

Karwani Islami

Through its Chairman,

ShiekhGhulamRasoolHami Age about 38 years

S/O Gh Ahmad Shiekh

R/O HariporaKangan District Ganderbal

At Present HMT Srinagar..

.....Petitioner

1. State of Jammu & Kashmir through
Chief Secretary
Civil Secretariat Srinagar.
2. Principal Secretary Home Jammu and Kashmir
Civil Secretariat Srinagar.
3. Director General of Police Jammu and Kashmir
At Srinagar.
4. Divisional Commissioner Kashmir at Srinagar.
5. Inspector General of Police Kashmir Range, Srinagar.
6. Jammu Wine Traders Association Jammu through its
President, S. Charanjeet Singh.

.....Respondents.....

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice

Hon'ble Mr. Justice HasnainMassodi, Judge

Appearing counsel:

For the Petitioner(s) : Mr. Firdous Ahmad Parray, Advocate.

Mr.MudasirNaqshbandi ,Advocate

For the Respondent(s) : Mr. Tasaduq H. Khawaja, A. A. G.

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

N. Paul Vasanthakumar, CJ

1. This Public Interest Litigation is filed by Karwani Islami which is a registered society bearing registration No. 5949-S of 2010 under the Societies Registration Act of 1998 (1941 AD), contending that the State of Jammu and Kashmir has failed to take necessary steps for prohibition of sale and consumption of liquor in the State of Jammu & Kashmir due to

which the health of the residents of the State is effected and various social evils are taking place and many human beings have lost their lives due to drunken driving and sexual offences are on the rise. It is further contended in the affidavit that due to the availability of liquor and consumption of the same the health of the residents is very much effected which the State is bound to protect under Article 21 of the Constitution of India. It is also the contention of the petitioner that Article 47 of the Constitution of India and Section 24 of the Constitution of Jammu and Kashmir mandates the State to take every effort to safeguard and promote the health of the people and imposes an obligation on the State to curb the sale and consumption of liquor is responsible for deteriorating of public health. The petitioner submitted representation to the Government and also forwarded a draft bill to the respondents for taking action to prohibit the sale of liquor in the State of Jammu and Kashmir. No action being taken this writ petition is filed praying for issuing writ of mandamus directing the respondents to close all shops and other establishments wherein liquor is sold and to ensure that those involved in this business be rehabilitated by providing alternative means of livelihood and also to provide necessary counseling to those who are addicted by liquor.

2. When the writ petition was posted for hearing this Court, taking note of the limited jurisdiction vested in this Court, made it clear that whether total prohibition has to be strictly enforced or not is a policy decision to be taken by the State. However, regarding regulating the liquor shops near the educational institutions, hospitals, places of worship, National Highways and State Highways and the time for which the liquor shops should be opened and closed etc. are to be clarified by the Government. The said order was passed on 29.09.2015 and at the request of learned Advocate General on 06.10.2015 time was granted to file written response and the matter was posted for 14.10.2015.

3. MP No. 02/2015 was filed by the Jammu Wine Traders Association to implead themselves, stating that if the liquor shops are ordered to be closed the members of the association would be prejudiced as their right to earn the livelihood out of the trade which they are running according to law

would be put to serious jeopardy. Impleadment was ordered on 14.10.2015.

4. The official respondents, namely, the Excise Commissioner, J&K Government, filed reply stating that the trade of liquor is regulated in the State of Jammu & Kashmir under the Jammu and Kashmir Excise Act, 1958 and the rules framed thereunder. For opening a liquor shop or for manufacturing the liquor/beer the persons desirous of trading in the commodity are required to apply before the Excise Commissioner as per the said Act and Rules who is the competent authority to grant license after completion of the requisite formalities and as per Rule 30 of the J&K Liquor License and Sale Rules, 1984 procedures has to be followed before grant of license of retail vending of liquor, for consumption on the premises and off the premises, including to ascertain the opinion of the residents of the locality by issuing notice for the proposed site and also ask for the opinion of the District Magistrate and if the license has to be granted near the Railway Station, Educational Institution, Hospital area or any large factory, mill or workshop the Deputy Excise Commissioner shall ask for the opinion of the Railways, education or hospital authorities etc. and if any objection is preferred within two months, the Deputy Excise Commissioner or a Gazetted Officer shall be deputed for enquiry and a report alongwith the opinion of the Commissioner of Local Bodies concerned and the District Magistrate shall be forwarded by the Deputy Excise Commissioner to the Excise Commissioner and only temporary license for retail vending of liquor, pending enquiry as stated supra will be given for a period not exceeding four months. It is also stated in the reply that for the last ten years due to pendency of OWP No. 822/2005, no fresh license has been issued. It is further stated in the reply that when steps are taken to stop drinking liquor by the citizens, it has encouraged bootlegging and spurious liquor has flourished apart from smuggling of liquor from other States and several deaths of poor consumers were reported. It will also lead to loss of revenue to the tune of Rs. 500 crore to the Government per annum from the Excise revenue and about 300 crore towards Sales Tax to the State exchequer and the Tourism will also be effected as the Government of

