

Amar Chandra Chakraborty

Vs

The Collector of Excise, Government of Tripura and Others

Civil Appeal No. 1063 of 1971

(A. N. Ray, D. G. Palekar, M. H. Beg JJ)

03.05.1972

JUDGMENT

DUA, J.

1. This appeal is by special leave. The appellant assails the order of the Judicial Commissioner, Tripura, dated June 25, 1971, dismissing his petition under Article 226 of the Constitution challenging the order of the Collector of Excise, Tripura, dated July 5, 1970.
2. The appellant was granted licence for the period April 1, 1963 to March 31, 1966, for running a warehouse for supply of country liquor to excise vendors in the territory of Tripura. The Bengal Excise Act, 1909 (hereinafter called the Act) had been extended to that territory on August 1, 1962. The appellant's licence was subsequently extended for a further period of two years ending March 31, 1968. On November 6, 1967 the appellant applied to the Excise Collector praying that he should be permitted to continue the supply of country liquor for a period of five years commencing April 1, 1968. The Collector recommended the appellant's case to the Government on November 18, 1967, for extension of his licence for a further period of only two years. On December 22, 1967, the Collector of Excise, Tripura, Agartala, wrote to the appellant that he had been appointed by the Chief Commissioner "a contractor for the supply of country liquor to the excise vendors for the territory of Tripura for five years, i.e., from April 1, 1968 to March 31, 1973, at the existing rate, i.e., Rs. 2.25 only being the cost of one L.P. litre of country liquor of 40 U.P. strength for sale to the excise vendors" of that territory from the Central Warehouse at Agartala. On January 13, 1968, the appellant was asked by the Collector of Excise to deposit Rs. 1,000/- as security and Rs. 2,500/- as licence fee for five years at the rate of Rs. 500/- per year. On March 13, 1968, the appellant was accordingly granted a licence to establish a warehouse for the storage in bond and wholesale vend of country spirit by import and for supply to the excise vendors in the territory of Tripura for five years commencing April 1, 1968, and ending March 31, 1973. It was granted by the Excise Collector.
3. The Committee of Estimates in their Fifth Report about the working of Excise Department in the territory of Tripura in general and about the procedure adopted in giving contract to the appellant for a period of five years from 1968 to 1973 in particular made some adverse observations criticising the method of appointment by means of selection because this method, according to the report, left loopholes for corruption. As a result of this report the Lt. Governor of Tripura on July 2, 1970, inserted Rule 164-A in the Tripura Excise Rules of 1962 in exercise of the power conferred by Section 86 of the Act. According to the new rule, fees for licence for the wholesale vend of country spirit were required to be fixed by tender-cum-auction. On July 6, 1970, the Excise Collector issued a following order to the appellant :

"GOVERNMENT OF TRIPURA, OFFICE OF THE COLLECTOR OF EXCISE###

No. 810/DM/EX/5(19)/70-71, dated, Agartala July 6, 1970

Whereas it has been decided by the Government of Tripura that the licences for the wholesale of country spirit shall hence forwards be granted by the method of tender-cum-auction and to different persons for different specified areas as far as practicable, instead of the present system of selection of one licensee for the whole territory of Tripura, in the interests of excise revenue.

And whereas I, Sri Omesh Saigal, Collector of Excise, Tripura consider that for the aforesaid reason the licence No. 1, dated March 13, 1968, issued to Sri Amar Chandra Chakraborty for the wholesale vend of country spirit in the Union Territory of Tripura for the period from April 1, 1968 to March 31, 1973, should be withdrawn.

Now, therefore, in exercise of the powers conferred on me under Section 43 of the Bengal Excise Act, 1909, as extended to the Union Territory of Tripura, I remit a sum of Rs. 20.84 equal to the amount of the fees payable in respect of the said licence for 15 days and hereby give the licensee 15 days' notice of my intention to withdraw the said licence and under that the said licence be withdrawn with effect from September 1, 1970.

