Chaitanya Kumar and Others

Vs

State of Karnataka and Others

Civil Appeals Nos. 634-45 of 1986

(O. Chinnappa Reddy, K. N. Singh JJ)

09.04.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. This case has made political history, but those concerned for the Rule of Law must remain unmindful and unruffled by the ripples caused by it. The legality of the action of the government of the State of Karnataka in awarding contracts for 'bottling' arrack to the appellants and others was questioned in the High Court of Karnataka and the order of the State Government was struck down on the ground that it was 'unlawful', 'arbitrary', 'capricious', 'in flagrant violation of the rule of law' and as 'shocking the judicial conscience'. Some of the persons, to whom the bottling contracts had been awarded by the government, have preferred these appeals under Article 136 of the Constitution.

2. By general concurrence of opinion since days of yore, manufacture and sale of intoxicating liquor has always been considered to be a dangerous and obnoxious trade requiring the strictest vigilance and supervision and even prohibition. It is now firmly established that the government is the exclusive owner of the privilege of manufacturing and selling intoxicating liquor and that the government may farm out these privileges for the purposes of raising revenue. The legislatures of the various States in India have enacted excise laws which enable them to raise public revenue by farming out these privileges and further to regulate and supervise the manufacture and sale of intoxicating liquor. The Karnataka Excise Act, 1965 is one such law. The Preamble to the Act states that it is enacted "to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka and for certain other matters hereinafter appearing". Section 2(15), (16), (18) and (19) of the Act define the expressions 'Indian liquor', 'intoxicant' 'liquor' and 'manufacture'. Section 2(25) defines 'sale or selling' as including 'any transfer otherwise than by way of gifts. Section 2(2) defines "to bottle" as meaning "to transfer liquor from a cask or other vessel to a bottle, whether any process of manufacture be employed or not, and includes re-bottling". Sections 3, 4 and 5 provide for the appointment of Excise Commissioner, Deputy Commissioner and Superintendents and Deputy Superintendents of Excise. Chapter III (Sections 8 to 12) deals with import, export and transport of intoxicants while Chapter IV (Section 13 to 21) deals with their manufacture, possession and sale. Section 13(1)(e) prescribes that 'no person shall bottle liquor for sale except under the authority and subject to the terms and conditions of a licence granted by the Deputy Commissioner in that behalf or under the provisions of Section 18.' Section 16 provides for the establishment of distilleries and warehouses. Section 17 authorises the government to lease to any person, on such conditions and for such periods as it may think fit the exclusive or other right - (a) of manufacturing or supplying by wholesale or of both; or (b) of selling by wholesale or by

retail; or (c) of manufacturing or supplying by wholesale, or of both and of selling by retail any Indian liquor or intoxicating drug within any specified area. Chapter VI provides for the grant of licences and permits and Chapters VII and VIII deal with offences and penalties and detection, investigation and trial of offences. Section 71 invests the government with the power to make rules, generally and particularly. Pursuant to the power given under Section 71, the Government of Karnataka has made various sets of rules. We are primarily concerned with the Karnataka Excise (Bottling of Liquor) Rules, 1967. Prior to November 30, 1984, Rules 3, 4, 5 and 6 of the Karnataka Excise (Bottling of Liquor) Rules, were as follows :

> 3. Restrictions on the grant of licences to bottle liquor. -
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> (1) No liquor shall be bottled except at a warehouse :
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> Provided that arrack may also be bottled in an arrack depot licensed under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968.
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> (2) No person shall be granted a licence to bottle liquor (unless he is a lessee of the right of retail vend of arrack or he holds a licence) for the distillation or manufacture of liquor or trade and import licence or a licence for compounding, blending or reducing of liquors or any other licence which requires possession bottle licence.
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> 4. Application for licence. - A lessee of the right of retail vend of liquor or a person holding any of the licences specified in Rule 3 and desirous of obtaining a licence to bottle liquor may make an application specifying the warehouse in which the operation of bottling of liquors is to be carried on together with the detailed plan thereof.
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> 5. Grant of licence. - If, after making such enquiries as he may deem necessary, the Excise Commissioner is satisfied that the applicant is a fit person to hold a licence and that the warehouse in which he proposes to carry on bottling operation is suitable, he shall, subject to the conditions hereinafter provided grant a licence on payment of a fee of rupees one thousand per annum.
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> 6. Duration of licence. - The licence shall be granted in Form MEB 1 and shall take effect from the day specified therein and shall remain in force until June 30 next year.
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> Rules 7 to 19 deal with various regulatory prescriptions in regard to the bottling of liquor with which we are not directly concerned now. On November 30, 1984, subsequent to the filing of some the writ petitions in the High Court, Rule 3(2) was amended by the addition of the words "or to persons entrusted with the bottling of arrack by the government" after the words "reducing of liquors". Later still Rule 4 was also amended to bring it in line with the amended Rule 3.

