

SUPREME COURT OF INDIA

Lakshmi Narain

Vs.

District Excise Officer, Fatehpur

Writ Petns. Nos. 966, 971, etc. of 1978

(V. R. Krishna Iyer, D. A. Desai and O. Chinnappa Reddy, JJ.)

16.08.1978

JUDGEMENT

KRISHNA IYER J.:-

1. We have today disposed of a batch of writ petitions arising under the Punjab Excise Act, 1914 (Annexure A). There the petitioner had challenged S. 59 (f) (v) and R. 37 as unconstitutional. In the present batch of writ petitions the contention is identical except that the enactment and rule are formally different but in pari materia. Section 41 (e) (v) of the U. P. Excise Act empowers the Excise Commissioner to make rules fixing the days and hours during which licensed premises may be kept opened or closed. Rule 13 B is one such rule which forbids sale of liquor "on all Tuesdays as well as the first day of every month." Aggrieved by R. 13-B (as amended), because it prohibits liquor trade on the 1st of every month the petitioners, who are licensees, have come up to this Court challenging its vires, Rule 13-B reads thus:

"13-B. All excise shops (including foreign liquor, country spirit, home drugs, opium, tari and outstill shops) shall not be kept open on Independence day (Aug. 15) Mahatma Gandhi Birthday (October

2) and on the day of Mahatma Gandhi's tragic death (January 30) every year and also on all Tuesdays as well as on the first day of every month.

Provided that if the first day of the month happens to be a public holiday, the day next following of that month shall be the day on which the excise shops shall not be kept open. Provided further Excise Commissioner, may in consultation with the Collector of the District concerned, waive the condition of not keeping an excise shop open on Tuesdays or the first day of the month or the day next following of that month as the case may be, for such specified period as he may think fit, in the case of hotels possessing a licence in Form F. L. 6 for the sale of foreign liquor for the benefit of such foreign tourists as may hold a valid permit under the All India liquor permit scheme of the Government of India."

2. The source of the rule-making power is S. 41 (e) (v) which hardly needs reproduction.

3. It is easy to see that the provisions in the Punjab Law, challenged unsuccessfully before us, and these U. P. provisions are virtually the same. The contentions put forward by counsel for the petitioners and the submissions by the Solicitor General and Shri O. P. Rana in reply are also identical with what we have heard and considered in the Punjab cases. Indeed, the U.P. cases, from the point of view of the State, are stronger because the licences were awarded at public auctions and all the conditions now objected to in these writ petitions regarding closure of business on certain days are printed in the auction notice. With full knowledge of these restrictions, which they participated in the bids (and which we consider reasonable for reasons we have given in the Punjab cases), they took the licences. So their present challenge must meet with its Waterloo in the decision of this Court in the Punjab cases (AIR 1978 SC 1457). Without more ado, we dismiss the Writ Petitions with costs (one hearing fee).

Petitions dismissed.