

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO.68 OF 2015
(Anil Shamsundar Agre vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri S.P. Bhandarkar, Advocate for petitioner.
Shri S.G. Aney, Advocate General with Smt. B.H.
Dangre, Government Pleader for respondents.

CORAM : B.R. GAVAI AND
P.N. DESHMUKH, JJ.

DATED : FEBRUARY 4, 2016

The petitioner seeks a writ of mandamus directing respondents to immediately impose total prohibition all over the State of Maharashtra on manufacture, sale and consumption of all types of liquor, cigarettes and tobacco products as well as intoxicating drinks and drugs, which are injurious to health.

Shri Bhandarkar, learned Counsel appearing on behalf of petitioner, submits that under Article 47 of the Constitution of India, it is a duty

cast upon the State Government to endeavour to bring about prohibition on the consumption except for medicinal purposes of intoxicating drinks and drugs, which are injurious to health. It is contended that Hon'ble Apex Court itself in the case of Khoday Distilleries Ltd. and others vs. State of Karnataka and others {(1995) 1 SCC 574) has held that to carry on business of intoxicating products is an activity, which is immoral, criminal and injurious to health, safety and welfare of general public. It is, therefore, submitted that State is bound in view of Article 47 of the Constitution to impose total ban on manufacture, sale and consumption of alcoholic drinks and tobacco products.

The learned Counsel for the petitioner further submits that when State has imposed total prohibition on manufacture, sale and consumption of all types of liquor in Wardha, Gadchiroli and Chandrapur Districts, there is no reason why same should not be made applicable to entire State. The learned Counsel relying on Section 139(1)(a) of the Maharashtra Prohibition Act, 1949 submits that power under the said provision has to be exercised

by the State uniformly.

Shri Aney, learned Advocate General appearing on behalf of respondents, submits that whether to impose a ban in the entire State or restrict it to particular Districts or areas is a matter within the domain of policy. It is contended that this Court while exercising its power under Article 226 of the Constitution, cannot direct State to frame a particular policy. The learned Advocate General further submits that only if a policy is framed, this Court will have jurisdiction to decide as to whether the said policy is sustainable in law or not.

With the assistance of learned Counsel for the parties, we have examined the relevant provisions. Article 47 of the Constitution reads thus :

“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.”

Though learned Counsel Shri Bhandarkar has emphasised on the word “duty” used in Article 47 of the Constitution, it cannot be forgotten that Article 47 also forms a part of Part IV of the Constitution. The provisions of Part IV of the Constitution are not enforceable in law. It is only the Legislature and Executive, which are required to take into consideration policy as enshrined in Part IV of the Constitution while making laws or implementing them. No doubt, if a law enacted by the State Legislature or policy framed by the State Government while taking further mandate of Part IV of the Constitution is challenged on the ground that it violates fundamental rights of any of the citizens, then in view of provisions of Article 31-C of the Constitution, the Court should be slow to interfere while examining such enactment or policy decision. However, if Court directs State Government to frame a particular policy to take further mandate of Article 47, it would amount to travelling beyond the powers vested with this Court under Article 226 of the Constitution.

Even while examining the policy,

jurisdiction of this Court is limited. The policy decision of the State can be examined only on the touchstone of arbitrariness and violation of Article 14 or any of the fundamental rights guaranteed in Part III of the Constitution.

Insofar as submission of learned Counsel Shri Bhandarkar that when State Government has imposed prohibition on manufacture, sale and consumption of all types of liquor in three Districts, the same should also be applied to entire Maharashtra is concerned, we find that the said submission would not be sustainable in law. Section 139(1)(a) of the Maharashtra Prohibition Act, 1949 reads thus :

“Section 139 – General powers of State Government in respect of licences, etc. -
(1) Notwithstanding anything contained in this Act or the rules made thereunder, the State Government may, by general or special order -
(a) prohibit the grant of any kind of licences, permits, passes or authorisations throughout the State or in any area.”

It could thus clearly be seen that the said provision itself enables the State to adopt a policy of

prohibition in the entire State or in any area. As such, a reasonable classification is inbuilt in the statutory provision itself. The only requirement is that while making classification, the same has to be done on the basis of intelligible differentia having nexus with the object to be achieved. It is presumed that while imposing prohibition in Wardha, Gadchiroli and Chandrapur Districts, the State must have considered relevant factors and reasons as to why such policy is to be imposed in such Districts. Not only this, imposition of prohibition in the Districts of Gadchiroli and Chandrapur has also undergone judicial scrutiny and this Court has upheld the policy of prohibition in these Districts.

We would be very happy if Legislature or State imposes policy of prohibition in the entire State taking mandate of Article 47 of the Constitution further. However, question is whether while exercising our jurisdiction under Article 226 of the Constitution, can we issue such mandamus ? No doubt, Hon'ble Apex Court as well as various High Courts while exercising their jurisdiction under Article 226 of the Constitution have taken recourse

to judicial activism so that the rights guaranteed under the Constitution are implemented in true spirit. However, if we grant the prayer as made by the petitioner, we will be travelling beyond the scope of judicial activism and entering in the arena of judicial terrorism and adventurism, which is not permissible in law. The petition is without any merit and hence, the same is dismissed.

JUDGE

JUDGE

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