Any fee paid in advance or deposit made by the licence in respect thereof shall be refunded to him after deducting the amount, if any due to the Government.

(Sd.) Omesh Saigal 5/7/1970 Collector Of Excise."###

Feeling aggrieved the appellant challengd this order in the court of the Judicial Commissioner by means of a writ petition under Article 226 of the Constitution which was dismissed by the impugned order.

4. The order of the Collector, dated July 6, 1970, was challenged by the appellant on a number of grounds, including invalidity of Section 43 of the Act and Rule 164-A of the Rules framed thereunder. The learned Judicial Commissioner in an exhaustive order came to the conclusion that the appellant had been given a contract for five years on the basis of his application, dated November 6, 1967, without issuing a public notice as required by the proviso to Section 22(1) of the Act. This violation of the statutory provision invalidated the contract or the privilege of selling country liquor secured by the appellant. According to the Judicial Commissioner this ground by itself was enough for throwing out of the appellant's writ petition. The contention that Section 43 of the Act does not envisage withdrawal by the Collector of the licence pertaining to the privilege granted by the Chief Commissioner of Tripura under Section 22 of the Act was also negated by the Judicial Commissioner as in his opinion the Collector who had issued the licence was fully competent to withdraw the name. Similarly challenge to the constitutionality of Section 43 of the Act was repelled and it was held that this section merely imposes reasonable restrictions in the matter of trade in liquor. The argument that 15 days' notice as contemplated by Section 43 of the Act had not been given was also rejected because in the Judicial Commissioner's opinion notice had actually been given to the appellant but he had not cared to avail of it as he never approached the Collector for representing to him his case against the action withdrawing the licence. Rule 164-A, was held to be intra vires and within the terms of Section 86 of the Act.

5. In this Court the principal contention raised by Shri A. K. Sen, on behalf of the appellant, is that Section 43 of the Act contemplates a show-cause notice which has not been given and that in any

event this section clothes the authority granting the licence with unguided and uncanalised power to withdraw the licence and is, therefore, violative of Article 14 and also Article 19 of the Constitution as it encroaches on the appellant's fundamental right of carrying on trade or business.

6. Shri Sen further submitted that the authority granting the licence was the Chief Commissioner but the order, dated July 6, 1970, was issued by the Collector of Excise. The order withdrawing the licence, according to the learned counsel could only be made by the authority granting the licence and that too after the expiry of 15 days. The counsel added that withdrawal of licence virtually amounts to its forfeiture with the result that the provisions dealing with such withdrawal calls for a strict construction.

7. The contention that the authority granting the licence was the Chief Commissioner and, therefore, the notice issued by the Collector of Excise is bad, cannot be accepted. The licence, dated March 13, 1968, was issued from the office of the Collector of Excise, Agartala and was signed by that officer. Even In the appellant's writ petition in Para 15 there is an express averment that the licence, dated March 13, 1968, had been issued under the signatures of the Collector of Excise, Tripura. No doubt, it is added in the same paragraph that the Collector is not the authority to exercise power under Section 43 of the Act but this submission has not been substantiated at the bar and is contrary to the statutory provisions. Under Section 22, sub-section (1), the Chief Commissioner is no doubt given the power of granting the exclusive privilege of manufacturing and selling country liquor or intoxicating drugs as mentioned in clauses (a) to (e) but sub-section (2) of this section in express terms provides that no grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a licence in that behalf from the Collector or the Excise Commissioner. In view of this provision it is obvious that it is the Collector who grants the licence within the contemplation of Section 43 and, therefore, it was this very officer who rightly granted the licence to the appellant and is empowered to withdraw the licence under Section 43.

