85/74-75 dated 31-12-1974. The additional licences now admissible as per quota fixed in this Notification may be examined scrupulously with reference to the local demand for I.M.L. before recommending for grant of new licences."

ANNEXURE.

Statement showing the quota of C.L. 2 licences allotted and number of licences sanctioned in the Taluks of Mandya District.

Sl.No.

Name of the Taluks

Quota sanctioned

No. of CL. 2 licences issued

No. of CL. 2 licences granted in excess of the quota

1.

2.

3.

4.

5.

1.

Mandya

22

25

3

XXX

XXX

XXX

The Notification has been issued under Rule 12(1) and according to the said Notification, the maximum number of retail licences that could be granted for Mandya Taluk were 22. Therefore, appellant 3 who is the Licensing Authority had no authority in law to grant licences in excess of the maximum number fixed by

the Excise Commissioner with the previous approval of the Government under Sub-rule(1) of Rule 12.

8. In support of his submission, learned Government Advocate relied on the Principles of Statutory Interpretation by G. P. Singh, 3rd Edition at page 272 wherein the general principles governing the construction of statutory provisions to find out as to whether they are directory or mandatory are summarised.

These are well known Rules of Construction. From these passages also it is clear that one of the circumstances which compel to construe a provision as mandatory is that the legislature provides for consequences for disobedience of statutory provisions. But that is not the sole criteria to find out whether a provision is mandatory or directory. The question whether a particular provision is mandatory or directory must necessarily depend upon the language of the provision and the context in which and the purpose with which it is made. As can be seen from Section 71(2)(e) of the Act, the intention of the legislature was to require the State Government to make a Rule fixing the maximum number of liquor licences that could be granted in any local area. In order to give effect to the said object, Rule 12 has been incorporated. Rule 12 expressly provides that the Excise Commissioner with the previous approval of the State Government has to fix the maximum number of licences. In our opinion, the use of the word "maximum" itself is sufficient to hold that the licensing authority cannot grant any licence beyond the number fixed under Sub-rule (1) of Rule 12. Otherwise the word "maximum" loses all its significance.

9. In this behalf, the observations of the Supreme Court made in the case of Nashirwar and Others Vs. State of Madhya Pradesh and Others, are appropriate. They read :

"The observations in Crowley's case (1890) 34 Law Ed. 620 (Supra) which were laid down as a ruling of this Court in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, are these.

"There is no inherent right in a citizen to sell intoxicating liquors by retail ; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, under such conditions as will limit to the utmost its evil. The manner and extent of regulation rest in the discretion of the governing authority".

Bharucha's case (supra) negated the contention of inherent right of citizens to carry on trade in intoxicating liquors."

(underlining by us)

Thus it may be seen that the object of limiting the liquor shop licences is to limit the evil resulting from consumption of liquor. Therefore, any interpretation of a provision like Rule 12(1) must give effect to the intention, purpose and object of the provision. As pointed out earlier, Section 71(2)(e) expressly authorises the Government to frame a Rule fixing the maximum number of licences in any local

area. Rule 12 is framed for that purpose.

10. Learned Counsel for the State referred to Sections 23, 26, 27 and 29 of the Act and submitted that in those provisions, the authority on whom the power is conferred for various purposes under those provisions were required to exercise the power subject to such restrictions and conditions as might be prescribed by Rules, but no such restriction was imposed by Section 15 and therefore it should be held that the maximum number prescribed under the Rules was not binding on the licensing authority. Section 23 provides that excise duties shall be levied subject to such Rules regulating the levy. Section 26 provides that grant of licences shall be subject to the conditions prescribed under the Rules. Section 27 provides for the taking of security or counter part agreement subject to the Rules. Section 29 confers power on the Government to suspend or cancel licences subject to Rules. Learned Counsel submitted that this difference between Section 15 and these other Sections showed that the power conferred on the Licensing Authority u/s 15 was not controlled by the Rules. We see no force in this submission, in view of Section 71(2)(3) which expressly provides for regulating the number of such licences which may be granted in any local area and Section 71(3) which provides that every Rule shall have effect as if enacted in this Act. The Rules made u/s 71 are meant to be obeyed and therefore cannot be flouted. For these reasons we reject the contention that Rule 12 is not mandatory.

11. Learned Counsel for the interveners, however, contended that Rule 12(3) of the Rules authorised the licensing authority to grant additional licences over and above the number fixed under Rule 12 (1). They submitted that Sub-rule (3) conferred power on the licensing authority to grant additional licences at the rate of one licence for every 10,000/--urban population and one licence for every 20,000/-rural population in every taluk. Therefore, as, admittedly, in the present case, the number of licences fixed under Sub-rule (1) of Rule 12 was 22 for Mandya Taluk having regard to the undisputed population figures, the licensing authority could grant as many as 22 additional licences. As, admittedly, only four licences had been granted in excess of 22, they could not be regarded as illegal.

