

SUPREME COURT OF INDIA

The State of Tamilnadu Rep. By Its Secretary Home, Prohibition & Excise Dept & Ors.

Vs.

K.Balu & Anr.

C.A.No.12164-12166 of 2016

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and L.Nageswara Rao,JJ.,)

15.12.2016

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP (Civil) No.14911-14913 of 2013

1. Delay condoned.

2. Leave granted.

3. The issue which we address in this case is about the presence of liquor vends on national and state highways across the country. The backdrop to the case is provided by alarming statistics on the occurrence of road accidents. They have claimed human lives and caused debility and injury. Both on a personal scale (in terms of the injuries and loss of life) as well as in a social context, restitution in the form of mandatory awards of compensation can never undo the trauma of loss and the pain of suffering. The law can only imperfectly alleviate the consequences of road accidents. In terms of personal suffering caused to individuals and families as well as in terms of deprivation caused to society of its productive social capital, road accidents impose unacceptable costs. We will analyse the issues which have been raised in this case on the basis of facts which are not in dispute and on the foundation of policy statements of the Union government which have been formulated after careful consideration. In doing that, the court must ensure that the parameters for the exercise of its jurisdiction are confined to the familiar terrain of enforcing the constitutional right to lead a life of dignity and self-worth.

4. The Union and the State Lists of the Seventh Schedule to the Constitution distribute (in conjunction with Articles 245 and 246) legislative jurisdiction over the highways which traverse the length and breadth of India, between Parliament and the State Legislatures. The constitutional pattern in relation to the distribution of legislative heads is replicated in this area : what is National is reserved to Parliament while that which has a state-centric orientation is reserved to the state legislatures. Entry 23 of the Union List is thus :

“23. Highways declared by or under law made by Parliament to be national highways”.

Entry 13 of the State List is thus :

“13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.”

5. The Union Ministry of Road Transport and Highways in its Transport Research Wing has brought out a publication titled “Road Accidents in India - 2015”. The cover depicts in rather graphic terms vehicles involved in car crashes. There is a large group of persons assembled in the foreground, an ambulance bearing the ‘108’ logo and a police car. Familiar sights on Indian roads. The publication tells us that:

“11.1 During 2015, within the category of drivers’ fault, accidents caused and persons killed due to ‘Exceeding lawful speed’, accounted for a high share of 62.2 per cent (2,40,463 out of 3,86,481 accidents) and 61.0 per cent (64,633 out of 1,06,021 deaths), respectively.

However taking into account the total road accidents and total road accident killings, the share of over speeding comes to 47.9 per cent (2,40,463 out of 5,01,423 accidents) and 44.2 per cent (64,633 out of 1,46,133 deaths) respectively.

II. 2 Intake of alcohol/drugs by drivers resulted in 16,298 road accidents and 6,755 fatalities in 2015 within the category of drivers’ fault, intake of alcohol/drugs accounted for 4.2 per cent and 6.4 per cent respectively. However taking into account the total road accidents and total road accident killing, the share of intake of alcohol/drugs comes to 3.3 per cent (16,298 out of 5,01,423 accidents) and 4.6 per cent (6,755 out of 1,46,133 deaths) respectively.”

6. The total number of persons killed in road accidents on national highways was 48,768 in 2012 and 51,204 in 2015. In 2014, on the national highways there were 1.24 lakh accident cases resulting in 1.35 lakh persons injured and 46,110 deaths. During the same year, on state highways, there were 1.13 lakh accident cases resulting in 1.24 lakh injured and 39,352 deaths. The expressways witnessed 4,208 accident cases, 4,229 injured and 1,802 deaths. . Figures are also available of the distribution of road accidents by causes during 2014. 1.38 lakh persons were injured in road accidents involving dangerous or careless driving and 42,127 deaths occurred. Injuries caused in accidents due to over-speeding stood at 1.81 lakh while there were 48,654 deaths. 7,307 accident cases involving driving under the influence of drugs/alcohol were registered resulting in 7,398 injuries and 2,591 deaths. In regard to the figures of death or injury due to drunken driving there is a tendency to under

estimate or under—report in order not to impede the right of victims and/ or their legal heirs to receive compensation.