8. As Section 43 provides for withdrawal of licence for any cause other than those specified in Section 42 of the Act we consider it proper to reproduce both these sections. They read :

"42. Power to cancel or suspend licence, permit or pass. - (1) Subject to such restrictions as the Chief Commissioner may prescribe, the authority who granted any licence, permit or pass under this Act may cancel or suspend it -

(a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or

(b) if any duty or fee payable by the holder thereof be not duly paid; or

(c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930 (II of 1930), or under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or under any section which has been introduced into the Indian Penal Code by Section 3 of that Act (Act XLV of 1860); or

(e) if the holder thereof is punished for any offence referred to in Clause 8 of Section 167 of the Sea Customs Act, 1878, (VIII of 1878); or

(f) Where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under Section 22, on the requisition in writing of such holder; or

(g) if the conditions of the licence, permit or pass provide for such cancellation or suspension at will.

(2) When a licence, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1) the authority aforesaid may cancel any other licence, permit or pass granted to such person by, or by the authority of, the Chief Commissioner under this Act, or under the Opium Act, 1878 (I of 1878).

(3) The holder of a licence, permit or pass shall not be entitled to any compensation for its cancellation for its cancellation or suspension under this section, or to the refund of any fee paid or deposit made in respect thereof.

43. Power to withdraw licences. - (1) Whenever the authority who granted any licence under this Act considers that the licence should be withdrawn for any cause other than those specified in Section 42, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may withdraw the licence either -

(a) on the expiration of fifteen days' notice in writing of its intention to do so, or

(b) forthwith, without notice.

(2) If any licence be withdrawn under clause (b) of sub-section (1), the said authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any), by way of compensation, as the Excise Commissioner may direct.

(3) When a licence is withdrawn under sub-section (1), any fee paid in advance, or deposit made by the licensee in respect thereof shall be refunded to him after deducting the amount (if any) due to the Government."

9. Before dealing with the contention relating to Article 19 we consider it proper to dispose of the argument founded on the ejusdem generis rule and Article 14 of the Constitution. It was contended by Shri Sen that the only way in which Section 43 can be saved from the challenge of arbitrariness is to construe the expansion "any cause other than" in Section 43(1) ejusdem generis with the causes specified in clauses (a) to (g) of Section 42(1). We do not agree with this submission. The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of ejusdem generis.

10. Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14. This classification is founded on an intelligible differential having a rational relation to the object to be achieved by the control imposed on the trade or business in country liquor. Article 14, it may be pointed out, only forbids class legislation but reasonable classification does not come within the prohibition. Nothing convincing was urged at the bar to attract the prohibition embodied in Article 14.

11. The submission that a separate order withdrawing the licence after the expiry of 15 days' period from the order, dated July 6, 1970, was necessary has also not appealed to us. Section 43 does not provide any such procedure. All that this section contemplates is that whenever the authority concerned considers that the licence should be withdrawn for any cause other than those specified in Section 42 it may withdraw the same but to do so it must remit a sum equal to the amount of fees payable in respect of the licence for 15 days. It is not complained that this amount was not remitted as required. Now if the licence is withdrawn under Section 43(1)(a) on the expiration of 15 days' written notice of the authority's intention to do so then nothing further need be done. It is only when the licence is desired to be withdrawn forthwith without notice as contemplated by Section 43(1)(b) that the authority is under a further obligation to pay compensation as may be directed by the Excise Commissioner. Here the licence stood withdrawn on September 1, 1970 as stated in the intimation contained in the order, dated July 6, 1970. That intimation fully complies with the provisions of Section 43.