Jammu and Kashmir is dependent upon the income from Tourism. There will be loss of employment to at least 6000 persons who are involved in the trade at different levels i.e. Licensees, Salesmen, Barmen, Managers, Workforce in Bottling Plants/Distilleries/Wholesale traders etc. and loss of transport as nearly 15000 vehicles perform freight work in the trade. It is also stated in the reply that taxes on alcohol were heavily imposed and sale price of liquor has been significantly increased to discourage the consumption of liquor and therefore it is not appropriate to bring about total prohibition of liquor in the State. However, certain steps were taken to restrict and regulate the trade and same are also stated in the reply affidavit filed by the official respondents.

5. We have heard the arguments of Mr. Firdous Ahmad Parray, learned counsel for the petitioner, Mr. Tasaduq A. Khawaja, learned AAG and respondent No.6, perused the pleadings as well as the Excise Act and the Rules framed thereunder.

6. Article 47 of the Constitution of India is dealing with the issue relating to imposing prohibition of intoxicating drinks and drugs. The said Article 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.”

7. The said Article is one of the articles included in the Chapter, “Directive Principles of State Policy” and is a guideline issued to the Government to frame policy. As per the said Article, 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. Section 24 of the Constitution of Jammu and Kashmir also emphasizes the need to make every effort to safeguard and promote the health of the people. Though the said Section imposes duty on the State to improve the public health and is not specifically dealing with bringing about prohibition on consumption of intoxicant drinks. It is an admitted fact that consumption of intoxicant drinks are injurious to health. In Article 21 of the

Constitution of India the right to health is guaranteed. As Article 47 of the Constitution of India is under the Chapter, “ Directive Principles of State Policy” and it cannot be enforced through Court of law. Hence this Court is of the view that the direction to enforce prohibition, as prayed for in this writ petition, cannot be ordered as the State has taken the stand that it is not possible to enforce strict prohibition by stating various reasons.

8. It is relevant to note here that even if such a policy is taken by the Government, regulation of trade in liquor is bound to be effected by the State as per the J&K Excise Act, 1958 and J&K Liquor License and Sale Rules, 1984 framed by the State towards the said purpose. The right of the State to regulate sale of liquor is emphasized by Hon’ble the Supreme Court in the decision reported in (1978) 3 SCC 558 (P. N. Kaushal v. Union of India). In paragraph 49 Hon’ble the Supreme Court held thus:-

“ 49.The trade is instinct with injury to individual and community and has serious side-effects recognized everywhere in every age. Not to control alcohol business is to abdicate the right to rule for the good of the people. Not to canalize the age and sex of consumers and servers, the hours of sale and cash-and-carry basis the punctuation and pause in days to produce partially the ‘dry’ habit is to fail functionally as a Welfare State. The whole scheme of the statute proclaims its purpose of control in time and space and otherwise. Section 58 vests in Government the power for more serious restrictions and laying down of principles. Details and lesser constraints have been left to the rule-making power of the Financial Commissioner. The complex of provisions is purpose-oriented, considerably re-enforced by Article 47.”

9. The drunken driving is causing most of the accidents and a number of deaths are being reported. Section 185 of the Motor Vehicles Act, 1988 prohibits drunken driving. Similar provision is available in the Motor Vehicle Rules 1989 particularly Rule 21 (16) which also mandates disqualification to hold driving lincese. Considering the said aspect the Government of India, Ministry of Road Transport and Highways (Road Safety Cell) issued a circular dated 01.12.2011 to all the State Governments to take the following steps:-

- i) Removal of liquor shops along National Highways.
- ii) No fresh license may be issued to liquor vendors to open shops along National Highways.
- iii) Wherever licenses have been given in the past to open liquor shops along National Highways, such cases may be reviewed and corrective action be taken under intimation to the Ministry.

