Krishna Kumar Narula Etc vs The State Of Jammu And Kashmir & Ors on 1 March, 1967

Equivalent citations: 1967 AIR 1368, 1967 SCR (3) 50, AIR 1967 SUPREME COURT 1368

Author: K. Subba Rao

Bench: K. Subba Rao, J.C. Shah, S.M. Sikri, V. Ramaswami, C.A. Vaidyialingam

PETITIONER:
KRISHNA KUMAR NARULA ETC.

Vs.

RESPONDENT:
THE STATE OF JAMMU AND KASHMIR & ORS.

DATE OF JUDGMENT:
01/03/1967

BENCH:
RAO, K. SUBBA (CJ)
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RAO, K. SUBBA (CJ)
SHAH, J.C.
SIKRI, S.M.
RAMASWAMI, V.
VAIDYIALINGAM, C.A.

CITATION:
1967 AIR 1368 1967 SCR (3) 50
CITATOR INFO :
R 1972 SC1816 (16)
RF 1972 SC1863 (13)
E 1975 SC 360 (12,17,19,21,22)
R 1975 SC1121 (51,52,53,54,67)
R 1977 SC 722 (9,17,29)
RF 1978 SC1457 (42)
R 1985 SC1676 (2)
RF 1990 SC1927 (75)

ACT:
Constitution of India, 1950, Art. 19(1)(g)-Right to carry on business in liquor-If fundamental right.
The jammu and Kashmir Excise Act, 1958, s. 20-Licence for carrying an business in liquor-Objections by inhabitants of

location of bar--Applicant asked to shift premises as condition for issue of licence-Validity of order under Art. 19(6) of the Constitution.

HEADNOTE:

The appellant, who was carrying on business in liquor in his hotel under an annual licence issued by the Excise and Taxation Commissioner under s. 20 of the Jammu and Kashmir Excise Act, 1958, had applied for a fresh licence for another year. Meanwhile, the Excise Department received complaints from the inhabitants of the locality objecting to the location of the bar in that locality. The complaints were inquired into and the appellant was informed by the Commissioner that the licence would not be issued unless he shifted the premises of his hotel to some other approved locality. A writ petition filed by the appellant for quashing the order was dismissed by the High Court.

In appeal to this Court.,

HELD : (i) Dealing in liquor is business, and a citizen has a fundamental right to do that business under Art. 19(1)(g) of the Constitution. But the State can make a law imposing reasonable restrictions on the right, in public interests, under Art. 19(6). (57 D-E]

Dealing in noxious and dangerous goods does not cease to be business, though the nature of the goods may be a ground for imposing a restriction on the activity. [53 F; 54 C]

T. B. Ibrahim v. Regional Transport Authority, Tanjore, [1953] S.C.R. 290, Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer, [1954] S.C.R. 873, State of Assam v. A. N. Kidwai, Commissioner of Hills- Division and Appeals, Shillong, [1957] S.C.R. 295, Nagendra Nath v. Commissioner of Hills Division and Appeals, Assam, [1958] S.C.R. 1240, explained.

Narain Swadesh Weaving Mills v. The Commissioner of Excess Profits 'Fax, [1955] 1 S.C.R. 952, State of Bombay v. R. M. D. Chamarbaugwala, [1957] S.C.R. 874 and Ranchhorlalji v. Revenue Divisional Commissioner, Northern Division, Sambalpur, A.I.R. 1960 Orissa 88, referred to.

Since the instant case was one of issuing a licence, s. 20 of the Excise Act applies. As the Excise and Taxation Commissioner had made a bona fide enquiry and came to the conclusion that the locality was not suitable far carrying on business in liquor, for relevant reasons, it could not he said that his order was arbitrary or unreasonable. [58 B]

(ii) Section 22 of the Act deals with cancellation of a licence and does not control s. 20. [58 C]

K.K.NARULA V. J. & K. STATE (Subba Rao, C.J.)

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 65 and 66 of 1967.

Appeals from the judgment and order dated September 16, 1966 of the Jammu and Kashmir High Court in Writ Petitions Nos. 2 and 4 of 1966.

S. T. Desai, S. K. Dholakia, Vineet Kumar and Inder Das Grover, for the appellants (in both the appeals). Raja Jaswant Singh, Advocate-General, Jammu and Kashmir, R. N. Sachthev for S. P. Nayyar, for the respondents (in both the appeals).

The Judgment of the Court was delivered by Subba Rao, C.J. These two appeals arise out of a common judgment of a Division Bench of the High Court of Jammu & Kashmir dismissing the two petitions filed by the appellants for the issuance of a writ quashing the order passed by the Taxing and Excise Officer, Jammu, refusing to renew their licences for the year 1966-67 in respect of their liquor shops.

