

(1996) 03 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 362 of 1996

Sunny Markose

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6), 21, 226
Industries (Development and Regulation) Act, 1951 — Section 18G

Citation : AIR 1996 Ker 379 : (1996) 3 ILR (Ker) 103 : (1996) 3 RCR(Civil) 51

Hon'ble Judges : K.T. Thomas, Acting C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : Thampan Thomas, for the Appellant; E.S. Muhamed Kabir, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner is the appellant. He challenges Ext. P2 order issued by the Government of Kerala. By Ext. P2 order, Government ordered that all arrack shops in the State will stand abolished from 1-4-1996. Presumably Ext. P2 order is issued in consonance with Article 47 of the Constitution of India. Appellant's attack of Ext. P2 is three fold. By abolition of all arrack shops from 1-4-1996, appellant's fundamental right under Article 19(1)(g) of the Constitution is violated as he is working as Route Manager for distribution of arrack for the past five years and he is earning his livelihood by working as Route Manager. The second attack is on the ground that while arrack shops are to be abolished, toddy shops and shops selling Indian made foreign liquor are to continue and hence it is discriminatory and violative of Article 14 of the Constitution of India. The third attack is that the fermentation industry is regulated by the Industries (Development and Regulation) Act, 1951 and that Ext. P2 entrenches upon the Industries (Development and Regulation) Act by abolishing the arrack shops. After hearing learned counsel for the appellant, we are not satisfied that the appellant is well founded on any of the grounds urged.

Point No. 1

2. Article 47 of the Constitution of India) enjoins on the State of bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The Article enjoins upon and in turn enables the State to take measures to raise the level of nutrition and the standard of living and to improve public health. To meet this end, State is required to bring about prohibition of the consumption of intoxicating drinks and drugs which is injurious to health. Prohibition may be complete or partial and it also includes regulation. It cannot be disputed that arrack is one such thing. Hidayatulla, J. (as he then was) in *Sheoshankar Vs. State Govt. of Madhya Pradesh and Others*, held that "a vast proportion of the population of this country does believe that drinking is an evil & that a policy of prohibition should be adopted. Whether they are right or wrong is immaterial. To prove that such views are held, it is enough to cite the solemn declaration of the people in Article 47 of the Constitution itself".

3. The question that is mooted is whether the State in enforcement of its duty to improve health, prohibit consumption of certain drinks. Can that policy be struck down as violative of Article 19(1)(g) of the Constitution of India. Article 19(1)(g) of the Constitution provides that all citizens shall have the right to practice any profession or to carry on any occupation, trade or business. This right conferred for the said profession is circumscribed by the provision in Clause (6). Article 19(1)(g) read with Article 19(6) of the Constitution spells out a fundamental right given to the citizen to practice any profession or carry on any occupation, trade or business so long as it is not prevented or is within the frame work of the regulation, if any. There can be no dispute that certain professions, occupations, trade or business which are not in the interest of the general public may be completely prohibited while others may be permitted with reasonable restrictions.

4. Question whether right to trade liquor is a fundamental right or not has come up for consideration before the Supreme Court in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, . The Court surveyed the earlier decisions rendered on the subject and held thus:

"(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited."

(d) 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."

Hence the citizens have no fundamental right to trade in liquor. Petitioner's contention that by the abolition of arrack shops he will be deprived of practising such trade and thus he will lose his livelihood cannot be countenanced. Interest of the public outweighs the inconvenience caused to persons like the petitioner.