3. In the scheme of things that prevailed before 1984, bottling of liquor was not obligatory. But if liquor was in fact bottled, it had to be done under the authority of and subject to the terms and conditions of a licence and in accordance with the requirements of the Karnataka Excise (Bottling of Liquor) Rules. Under the rules no person was entitled to the grant of licence to bottle liquor unless "he was a lessee of the right to retail vend of arrack or he held a licence for the distillation or manufacture of liquor or trade and import licence or a licence for the compounding, blending or reducing of liquors or any other licence which requires possession of bottling licence". In substance

it meant that only those persons who were connected with the liquor trade were entitled to apply for the grant of licence to bottle liquor that is, no one was entitled to apply for a licence to bottle liquor unless he was already connected with the liquor trade. It appears that in July 1981, there was a ghastly tragedy resulting in the death of 336 persons, men, women and children as a result of the consumption of liquor containing methanole. Several more persons lost their eyesight. A Commission of Enquiry headed by a High Court Judge was appointed by the government of Karnataka to investigate into the cause of the tragedy and to recommend the steps which should be taken to prevent the repetition of any such tragedy. After the Commission submitted its report, the government decided that in order to avoid "adulteration, short measurement and evasion of excise duty", it was necessary that arrack should be supplied in sealed bottles. Apart form adulteration, it was also realised that supply of loose arrack was unhygienic and, therefore, it was necessary that arrack should be sold in sealed bottles. The decision of the government was announced in the budget speech of the Chief Minister and instructions were given to the Excise Commissioner to issue necessary notifications inviting applications for bottling arrack.

4. Pursuant to the decision of the government to supply liquor in sealed bottles the Excise Commissioner by a notification published in the Karnataka Gazette dated April 11, 1984 invited application from "intending persons/firms for bottling arrack" in 18 places in Karnataka State specified in the notification. The price payable for each bottle of different size was determined and mentioned in the notification. We were told at the hearing that even at a modest estimate the turnover could be expected to be in the neighbourhood of Rs 50 crores and that the prices were so determined that the margin of profit would be in the region of about 10 per cent. It appears that the government had the cost structure worked out by a firm of chartered accountants who recommended a margin of profit of 17 per cent but the government decided that 10 per cent was sufficient and reasonable. The notification stated that the bottling units would be supplied arrack in bulk quantity from the warehouses, feeding centres or distilleries and that the arrack would have to be bottled in the bottling units. Further details of the procedure to be followed were also mentioned in the notification and it was stipulated that the working of the blending units would be governed by the provisions of the Karnataka Excise Act Excise Act and Rules. It was mentioned that the provisions of the Karnataka Excise (General Conditions) Rules would also apply. The period for which the arrangement would be in force was stated to be four years, that is, July 1, 1984 to June 30, 1988, in the first instance. Every application was required to be accompanied by a draft of Rs 10,000 and it was further made a condition that successful applicants would have to make a cash deposit of Rs 50,000 within five days of the date of acceptance of his offer. The successful applicant would be issued a bottling licence according to the rules on payment of the prescribed licence fee. April 21, 1984 was prescribed as the last date for receipt of applications.

5. One of the very curious features of the advertisement which attracts immediate attention is that the applications for bottling arrack were invited from all "intending persons/firms" without any restriction whatsoever. Though under the Karnataka Excise (Bottling of Liquor) Rules, as they stood at the relevant time, bottling licences could only be granted to persons already connected with the liquor trade, the advertisement did not confine its invitation to such persons only. That was indeed curious but things got "curiouser and curiouser" as Alice would certainly have said and as we shall presently see.

