V. Pethaperumal Vs State of Pondicherry
The Pondicherry F.L.II Wine Merchants Association Vs Union of India (UOI)

Writ Petition No''s. 5556 and 5720 of 2010 and Connected miscellaneous petitions

Court: Madras High Court

Date of Decision: March 29, 2011

Acts Referred:
Pondicherry Excise Act, 1970 â€" Section 70#Pondicherry Excise Rules, 1970 â€" Rule 113, 113(1), 113(2), 114, 115

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: R. Natarajan, in W.P. No. 5720/2010, for the Appellant; N. Mala, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, C.J.
Since in both the writ petitions, the Petitioners have sought for one and the same relief namely, for quashing G.O. Ms.

No. 1/ Excise dated 22.02.2010 published in the Extraordinary Gazette No. 8, dated 22.02.2010 they are being heard and disposed of by this

common order.

2. W.P. No. 5556 of 2010 is filed under the garb of public interest litigation seeking for the issue of a Writ of Certiorarified Mandamus calling for

the entire records in respect of G.O. Ms. No. 1/ Excise Dated 22.02.2010 on the file of the third Respondent, which was published in the

Puducherry Gazette and quash the same and consequently direct the Respondent not to issue fresh licenses to IFML in future.

3. W.P. No. 5720 of 2010 has been filed by the Petitioner-association called ""The Pondicherry F.L.II Wine Merchants Association"" seeking for

the issue of a Writ of Certiorari calling for the entire records pertaining to the order passed in G.O. Ms. No. 1/ Excise dated 22.02.2010 published in the Extraordinary Gazette No. 8, dated 22.02.2010 on the file of the second Respondent and quash the same.

4. The case of the Petitioner in W.P. No. 5556 of 2010 is that the Petitioner is the founder of Perunthalaivar Kamarajar Samooga Neethi Urimai

Padhukapu Sangam, which is a registered one, and is functioning from the year 2007 mainly for the welfare of public and downtrodden people at

Puducherry.

5. It is the case of the Petitioner that there are already surplus toddy shops, arrack shops, bars and wine shops in almost all the villages and town.

License has been granted to conduct bars in the five star and three star hotels. Apart from that the Government has also opened number of

restaurants wherein Government has permitted running of bars. The Government through co-operative societies like PASIC, PAPSCO and

AMUDHA SURABI has permitted to run the bar. During the year 1989, many Social Welfare Organizations, NG Os and Social Workers

brought to the notice of the Government the need to restrict the number of IMFL Shops in the interest of public and particularly younger

generation, whose population itself is around 3 lakhs. Accordingly, the Government took a policy decision not to grant new licenses. However, the

said ban was relaxed in respect of hotels/restaurants under Tourism category, and also to the Government run co-operative societies like PASIC,

PAPSCO and AMUDHA SURABHI. According to the Petitioner, in spite of ban in force, more than 100 licenses have been issued to the co-

operative/public sector category and tourism hotels.

6. The Petitioner had also given statistical details of the number of shops and also the consumption, thereby highlighting the fact consumption of

liquor has increased over the period and has affected the younger generation and college going students.

7. It is submitted by the Petitioner that now the Government is taking steps to issue licence to around 90 shops by relaxing the ban. The grievance

of the Petitioner is that if licence is granted to open more shops, it will lead to increase in floating population from adjacent states and it may create

law and order problem. The Petitioner has also emphasized that illegal activities have become order of the day and also dacoity, robbery and

murders are increasing.

8. The Petitioner''s case is that apart from the Petitioner-organization, number of NG Os, social welfare organizers and social workers have given

representation to the Government to defer the issuance of license to new IFML shops to private persons. According to the Petitioner, the

Government unmindful of the representation is taking steps to implement the notification for issuing licence. Hence, the Petitioner, taking the interest

of public, younger generation, women, students, is forced to file this public interest litigation to quash the notification issued by the Government of

Puducherry.

