

LAKSHMI NARAIN AND OTHERS

v.

DISTRICT EXCISE OFFICER, FATEHPUR & ORS.

August 16, 1978

[V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

U.P. Excise Act—Section 41(e)(v) & U.P. Excise Rules—Rule 138—Valid and not unconstitutional.

Constitution of India 1950—Article 32—Petition under—Petitioners participating in an auction with full knowledge of conditions if could object to condition.

Section 41(e)(v) of the U.P. Excise Act empowered the Excise Commissioner to make rules fixing the days and hours during which licensed premises may be kept open or closed.

The petitioners who were licensees in sale of liquor challenged the validity of the rule.

Dismissing the writ petitions,

HELD : 1. As the provisions of Rule 13B of the U.P. Excise Rules are *in pari materia* with Rule 37 of the Punjab Liquor Licence Rules 1956, the decision in *P. N. Kaushal v. Union of India etc.* [1979] 1 S.C.R. 122 is applicable. [161 G]

2. The licences were awarded at public auction and the conditions regarding closure of business on certain days were printed in the auction notice. With full knowledge of these restrictions which the petitioners considered reasonable when they participated in the bids, they took the licences. They cannot assail the same in the writ petitions. [162F-G]

(For appearance refer to pages 125-126).

The Judgment of the Court was delivered by

KRISHNA IYER, J. We have today disposed of a batch of writ petitions arising under the Punjab Excise Act, 1914 (Annexure A). There the petitioner had challenged Sec. 59(f)(v) and rule 37 as unconstitutional. In the present batch of writ petitions the contention is identical except that the enactment and rule are formally different but *in pari materia*. Sec. 41(e)(v) of the U.P. Excise Act empowers the Excise Commissioner to make rules fixing the days and hours during which licensed premises may be kept opened or closed. Rule 13 B is one such rule which forbids sale of liquor "on all Tuesdays as well as the first day of every month". Aggrieved by rule 13 B (as amended), because it prohibits liquor trade on the 1st of every month the petitioners, who are licensees, have come up to this Court challenging its vires. Rule 13 B reads thus :

A "13B. All excise shops (including foreign liquor country spirit, home drugs, opium(tari and outstill shops) shall not be kept open on Independence day (August 15) Mahatma Gandhi Birthday (October 2) and on the day of Mahatma Gandhi's tragic death (January 30) every year and also on all Tuesdays as well as on the first day of every month.

B Provided that if the first day of the month happen to be a public holiday, the day next following of that month shall be the day on which the excise shops shall not be kept open. Provided further Excise Commissioner, may in consultation with the Collector of the District concerned, waive the condition of not keeping an exercise shop open on Tuesday or the first day of the month or the day next following of that month, as the case may be, for such specified period as he may think fit, in the case of hotels possessing a licence in Form F.L. 6 for the sale of foreign liquor for the benefit of such foreign tourists as may hold a valid permit under the All India liquor permit scheme of the Government of India."

C The source of the rule-making power is Sec. 41(e)(v) which hardly needs reproduction.

D It is easy to see that the provisions in the Punjab Law, challenged unsuccessfully before us, and these U.P. provisions are virtually the same. The contentions put forward by counsel for the petitioners and the submissions by the Solicitor General and Shri O. P. Rana in reply are also identical with what we have heard and considered in the Punjab cases. Indeed, the U.P. cases, from the point of view of the State, are stronger because the licences were awarded at public auctions and all the conditions now objected to in these writ petitions regarding closure of business on certain days are printed in the the auction notice. With full knowledge of these restrictions, which they considered reasonable when they participated in the bids (and which we consider reasonable for reasons we have given in the Punjab cases), they took the licences. So their present challenge must meet with its Waterloo in the decision of this Court in the Punjab Cases. Without more ado, we dismiss the Writ Petitions with costs (one hearing fee).