The facts giving rise to these two appeals may be briefly and separately stated.

Civil Appeal No. 65 of 1967 relates to Glory Restaurant situated in Moti Bazaar, Jammu. The appellant in the said appeal, who is the proprietor of the said restaurant, after taking the requisite licence from the Government, had been carrying on for the last 7 years the business of retail sale of country and foreign liquor in the said restaurant. The licence was an annual licence and it was being renewed from year to year. On December 11, 1965, the Deputy Excise and Taxation Commissioner, Jammu, issued a notice to the appellant ordering the shifting of the premises of the said restaurant to some other locality on the ground that the inhabitants of the locality had complained against the location of the appellant's bar and restaurant there. As the licence for 1965-66 would expire on March 31, 1966, the appellant applied for a fresh licence for 1966-67 and deposited the prescribed licence fee in the Government treasury.

The appellant in Civil Appeal No. 66 of 1967 was carrying on business in liquor in his hotel, named Bliss Hotel and Bar, situated in Parade Ground, Jammu, under a licence issued by the Government of the said State. He obtained a licence for the first time in 1964. After obtaining the licence, it is alleged, he had spent about Rs. 70,000/- in furnishing the Hotel and Bar, but for unavoidable reasons he could not do business during the financial year 1964-65. For the year 1965-66 he made an application for the renewal of the licence and on December 11, 1965, he received a letter from the Deputy Excise and Taxation Commissioner, Jammu, desiring the appellant to shift the premises of his Hotel and Bar to some other suitable place after getting it approved by the Department on the ground that he had received complaints from the inhabitants of the locality against the location of the bar there. At the instance of the 2nd respondent, the Excise and Taxation Commissioner, Jammu, his licence, along with those of other licensees, was collected by the 3rd respondent. As he was not given a licence to do business in liquor in the same locality, this appellant also filed a writ petition in the High Court for a relief similar to that claimed by the appellant in Civil Appeal No. 65 of 1967.

To both the petitions, the State of Jammu and Kashmir, through its Chief Secretary, the Excise and Taxation Commissioner. Jammu & Kashmir, and the Deputy Excise and Taxation Commissioner, Jammu, were made respondents 1, 2 and 3 respectively.

The respondents opposed the petitions and pleaded, inter alia, that the localities wherein the petitioners were carrying on the business were the most congested and frequented parts of the city and that, as complaints were made against their carrying on the business in the said localities, the respondents refused to renew their licences to carry on the said business in the said localities. They also pleaded that under The Excise Act, 1958, hereinafter called the Act, the issuing of licence was at the discretion of the Excise Commissioner and he had, having regard to the complaints received, bona fide, in exercise of his discretion, refused to give licence to the appellants to carry on business in the said localities.

In the High Court the Writ petitions, along with others, were decided by a Division Bench consisting of Chief Justice and Justice Syed Murtaza Fazl Ali. They gave concurrent but separate judgments. Both the Judges agreed on merits in dismissing the petitions, but expressed different views on the question whether the petitioners had fundamental right to do business in liquor. Hence the appeals. Mr. Desai, learned counsel for the appellants, contended as follows :-(1) If s. 20 of the Act was construed as conferring an absolute discretion on the Commissioner of Excise and Taxation to issue or not to issue a licence to do business in liquor, it would be void on the ground that it infringed Art. 19 of the Constitution. (2) The licence being renewable as a matter of course, the Commissioner of Excise and Taxation could not refuse to renew the same on a ground other than those similar to the grounds contained in s. 22, cls. (a), (b), (c) and (d) of the Act. (3) In any case, as the licences were renewable as a matter of course, the appellants were entitled to notice and an opportunity to explain why the licence should be renewed. (4) The ground relating to objections as to locality was not in substance accepted by the High Court.

The first point, namely, the constitutional validity of S. 20 of the Act was not raised in the High Court. We cannot permit the appellant to raise that question for the first time before us. But we should not be understood to have expressed our view one way or other on the said question. As we have pointed out earlier, the learned Chief Justice and Ali, J., expressed different views on the question whether the appellants had a fundamental right to do business in liquor. To avoid further confusion in the matter it is necessary to make the position clear. Article 19 of the Constitution qua the right to do business reads thus :

> (i) All citizens shall have the right-
>
> (g) to practice any profession, or to carry on any occupation, trade or business. (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.....