12. The argument that no show-cause notice was given to the appellant before withdrawing the licence is equally un-acceptable for reasons just stated. The section does not contemplate two separate notices. The order, dated July 6, 1970, also clearly states that 15 days' notice was being given to the licensee regarding the intention of the Collector of Excise to withdraw his licence and it is also specifically mentioned in the order that the said licence would be withdrawn with effect from September 1, 1970. The fact that under the notice the licence was to be withdrawn more than 15 days after the date of the notice did not cause the appellant any prejudice and indeed no objection was raised on this score. The contents of this order also quite clearly show that the appellant had ample opportunity of showing cause against the intention of the Collector to withdraw the licence with effect from September 1, 1970. Rules of natural justice on which the appellant's counsel relied for his grievance vary with the varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to act and the question whether in particular case the rules of natural justice have been contravened must be judged not by any pre-conceived opinion of what they may be but in the light of the relevant statutory provisions : *Gullapalli Nageswara Rao v. A.P. State Road Transport Corporation* (1959 Supp 1 SCR 319 : AIR 1959 SC 356 : 1959 SCJ 967 : (1959) 2 Mad LJ (SC) 156.). Applying this test to the present case the order, dated July 6, 1970, cannot be considered to violate any rule of natural justice.

13. According to Shri Sen the business of selling liquor is protected by Article 19 of the Constitution as a fundamental right and reliance for this submission has been placed on *K.K. Narula v. The State of J & K* ((1967) 3 SCR 50 : AIR 1967 1368 : (1967) 2 SCJ 373.). This fundamental right has been illegally infringed, said the counsel. It is no doubt true that this Court in the case cited held that dealing in liquor is business and a citizen has a right to do business in that commodity but it was added that the State can make a law imposing reasonable restrictions on the said right in public interest. In dealing with reasonable restrictions no abstract standard or general pattern is

possible to lay down. In each case, regard has to be had to the nature of trade or business, the conditions prevailing in such trade or business, the nature of the infringement alleged, and the underlying purpose of the restriction, the imposition of which is alleged to constitute an infringement.

14. According to Shri Sen the licence was granted to the appellant for five years and withdrawal of this licence before the expiry of five years has caused him immense financial loss. The licence was withdrawn without any fault on his part. Unreasonableness of the provision contained in Section 43, according to him, is manifest because it permits the licensing authority to withdraw the licence for any reason whatsoever not falling under Section 42. This wide and arbitrary power being unreasonable, is violative of the appellant's fundamental right under Article 19. Let us see if this submission is well-founded.

15. Section 42 empowers the authority granting a licence, permit or pass under the Act to cancel or suspend it subject to such restrictions as may be imposed by the Chief Commissioner. The grounds on which the order of cancellation or suspension may be based are contained in clauses (a) to (g) of sub-section (1). Except for clause (f) and (g) all other clauses suggest some impropriety or default on the part of the licensee. Clause (f) speaks of cancellation or suspension on the written requisition by the holder of the exclusive privilege under Section 22 and cancellation or suspension under clause (g) is in accordance with the conditions of the licence, permit or pass in question. Sub-Section (3) expressly negatives the right to compensation and also to refund of fee and deposit. Section 43 providing for withdrawal of licence only empowers the authority granting a licence under the Act to withdraw the same for any cause other than those specified in Section 42 on remitting a sum equal to the amount of fee payable for 15 days. It is no doubt true that in Section 43 there is no express mention of the precise grounds on which the licence can be withdrawn. But in our opinion keeping in view the nature of the trade or business for which the grant of licence under the Act is provided the cause contemplated by Section 43 must be such as may have reasonable nexus with the object of regulating this trade or business in the general interest of the public. In the determination Of reasonableness of restriction on trade or business regard must be had to its nature, the conditions prevailing in it and its impact on the society as a whole. These factors must inevitably differ from trade to trade and no general rule governing all trades or businesses is possible to lay down. The right to carry on lawful trades or businesses is subject to such reasonable conditions as may be considered essential by the appropriate authority for the safety, health, peace, order and morals of the society. Article 47 of our Constitution directs the State to endeavour to prohibit consumption of intoxicating drinks and of drugs which are injurious to health except for medicinal purposes. In the case of country liquor, therefore, the question of determining reasonableness of the restriction may appropriately be considered by giving due weight to the increasing evils of excessive consumption of country liquor in the interests of health and social welfare. Principles applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor : this is so because of the impact of this trade on society due to its inherent nature.