6. In response to the advertisement, 131 applications were received by the Excise Commissioner. The Excise commissioner then called all the applicants for discussion in order to ascertain their experience and financial stability. At the conclusion of the discussions and after obtaining Intelligence reports, the Excise Commissioner proceeded to make his recommendation to the

government. The Excise Commissioner after referring to the qualifications etc., of each of the 131 applicants stated as follow :

> 131 applicants were examined with reference to the interview and other informations available and the details are as under :
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> Sl. Nos. 25, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 63, 64, 78, 85, 86, 89, 95 and 122 are distillers and hence they need not be considered. Sl. Nos. 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 56, 57, 58, 59, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 79, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 117, 118, 123, 124, 125, 126, 128, 129, are connected with the trade of arrack and among them Sl. Nos. 9 to 12, 13 to 20 have no base in Karnataka and they are said to be trading in bottling, blending etc., or arrack in Tamil Nadu and Kerala.

Similarly Sl. Nos. 1, 114, 119, 120 and 127 are outsiders who have not shown any proof of base in Karnataka. These also need not be considered.

In the result others namely Sl. Nos. 5, 23, 74, 102, 112 121, 130, 131 who have got background of trade in bottling and blending and also financially sound and are found to be capable of handling the work if entrusted to them may be considered for bottling work and their names may be recommended for approval.

We see that the Excise Commissioner rejected twenty-eight applications on the ground that the applicants were distillers, ninety applications on the ground that the applicants were connected with the liquor trade and five applicants on the ground that there was no proof that they had a base in Karnataka. Eight applications remained and they were recommended to be chosen for the award of the bottling contracts. Earlier we remarked that things were to become "curiouser and curiouser". They did. Under the Karnataka Excise (Bottling of Liquor) Rules, distillers and persons connected with the liquor trade were those that were eligible for the grant of bottling licences and strangers to the liquor trade were not eligible for the grant of bottling licences. But there the Excise Commissioner was, excluding from consideration for the award of the bottling contracts those persons who were eligible for the grant of bottling licences and recommending such persons as were not eligible for the grant of bottling licences under the rules, an unusual, wilful and perverse way of exercising the power of distributing State largesse. It was suggested before us that the public exchequer would not suffer in any way since the bottling charges were to be borne by the arrack contractors and not by the State. So were the huge profits to be made by the contractors. It would make no difference that the bottling charges were to be borne by the contractors since the award of bottling contracts by the State would enable them to make huge profits. The burden of the bottling charges would of course be passed on ultimately to the poor consumer. Thus even if the award of the bottling contracts was not at the expense of the exchequer, there could be no question that what was done was the distribution by the State of favours loaded with bounty by way of enabling the recipients of the favours to earn enormous profits. Proceeding further we may also mention at this stage itself that the recommendation of the Excise Commissioner to award the bottling contracts to the eight 'chosen' persons was not wholly consistent with the very principle on which he had excluded as many as 118 out of 131 applications from consideration. One of the successful applications (serial No. 73) was that submitted by T.V. Sarangadharan, who was already an excise contractor and who, therefore, was ineligible from being considered on the very principles

enunciated by the Excise Commissioner in his recommendation. In fact, 10 applications (Nos. 58, 59 and 60 to 67) submitted by this very gentleman, T.V. Sarangadharan, were rejected by the Excises Commissioner by the application of that principle. It is strange that while 10 applications by the same person were rejected on the ground that he was connected with the liquor trade, the eleventh application by that very person should have been granted without a word to indicate the sudden departure from the principle or the reason for the departure. An attempt was made to explain the choice made in favour of Sarangadharan on the ground that he had an existing bottling unit and that he had been voluntarily bottling arrack in the previous years. Apart from the fact that this ground was not mentioned the report of the Excise Commissioner, it does not explain why then the ten other applications of Sarangadharan were rejected, nor does it explain why the applications of the Mysore Sugar Company (a public sector undertaking) was rejected on the ground that it was connected with the liquor trade despite the fact that this company, like Sarangadharan, had voluntarily bottled the arrack supplied or sold by it in previous years. To add to it, the Mysore Sugar Company was also a public sector undertaking.

