

Nagaraju Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jun-15-1999

Reported in : ILR1999KAR2903; 1999(4)KarLJ668

Judge : Y. Bhaskar Rao, C.J. and ; V. Gopala Gowda, J.

Acts : [Karnataka Excise Act, 1965](#) - Sections 15, 26, 30, 31 and 71; Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 - Rules 2, 7 and 12(2), (3)

Appeal No. : Writ Petition No. 1044 of 1999 connected with Writ Petition Nos. 2751 and 12781 of 1999

Appellant : Nagaraju

Respondent : State of Karnataka and Others

Advocate for Def. : Sri N.K. Ramesh, Government Advocat

Advocate for Pet/Ap. : Sri G.K. Bhat, ;Sri K. Prabhakar and ;Sri Basavaraj Karedy, Advs.

Judgement :

Y. Bhaskar Rao, C.J.

1. These writ petitions are filed in the nature of public interest litigation assailing the action of the officers of the Excise Department empowered to grant licences, in granting innumerable licences under the [Karnataka Excise Act, 1965](#) ('Act', for

short) and rules framed therein. Brief facts of the case are:

2. The petitioners are the residents of different places in the State and they are aggrieved by the action of the respondents indiscriminately granting licences for the sale of Indian made liquor in the districts of Tumkur, Raichur and Kolar. The case of the petitioners is that the Act and the rules framed therein prescribe guidelines for the grant of licences. The authority to grant licence takes into consideration the population of the area as provided under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Therefore, the circular issued by the Commissioner dated 20-12-1995 (Annexure-H) be quashed with a direction to respondents 2 to 4 to withdraw the licences granted in Form CL 2 or CL 9 over and above the quota permissible under Rule 12 of the Rules and further direct the respondents to implement Rule 12 strictly and not to grant more CL 2 or CL 9 licences in the above places.

3. We ordered notice to the Government Advocate and at the request of both the parties, the writ petitions are taken up for final hearing. The contention of the petitioners is that the impugned Circular-Annexure-H, of the Commissioner is violative of Rule 12 of the Rules and therefore, is liable to be quashed and action be taken for cancelling the licences and not to grant any further licences in violation of Rule 12. But, the learned Government Advocate contended that the circular was issued as per the requirement in those districts because number of tourists in Karnataka have increased and as there are number of tourists spots and some more new tourists spots are sighted, recently, Tourist Department made recommendations for providing facilities for tourists including foreign tourists and as such the Government decided to authorise the Commissioner for taking necessary action and in turn, he issued the circular. The circular is in consonance with the rules and provisions of the Act. Therefore, there is no merit in the writ petitions and the same are liable to be dismissed.

4. To appreciate the above contentions, it is relevant to extract some of the provisions of the Act. The Act is promulgated with a view to provide uniform laws regarding production, manufacture, import, export, purchase and sale of liquor and in such States levy of duty thereon and for certain other matters mentioned in the

Act. Sub-section (7) of Section 2 defines Excise Commissioner as the officer appointed as Excise Commissioner under Section 3; sub-section (10) defines Excise Officer as the Excise Commissioner, a Deputy Commissioner, a Deputy Commissioner of Excise or any officer or other person lawfully appointed or invested with powers under Section 5, Section 5-A or Section 6; sub-section (15) of Section 3 defines Indian Liquor as liquor produced, manufactured or compounded in India in the same manner as Gin, Brandy, Whisky or Rum imported into India and includes 'milk punch' and other liquors consisting of or containing spirits; sub-section (18) defines liquor; sub-section (23) defines 'Prescribed' as meaning prescribed by rules made under the Act. Section 26 of the Act provides for granting of the licences or permit under the Act and on payment of fees for a prescribed period subject to such restrictions and on such conditions as may be prescribed. Section 29 empowers the Government for cancelling or suspending licence. Section 30 empowers for withdrawing the licence and Section 31 for surrender of licence. Sub-rule (2) of Rule 2 enables the Government to frame the rules regulating the grant of licence to person or class of persons to whom licence for the wholesale or retail sale of intoxicants can be granted in a local area. This rule is made by virtue of powers conferred under Section 71 of the Act. In pursuance of the said powers, the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 are framed governing the grant of licence and regulating the licences. Rule 2 of the said rules deals with definitions. As per the rules, there are wholesale licence for vending Indian liquor or foreign liquor or both, distributor licences, licence to clubs, occasional licences, special licences, hotel and boarding house licences, tourist hotel licences, tourist hotel beer bar licences, military canteen licences, military canteen stores bonded warehouse licence, border security force or paramilitary force licences, refreshment room (bar) licence, auctioneer's licences. Rule 4 deals with filing of applications; Rules 4-A, 5 provides for grant of licences with restriction or conditions; Rule 7 deals with duration of licence; Rule 8 provides for payment of fees for grant of licence. Rule 12 provides for number of licences to be fixed. It is relevant to extract Rule 12 which reads as hereunder:

1. The maximum number of licences to be granted in an area shall be determined from time to time by the Excise Commissioner with the previous approval of the

State Government.