7. Now in this background, it would be necessary to elucidate the policy adopted by the Union government. The National Road Safety Council (NRSC) is an apex body for road safety established under Section 215 of the Motor Vehicles Act, 1988. NRSC unanimously agreed in a meeting which was held nearly thirteen years ago on 15 January 2004 that licences for liquor shops should not be given along the national highways. The Ministry of Road Transport and Highways (MoRTH) issued a circular to all the state governments advising them to remove liquor shops situated along national highways and not to issue fresh licenses. Since 26 October 2007, when an advisory was issued, MoRTH has consistently advised all the state governments to remove liquor shops and not to issue fresh licences to liquor vendors along national highways.

8. On 1 December 2011, MoRTH in an advisory to the Chief Secretaries of all the States and Union Territories noted that India had reported the highest number of road accident fatalities in the world and data of 2009 indicated that a road accident occurred every four minutes. Drunken driving, it was stated, was a leading cause of road accidents with as many as 27,152 road accidents being caused under the influence of alcohol in that year. The advisory drew attention to the provisions of Section 185 of the Motor Vehicles Act, 1988 and solicited the following enforcement action :

“(i) Strict enforcement of section 185 of MV Act 1988 preferably pursuing cases in various courts for award of penalty of imprisonment followed by adequate publicity which will together act as a deterrent for drunken driving.

(ii) Removal of Liquor shops along National highways.

(iii) No fresh license may be issued to Liquor vendors to open shops along National highways.

(iv) Wherever licenses have been given in the past to open liquor shops along National highways, such cases may be reviewed and corrective action taken under intimation to this Ministry.”

Section 185 to which a reference has been made in the above circular provides as follows :

“185. Driving by a drunken person or by a person under the influence of drugs. Whoever, while driving, or attempting to drive, a motor vehicle,--

- a. has, in his blood, alcohol in any quantity, howsoever small the quantity may be, or
- b. is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with

imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.--For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

Section 185 is indicative of a Parliamentary intent to follow a zero-tolerance policy towards driving under the influence of alcohol. The position was illustrated in another advisory dated 18 March 2013 of MoRTH to the Chief Secretaries of States and Union Territories where it was stated that in 2011, 1.42 lakh people were killed in 4.9 lakhs road accidents. 24,655 road accidents were caused due to drunken driving resulting in 10,553 deaths and injuries to 21,148 persons. The advisory requested the removal of all liquor vends on national highways and a ban on the issuance of fresh licences on the ground that “prevention is better than cure”.

9. In an advisory dated 21 May 2014, MoRTH stated that in 2012, 1.38 lakh people were killed in 4.9 lakh road accidents. 23,979 road accidents were caused due to drunken driving resulting in 7835 deaths and injuries to 23,403 persons.

10. The Union government has constantly issued advisories setting out, as a matter of policy, its position.

11. The material which has been placed on record indicates that:

“(i) India has a high rate of road accidents and fatal road accidents - one of the advisories states that it is the highest in the world with an accident occurring every four minutes;

(ii) There is a high incidence of road accidents due to driving under the influence of alcohol;

(iii) The existence of liquor vends on national highways is in the considered view of the National Road Safety Council and MoRTH - expert authorities with domain knowledge - a cause for road accidents on national highways;

(iv) Advisories have been issued to the State Governments and Union Territories to close down liquor vends on national highways and to ensure that no fresh licences are issued in the future. The reason why these advisories are confined to the national highways is because of the distribution of legislative competence between the Union

and the States under the Seventh Schedule to the Constitution. State highways fall under the domain of the states.”

12. The figures which are available on the record indicate that the occurrence of a large number of road accidents is not a phenomenon confined to national highways nor is the prevalence of road accidents, including fatalities, confined only to the national highways. Both the national highways and state highways share a common experience of an unacceptably high number of road accidents, the prevalence injuries and fatalities; drunken driving being one of the major causes. Hence, the content of the advisories which have been issued by the Union government as well as their basis, rationale and foundation would equally apply to state highways. Human life is precious. As the road network expands in India, road infrastructure being an integral part of economic development, accidents profoundly impact on the life of the common citizen. For a nation on the cusp of economic development, India can well avoid the tag of being the accident capital of the world. Our highways are expanding, as are the expressways. They provide seamless connectivity and unheralded opportunities for the growth of trade and industry and for the movement of goods, persons and capital. They are the backbone of the freedom of trade and commerce guaranteed by Article 301 of the Constitution. Our highways are dotted with sign boards warning of the dangers of combining speed and alcohol. Together, they constitute a heady cocktail. The availability of liquor along the highways is an opportunity to consume. Easy access to liquor shops allows for drivers of vehicles to partake in alcohol, in callous disregard to their own safety and the safety of others. The advisories of the Union government to the states are founded on a logical and sound rationale.

