
(2012) 07 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10581 of 2012

Xaviers Residency and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Income Tax Act, 1961 — Section 255(4), 263, 28(iv), 40A(5)

Kerala Shops and Commercial Establishment Act, 1960 — Section 10, 3(2)(c)

Citation : (2012) 3 KLJ 328

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : A. Sudhi Vasudevan, K. Pushpavathi and Jose Jones Joseph, for the Appellant; P.C. Iype, Addl. AG, for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—The first petitioner is a partnership firm, which has established a three star hotel located within the limits of the Kollam Corporation. The second petitioner is stated to be an employee of the hotel. The hotel has been issued a FL-3 licence, which has been renewed from time to time and is valid upto 31/3/13. In this writ petition, petitioners challenge the validity of Rule 28 of the Foreign Liquor Rules, which was substituted by notification dated 18th of April 2012. This rule read as under;

28 (1) FL-3 Hotels (Restaurants) functioning within a Panchayat or Municipality shall not be kept open before 8"O clock in the morning and after 11"O clock in the night. FL-3 Hotels (Restaurants) functioning within Corporation limits shall not be kept open before 9"O clock in the morning and after 12"O clock in the night. No FL-1 shop shall be kept open before 9"O clock in the morning and after 11"O clock in the night.

(2) The Deputy Commissioner of Excise shall be competent to fix the working hours of FL-1 shops in each area subject to the conditions that the total working

hours shall not exceed 12 hours in a day and no such shop shall be kept open beyond the time limit specified in this rule.

2. According to the petitioners, this rule is, to the extent it discriminates hotels in Corporation limits, is invalid, for it violates Article 14 of the Constitution of India. Secondly, petitioners also argued that the Rule is contrary to Section 3(2)(c) of the Kerala Shops and Commercial Establishments Act 1960. It is broadly on these two grounds, the petitioners seek to invalidate the rule as substituted.

3. By Rule 28(1) of the Foreign Liquor Rules as substituted, functioning of the FL-3 licenced bars have been restricted by the Government. Accordingly in Municipal and Panchayat areas, bars are allowed to be opened during 8 am to 11 p.m. and in the Corporation limits between 9 am to 12 pm. This according to the respondents is part of the abkari policy of the Government and is intended to reduce the consumption of liquor by imposing certain restrictions. It is stated that to check the menace of alcoholism, it is essential to restrict the easy availability of liquor and to achieve that object, various measures are to be adopted. It is stated that, it was with that object in mind, abkari policy was implemented in a phased manner and that while framing the policy, the Government took various steps including (1) that fresh FL-3 licence shall be issued only to hotels having 4 star and above classification (2) no FL-3 licence shall be granted to hotels which are located within a radius of 3 kms in Grama Panchayats and 1 km in Municipal/Corporation limits from another hotel having an FL-3 licence and (3) the working hours of the bar hotels will be reduced by three hours etc. It is stated that to give effect to the abkari policy, various provisions of the Foreign Liquor Rules were amended and as part thereof, Rule 28 was substituted. Government also contends that such substitution of the Rule was well within the rule making power of the Government u/s 29 of the Abkari Act.

4. Further, the 1st respondent has also explained that it is committed to reduce the availability of liquor through various means and the measures taken in this behalf have been explained in the counter affidavit in the following manner;

4. It is submitted that various study reports highlight that one of the reasons for high drinking habits of the people is the easy availability of liquor especially from bar hotels that were kept open from sunrise to midnight. Government is committed to reduce the availability of the liquor through various means in public interest. Therefore Government have introduced various stringent measures like not to grant any fresh licence to the Foreign Liquor shops run by the KSBC and Consumer Federation; not to grant FL-3 licences to Hotels having Three Star and below classification; introduced distance restriction for the grant of FL-3 licences; reduced the working hours of the FL-3 licences etc. It is submitted that these are the reasonable in imposing the restrictions in opening time of FL-3 shops. It is also submitted that the State on a periodical re-assessment of the Policy, is competent to modify or amend its earlier declared policy. The Government is also competent to amend the concerned rules by adding, modifying or omitting any

