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W.P.No.29936 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.29936 of 2022

and

W.M.P.No.29334 of 2022

BSF-Ex-Servicemen Welfare
Association of Tamil Nadu
Represented by its President S.K.Srinivasan
No.49, Vinayagapuram 2nd Street
M.M.D.A.Colony, Arumbakkam
Chennai-600106.

.. Petitioner

-VS-

1. The District Collector-Vellore District
AH-45, Vellore District Collector Office
Vellore, Vellore District
Tamil Nadu 632 012.
2. Commissioner of Prohibition and Excise
Government of Tamil Nadu
Fort St. George
Chennai – 600005.
3. Government of Tamil Nadu
Represented by its Chief Secretary
Fort St. George
Chennai – 600005.



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the armed forces of the union and also any other armed forces raised or maintained by the Union, which would include BSF as other armed force of the Union of India, which will constitute composite exempted category under the Act subject to the discretion of the 3rd respondent for exercising the power of exemption, but all the same not including BSF and Ex BSF servicemen for the purpose of issue of License and permit under rule 17(b) VI. Titled as License for Possession and sale of liquor to military units and military personnel and Ex-servicemen]-F.L.4(A) License" under Tamil Nadu Liquor (License and Permit) Rules, 1981 is discriminatory, arbitrary, unreasonable classification and violative of Article 14 and 16 of Constitution India for having omitted "Ex-servicemen and BSF and Ex-BSF Personnel in the said Act compounded by the Notification of the provisions under Rule 17 (b) VI. Titled as "Licence for possession, and sale of liquor to military units and military personnel and Ex-servicemen]-F.L.4(A) License" under Tamil Nadu Liquor (Licence and Permit) Rules, 1981, leaving out BSF Servicemen and Ex-BSF Servicemen, which is "other armed force of the Union of India" within the purview of F.L.4 (A) License" under Tamil Nadu Liquor (Licence and Permit) Rules, 1981, but unilaterally including Ex Servicemen for issue of License being in violation of the Parent Act as well as vitiated by transgression of Rule of Law, arbitrary, unconstitutional, unjust, unreasonable classification, violation of Articles 14 and 16 of the Constitution together with a consequential direction to the respondents to consider appropriate amendment of the provisions under Tamil Nadu Prohibition Act, 1937 and Tamil Nadu Liquor (License and Permit) Rules, 1981, so as to accommodate the serving BSF personnel and



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Ex-BSF personnel in the capacity of “any other armed forces raised or maintained by the Union” pertaining to issue of F.L.4 (A) license, by way of including Border Security Personnel including Ex-BSF personnel through their Canteen system in the relevant provisions of the said Rules, thus ensuring uniformity / non-discrimination in the aforesaid Act and said Rules after due consultation involving the third respondent and fourth respondent.

For the Petitioner : Mr. A.Irudayam

For the Respondents : Mrs. R.Anitha (RR1 to 3 & 8)
Special Government Pleader

Mr. K.B.Arul, CGSC (RR4 to 7)

ORDER

(Order of the Court was made by P.D.AUDIKEVALU, J.)

The Petitioner is an association registered under the Tamil Nadu Societies Registration Act, 1975, and its members are retired personnel of the Border Security Force established under the Border Security Force Act, 1968. In this Writ Petition, the cause of the members of the Association of the Petitioner is sought to be espoused for treating them as 'Ex-Servicemen' for the benefits of purchase and consumption of liquor in the State of Tamil Nadu.



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2. The Tamil Nadu Prohibition Act, 1937, (hereinafter referred to as 'the Act' for short) mandates that any form of purchase, sale or consumption of liquor in the State of Tamil Nadu would have to be strictly in accordance with the provisions of that enactment and the Rules made thereunder. It has been provided in Section 17-A of the Act as follows:-

"17-A. Exemption of members of armed forces, etc.,-

- (1) The State Government may, by notification and subject to such condition as they think fit, exempt members of the armed forces of the Union or of any other armed forces raised or maintained by the Union or attached to or operating with any of its armed forces and the member of the medical or other staff attached to any of the armed forces aforesaid, from all or any of the provisions of this Act.
- (2) Whoever commits a breach of any of the conditions subject to which the exemption is notified under sub-section (1), shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one



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thousand rupees.”

Rule 17 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, made in the exercise of the powers conferred by Sections 17-C, 17-D, 17-E, 18-B, 18-C, 20, 21 and 54 of the Tamil Nadu Prohibition Act, 1937, provides the various kinds of licences issued for personal use and consumption of liquor. F.L. 4 and F.L. 4(A) of those licences which are relevant in the present context read as follows:-

F.L. 4 Licence for possession for liquor by the Manager, Canteen Stores Department (India) , Canteen Retail and Bulk issue Depot, Fort St. George, (Chennai) for a supply to military contractors and officers of the military units holding licences in Form F.L.4 (A) and for export to the Andaman and Nicobar Islands for the unit-run canteens of the Armed Forces stationed in the said Islands.