13. We are conscious of the fact that the policy of the Union government to discontinue liquor vends on national highways may not eliminate drunken driving completely. A driver of a motor vehicle can acquire liquor even before the commencement of a journey or, during a journey at a place other than a national or state highway. The law on preventing drunken driving also requires proper enforcement. Having said this, the court must accept the policy of the Union government for more than one reason. First and foremost, it is trite law that in matters of policy, in this case a policy on safety, the court will defer to and accept a considered view formed by an expert body. Second as we have seen, this view of the Union government is based on statistics and data which make out a consistent pattern year after year. Third the existence of liquor vends on highways presents a potent source for easy availability of alcohol. The existence of liquor vends; advertisements and sign boards drawing attention to the availability of liquor coupled with the arduous drives particularly in heavy vehicles makes it abundantly necessary to enforce the policy of the Union government to safeguard human life. In doing so, the court does not fashion its own policy but enforces the right to life under Article 21 of the Constitution based on the considered view of expert bodies.

14. There is no fundamental right under Article 19(1)(g) to trade in liquor. Liquor has been regarded as *res extra commercium* : *State of Bihar v. Nirmal Kumar Gupta*¹, *Amar Chandra Chakraborty, Appellant v. Collector of Excise, Govt of Tripura, Agartala*², *Nashirwar v. State of Madhya Pradesh*³, *Har Shankar v. Deputy Excise and Taxation Commissioner*⁴;

*Secretary to Government, Tamil Nadu v. K. Vinayagamurthy*⁵ *State of Punjab v. Devans Modern Breweries Ltd*⁶. *State of Kerala v. Kandath Distilleries*⁷.

15. Liquor licences in respect of potable alcoholic liquor are granted by the state governments. Entry 51 of the state list provides for duties of excise on alcoholic liquors for home consumption manufactured and produced in the state and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. The power of the states to grant liquor licences is undoubted. The issue is whether such liquor licences should be granted on national and state highways at the cost of endangering human lives and safety. In our view, which is based on the expert determination of the Union government, we hold that the answer should be in the negative. Though, excise duty is an important source of revenue to the states, a prohibition on the grant of liquor licences to liquor shops on the national and state highways would only regulate the grant of such licences in a manner that would ensure that the consumption of alcoholic liquor does not pose dangers to the lives and safety of the users of national and state highways. May we also remind ourselves that among the Directive Principles contained in the Constitution is that in Article 47:

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

16. Well over a decade ago, the Union government had formulated for consideration and adoption by the states a document titled “Model Policy/taxation/act/rules for alcoholic beverages and alcohol”. The Model Policy inter alia made general provisions relating to liquor vends. Para 92(2) of the Model Policy inter alia provides as follows:

“(2) No licence for sale of liquor shall be granted to a retail vend selected within a distance of 100 metres from any religious or educational institution or hospital or outside the inhabited site of village /town/city or any Office of the State/Central Government or Local Authorities or within a distance of 220 metres from the middle of the State/National Highways.

Explanation - For the purpose of this rule:

(a) “National Highway” or “State Highway” shall not include such parts of the National Highway or State Highway as are situated within the limits of Municipal Corporation, City or Town Municipal Council or such other authority having a population of twenty thousand or more.”

This Model Policy provided for a minimum distance from the state/national highways for locating liquor shops. However, an exception was carved out to the effect that the national or

state highways would not include such parts of them as are situated within the limits of the local authorities with a population of 20,000 or more. By an order of this Court dated 8 September 2015, the attention of the authorities was drawn to the fact that the model policy had been prepared nearly a decade earlier and several decisions of the High Courts have been delivered since. Hence, the court opined that it was necessary that the policy is revisited by the states and union territories and by the Union government together in regard to the sale of liquor and alcoholic beverages in the proximity of national and state highways. MoRTH however has informed the court on affidavit that a model policy on alcoholic beverages and alcohol does not fall within its purview, and hence it may not be in a position to review the model policy. MoRTH while stating this has emphasised its considered view and position based on the statistics of road accidents that liquor shops should not be situated along national highways. We see no rational basis to exclude stretches of national highways and state highways which fall within the limits of a municipal or local authority (with a population exceeding a stipulated figure) from the ambit of the suggested prohibition. Where a national or state highway passes through a city, town or through the area of jurisdiction of a local authority, it would completely deny sense and logic to allow the sale of liquor along that stretch of the highway. Such an exclusion would defeat the policy since the presence of liquor shops along such stretches of a national or state highway would allow drivers to replenish their stock of alcohol, resulting in a situation which the policy seeks to avoid in the first place. Once it is an accepted position that the presence of liquor vends along the highways poses a grave danger to road safety an exception cannot be carved out to permit the sale of liquor along a stretch of the highway which passes through the limits of a city, town or local authority. Such an exception would be wholly arbitrary and violative of Article 14.