Point No. 2

5. Second point urged is that while the arrack shops are to be closed, Government has allowed vending in toddy and Indian made foreign liquor to continue. According to the appellant, if public interest was the criterion, the State should have completely prohibited the sale of all kinds of intoxicating drinks. Counsel for the appellant thus submits that Ext. P2 order is discriminatory inasmuch as only vending in arrack is prohibited. We are afraid that this contention cannot stand. State is entitled to impose prohibition in a phased manner. The decision to close arrack shops is the policy decision taken by the State. As was held by Hidayatullah, J. (as he then was) in *Sheoshankar Vs. State Govt. of Madhya Pradesh and Others*, referred supra, so far as prohibition is concerned, there can be no doubt that a vast proportion of the population of this country does believe that drinking is an evil and that a policy of prohibition should be adopted. In adopting this policy, a large discretion is given to the State Government as the mode in which the policy is to be implemented. Moreover, it stands to reason that when a measure of social reform is introduced, it denudes the State of a large revenue and on the other, imposes additional duties and expenses for the purposes of preventing and penalising the evasion of the law, it should be applied stage by stage and in the light of the experience gained. Further, as was observed in *The State of Bombay and Another Vs. F.N. Balsara*, the power to legislate with respect to intoxicating liquors and narcotics includes the power to introduce partial or total prohibition. Besides, no objection can be taken on the classification of intoxicating liquors between arrack, toddy and Indian made foreign liquor. There are identifiable separate classes of consumers of toddy, arrack and Indian made foreign liquors. Abkari Act itself defines separately toddy, country liquor and foreign liquor. The Kerala Abkari Shops (Disposal in Auction) Rules 1974 deals with classes of shops, viz., toddy shops, arrack shops and foreign liquor shops. While Chapter VI of the Rules deals with special conditions applicable to licensees for the privilege of vending toddy in independent shops, Chapters VII and VIII independently deal with conditions applicable to vending of arrack and foreign liquor in independent shops. There are toddy workers and abkari workers welfare funds. Thus toddy shops, arrack shops and foreign liquor shops belong to different classes as a matter of fact, even though they are generally referred to as liquor shops. If as a matter of fact,

these shops have separate existence and separate rules have been framed wherever necessary, it will be illogical to call them as belonging to one class. Even with regard to one class of service having several categories and having different attributes and incidents it has been held that such a category becomes a separate class by itself-*vide AIR India Vs. Nergesh Meerza and Others*,

6. In *Lingo-Sulphite Corporation of India Limited and Others Vs. U.P. State Sugar Corporation Limited, Unit Bijnorand Others*, Supreme Court was considering Rule 22 of U. P. Sheera Niyamtran Niyamavali 1974. Under Rule 22(1) all stocks of molasses produced in the sugar factory have to be sold or disposed of by the occupier only in accordance with the order in writing from the Controller. As per this Sub-rule, the occupier can sell molasses only as per the price fixed in the schedule. Under Rule 22(2) the Controller shall release any stock of molasses in favour of occupier of a sugar factory only when the same is not required for distilleries, etc. Question arose as to whether the occupier can sell the molasses released to him at the market rate? It was contended that it will give rise to discrimination. Court held that there is no discrimination. Court also held that there have been other enactments in which similar provision has been made, for example, the levy sugar was to be sold only at the controlled rate but free sugar was to be sold by the factories at a free market price and that has been always accepted as a valid classification. Thus the same principle will apply to the discrimination between toddy shops, arrack shops and foreign shops. In this context, it is useful to refer to the following passage from the decision reported in *Sheoshankar Vs. State Govt. of Madhya Pradesh and Others*,

"It does not, however, mean that every law must have universal application, for all persons are not, by nature attainment or circumstances, in the same position. The varying needs of different classes of persons often require separate treatment and it is, therefore, established by judicial decisions that the equal protection Clause of the Fourteenth Amendment of the American Constitution does not take away from the State the power to classify persons for legislative purposes. This classification may be on different basis. It may be geographical or according to objects or occupations or the like. If the law deals equally with all of a certain well defined class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and therefore, there is no discrimination amongst equals. It is plain that every classification is in some degree likely to produce some inequality, but mere production of inequality is not by itself enough.

If there is a classification, the Court will not hold it invalid merely because the law might have been extended to other persons who in some respect might resemble the class for which the law was made, for the Legislature is the best Judge of the needs of the particular classes and to estimate the degree of evil so as to adjust its legislation according to the exigency found to exist".