12. Sri K.R.D.Karant, learned Counsel for the Respondents submitted that Sub-rule(3) did not confer any such power on the licensing authority, but that sub-rule only regulated the exercise of the power by the Excise Commissioner and the Government under Sub-rule (1) and Sub-rule (2) of Rule 12.

13. The answer to the rival contention lies in the correct interpretation of Rule 12 extracted earlier. Sub-rule(1) of Rule 12 provides that the Excise Commissioner shall determine from time to time the maximum number of licences to be granted in any area with the previous approval of the State Government. This sub-rule requires the fixation of maximum number of whole sale as well as retail licences for any locality. This is the general power. When we come to Sub-rule (2) of Rule 12, we find that it is specific in respect of two aspects:(i) It requires the fixation of number of retail licences and (ii) the number has to be fixed for each

Taluk. The general basis provided in this sub-rule is population of each Taluk and the probable demand. When we come to Sub-rule(3), it prescribes the ratio between rural and urban population in each taluk and the maximum number of retail licences to be fixed for each Taluk. One point on which all the Counsel agreed was that the Rule was not happily worded. In addition to the defective drafting, the use of the word "additional" in the said sub-rule has given rise to sufficient confusion. The word has given the basis for the interveners to argue that over and above the maximum number of licences fixed by the Excise Commissioner with the previous approval of the State Government for each Taluk, under Sub-rule(1) of Rule 12, the licensing authority can grant additional licences if the urban population exceeds 10,000 or rural population exceeds 20,000 in every Taluk at the rate of one additional licence for each 10,000 urban and 20,000 rural population respectively.

14. The construction suggested for the interveners, at first sight, appears to be attractive, but a closer scrutiny would show it is not correct: A reading of the entire rule would indicate that what is prescribed under the Rule is that the maximum number of licences for each Taluk should be decided by the Excise Commissioner and the Government in the ratio of one licence for each 10,000 urban population and one licence for each 20,000 rural population. In other words, 10,000 urban population is treated as one unit and 20,000 rural population as one unit. In cases where the rural or urban population exceeds fifty per cent of one or more of the units, but is less than twenty thousand or ten thousand as the case may be, one additional licence could be allowed while fixing the maximum, but in cases where the population, exceeding one or more such units, is less than fifty per cent, no additional licence can be granted taking such population as the basis.

This is evident from the last sentence in Sub-rule (3) which reads :

"The maximum number of licences determined on the basis of the population of a taluk shall be rounded off to the nearest whole number".

The "whole number" in the rule means 10,000 or 20,000 urban and rural population respectively.

15. The Excise Commissioner and the Government have, in fact, fixed the maximum number of licences for Mandya District on that basis. The notification by which the number was fixed is extracted earlier. There is no dispute that the rural and urban population figures of Mandya Taluk, according to the latest census, are as follows :--

Rural--230849

Urban-100264

Applying the population ratio implied in Sub-rule (3) as explained above, the maximum number of licences under Sub-rule (1) read with Sub-rule (2) of Rule 12 for Mandya District would be 22. This is exactly the number fixed by the

Excise Commissioner with the previous approval of the Government.

16. The construction suggested for the interveners would lead to an absurd result in that the licensing authority would have the power to give as many as 22 additional licences for Mandya Taluk over and above the 22 fixed for that taluk by the Excise Commissioner and the Government. In our view, that was not the intention and purpose with which the Rule was made. Further such construction comes into conflict with the last sentence in Sub-rule (3) of Rule 12 which requires that the maximum number should be determined with reference to the population by rounding off to the nearest whole number.

18. It is settled rule of construction that when, apparently, a provision, on the basis of the words used, if understood literally, defeats the intention of the Rule Making Authority, it is the duty of the Court to ascertain the real intention of the rule making authority and give effect to it. This principle is laid down by the Supreme Court in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, . In that case, the Supreme Court was interpreting Section 95(2) of the Motor Vehicles Act. According to the wording of the provision as it stood then, in respect of any one accident the liability of an insurer was limited for twenty thousand rupees in alias the compensation payable in respect of employees carried in a goods vehicle. The construction placed for the Insurance Company was that the total liability in respect of all the employees who suffered at an accident was limited to Rs. 20,000/-. The Supreme Court held that the intention of legislature was to limit the liability to Rs. 20,000/- in respect of every one who met with an accident and therefore the words "any one accident" must be understood as accident to any one. The principle of interpretation applied in that case reads:

"We are, therefore, of the opinion that the ambiguity in the language used by the legislature in the opening part of Section 95(2) and the doubt arising out of the correlation of that language with the words "in all" which occur in Cl.(a) must be resolved by having regard to the underlying legislative purpose of the provisions contained in Chapter VIII of the Act which deals with third party risks. That is a sensitive process which has to accommodate the claims of the society as reflected in that purpose. Indeed, it is in this area of legislative ambiguities, unfortunately not receding, that Courts have to fill gaps, clear doubts and mitigate hardships. In the words of Judge learned Hand-

"It is one of surest indexes of a mature and developed jurisprudence.... to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell v. Markham* (1945) 148 F &D 737, 739.