10. In the reply affidavit filed by the State it is mentioned that in the State of Jammu and Kashmir around 40 Liquor Shops are located on the National Highways and notices have been issued to such licensees on 21.09.2015 and 30.09.2015 to shift their retail outlets to some other places within a period of three months in accordance with the norms/procedure in vogue failing which their licensed premises shall be closed without any further notice. The list of the retail outlets numbering 40 is also annexed along with the reply affidavit. The said notice is issued based on the report of the Committee constituted by Hon'ble the Supreme Court regarding Road Safety dated 13.02.2015, stating that measures to be taken to promote road safety, including, "Ban sale of alcohol on State and National Highways". On 16.06.2015 the Chief Secretary of the State convened a meeting of various officers of the State to discuss the implementation of the directions/suggestions of the Committee on Road Safety constituted by Hon'ble the Supreme Court and based on the decisions taken and approval sought from the Finance Department, which was granted on 11.09.2015, notices were issued to the retail vendors whose shops are located on State/National Highways. The said action initiated by the State after filing of this writ petition, against the licensees of liquor shops which are located on the State/National Highways, shall be strictly implemented and if any liquor shop is allowed to operate on the State/National Highways beyond the time granted i.e. after December, 2015, either the writ petitioner or any person interested in closing the said liquor shops can approach this Court for immediate closure of the said shops.

11. In the objections filed the following steps taken by the State Government to restrict and regulate the trade of liquor are mentioned:

- (i) Liquor is taxed heavily. The duties/taxes have been enhanced considerably so as to discourage excessive use of liquor.
- (ii) No Advertisement of liquor is permitted in the State. No liquor is imported into the State or sold in the State without the legend "Consumption of Liquor is injurious to health" printed on the labels.
- (iii) A licensee cannot exhibit the pictures or photographs of prominent National/State Leaders in the licensed premises.
- (iv) Liquor cannot be sold to a person of less than 21 years of age.

(v) Timings to operate Wine Shops and Bars have been notified and no one is allowed to operate beyond prescribed time.

<u>Name of License</u>	<u>Jammu Division</u>	<u>Kashmir Division</u>
Wine Shop (JKEL-2)	9:00 am to 10:00 pm (throughout the year)	Summer: (15 th Apr. to 14 th Oct) 9:00 am to 9:30 pm Winter (15 th Oct. to 14 th Apr) 9:00 am to 9:00 pm
Bar (JKEL-3, JKEL-3A, JKEL-4, JKEL-4C)	10:00 am to 10:30 pm (throughout the year)	Summer: (15 th Apr. to 14 th Oct) 10:00 am to 11:00 pm Winter (15 th Oct. to 14 th Apr) 10:00 am to 10:00 pm

(vi) The License is not granted if the premises is near any educational or religious place.

(vii) If the site of the proposed license is near a Railway Station, educational Institution, hospital area or any large factory, mill or workshop, the Deputy Excise Commissioner has to obtain the opinion of the Railway, educational or hospital authorities or commercial firms concerned.

(viii) Categorical NOC is sought from District Magistrate/District Superintendent of Police/Municipality or Town Area Committee before issuing License for the trade.

(ix) Objections from general public are also sought before granting any license for conducting liquor trade to any individual.

(x) Character verification of individuals seeking Liquor trade license is sought from District Magistrate/ District Superintendent of Police concerned;

(xi)

(xii)

(xiii) In the Excise policy for the year 2015-16, the Government has taken a conscious decision in the restriction and regulation of liquor trade by adopting firm measures:

- (a) To create a social responsibility corpus fund. This corpus fund shall be used for the support to de-addiction centres, measures to reduce the incidence of drunken driving and promotion of road safety. The department will make an equal contribution that of the stake holders/liquor industry.
- (b) The duties/taxes stand s enhanced considerably so as to discourage excessive use of liquor.
- (c) Intensifying strict checking of illegal distillation and smuggling thereby controlling distillation of spurious liquor endangering human life.
- (d) To promoting low alcoholic drinks to wean away people from hard liquor which endanger the health of consumers thus ultimately aims towards prohibition.
- (e) No liquor is imported into the State or sold in the State without the legend "Consumption of liquor is injurious to health" printed on the labels"

12. It is relevant to state at this juncture that by merely bearing the labels printed on the liquor bottles that "Consumption of liquor is injurious to health", the evil of liquor cannot be spread. Hence the Excise Department of the State Government shall take necessary steps to educate the

residents of the State regarding the evils of drinking liquor which will promote the policy behind Article 47 of the Constitution of India.

13. The stand taken by the State Government in the reply affidavit read with Section 50 B of the Jammu and Kashmir Excise Act, 1958, is directed to be strictly enforced by the official respondents and if there is any slackness on the part of the authorities of the State or the retail vendors, liberty is granted to the petitioner or any person who is effected or interested in the implementation of the restrictions/regulations to approach this Court for appropriate directions by pointing out specific instance or instances of violation of the regulations and in such event this Court will consider the grievance in accordance with law.

14. The writ petition is disposed of with above liberty.

15. No costs.