7. May be, the Government could have imposed total prohibition at one stroke or

it could have prohibited foreign liquor shops. It cannot be denied that Government derives a large amount of revenue by conducting the abkari shops. Hence it is for the Government to decide whether it should deprive itself of the whole revenue by imposing a total prohibition. It would have also thought that arrack is consumed by poor people and more injurious to health and hence it was better to start the abolition of arrack shops. Government is the best judge to make the choice and this Court will not interfere with such choice. Further "it is incontestable that intoxicating liquor is not an innocuous thing and is liable to be abused. It is therefore within the competence of the legislature to make appropriate laws concerning it". As it is sometimes said a law may "hit the evil where it is most felt". Hence we do not accept the argument based on Article 14 of the Constitution. Such classification between country liquor and foreign liquor was upheld by Mohan, J. (as he then was) in *Sundarababu Gramani, K. V. v. State of Tamil Nadu* 1988 WLR 427

Point No. 3

8. Third point raised by the learned counsel for the appellant is that the Industries (Development and Regulation) Act, 1951 (Act 65 of 1951) occupies the field as the central legislation falls within Entry 52, List 1 of VIIth Schedule. According to learned counsel for the appellant, enforcement of Ext. P2 order will entrench upon the Industries (Development and Regulation) Act, 1951 (Act 65 of 1951). The Industries Development and Regulation) Act, 1951 is enacted under Entry 52, List 1 of with Schedule. Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Item 26 in the Schedule is Fermentation Industries -- (1) Alcohol and (2) Other products of fermentation industries. Section 18G(1) of the Act runs as follows :

"18G Power to control supply, distribution, price, etc., of certain articles:-- (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein".

On the basis of the above section, learned counsel submits that Alcohol is a controlled industry. Supply and distribution and trade and commerce therein can be regulated only by the notified order by the Central Government. The contention raised by the counsel cannot stand scrutiny for a moment as the matter is no longer *res integra*.

9. Supreme Court had occasion to consider the above contentions in many cases, viz., *State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others*, , *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, and *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs.*

State of Kerala and Others, Recently, Supreme Court had occasion to consider the above contention in the decision reported in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, Dealing with this contention, Supreme Court held thus :

"pith and substance of the IDR Act is to provide the Central Government with the means of implementing their industrial policy which was announced in their resolution of 6-4-1948 and approved by the Central Legislature. That brings under Central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. The development of the industries on sound and balanced lines is sought to be secured by the licensing of all new undertakings. Hence the IDR Act confers on the Central Government power to make rules for the registration of existing undertakings and for regulating the production and development of the industries mentioned in the Schedule and also for consultation with the Provincial (now State) Government in these matters. The Act does not in any way denude the power of the State Governments to make laws regulating and prohibiting the production, manufacture, possession, transport, purchase and sale of intoxicating liquors meant for human consumption (but not for medicinal or toilet preparations) and levying excise on them under Entries 8 and 51 of List II."

Thus, the power of the State Government to impose prohibition arises under Entry 8 of List II. The same matter came up for consideration before this Court in the decision reported in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, This Court held thus:

"The Kerala Abkari Act and the rules are in pith and substance within the legislative competence of the State falling under Entry 8 of List II of the 7th schedule of the Constitution. They are not repugnant to the Central enactment, the Industries (Development) and Regulation) Act 45 of 1951, falling within Entry 52 of List I of the 7th schedule; nor has the centre, in any case, occupied the field in the absence of a notification u/s 18G of that Act empowering the authorities to control trade and commerce of alcohol".

10. Lastly it was contended that because of the policy adopted by the Government many persons will be retrenched. Ext. P2 order itself has directed the Labour Commissioner to examine the problem relating to the retrenchment of the workers of these arrack shops and their proper rehabilitation.

Hence appellant has no scope for any grievance. In the result, appeal is dismissed.