9. The case of the Petitioner-association in W.P. No. 5720 of 2010 is that the Petitioner-association is a registered association formed for the purpose of safeguarding the rights and interests of its members and also the public. The members of the association are the lawful licensees granted with F.L.II license by the Excise authorities in the Government of Puducherry in terms of the Pondicherry Excise Act, 1970 and the Pondicherry Excise Rules, 1970.

10. It is the case of the members of the association that they are drawing IMFL products only from the known and authorized source of persons enjoying FL.I license duly issued by the Department of Excise, Government of Puducherry. The Government of Puducherry has framed rules for regulating the Trade in liquor in all aspects under the caption of The Pondicherry Excise Rules in exercise of the Rule making power vested with it u/s 70 of the Act, 1970. As regards the liquor trade, the Government is bound by the Act and the Rules referred to above.

11. The Petitioner''s case is that the Union Territory of Puducherry consists of four regions namely, Puducherry, Karaikal, Mahe and Yanam. With regard to all these four regions, the Act 1970 and Rules 1970 alone would govern to all aspects concerning liquor trade. The Government all of a sudden issued notification G.O. Ms. No. 1/Excise dated 22.02.2010 intending to issue IMFL "" FL.I and FL.II licenses to 90 private persons for the two regions of Puducherry and Karaikal leaving the other two regions. The Government in terms of the policy adopted on the basis of the Budget speech made by the Chief Minister for the year 2002-03 are intending to issue licenses to Co-operative organizations and Government Public Undertakings at any level without any limitation for the license without reference to any ban. The notification states that 74 new licneses for Puducherry Region and 16 new licneses in IMFL for Karaikal Region are issued under the provision of the Puducherry Excise Act and the Rules framed there under.

12. It is the case of the Petitioner that the Government do not enjoy the power to grant license in IMFL-FL.1 and FL.II to any Co-operative societies and public sector undertakings run by it under the scheme of Pondicherry Excise Act and the Pondicherry Excise Rules. The provisions contained under Rules 113 to 123 in Chapter VI of the Rules 1970 do not in any manner empower and authorize the Government or its instrumentalities to issue licenses in IMFL-FL.I and FL.II to the Co-operative Societies and Public Sector Undertakings to any extent without limitation. Moreover, there is no legal justification to act upon the Budget speech made by the Chief Minister. Hence, the impugned notification is totally without jurisdiction and devoid of authority.

13. According to the Petitioner, there are no tangible reasons for giving licenses in IMFL.I and IMFL.II to 90 private persons for the regions of Puducherry and Karaikal. Further, there are no valid and weighty reasons in choosing 90 private persons without any basic requirements and

demands from these two regions. The rules i.e., 113, 114 and 115, which deal with grant of IMFL "" FL.I and FL.II, do not prescribe the method

by which the applications should be processed and no method is prescribed for excluding the applicants from the zone of entitlement while

scrutinizing the application, if received in excess beyond the number identified under the impugned notification. The public had already raised strong

voice and objections for further issuing licenses in IMFL-FL.I and Fl.II, besides various other organizations in their representations objecting to the

notification issued.

14. It is the case of the Petitioner that the Government and Excise Department are indirectly allowing the licenses in IMFL FL.I to trade in IMFL.II

business without there being a separate licence in that behalf IMFL FL.II unauthorisedly whereby depriving the legitimate rights of the Petitioner

association licencees performing their trade in IMFL FL.II regarding which the Petitioner association has given several representations time and

again pointing out the violations of the rights in trade in IMFL-FL.II by the licensees of the Petitioner association by the licensees in IMFL.FL.I.

The Petitioner association has given representations on 25.02.2010 and 05.03.2010 to the Government and the Respondent concerned wherein it

has set forth the grievances besides pointing out the existing illegalities and wrongs committed by the licenses in FL.I.

15. In both the cases, counter affidavits have been filed by the Excise Commissioner-cum-Special Secretary to Government, Puducherry by taking

the following stand.