2. The number of retailers' licences to be granted in a taluk for the year shall be determined with reference to the population of such taluk and the probable demand.

3. The number of retail licences to be granted in a taluk shall be as follows:

a. One retail licence for every 7500 urban population or a fraction thereof exceeding 3,500; and

b. One retail licence for every 15,000 rural population or a fraction thereof exceeding 7,500.

Explanation.--'Population' for the purpose of this sub-rule shall be the population as ascertained at the last preceding census and includes the projected annual growth subsequent to the last preceding census.

4. The number of wholesale licences shall be so determined that there shall be one wholesale licence for five retail licences. In the event of there being applicants, one wholesale licence shall be granted for each district, even if the number of retail licence in the district is less than five.

Explanation.--For the purpose of this sub-rule 'retail licence' shall include licence issued in Forms CL 2, CL 4, CL 7 and CL 9 for retail sale of liquor.

5. The correct interpretation of the rule manifests that the Excise Commissioner shall determine from time to time the maximum number of licences to be granted in any area with the previous approval of the State Government; fixation of minimum number of wholesale and retail licences for any locality is a general power. Sub-rule (2) of Rule 12 provides for the fixation of number of retail licences based on the population and demand in that taluk. The criterion for such fixation is the population of that particular taluk and the probable demand. Sub-rule (3) prescribes the ratio between the rural and urban population for fixing the number of licences to be granted.

6. The sum and substance of the rule is that the number of retail licences to be granted in the taluk per year shall be determined according to the population of such taluk and the probable demand. As per explanation to sub-rule (3), population for the purpose of this rule shall be the population ascertained as per the last preceding census and includes the projected annual growth subsequent to the last preceding census. Further, the explanation provides that retail licences shall include licences issued in Forms CL 2, CL 4, CL 7 and CL 9 for retail sale of liquor. Rule 14 provides that the licensee or his successors or assign-ees shall have no claim whatsoever to the continuance or renewal of the licence as the case may be, after the expiry of the period for which such licence was granted. Thus, according to the above rule, the Excise Commissioner or the concerned authority has to decide in a given year as to how many licences should be granted. He has to take into consideration while determining the number of licences to be granted, the population of the locality and the probable demand thereto. These are the two important factors to be taken into consideration before determining how many licences should be granted.

6. Learned Counsel for the appellants relied on the judgment of this Court in *State of Karnataka and Others v M/s. Mandya District Wine Merchants Association and Others*, to contend that the Division Bench interpreted the scope of Rule 12 and held that population is only a basis which has to be taken into consideration to determine the number of licences to be granted in an area in a year. We have gone through the judgment. In that case, the authority had to determine the licence granted in Mandya Taluk where the maximum number of retail licences for liquor shops was fixed at 22 but 25 licences were granted in favour of the individuals in a given year. When it was challenged before this Court, this Court while considering Rule 12 held that it is a fact that granting of licences has to be based apart from other factors, on the population of the area or locality. The learned Judges have not discussed or considered the probable demand in the area. It has to be noticed that according to Rule 12 as discussed supra, the population of the area and the probable demand, whether the area is urban or rural area has to be taken into consideration for determining the number of licences to be granted in a particular year. Therefore, apart from the population of the area, probable demand is a relevant factor to be taken into consideration by the authority determining the grant

of licence to a particular area from time to time. This factor has not been in any way interpreted by the Division Bench in the decision cited above.

8. Further, it is brought to our notice that the Tourism Department has already written to the Government for grant of licences at tourists spots and it is also not disputed that tourism industry in Karnataka is expanding. The Department of Tourism has laid down tourism policy/guidelines for implementation of the policy with effect from 1-7-1987. Earlier to the issuing of the impugned circular, on the recommendation of the Tourist Department regarding grant of licence at a particular place or locality where the tourists are visiting, the authority used to grant licences. As it was causing many problems, the Government has reviewed its policy and issued the impugned circular authorising the Commissioner for issuing licences basing mainly on the population and probable demand. Therefore, the impugned circular issued by the Commissioner of Excise is in consonance with the recommendation of the Tourist Department and the Government Order. It is the case of the petitioners that innumerable licences are granted in violation of Rule 12 and that has to be stopped and to cancel the licences issued in violation of the rule.

9. There is no dispute that there is increase in the number of tourists in the State and there are number of tourists spots also. The Tourism Department also identified Tumkur, Kolar and Raichur Districts as tourists spots. Therefore, grant of licences in such places will not only depend on the population of that area but also the probable demand i.e., number of tourists who visit that area and who pass through that area while travelling in the State. There is nothing wrong in granting licences taking into consideration the population and probable demand.

10. Therefore, in view of the above circumstances, we think it is just and appropriate to direct respondents 2 to 4 first to determine how many licences have to be granted in a year before issuing licences based on the population and probable demand of the area; whether in a given place there is increase in the grant of licences because of increase in population or increase in demand, has to be taken into consideration while issuing licences. If they have issued more licences in violation of Rule 12 of the Rules, the concerned authority has to take

action for cancelling such licences after considering the representation of the concerned person.

11. Writ Petitions are accordingly disposed of as per the observations made above. No order as to costs.

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