provisions to give effect to the declared policy. Government Policy is very clear that the liquor business is not a source of income earning industry. The Government is fully committed to reduce the availability of the liquor in a phased manner and thus to achieve the directive principles as envisaged in the Constitution of India. The Government is giving priority to the welfare of the citizens of the State and as per the declared policy {Ext. R1(a)} have also declared the starting of de-addiction centres and formation of a separate wing in the Excise Department for the campaign against alcoholism. Two crores of rupees has been earmarked for this purpose. A separate wing, namely, Awareness Programme Coordinator headed by the Joint Excise Commissioner has been already formed, and about Rs. 2 crores has been spent in this regard. For this, the Excise Department has been modernised and enforcement wing has been strengthened. In the 140 Legislative Constituencies already 306 Anti-liquor Clubs has been formed in various Schools for the purpose of spreading ill-effects of alcohol consumption. Restriction of time is also one of the measures taken by Government along with the above mentioned matters of preventing the menace of liquor in the society. All these show the determination of the Government to minimize the consumption of liquor and safeguard the interest of the public as a whole.

5. In so far as the argument of the petitioners that the impugned restriction is against the provisions of Kerala Shops and Commercial Establishments Act, 1960 is concerned, it is stated that there is no substance in this argument and that at any rate, the petitioners cannot impugn the validity of the rules by taking resort to the provisions of other enactments. Therefore, the 1st respondent contended that there is no substance in the contentions raised. Petitioners have filed an affidavit in reply refuting the assertions in the counter affidavit.

6. I heard the learned counsel for the petitioners and the learned Additional Advocate General and have considered their submissions.

7. The first contention raised by the learned counsel for the petitioners is that the rule in question violates Article 14 of the Constitution of India. Although it is true that none has any fundamental right to trade in liquor, once the Government have decided to farm out the privilege of vending liquor to the citizens, the State is bound to deal with all of them in compliance with Article 14 of the Constitution and without any discrimination. In so far as the State of Kerala is concerned, by virtue of the provisions contained in the Abkari Act and the Foreign Liquor Rules framed in exercise of its power conferred u/s 29 thereof, the privilege of vending liquor in hotels has been farmed out subject to various restrictive conditions and on payment of annual licence fee. Therefore, the State, having decided to farm out this privilege, is bound to comply with Article 14 of the Constitution of India in its dealings with the citizens.

8. As far as the working hours of the FL-3 licenced bars in Kerala are concerned, Rule 28 of the Foreign Liquor Rules, as it stood prior to the substitution, provided that, no shop shall be opened before sun rise or kept open after 11 pm except

under special authority from the Excise Commissioner or from the Assistant Excise Commissioner. Further, as per the proviso, shops in respect of which FL-3 licence has been issued, were permitted to be kept open till 12"O clock at night. It is this rule which has been substituted by notification dated 18th of April, 2012. As per the substituted Rule 28(1), FL-3 hotels functioning within Panchayats and Municipalities shall not be kept open before 8"O clock in the morning and after 11"O clock in the night. However, in so far as FL-3 hotels functioning within Corporation limits are concerned, Rule provides that such hotel shall not be kept open before 9"O clock in the morning and after 12"O clock in the night. Thus, in so far as its working hours are concerned, while the Rule as it originally stood, did not make any distinction between the bars whether it is situated in the Panchayat or Municipality or Corporation limits, a distinction has now been drawn in Rule 28(1) with its substitution as per the notification mentioned above. From the above, therefore it is obvious that, in so far as the working hours of the bars in State of Kerala are concerned, while all the bars were treated equally as per Rule 28, with the substitution of the Rule, the bars have now been classified into two categories, viz., the bars in Panchayat or Municipal areas and the bars situated within the Corporation limits. On that basis, different timings have also been prescribed for their functioning. The question is whether such a subordinate legislation calls for the interference of this Court.

9. Rule 28 of the Foreign Liquor Rules has been framed in exercise of the powers of the 1st respondent u/s 29 of the Abkari Act. As pleaded in the counter affidavit, the rule is a reflection of the abkari policy which, according to the respondents, is intended to achieve an object, about which, detailed reference has been made in the counter affidavit filed. In this situation, the question to be examined is what are the circumstances which entitles this Court to interfere with a subordinate legislation. It has been held by the Apex Court that Court cannot sit in judgment of a policy decision taken by the Government, even if the policy is an unwise one and is warranting revision and improvement. In this context, it is worthwhile to refer to the principles laid down by the Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, where it has been held thus:

16. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegates are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by

the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

10. Similarly in paragraph 19 of its judgment in *Karnataka Bank Ltd. Vs. State of A.P. and Others*, , the Apex Court has held thus:-

19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it. (See *State of Bombay v. F.N. Balsara*.)