There is no table of logarithms to guide or govern statutory construction in this area, which leaves a sufficient and desirable discretion for the Judges to interpret laws in the light of their purposes, where the language used by the law makers does not yield to one and one meaning only. Considering the matter that way, we

are of the opinion that it is appropriate to hold that the word "accident" is used in the expression "any one accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer".

It is also a well settled Rule of Construction that the statute must be read as a whole in order to ascertain its true meaning and further there is also an other Rule of interpretation namely the principle of *Casus Omissus*, This principle could be applied to give effect to the real intention of the law making authority, when literal construction of a statute leads to manifestly absurd result. (see *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, The circumstance in which the principle of *Casus Omissus* could be applied has been laid down by the Supreme Court in the above case. The relevant part of the Judgment at paragraph-10 reads :

"In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *cause missus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result" said Danckwerts L.J. in *Artemiou v. Procopiou* (1966) 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in *Luke v. I.R.C.* 1963 AC 557 where at page 577 he also observed : "this is not a new problem, though our standard of drafting is such that it rarely emerges)."

19. As pointed out at paragraph 16, the construction placed on the first sentence of Rule 12 (3) leads to absurd results and an intention to bring about such a result cannot be attributed to the Rule Making Authority. It is also significant no such construction was placed on the sub-rules on behalf of the State. On consideration of all the sub-rules on which the learned Counsel for the interveners relied and having due regard to the intention and purpose underlying Section 71(2)(e) and Rule 12, it appears to us, the meaning of the Rules is that the maximum number of licences for a taluk should be fixed on the ratio of one retail licence for every 10,000 urban population and one retail licence for every 20,000 rural population. The real meaning of the Rule may be summarised thus :

(1) One retail licence for the first ten thousand urban population and one retail licence for the first twenty thousand rural population may be permitted and

similarly where the urban and rural population of a taluk exceeds 10,000 and 20,000 respectively, one additional licence may be allowed for each 10,000 or 20,000 urban and rural population respectively.

(2) In respect of urban population exceeding ten thousand, by more than five thousand but less than ten thousand, granting of one additional licence could be provided for by rounding off the figure to ten thousand.

(3) In respect of rural population exceeding twenty thousand, by more than ten thousand, but less than twenty thousand one additional licence could be provided for by rounding off the figure to twenty thousand.

(4) If the urban population, in excess of ten thousand, is five thousand or less, no additional licence could be provided over and above the number of licences which could be fixed at the rate of one licence for ten thousand urban population by rounding off the population figure to the preceding ten thousand.

(5) If the rural population, in excess of twenty thousand, is ten thousand or less, no additional licence could be provided for, over and above the number of licences which could be fixed at the rate of one licence for every twenty thousand population by rounding off the population figure to the preceding twenty thousand.

20. Thus, the allowing of additional licence provided under Rule 12(3) is in the context of fixing the maximum number of licences for a taluk under Rule 12(1) and (2), after computing the number of licences at the rate of one licence for each unit of ten thousand urban population and one licence for each unit of twenty thousand rural population. The Sub-rule (3) of Rule 12, in our view, does not confer any power on the licensing authority to grant additional licence over and above the maximum number fixed by the Excise Commissioner with the previous approval of the Government. For these reasons, we reject the construction placed on Rule 12(3) by the interveners.

21. One of the objections raised by the interveners was that such of the persons to whom the licences had been granted in excess of the maximum fixed for Mandya Taluk were necessary parties, as by the granting of relief sought for in the Petitions, their licences were liable to be cancelled but nonetheless the learned Single Judge has held that the Writ Petitions were maintainable even without impleading them. There can be least doubt that the persons to whom the licence in excess of the maximum number were granted were necessary parties to the Writ Petitions as they were the persons who would be affected by the grant of the relief sought for in the Petitions. It is well settled rule of law that non-impeding of necessary parties is fatal to the Petition. Therefore, we are unable to agree with the view expressed by the learned Single Judge. But what has happened in this case is the licences granted to them expired on 30th June, 1986 and therefore the point has become academic and the ex-licensees are not necessary parties.

22. In the result, we make the following order:--

ORDER

(i) The Writ Appeal are dismissed.

(ii) No costs.