7. We gather from the counter-affidavit filed on behalf of the Excise Commissioner and the Government of Karnataka that it was thought desirable to award the bottling contracts to persons unconnected with the manufacture and also (sic sale) of arrack as that would prevent the possibility of adulteration and short measurement. In their own words, they have stated in their counter before the High Court as follow :

> It is felt that as far as possible, the work of bottling of arrack should be entrusted to an Indian agency which is not connected with the manufacture of arrack or rectified spirit to avoid any possibility of adulteration and short measurement. It was thought that if the work of bottling of arrack is entrusted to a third person unconnected with the manufacture of arrack or sale of the same, it would be far easy to check short measurement, adulteration and also prevent evasion of excise duty.

It would be possible to appreciate and commend the stand taken by the Government of Karnataka if such a policy decision had been taken by the government before inviting applications for the bottling contracts and the rules had been suitably amended. Apart from the statement in the counter, no such decision was brought to our notice. Whether such a decision was taken by way of a resolution of the Cabinet or by the issue of a GO or by a communication to the Excise Commissioner, we have no information whatsoever. Assuming that there was any such decision, it was clearly in the teeth of the Karnataka Excise (Bottling of Liquor) Rules which contemplated the grant of bottling licences to persons connected with the trade and not to strangers to the trade. If any prior policy decision had been taken by the Government of Karnataka to award the bottling contracts to strangers to the liquor trade and not to persons connected with the trade, nothing would have been simpler than to make necessary amendments to the rules before giving effect to the policy. Government and the governed are equally bound by the laws. And the advertisement inviting applications could have restricted the applications to applicants who were unconnected with the liquor trade. As we shall presently point out it was only subsequent to the award of the bottling contracts that it was thought necessary to amend the Karnataka Excise (Bottling of Liquor) Rules. It looks to us that the so-called policy decision was only an afterthought tailored to meet the situation and the principle purported to be enunciated by the Excise Commissioner was a mere pretext designed to eliminate all except the chosen.

8. The correspondence which followed between the Excise Commissioner and the government is also revealing. On receipt of the letter of the Excise Commissioner containing his recommendation,

the Secretary to the government wrote to the Excise Commissioner a letter in which he stated :

> The process of establishing bottling plants at different places would inevitably involve financial outlays and time. There are no details forthcoming regarding the creditworthiness of these individuals who are to be entrusted with the bottling work. No information is forthcoming regarding the infrastructure facilities available with them and the time frame within which they can set up the bottling plants. The same may kindly be furnished.

Instead of placing before the government the material if any which was available to him to judge the creditworthiness of the contractors and the availability of infrastructural facilities to them, the Excise Commissioner sent what would strike anyone as an evasive reply. He said :

> The process of establishing of bottling plant in different places involve financial outlays toward the cost of land, buildings, machinery etc. Before finalising these proposals I called all the applicants for discussions in my office to find out their creditworthiness and capability for doing the work. The proposals sent by me to the government are on the basis of my assessment of the creditworthiness and capacity of the individuals to provide the infrastructure facilities required for taking up bottling of arrack without undue delay.

The Secretary who was obviously dissatisfied with the reply of the Commissioner : so, in his note to the Excise Minister he stated :

> There is hardly any data on record either regarding the creditworthiness of the individuals/firms companies recommended by the Excise Commissioner or their capabilities to undertake a job of the magnitude and the proportions in question. No information is also forthcoming on the infrastructural facilities at their disposal. As the entire arrack is to be sold in bottles, their operational efficiency would have a very significant bearing on the excise revenues of the State. In the absence of data, it is difficult to come to any conclusion on this issue.

Despite the note of the Secretary, the Minister accepted the recommendation of the Excise Commissioner and also added that he had already discussed the proposal with the Chief Minister and that the latter had given his clearance to the proposals, and, therefore, necessary orders might be issued approving the proposals of the Commissioner. When the matter went to the Finance Department, the Deputy Secretary (Finance) made a note stating :

> Home Department is also requested to take into consideration the following observations:
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> (a) It is not clear from the file as to how the Excise Commissioner had selected 9 bottling contractors out of 131 firms which have submitted their offers. This has to be brought on record clearly. Otherwise, the selection is subject to challenge in the court of law.