This judgment has been followed in *State of M.P. Vs. Rakesh Kohli and Another*, . Thus law is settled that the Rule should be shown to suffer from a legal infirmity to interfere with the same. Therefore, it has to be seen whether there are any legal infirmities in the Rule which alone entitle this Court to interfere with subordinate legislation.

11. In order to answer this vexed question, it is unnecessary to burden this judgment with the numerous precedents on this subject, except to the judgment in *Mahalakshmi Sugar Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, , where in para 53, after referring to all relevant precedents, the grounds on which the validity of subordinate legislation may be questioned, have been summarised thus;

53. From these decisions, it may be deduced that validity of subordinate legislation may be questioned on the ground that;

a) it is ultra vires the Constitution:

b) it is ultra vires the parent Act:

c) it is contrary to the statutory provisions other than those contained in the parent Act:

d) law-making power has been exercised in bad faith:

e) It is not reasonable: and

f) it goes against legislative policy, and does not fulfil the object and purpose of the enabling Act.

12. Therefore, if any one of the aforesaid grounds are made out, it is well within the powers of this Court to interfere with a subordinate legislation. In so far as this case is concerned, the contentions raised are twofold. One is that Rule 28 as substituted offends Article 14 of the Constitution of India and the second one is that the provision runs counter to Section 3(2) of the Kerala Shops and Commercial Establishments Act. Therefore, if there is substance in these two contentions, the grounds mentioned in the Apex Court judgment at (a) and (c) are available and I shall proceed to examine whether the petitioners have succeeded in making out any of these grounds.

13. As I have already stated elsewhere, till the Rule was substituted by Ext. P2 notification dated 18th of April, 2012, Rule 28 as it stood then, prescribed uniform working hours for the bars, irrespective of whether it is situated in the Panchayat, Municipalities or in the Corporation areas. Thus, with the substitution of the Rules, bars have been classified differently based on its situs and the question is whether such a classification is valid. It has to be remembered that Article 14 of the Constitution of India, the violation of which is canvassed by the petitioners, only provide that the State shall not deny to any person equality before law or equal protection of laws within the territory of India. Article 14 therefore does not prohibit valid classification of citizens but only prohibits discrimination of equals and also prohibits inequality. Further, this Article only provides equality only among equals and not among unequals. A legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws, to attain particular objects; and for that purpose, it must have large powers of selection or classification of persons and things upon which such laws are to operate.

14. It has been held that State has always the power to make classification on the basis of rational distinctions relevant to the particular subject to be dealt with and that in order to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification, must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that the differentia must have a rational relation to the object sought to be achieved by the legislation. Thus, what is necessary is that there must be a nexus between the basis of classification and the object of the legislation or rule in question. It has been held that when a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object sought to be achieved by it and that having ascertained the policy and the object of the Act, the Court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from

others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. Further, according to the Apex Court, in order that a law may be struck down under this Article, the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. Further, the Court has also held that the inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14 and that Article 14 does not require that the legislative classification should be scientifically or logically perfect (see in this connection *Ashutosh Gupta Vs. State of Rajasthan and Others*, .

15. These principles have been reiterated by the Apex Court in its judgment in *Dharam Dutt and Others Vs. Union of India (UOI) and Others*, , where in para 56, it has been held thus:

56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are; that the subject-matter of legislation should be a well-defined class founded on an intelligible differentia which distinguishes that subject-matter from the others left out, and such differentia must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differentia does not, however, mean that the legislative classification should be scientifically perfect or logically complete.

16. In *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, , the principles for a valid classification for the purpose of legislation has been stated thus:

8. What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is two fold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.

17. However in its judgment in *B. Manmad Reddy and Others Vs. Chandra*

Prakash Reddy and Others, , the Apex Court has made a note of caution in the following words;

By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable.