17. During the course of the hearing, learned counsel appearing on behalf of the State of Punjab stated before the court that based on the model policy the Punjab Excise (Amendment) Act, 2016 was brought into force on 28 March 2016. Section 26A of the Punjab Excise Act, 1941 provides as follows:

"26-A. (1) The location of the liquor vends shall be regulated by the Government: Provided that this section shall be applicable only to liquor vends situated in areas adjoining the National Highways and State Highways for consumption, off the premises. (2) No licence for sale of liquor shall be granted to a liquor vend situated within the road reservation of National Highways and State Highways and beyond road reservation neither the liquor vends nor their entry points shall be visible or directly accessible from the National Highways and State Highways. Explanation.- (i) "Visibility" means existence of any signboard, direction mark, display of stock of liquor, display of rates or any direct/indirect invitation to the commuter travelling on such Highway; and (ii) "Directly Accessible" means such liquor vend shall not be directly approachable from the National Highway and State Highway. (3) The restrictions referred to in sub-section (2) shall not apply to the liquor vends situated in the areas adjoining to National Highway and State Highway, passing through the limits of Municipal Corporation/Municipal Council/ Municipal Committee/ Notified Area Committee/ Nagar Council/ Cantonment Board or any other Authority having a

population of twenty thousand or more."

18. Explanation 3 by its operation merely confers an enabling power upon the state government to grant liquor licences in the area as described therein. We are of the view that the exercise of this enabling power by the State government must not obstruct or impede the overwhelming public interest in ensuring that the sale of liquor along national or state highways should be discontinued having regard to the danger to road safety.

19. These proceedings have arisen under Article 136 of the Constitution from the judgments of the High Courts at Madras and Punjab and Haryana respectively. The Madras High Court was seized with a public interest litigation seeking the removal of retail outlets for liquor on national and state highways, contrary to the advisory of the Union government dated 1 December 2011. The High Court noted that in the state of Tamil Nadu liquor shops along the highways are being run by Tamil Nadu State Marketing Transport Corporation (TASMAC). Before the High Court, the Managing Director of TASMAC stated that:

“It was also submitted that TASMAC Ltd has been taking all prudent steps to remove the shops located in Highways and has instructed all the Senior Regional Managers to refrain from giving new licenses to shops that are proposed to be located on the Highways and also shift the existing shops to some other place without violating the Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and other relevant laws.”

The affidavit stated that nearly 504 shops are situated along national highways and sometime would be required to relocate them. It was stated that 75 shops have been shifted and a new location for 335 shops had been identified. Six months' time was sought for shifting the shops; the affidavit having been filed in March 2013. The High Court by a judgment and order of its Division Bench dated 25 February 2013 granted time until 31 March 2013 for the relocation of existing liquor shops being run on national/state highways. This order of the High Court has been questioned by the State of Tamil Nadu and TASMAC.

20. During the pendency of these proceedings, this Court by its order dated 7 May 2013 directed that liquor vends along national highways be removed by 14 August 2013. Notice was issued, confined to the closure of liquor vends along state highways. An affidavit was filed before this Court on 22 August 2013 by the state government stating that 504 TASMAC retail liquor shops along the national highways have been shifted. The additional affidavit filed by the state on 29 April 2013 sets out the position in regard to state highways. The total length of state highways is divided into five regions namely, (i) Chennai; (ii) Coimbatore (iii) Madurai; (iv) Salem; and (v) Trichy and traverses 9520.4 kilometres. The total number of shops situated thereon is stated to be 1731. 839 liquor shops out of them are situated in market areas abutting the state highways in towns, municipalities and corporations while 892 are liquor shops in rural areas abutting the state highways. These figures which have been disclosed by the state government indicate the serious nature of the problem. The proliferation of liquor shops on state highways (1731 shops over 9520 kilometres) indicates the easy availability of liquor on the state highways. Evidently within a distance of a few

kilometres a liquor shop is available to cater to the demand of the users of the highways. There can be no valid distinction between a national highway and state highway insofar as the location of liquor shops abutting the highway is concerned. Accidents take place both on national and state highways and the easy availability of liquor possess a grave danger to the safety and lives of those who use these highways.

