

State of Andhra Pradesh and Others

Vs

Guntakal Toddy Tappers Co-Operative Society and Others

Civil Appeals Nos. 520-23 of 1984

(Ranganath Misra, Syed M. Fazal Ali, A. Varadarajan JJ)

01.05.1985

ORDER

1. The State of Andhra Pradesh and its officers of the Excise Department have challenged the judgment of a Division Bench of the Andhra Pradesh High Court by special leave. Under Rule 3 of the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969, framed under the Andhra Pradesh Excise Act, 1968, the right to sell liquor in retail was being granted by auction and such lease was ordinarily for a term of one excise year commencing from October 1. In September 1982, a policy decision was taken and a provision was added to Rule 3(1) which authorised grant of licence in favour of the Toddy Tappers Co-operative Societies for operating toddy shops within Grade I and Grade II municipalities of the State for a period of five years at a time effective from October 1, 1982. Under the scheme, four Tappers Co-operative Societies, each of which is a respondent in the respective appeals, were given the privilege for a term of five years effective from October 1, 1982. In August 1983, that rule was amended and there was revision to settlement on annual basis. Thereupon notices were issued to the four Tapper Societies each of which had already obtained lease for a term of five years. The notices purported to be under Section 32 of the act and intended to be brought into effect from September 30, 1983, when the excise year 1982-83 ended. Aggrieved by issue of such notices, the Tappers Societies moved the Andhra Pradesh High court for quashing of the notices. The High Court did not grant any interim relief. Consequently, on the footing that the Tappers Societies' lease came to an end with effect from September 30, 1983, the shops were auctioned for a term of one year, i.e. from October 1, 1983, to September 30, 1984. On January 17, 1984, the High Court found in favour of the Tappers Societies and notices. The State challenges the decision of the High Court and maintains that it has power to alter the rules retrospectively and consequently the notices were valid and the Tappers Societies have no right to claim any benefit contrary to law.

2. In *Krishna Kumar Narula v. Jammu Kashmir State* ((1967) 3 SCR 50 : AIR 1967 SC 1368) this Court held that the right to trade in intoxicating drugs is also a right to carry on any trade or business within the meaning of Article 19(1)(g). At the same time, it has been held by this Court in *Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer* ((1954) SCR 837 : AIR 1954 SC 220 : 1954 SCJ 246), that for determining reasonable restrictions within the meaning of Article 19(6) of the Constitution on the right given under Article 19(1)(g), regard must be had to the nature of the business and the conditions prevailing in a particular trade; State has power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public and there is no inherent right in a citizen to sell intoxicating liquors by retail. In *Cooverjee* case ((1954) SCR 837 : AIR 1954 SC 220 : 1954 SCJ 246) it was held that the charge of licence fee by public auction is more in the nature of a tax than a licence fee though it is described as a licence fee. One of the purposes of regulation was to raise revenue and revenue is to be collected

by the grant of contracts to carry on trade in liquor and these contracts are sold by auction. In this backdrop of the legal position, no challenge is available against the Andhra Pradesh Act and the Rules made thereunder.

3. As indicated the respondents had been given lease for a term of five years beginning from October 1, 1982. Mr. Ram Reddy for the appellant State on our request has produced copies of the contracts. The State had taken the stand that it has power under Section 32 of the Act to rescind contracts at any time and the retail vendor has also a similar choice to exercise. The notice terminating the five years lease after expiry of one year was, therefore, legal and was a valid exercise of statutory power. Learned counsel also contended that the settlement on annual basis by public auction was in the interest of the revenue and when it was found that settlement on annual basis by public auction was in the interest of the revenue, a reversion to the old method of settlement was accepted. These submissions of Mr. Ram Reddy appeared to be apparently attractive but when we were told that the State has at the end of one year after October 1, 1983, again reverted to a three year basis for settlement, we called upon learned counsel for the State to explain justification for such innovation. Mr. Ram Reddy fairly accepted the factual position that a three year period has now been prevailing and found it difficult to justify the switch-over.

4. The net position, therefore, is that up to September 30, 1982, under the original Rule 3 annual leases were being granted following public auction. A five year basis was adopted under the newly introduced proviso to Rule 3 in respect of Tappers Co-operative Societies but at the end of one year out of the term of five years, there was a reversal of the policy and annual settlements were again adopted. That again was changed and a three year basis was adopted at the end of the year. It gives us a very uneasy feeling that the State has dealt with the Tappers Co-operative Societies, with whom contracts had been entered into, in such a cavalier fashion. If the State's intention was really to earn more revenue and with a view to protecting the interests of the State Exchequer, there was a deviation from the policy of settlement for five years with the Tappers Societies to the old scheme of one year, there could be no warrant for the adoption of a three years basis. At this juncture, counsel for respondents readily agreed to increase of the fee payable by each of them under the contracts entered into in 1982 valid for five years taking into consideration the general rise in prices and the corresponding rise in auction money fetched in other districts in respect of settlement of excise shops. It was also pointed out to us by counsel for respondents that in respect of three of the Tappers Societies out of four - exception being the Society in Guntakal District, the Societies have been running the shops not as lessees but as agents of the State. Learned counsel for the State told us that in regard to Guntakal no arrangement at all has been made during the current excise year.

5. We are of the view that the State should not have interfered with the existing rights of the Tappers Societies and if it wanted to bring in a change, effect should have been given to such change only after the existing contracts with the respondent Societies came to terminate by efflux of time. Now that we have gathered that no interest of any outsider as lessee is involved, giving immediate effect to the judgment of the High Court would also not prejudice any party.

6. Under the contracts entered into with the Tappers Societies they would have continued to be operating till September 30, 1984. We accordingly direct that the Tappers Societies in the three districts, Guntakal Tappers Society being excepted, who are now operating as contract agents of the Government, shall continue as lessees in terms of their contract entered into with effect from October 1, 1982, subject to the condition that each of such Society shall be liable to pay 15% in excess of the fee agreed to then for each year and shall remain as lessees up to September 30, 1987. In regard to Guntakal Tappers Society, we direct the State to allow that Society to function as a

lessee within its area under its contract of 1982 effective from June 1, 1985, on the similar condition, namely by paying 15% extra over the contracted rate of fee. That Society would, however, get pro rata deduction for the period from October 1, 1984, up to May 31, 1985 - the period for which it is not enjoying the benefit. With these directions we dispose of the appeals. Each party shall bear its own costs throughout.

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