F.L.4(A) Licence for possession and sale of liquor to Military Units and Military personnel and Ex-servicemen.



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3. A plain reading of the aforesaid statutory provisions makes it clear that the benefits of exemption and concession have been granted only to serving personnel in the Armed Forces of the Union and do not apply to those who have retired after such service, apart from Ex-Servicemen. The grievance ventilated by the Petitioner in this Writ Petition is that its members, who had retired from the Border Security Force, are entitled to the same benefits relating to consumption of liquor that have been extended to Ex-Servicemen in the State of Tamil Nadu. In other words, the question that arises for determination in this Writ Petition is whether persons who have retired from the Border Security Force are entitled to be treated as 'Ex-Servicemen' for the purpose of consumption of liquor in the State of Tamil Nadu.

4. In support of the said claim of the Petitioner, strong reliance is placed by the Learned Counsel for the Petitioner on the Office Memorandum in No. 27011/100/2012-R&W dated

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23.11.2012 issued by the Government of India, Ministry of Home Affairs, Police Division-II, Resettlement and Welfare Directorate, in which it has been stated as follows:-

“ Subject: Designating the retired Central Armed Police Force (CAPF i.e., CRPF, BSF, CISF, ITBP and SSB) personnel as “Ex-Central Armed Police Force personnel (Ex-CAPF personnel).

There has been a demand from various for a that the retired Central Armed Police Force (CAPF) personnel may be given the status of Ex-CAPF personnel. Accordingly a proposal was sent to the Government for their consideration. Cabinet Committee on Security has approved the proposal of this Ministry to declare retired Central Armed Police Force personnel from Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB) as “Ex-Central Armed Police Force personnel” (Ex-CAPF personnel).

2. Based on such designation, the State /UT Governments concerned may extend suitable benefits to them on the lines of the benefits extended by the State/UT Governments to the Ex-Servicemen of Defence Forces.”



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5. On the contrary, Learned Special Government Pleader appearing for the First to Third and Eighth Respondents refers to the clarification made by the Government of India in the Letter No. 28(86)/2018/D (Res-I) dated 16.03.2018, where after noticing the definition of 'Ex-Servicemen' in Rule 2(c) of the Ex-Servicemen(Re-employment in Central Civil Services and Posts) Rules, 1979, as amended by Notification No.38034/1/2010-Estt(Res.) dated 04.10.2012, it has been highlighted that personnel of Border Security Force are not covered under the definition of 'Ex-Servicemen' of the said Rules, which reads as follows:-

"'ex-serviceman' means a person, who has served in any rank (whether as a combatant or as non-combatant), in the Armed Forces of the Union, including the Armed Forces of the former Indian States, but excluding the Assam Rifles. Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena and Territorial Army, for a continuous period of not less than six months after attestation, and

(i) has been released, otherwise than at his own request or by way of dismissal or discharge on



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- account of misconduct or inefficiency, or has been transferred to the reserve pending such release; or
- (ii) has to serve for not more than six months for completing the period of service requisite for becoming entitled to be released or transferred to the reserve as aforesaid; or
- (iii) has been released at his own request after completing five years' service in the Armed Forces of the Union;"

On that basis, it is asserted that the Petitioner cannot seek any benefit for its members in respect of the exemption and concession granted to Ex-Servicemen for the consumption of liquor.

6. We have heard Mr. A.Irudayam, Learned Counsel for the Petitioner; Mrs. R.Anitha, Learned Special Government Pleader appearing for the First to Third and Eighth Respondents; and Mr. K.B.Arul, Learned Central Government Standing Counsel appearing for the Fourth to Seventh Respondents.

7. Before proceeding to delve into the merits of the controversy involved, it would be necessary to recapitulate the



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law relating to trade in liquor enunciated by the Constitution

Bench of the Hon'ble Supreme Court of India in ***Khoday***

Distilleries Limited -vs- State of Karnataka [(1995) 1 SCC

574] in the following words:-

"60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are



obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

- (c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.
- (d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in



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Article 47, except when it is used and consumed for medicinal purposes.

- (e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.
- (f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.
- (g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make



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- discrimination between the citizens who are qualified to carry on the trade or business.
- (h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.
- (i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.
- (j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make



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the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

- (k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.
- (l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.
- (m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

Having due regard to the aforesaid legal position, viz-a-viz., the rival submissions made by both sides, it is beyond any cavil that the members of the Association of the Petitioner have to satisfy that they are 'Ex-Servicemen' in order to be entitled to



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the benefits of exemption and concession granted to Ex-Servicemen for consumption of liquor in the State of Tamil Nadu in terms of the relevant provisions of the Act and the Rules framed thereunder.