21. Insofar as the State of Punjab is concerned, the petition for special leave has been filed by the state government against a judgment and order of a Division Bench of the High Court dated 18 March 2014. Like the case before the Madras High Court, the proceedings before the Punjab and Haryana High Court were instituted in public interest (in this case by the Arrive Safe Society of Chandigarh) seeking directions for the removal of liquor vends from highways. The High Court directed the State of Haryana to ensure in its liquor policy that no liquor vend shall be located along the national highways/state highways and that liquor shops are not accessible or visible from those highways or from the service lanes running along such highways. The High Court rejected the case of the state that the prohibition should be confined only to the national highways. The High Court has, in our view, justifiably held that it can hardly be contended that drunken driving is not permissible on national highways but does no harm on state highways. In relation to the States of Punjab as well as Haryana the High Court has held that the prohibition would apply to state and national highways

22. For the reasons that we have already indicted, we have come to the conclusion that the views of the High Court of Madras and the High Court of Punjab and Haryana are unexceptionable. No distinction can be made between national and state highways in regard to the location of liquor shops. In regulating the use of national and state highways, the safety of the users of the road is of paramount concern. It would defy common sense to prohibit liquor shops along national highways while permitting them on state highways. Drunken driving as a menace and as a cause of road accidents is a phenomenon common to both national and state highways. Nor, is it a plausible defence to urge that while it is impermissible to drink and drive on a national highway, it is permissible to do so on a state highway.

23. Moreover, we find merit in the restrictions suggested by the Punjab and Haryana High Court that the prohibition should extend not merely to the national and state highways but must be so appropriately tailored so as to ensure that the policy is not defeated by locating liquor shops in close proximity of the highway. A restriction that the shop should not be accessible or visible from the national or state highways or from a service lane along such highways is necessary to ensure that the policy is not surreptitiously violated. Our attention has been drawn during the course of the hearing to a report filed by the OSD Vigilance before the High Court indicating that the prohibition was sought to be defeated by setting up liquor vends which, though not visible from the highway, were situated in close proximity with signboards indicating their presence. The entry to the shop is camouflaged or placed at the rear portion to evade the judicial direction. A detailed survey has been made by the OSD in which observations in regard to liquor shops located along the highway have been recorded. We may also advert at this stage to a letter dated 4 August 2012 of the Project Director of National Highways Authority of India (NHAI) to the Deputy Commissioners of

various regions in Punjab. The letter highlights that on a stretch of 291 kilometres on the Panipat-Jalandhar section of NH-1, there are as many as 185 liquor shops (though in comparison the trauma centres and hospitals where immediate medical service can be provided to road accident victims is almost negligible). Many of the liquor shops have encroached on national highway land. Though, NHAI has sought the removal of these shops, “concrete action” is yet to be taken due to the lack of support from various quarters. Liquor shops, the Project Director notes, are owned by influential people making the removal of unauthorised encroachment impossible without the support of the district administration.

24. For all these reasons, we have come to the conclusion that no licences for liquor shops should be allowed both on the national and state highways. Moreover, in order to ensure that this provision is not defeated by the adoption of subterfuge, it would be necessary to direct that no exception can be carved out for the grant of liquor licences in respect of those stretches of the national or state highways which pass through the limits of any municipality corporation, city, town or local authority. Necessary safeguards must be introduced to ensure that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500 metres from the outer edge of the highway, or from a service lane along the highway.

25. However, we have also duly borne in mind the practical difficulty which has been expressed on behalf of the licence holders (including those in the town of Mahe) and the states that there are licences which have been duly renewed and whose term is still to expire. The states apprehend that premature termination may lead to claims for refund of licence fee for the unexpired term, with large financial implications. Hence we would direct that current licences may continue for the existing term but not later than 1 April 2017.

26. We accordingly hereby direct and order as follows:

“(i) All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;

(ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a

distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

(vi) All States and Union territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned inter alia to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution.

25 We dispose of the appeals and transfer petitions in the above terms. There shall be no order as to costs.

¹(2013) 2 SCC 0565

²(1972) 2 SCC 0442

³(1975) 1 SCC 0029

⁴(1975) 1 SCC 0737

⁵(2002) 7 SCC 0104

⁶(2004) 11 SCC 0026

⁷(2013) 6 SCC 0573