18. Thus, when the validity of a classification is raised for consideration, what is to be probed by this Court is whether the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out and whether the differentia has a rational relation to the object that is sought to be achieved by the Act or the Rule as the case may be. In so far as this case is concerned, hotels with FL-3 licences are classified into two, one class of hotels situated within the Panchayats and Municipalities, the other class are the hotels situated within the limits of Corporations. The expression Panchayat, Municipality and Corporation used in the Rule have been given the same meaning as it occurs in the Kerala Panchayat Raj Act and the Kerala Municipality Act. As per Section 2(xxv) of the Kerala Panchayat Raj Act, 1994, "Panchayat" means a Village Panchayat, a Block Panchayat or a District Panchayat, which expressions are also defined in Section 2(xlvi), 2(ii) and 2(xii) respectively of the Act. Section 4 of the Kerala Panchayat Raj Act provides for the constitution of Panchayats at different levels. As per this Section, the Government shall, by notification in the Gazette, constitute a Village Panchayat for each village or for group of villages, a Block Panchayat at intermediate level and a District Panchayat for each District Panchayat area. Similarly, as per Section 4 of the Kerala Municipality Act, 1994, the Government is authorised to constitute Municipal Councils for small urban areas and Municipal Corporations for larger urban areas. Similarly, Article 243-Q of the Constitution provides that there shall be constituted in every State, a Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. Therefore, in the light of these provisions of the Kerala Panchayat Raj Act, Kerala Municipality Act and the Constitution of India, without any fear of contradiction, it can be said that the classification is founded on an intelligible differentia which distinguishes the Panchayats and Municipalities that are grouped together from Corporations which are left out of the group. If that be so, it has to be concluded that the classification made by the 1st respondent satisfies the first test to sustain its validity.

19. The second question is whether the differentia in the classification has a rational relation to the object that is sought to be achieved by the Rule. 1st respondent has sworn to an affidavit explaining its commitment to reduce the availability of liquor in the State. According to them, it was to achieve that object, the abkari policy was framed. It is stated that one of the measures that was taken by the respondents to check the menace of alcoholism by restricting the easy availability of liquor, was to reduce the working hours of the bar hotels

in the State by three hours and the policy also provided that the working hours of the bars within the Panchayat and Municipal areas shall be between 8 am and 11 pm and that the bars within the Corporation limits shall be between 9 am to 12 pm.

20. A reading of the counter affidavit therefore shows that according to the respondents, the rationale of imposing restrictions in the working time of FL-3 shops is the commitment of the Government to reduce easy availability of liquor, so as to have a check on the high drinking habits of the people, which is on account of the easy availability of liquor. While it may be true that such a rationale has been pleaded, it is a fact that prior to its substitution by Ext. P2 notification, for the purposes of Rule 28, all FL-3 shops in the State were treated alike and with the Rule as substituted, FL-3 shops have been classified into two on the basis of its location. On that basis, FL-3 shops situated in Panchayat and Municipalities are allowed to be opened from 8 am to 11 pm, whereas, FL-3 shops situated in Corporation limits are allowed to be opened from 9 am to 12 pm. According to the respondents, by placing restrictions on the working hours of the FL-3 shops, what is sought to be achieved is a check on the easy availability of liquor in the State, and thus to reduce consumption of liquor. This is an object which is applicable to every part of the State irrespective of whether the bar is in a Panchayat, Municipality or Corporation. If that be so, the aforesaid object cannot be a justification for the different working hours for FL-3 shops in Corporation limits and the aforesaid object cannot be a reason for such a classification. On the other hand, if the FL-3 shops in the Corporation limits are to be treated differently from others, in addition to the objects of restricting the easy availability of liquor, there must be some object which is special to the area in respect of which such additional restraints are imposed. Counter affidavit filed by the respondents does not contain any such object for treating the FL-3 shops in the Corporation limits differently from FL-3 shops in the Panchayat or Municipal areas.

21. On account of the absence of materials in the counter affidavit, at the request of learned Additional Advocate General, the case was adjourned in order to enable him to produce further materials. Accordingly, when the case was taken up for further hearing on 26/6/12, the Additional Advocate General produced minutes of the meetings convened by the Minister for Excise on 16/6/11, 5/7/11, 13/2/12 and 16/2/12. In the minutes of the meeting held on 16/2/12 held with the representatives of the Kerala Bar Hotel Association, it is stated that the Government will consider making working hours of liquor shops in the state uniformly from 8 am to 11 pm. Apart from this, even these materials do not contain any reason for treating the FL-3 shops within the Corporation limits differently. Though nothing further appears to have been done on the request for making working hours uniform, the fact that the Government agreed to consider the request itself show that the object now canvassed, is only a justification offered, to sustain the Rule. Therefore, the additional materials produced by the learned Additional Advocate General also do not contain

anything enabling this Court to infer that there was any rationale in treating the FL-3 shops within the Corporation limits differently from FL-3 shops situated in Panchayat or Municipal areas or that anybody had applied their mind to the issue. In other words, the Government have failed to satisfy this Court that the differentia in the classification of FL-3 shops in the State has any object at all, that is sought to be achieved by the said differentia.