A combined reading of cls. (1) and (6) of Art. 19 makes it clear that a citizen has a fundamental right to carry on any trade or business, and the State can make a law imposing reasonable restrictions on the said right in the interests of the general public. It is therefore, obvious that unless dealing in liquor is not trade or business, a citizen has a fundamental right to deal in that commodity. The learned Advocate General contended that dealing in liquor was not business or trade, as the dealing in noxious and dangerous goods like liquor was dangerous to the community and subversive of its morals. The acceptance of this broad argument involves the position that the meaning of the ex- particular point of time in our country. Such an approach leads general acceptance of the standards of morality obtaining at a particular point of time in our country. Such an approach leads to incoherence in thought and expression. Standards of morality can afford a guidance to impose restrictions, but cannot limit the scope of the right. So too, a Legislature can impose restrictions on, or even prohibit the carrying on of a particular trade or busi- ness and the Court, having regard to the circumstances obtaining at a particular time or place may hold the restrictions or prohibition reasonable. The question, therefore, is, what is trade or business ? Though the word "business" is ordinarily more coin-

prehensive than the word "trade", one is used as synonymous with the other.It is not necessary to bring out the finer points of distinction between the said two concepts in this case. In the words of S.R. Das, J., as he then was, in Narain Swadeshi Weaving Mills v. The Commissioner of Excess Profits Tax(1), the word "business" connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. Even accepting this test, if the activity of a dealer, say, in ghee is business, then how does it cease to be business if it is in liquor ? Liquor can be manufactured, brought or sold like any other corn- modity. It is consumed throughout the world, though some countries restrict or prohibit the same on economic or moral ,,rounds. The morality or otherwise of a deal does not affect the quality of the activity though it may be a ground for imposing a restriction on the said activity. The illegality of an activity does not affect the character of the activity but operates as a restriction on it. If a law prohibits dealing in liquor, the dealing does not cease to be business, but the said law imposes a restriction on the said dealing. But it is said that the decisions of this Court have held that dealing in liquor is not a business or trade within the meaning of Art. 19 of the Constitution. In T. B. Ibrahim v. Regional Transport Authority, Tanjore (2) it was held that restriction placed upon the use of the bus- stand for the purpose of picking up or setting down passengers to or from outward journeys could not be considered to be an unreasonable restriction on the right to carry on. any profession, trade or business of the appellant and, therefore, Art. 268 was not in any way repugnant to Art. 19 (1) (g) of the Constitution. In that context, Chulam Hasan, J., speaking for the Court, observed:

> "There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience."

This Court did not say that there was no fundamental right to do business but only held that a citizen could not claim that his fundamental right could not be restricted in public interests. Nor did the decision in Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner. Ajmer(3) lay down any such proposition. There the question was whether the Excise Regulation 1 of

1915 imposed a reasonable restriction within the meaning of Art. 19(6) of the Constitution on the right given under Art. 1 9 (1) (g) thereof to carry on the business in intoxicating liquors. This Court. held that the said Regulation was a reasonable restriction within the meaning of Art. 19(6) of the (1) [1955] 1 S.C.R.952,961. (2) [1953] S.C.R. 290, 299. (3) [1954] S.C.R. 873,880.

Constitution. But in the course of tile judgment Mahajan. C. J., who spoke for the Court, gave an extract from the judgment of Field, J., in Crowley v. Christensen(1). In that extract the following passage is found :-

> "The police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the commu- nity, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evil."

After citing the entire passage, this Court concluded thus "These observations have our entire concurrence and they completely negative the contention raised on behalf of the petitioner. The provisions- of the regulation purport to regulate trade in liquor in all its different spheres and are valid."

It will be seen that the said passage from the judgment of Field. J., has nothing to do with the construction of Art. 19 (1) (g) of the Constitution of India. The learned Judge was considering the scope of the "police power" and in that context the said observations were made. This Court applied those observations in considering the reasonableness of the restrictions imposed on the fundamental rights. Indeed, a perusal of the entire judgment shows that the Court conceded the fundamental right but held that the said regulation operated as a reasonable restriction on the said right. The decision of this Court in The State of Assam v. A. N. Kidwai, Commissioner of Hills Division and Appeals, Shillong(2) has no relevance to the present enquiry. The following- passage from the said judgment is relied upon "A perusal of the Act and rules will make it clear that no person has any absolute right to sell liquor and that the purpose of the Act and the rules is to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue."

This Court only said that on the provisions of the Act no absolute right to sell liquor was given to any person and that the said right was controlled by the provisions of the said Act. These observations have nothing to do with the question whether a person has a fundamental right to do business in liquor. Nor can the (2) [1957] S.C.R. 295, 301.