8. The word 'Ex-Servicemen' has not been defined either in the Act or in the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. Though the Government of India has expressed divergent views on extending the benefits granted to Ex-Servicemen in the Official Memorandum No. 27011/100/2012-R&W dated 23.11.2012 and in the clarification regarding definition of 'Ex-Servicemen' in the Letter No. 28(86)/2018/D (Res-I) dated 16.03.2018 for the purpose of Government jobs in terms of the Ex-Servicemen (Re-Employment in Central Civil Services and Posts) Rules, 1979, it is amply clear that retired personnel from 'para-military forces' which includes the Border Security Force have not been treated as 'Ex-Servicemen'. This would obviously mean that unless retired personnel from the Border Security Force are included



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as 'Ex-Servicemen' in the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, there is no scope for extending the benefits of exemption and concession granted to Ex-Servicemen to them.

9. It is for the Government of Tamil Nadu, as the delegatee of the State Legislature to make suitable amendments in the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for including retired personnel from the Border Security Force in the definition of 'Ex-Servicemen' in the said Rules, but it would not be possible for this Court, at the instance of the Petitioner, to issue any direction in that regard as succinctly explicated by the Hon'ble Supreme Court of India in ***Union of India -vs- K.Pushpavanam*** (Order dated 11.08.2023 in Civil Appeal No. 5049 of 2023) as follows:-

"12. The law regarding power of the writ court to issue a mandate to the legislature to legislate is well settled. No Constitutional Court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a



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*particular manner. The Court may, at the highest, record its opinion or recommendation on the necessity of either amending the existing law or coming out with a new law. The law has been laid down in this behalf in several decisions including a decision of this Court in the case of **Supreme Court Employees' Welfare Association -vs- Union of India** [(1999) 4 SCC 189] and **State of Jammu and Kashmir -vs- A.R. Zakki** [(1992) Supp (1) SCC 548]. The only exception is where the Court finds that unless a rule making power is exercised, the legislation cannot be effectively implemented."*

It may also be true that retired personnel of the Border Security Force have been extended the benefits granted to Ex-Servicemen for certain specific purposes, but that would not mean as if they have become Ex-Servicemen. The nature of duties performed by the personnel in the Border Security Force may have been similar to those carried out by those in the Armed Forces of the Union. In that event, if the claim of the Petitioner that discrimination is meted out to the retired



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personnel of the Border Security Force as against Ex-Servicemen has to be accepted, the consequence would only be that the exemption and concession granted to Ex-Servicemen in consumption of liquor would have to be withdrawn, but, by no stretch of imagination, it can be a ground on parity to extend the same benefit to the retired personnel of the Border Security Force. In such circumstances, the members of the Association of the Petitioner would have to work out their remedies before the proper forum in the manner recognized by law and the Petitioner cannot be entitled to any of the reliefs as sought in the Writ Petition.

10. Learned Counsel for the Petitioner fervently pleads that the District Collector, Vellore, who is the First Respondent in this Writ Petition, has during the previous years issued F.L. 4(A) licences to the Petitioner, and has subsequently withdrawn the same without assigning proper reasons. As already pointed out, it would not be possible to treat retired personnel from the Border Security Force as Ex-Servicemen for extending the



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benefits of exemption and concession granted to Ex-Servicemen without making suitable amendments to the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for their inclusion, and the circumstance that they had been mistakenly extended such benefit earlier cannot confer any indefeasible right to perpetuate the illegality and the First Respondent cannot be faulted for the corrective action taken.

11. In view of the foregoing discussion, there does not appear to be any infirmity in the impugned action of the First to Third and Eighth Respondents in declining to treat the members of the Association of the Petitioner, who are retired personnel of the Border Security Force, as Ex-Servicemen for the purpose of extending the benefit of exemption and concession granted in consumption of liquor in the State of Tamil Nadu.

In the upshot, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.



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(S.V.G., CJ.)

(P.D.A., J.)

21.09.2023

Index : yes/no
Neutral Citation : Yes/No
Maya

To:

1. The District Collector-Vellore District
AH-45, Vellore District Collector Office
Vellore, Vellore District
Tamil Nadu 632 012.
2. The Commissioner of Prohibition and Excise
Fort St. George
Chennai – 600005.
3. The Chief Secretary
Fort St. George
Chennai – 600005.
4. The Secretary to
Home Ministry of India
North Block, Central Secretariat
New Delhi – 110001.
5. The Director General
Headquarters, Border Security Force
Block No.10, CGO Complex
Lodhi Road, New Delhi-110003.
6. The Secretary
Welfare and Rehabilitation Board
Central Armed Police Force (CAPF)
Ministry of Home Affairs

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North Block, Central Secretariat
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7. The Directorate of Ex-Servicemen's Welfare
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8. The Home Secretary
Department of Home, Prohibition and Excise
of State of Tamil Nadu
Secretariat, Fort St. George
Government of Tamil Nadu
Chennai-600009.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

(Maya)

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