9. The protest of the Deputy Secretary was ignored, the political arm of the executive prevailed over the bureaucratic arm of the executive, as it always happens when the question is of distribution of government patronage and, the impugned order of the government was issued on September 27, 1984 allotting the bottling contracts to the eight persons recommended by the Excise Commissioner.

On October 26, 1984, M/s Pramila Plastics filed a writ petition (No. 17011 of 1984) in the Karnataka High Court questioning the GO. Some other persons already engaged in the liquor trade whose applications had been rejected by the Excise Commissioner also field writ petitions questioning the GO in November, 1984. At that stage it appears to have dawned on the powers that it was necessary to amend the Karnataka Excise (Bottling of Liquor) Rules. So the Excise Commissioner wrote to the government on November 6, 1984 a letter in the following term :

> I write to state that government have approved in their GO No. HD 24EAA 84 dated September 29, 1984 for the sale of arrack in sealed bottles. In order to implement the orders of government contained in the above government order, the amendments for the above rules are necessary. Unless these amendments are issued, the bottling units approved by the government in the above government order cannot be issued licences for bottling units. Hence I request that the enclosed draft amendments may kindly be approved and issued by the government.

On November 23, 1984, the government issued a notification containing a draft amendment of Rule 3 and inviting objections, if any, by the public to be made before November 28, 1984. There is some controversy as to the date on which notification dated November 23, 1984 was published in the gazette, that is whether it was published on twenty-third itself or on twenty-ninth, that is after the prescribed date for filing of objections. Even if it was published on twenty-third, the there hardly any time for anyone to make any objections since only five days' time was given. The draft rule was finalised and the amended rule was published on November 30, 1984. Later it was discovered that an amendment of Rule 4 was also necessary and that rule was accordingly amended in April, 1985. The almost surreptitious manner in which Rule 3 was amended subsequent to the filing of some of the writ petitions also appears to give an indication regarding the anxiety of the government to favour the chosen ones with the bottling contracts.

10. More writ petitions were thereafter filed, some by rival applicants for the bottling contracts and some by public spirited citizens determined to expose governmental misconduct. We were told by Shri Venugopal that the preliminary hearing of the writer petitions was postponed twice and that a rule nisi was issued only after an amendment of one of the writ petitions by the inclusion of an allegation of mala fides against the Chief Minister whose son-in-law was stated to be interested in some of the firms to whom the contracts had been awarded. The allegation against the Chief Minister has been found to be unfounded and false. According to Shri Venugopal while the institution of Public Interest Litigation is a good thing in itself, those professing to be public-spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others and so the court must refuse to act at the instance of such pseudo-public spirited citizens. We agree with Mr Venugopal. But, simultaneously, the court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and bought out clearly, the court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the court is concerned with the balancing of interests, and we are satisfied that in the present case the High Court had little option but to act as it did and it would have failed in its duty had it acted otherwise and refused to issue a writ on the ground that the allegation of personal bias against the Chief Minister was false. Had that been done the public mischief perpetrated would have been perpetuated. That is not what courts are for.

11. To continue, two of the writ petitions filed by rival applicants were settled between the parties at the time of the preliminary hearing and were so disposed of. After the cases were partly argued at

the final hearing, permission was sought to withdraw three other writ petitions filed by rival applications. The result was that only two writ petitions were effectively argued and they were allowed by the High Court on the ground that the order of the government was arbitrary, capricious etc. The High Court however held that the allegation of personal bias made against the Chief Minister was false. The court did not record any finding on the question of 'mala fides' on the ground that it was unnecessary. The State Government has gracefully accepted the judgment of the High Court but some of the persons in whose favour the contracts had been awarded have preferred these appeals by special leave.