(1) 34 L.E.D. 620, 623.

respondents draw any support from the decision of this Court in Nagendra Nath v. Commissioner of Hills Division and Appeals, Assam(1). There, the question was in regard to the scope of Arts. 226 and 227 of the Constitution vis-a-vis the orders passed by the appropriate authorities under the East

Bengal and Assam Excise Act, 1910. There incidentally two decisions of this Court, namely, Cooveriee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer(2) and The State of Assam v. A. N. Kidwai, Commissioner of Hills Division and Appeals,Shillong (3) were noticed and it was observed that there was no inherent right to the settlement of liquor shops. No question of fundamental right under Art. 19(1) arose in that case. This Court in The State of Bombay v. R. M. D. Chamarbaugwala(4) upheld the validity of the Bombay Lotteries and Prize Competition Control and Tax Act, 1948 (Bom. LIV of 1948), as amended by the Bombay Lotteries and Prize Competition Control and Tax (Amendment) Act (Bombay Act XXX of 1952). One of the questions raised was whether gambling was business or trade or commerce within the meaning of Art. 19 (1) (g) of the Constitution or Art. 301 thereof. Das, C. J., after considering the various decisions, observed thus :

> "We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject-matter of a fundamental right guaranteed by Art. 19(1) (g)."

This decision only lays down that gambling is not business or trade. We are not concerned in this case with gambling. A division Bench of the Orissa High Court in Ranchhorlalji v. Revenue Divisional Commissioner, Northern Division, Sambalpur(5) maintained the validity of the provisions of the Orissa Cinema (Regulation) Act, 1954, on the ground that it did not infringe the fundamental right guaranteed under Art. 19 (1) (g), read with Art. 19(6) of the Constitution. The learned Judges observed :

> "It is only when no policy or principle has been laid down either in the Preamble or in the other provi-

> (1) [1958] S.C.R.1240. (2) [1954] S.C.R. 873, (3) [1957] S.C.R. 295. (5) A.I.R. 1960 Orisa 88, 92. (4) [1957] S.C. R. 874, 925.

sions of the statute or statutory rules, and the impugned provision confers arbitrary or excessive powers on the authority, that it is liable to be struck down. The nature of the restrictions imposed will necessarily vary with the nature of the business. Restrictions on the carrying on of business in respect of 'normally available' commodities should not be as drastic as those in respect of a business or occupation which is likely to cause nuisance or danger to the public."

This decision also does not say that there is no fundamental right to do business which is likely to cause nuisance or danger to the public, but stated that the nature of the restrictions would depend upon the nature of the trade. A scrutiny of these decisions does not support the contention that the courts held that dealing in liquor was not business or trade. They were only considering the

provisions of the various Acts which conferred a restricted right to do business. None of them held that a right to do business in liquor was not a fundamental right. We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right, in public interests.

The next question is whether s. 20 of the Act infringes the fundamental right under Art. 19 of the Constitution. This question, as we have said earlier, was not raised before the High Court. We do not, therefore, allow the learned counsel to raise this question before us for the first time. We assume, therefore, without deciding that s. 20 of the Act does not infringe Art. 19 (1) (g) of the Constitution. Even so it was contended that the order of the Commissioner of Excise and Taxation was arbitrary and in violation of the principles of natural justice and, therefore, it operated as an unreasonable restriction on the appellant's fundamental right to do business.

This argument was sought to be sustained on the following grounds : _(1) Though under the Act yearly leases were issued, in practice renewal was a matter of course. (2) On the basis of the issuance of a licence heavy expenditure had been incurred by the appellants. (3) No opportunity was given to the appellants to establish that the locality was suitable for carrying on the said business and that the complaints made against them were false. And (4) Even the High Court held that in regard to licensees against whom there were no complaints a further inquiry should M4 Sup.Cl/67-5 be held. In support of the contention we were taken through all the necessary correspondence. The learned Judges on a consideration of the entire material placed before them, held that the Commissioner of Excise and Taxation made a bona fide enquiry and found that the locality was not suitable for carrying on business in liquor in view of the- various circumstances mentioned in the counter-affidavit. We do not think we are justified in interfering with the finding of fact arrived at by the High Court on the material placed before it. On the said finding it cannot be held that the order of the Commissioner was arbitrary or unreasonable.

We cannot agree with the learned counsel that S. 22 controls s. 20 of the Act for the former deals with the cancellation of a licence and the latter with the issuance of a fresh licence : they deal with two different subject-matters. Lastly, the learned counsel for the appellants contended that the order was mala fide. But this point was not pressed before the High Court and we cannot allow it to be raised for the first time before us.

In the result the appeals fall and are dismissed with costs. V.P.S. Appeal dismissed.