16. In the present case, according to the counter-affidavit, after the Committee of Estimates had in their Fifth Report criticised the working of the Excise Department in the territory of Tripura in general and procedure adopted in granting five years' licence to the appellant in particular, the Council of Ministers, as a consequence of this criticism, resolved that the exclusive privilege of supplying country liquor by wholesale should be allowed to three persons and not to one and that also by tender-cum-auction. Pursuant to this decision Rule 164-A was inserted in the Tripura Excise Rules on July 2, 1970. The Union Territory of Tripura was accordingly divided into three districts for the purpose of licence for wholesale supply of country liquor with effect from September 1,

1970. It was for implementing this policy decision of the State Government that on July 6, 1970 the Collector of Excise informed the appellant by the impugned order that this licence would be withdrawn on September 1, 1970, at the same time remitting to him 15 days' licence fee as required by statute. The Government then took steps to invite tenders and fix a date for auction of wholesale supply of country liquor. The cause for withdrawing the appellant's licence is in terms of the major policy decision taken by the Tripura Government and his, in our opinion, is a cause which, keeping in view the purpose and object of granting such exclusive privileges and licences, cannot be considered to be either irrelevant or collateral to that purpose and object. The appellant had, it may be recalled, secured his licence for the maximum period of five years as provided By Rule 22(4) of the Tripura Excise Rules, 1962 for a nominal annual sum. On the withdrawal of the licence, fee for 15 days was remitted to him and the fee paid in advance and the deposit made were also directed to be refunded as provided by Section 43(3).

17. But this apart, the learned Judicial Commissioner has also held in the Judgment under appeal that since the contract for five years had been given to the appellant in complete violation of the statutory provision enacted in the proviso to Section 22(1) of the Act he could not claim to be a holder of any valid contract or of a valid privilege. Nothing serious was urged at the bar against this conclusion. Shri Mukherjee, however, did make a faint attempt to dislodge the conclusions of the learned Judicial Commissioner by submitting that the appellant was not aware of non-compliance with the proviso to Section 22(1) of the Act and that he could not be penalised for any such non-compliance. We are not impressed by this submission.

18. Section 22 contemplates the grant of exclusive privilege which amounts to a virtual monopoly for manufacturing, supplying and selling at wholesale or retail country liquor or intoxicating drugs within a specified local area. Keeping in view the nature of this trade or business particularly the unhealthy effect of intoxicants on certain important sections of the society it cannot be denied that the residents of the local area concerned would be vitally interested in the matter of grant of exclusive privileges and licences for sale of liquor as unless appropriately regulated such trade or business may prove a source of nuisance and annoyance to the persons residing in the vicinity. It is apparently in recognition of this vital interest of the residents of the locality that public notice of the intention to grant such exclusive privilege is provided so that objections thereto, if any, may be preferred before the exclusive privilege is actually granted. The public notice is thus a condition precedent to the grant of exclusive privilege. The underlying policy of Section 22 seems to be not to allow such an important matter to be decided in the secrecy of office without giving it proper publicity. All the conditions of the proposed grant including its duration are expected to be notified. Such notification would serve also to eliminate chances of favouritism, nepotism and corruption. Section 22 seems also to have its roots in these deeper considerations. Failure to give such public notice was, therefore, in our opinion, rightly considered by the learned judicial Commissioner to be fatal to the grant of the exclusive privilege to the appellant. Nothing convincing has been said at the bar against this view. If non-compliance with the proviso to Section 22(1) is by itself fatal to the grant of exclusive privilege then the impugned order, dated July 6, 1970, is sustainable on this ground alone and the writ petition was thus rightly dismissed. In any event, this ground along with the others already noticed, would, in our opinion, constitute a good cause for with drawing the licence under Section 43 of the Act. On this view the impugned Judgment of the learned Judicial Commissioner does not seem to us to be open to challenge particularly under Article 136 of the Constitution. This appeal accordingly fails and is dismissed with costs.

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