22. Consequently, this Court is constrained to hold that the respondents have failed in showing that the second test for a valid classification, viz., that the basis of differentia should have a rational nexus or relation with its avowed policy or objects, is satisfied in this case. If that be so, the classification of the FL-3 shops situated in the Corporation limits is discriminatory and is violative of Article 14 of the Constitution of India.

23. The second contention raised by the learned counsel for the petitioners is that Rule 28 runs counter to Section 3(2)(c) of the Kerala Shops and Commercial Establishments Act. Section 10 of this Act reads thus:

10. Opening and closing hours: (1) No establishment shall on any day be opened earlier than and closed later than such hour as may be fixed by a general or special order of the Government made under sub-section (2):

Provided that any customer who was being served or was waiting to be served in any establishment at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, by general or special order, fix the time at which any establishment or class of establishments shall be opened or closed in any local area.

24. Thus, this Section enables the Government to fix the working hours of establishments to which the Act is applicable, by general or special order. However, Section 3(2)(c) grants exemption to residential hotels from the purview of Section 10 and Section 3(2)(c) reads thus:

3(2) Nothing contained in Section 10 shall apply to-

(a) hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit;

(b) such chemists" or druggists" shops, as the Government may, by general or special order, specify;

(c) clubs and residential hotels, hostels attached to schools or colleges, and establishments maintained in boarding schools, in connection with the boarding and lodging of pupils and resident masters.

(d) stalls and refreshment rooms at railway stations, docks, wharves or ports.

25. The contention raised by the learned counsel for the petitioners is that Section 3(2)(c) exempts residential hotels from out of the power conferred on

the Government u/s 10 and that exemption thus conferred on the residential hotels is taken away by Rule 28 of the Foreign Liquor Rules which is a piece of subordinate legislation. On this basis, counsel contended that Rule 28 is opposed to the provisions of the Kerala Shops and Commercial Establishments Act, 1960 and therefore is invalid.

26. It is true that one of the grounds on which subordinate legislation can be invalidated is that it is contrary to the statutory provisions other than those contained in the parent Act. Therefore, it requires to be examined whether Rule 28 runs counter to the provisions of Section 3(2)(c) of the Kerala Shops and Commercial Establishments Act. Section 10 of this Act only enables the Government to fix the working hours in the manner as provided therein and Section 3(2)(c) provides that the provisions of Section 10 shall not apply to residential hotels. However, as far as hotels with FL-3 licence are concerned, its functioning is regulated by the provisions of the Abkari Act and the Rules framed thereunder, which is a self contained code. While Section 3(2)(c) of the Kerala Shops and Commercial Establishments Act makes Section 10 thereof inapplicable to residential hotels, the said Act does not provide that such exemption shall be notwithstanding anything to the contrary contained in any other enactment or Rule made thereunder. Therefore, if by Abkari Act or the Rules framed thereunder, another valid piece of legislation, a restriction is imposed on FL-3 shops, it cannot be said that such restrictions run counter to the provisions of the Kerala Shops and Commercial Establishments Act and therefore, are invalid. Therefore, in my view, the petitioners cannot rely on the provisions of the Kerala Shops and Commercial Establishments Act and seek to invalidate Rule 28 on the ground that it runs counter to the Shops Act. That apart, the scope of Section 3(2)(c) is totally different from the scope of Rule 28 of the Foreign Liquor Rules. Therefore, I see no substance in the second contention raised.

27. Having regard to my finding that the classification of the FL-3 shops situated in the Corporation limits does not satisfy the dual test for a valid classification, I should hold Rule 28(1) of the Foreign Liquor Rules, to the extent it is impugned, unconstitutional.

28. As at present, while FL-3 shops which are situated in Panchayat and Municipal areas are allowed to be opened during 8 am to 11 pm, those which are situated in Corporation limits are allowed to be opened from 9 am to 12 pm. Although this Court has held the different working hours to be discriminatory and violative of Article 14 of the Constitution of India, it is for the Government to frame Rule and achieve uniformity in the working hours by bringing the timings now fixed for FL-3 shops in Panchayats and Municipal areas on a par with those situated in Corporation limits or vice versa or by some other method. Therefore, the manner in which such uniformity has to be achieved is a matter which the Government will have to consider and decide. In that view of the matter, I direct that the respondents will frame Rule governing the working hours for the FL-3 shops in Corporation limits and this shall be done at any rate within 6 weeks

from the date of receipt of a copy of this judgment. It is further ordered that, in the meanwhile, the position as it obtains today will continue.

Writ petition is disposed of as above.