12. Shri K.K. Venugopal, Dr Chitale and Shri G.L. Sanghi learned counsel for the appellants submitted that the "bottling scheme" introduced by the government in 1984 was entirely outside the Karnataka Excise (Bottling of Liquor) Rules, and that Rule 3 had no application to the persons seeking or obtaining bottling contracts under the scheme. They argued that the Bottling of Liquor Rules as they stood before October, 1984 were applicable only to those who were engaged in the manufacture and sale of liquor and who desired to bottle such liquor for sale. They were not applicable and Rule 3 was not attracted to the case of persons who were merely engaged in the business of bottling liquor, having nothing whatever to do with the manufacture or sale of liquor. It was said that those who were engaged in the manufacture and sale of liquor had the option to bottle or not to bottle the liquor manufactured or sold by them and if they preferred to bottle the liquor they were obliged to observe the rules but others who neither manufactured nor sold liquor had not to observe the rules. It was also submitted that the persons who merely bottled liquor at the instance of the government were no more than the agents of the government appointed for the purpose of doing a jobwork, and since it would not be necessary for the government to obtain bottling licences, it would be equally unnecessary for the agents of the government to obtain bottling licences. It is patent that these submissions are submissions of desperation. It is impossible to agree with them. Even the government did not think that the rules had no application and that Rule 3 was not attracted. The advertisement inviting applications from intending bottlers was quite clear that licences for bottling 'as per rules' would have to be obtained on payment of the prescribed licence fee of Rs 1000 each. The necessity for obtaining licences under the Bottling of Liquor Rules by the persons to whom the bottling contracts had been awarded was also realised by the government and it was for that reason that Rule 3 came to be amended. We are unable to understand how despite the prohibition contained in Section 13(1)(e) anyone can engage himself in the business of bottling liquor without obtaining a licence under the Rules. It is true that Section 13(1)(e) uses the expression "bottling liquor for sale" and the expression 'to bottle' is itself defined to mean "the transfer of liquor from a cask or other vessel to a bottle for the purpose of sale". But there is no justification for the implication sought to be read into Section 13(1)(e) read with the definition of 'to bottle' that only a bottler who himself sells the liquor bottled by him is subject to and governed by Section 13(1)(e) and the Rules and not a bottler who merely bottles liquor for others. Bottling liquor for sale may be for selling the liquor by the bottler himself or by someone else for whom the bottling has been done by the bottler. In either case it is bottling liquor for sale. All that is necessary is that the liquor must be meant for sale. It may be that occasionally liquor may be bottled not for sale but for private consumption. Manufacture of liquor for private or domestic consumption may be permitted under the excise laws and where so permitted, the liquor may be bottle without obtaining a separate bottling licence but where the liquor which is bottled is intended to be sold whether by the bottler or by someone else at whose instance the bottling is done, the bottler must necessarily have a bottling licence without which he cannot engage himself in the business of bottling liquor meant for sale. Bottling of liquor meant for sale by whosoever is without doubt regulated by the Bottling of Liquor Rules. Nor is there the slightest substance in the submission that

the persons who have been awarded the bottling contracts are mere agents of the government and so they are not required in law to take out licences under the Rules. They are not 'instrumentalities' of the government; they are independent contractors who deal with the government at arm's length. They are as much agents of the government as contractors of the Public Works Department who build roads and bridges or, for that matter, the arrack vendors in whose favour the government parts with its exclusive privilege of selling liquor !

13. Though considerable argument appears to have been advanced before the High Court on the question of locus standi, the question was rightly not raised before us. Shri Venugopal however argued that Public Interest Litigation ceased to be in the public interest as soon as the relator wilfully indulged in false allegations and that should be a sufficient ground not to warrant the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution. We have already considered this submission and rejected it.

14. A special argument was advanced on behalf of Sarangadharan who it was said was also eligible under the rules as they then existed and who was entitled to claim preference in view of his previous bottling experience. But that was not the ground on which the contract was awarded to him and it is not open to us to uphold the award in his favour for altogether different reasons, ignoring the claims of over a hundred other applicants of whose claims to preference we are truly ignorant. Nor is it within our province to weigh the claims and the preferences.

15. At the conclusion of the argument, Shri Venugopal made an appeal that his clients may be permitted to continue to work the contracts for some reasonable time so that the heavy investments made by them may not go waste. We do not see how we can do that. All the appeals are dismissed with costs.

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