16. It is stated by the Respondent stated that trade in liquor is res extra commercial and the Government has the exclusive privilege to part with the

same and there is no question of violation of fundamental right or the principles of natural justice in dealing with the trade in liquor. The Respondent

submitted that in so far as Rule 122 is concerned, the rule recognizes the power of the Government as far as the general policy of issuance of

license, and that Rule 143 contemplates the method of grant of license and the procedure to be adopted. It is the case of the Respondent that since

the stage of grant of license has not been reached the reference of Rule 143 by the Petitioner is premature.

17. It is submitted by the Respondent that Puducherry Excise Act and Rules came into force from the year 1970 onwards which governs the

manufacturing, licensing, import, export and transport of intoxicants in the Union Territory of Puducherry and the Rules under the Act have been

framed in accordance with Section 70 of the Act.

18. It is submitted by the Respondent that FL-I and FL-2 licenses are issued in accordance with the law from the inception of the Act and the

Rules. During 1989, in the Council of Ministers meeting, it was decided to freeze the existing number of IMFL shops in the Union Territory of

Puducherry and accordingly a ban was imposed for issue of new license and it was also decided to grant new FL-2 license only under tourism category. Subsequently, in 2003, it was decided to grant licneses to PAPSCO, PASIC (Government of Puducherry undertakings) and AMUDHA

SURABHI (Co-operative organization). It is submitted by the Respondent that after two decades the Government, after considering in depth the

various factors in the Cabinet meeting held on 03.10.2009, decided to issue new licenses to private persons in Puducherry and Karaikal regions by

lifting the ban imposed in the year 1989.

19. The Respondent''s case is that the impugned notification conveys only the shift in policy of the Government and that being the case the writ

petition challenging the policy decision is not maintainable. It is the case of the Respondent that the State has the exclusive privilege to deal in liquor

business from manufacture to distribution and from sale to consumption. The State is parting with its exclusive privilege by giving licenses to the

individual for a fee or price fixed. The purpose is to generate revenue so that resources mobilized can be used to finance developmental activities of

the general public.

20. It is submitted by the Respondent that for doing business in liquor, Rule 113(1) and (2) stipulates two types of license viz., FL- I and FL-2.

FL-1 license is issued for doing wholesale business like importing of Indian liquor or foreign liquor or both from other States and for purchase from

distilleries. FL-2 license is issued for retail sales for serving in bars and restaurants.

21. Any person who desires to obtain license as per the provision of Rule 113 shall apply under Rule 114, and grant of license is governed by Rule

115. Renewal of license is governed by Rule 115-A.

22. It is submitted by the Respondent that change in policy is occasioned on a consideration of various factors like growth in population, economy

and commerce, etc, and that the Government is very conscious of the welfare of the people and the revenue generated by the issuance of license to

90 persons will augment the revenue of the Government, which will be utilized for welfare schemes. It is the stand of the Respondent that the

notification calling for application has not yet been issued and that only after finalizing the mode of selection in granting the license in the event of

more than one eligible application the notification calling for fresh application will be issued, and hence the apprehension of the writ Petitioners is

misplaced and the writs are premature and they deserve to be dismissed.

23. We have heard Mr. R. Natarajan, learned Counsel appearing in W.P. No. 5720 of 2010 and Ms. N. Mala, learned Government Advocate

appearing for the Respondents.

24. From the pleadings of the parties, the undisputed facts emerge are that during 1989, it was decided by the Respondent to freeze the existing

number of IMFL shops in the Union Territory of Puducherry. Accordingly, a ban was imposed for issuing new licenses. However, in the year

2003, it was decided to grant licenses to PAPSCO, PASIC and AMUDHA SURABHI. That continued for about two decades and it was only in

the year 2009, the Government took a policy decision to issue license to private persons in Puducherry and Karaikal regions by lifting the ban

imposed in the year 1989. Admittedly, the policy decision issued by the impugned G.O has not been implemented till date. The Petitioners

challenged the said policy decision of the Government, which provided for grant of new license to private persons in Puducherry and Karaikal

regions.

25. The only question, therefore, falls for consideration is as to whether the Petitioners, who are having vested interest, are entitled to challenge the

policy decision of the Government in the matter of excise business.

26. It is well settled law that no citizen has a fundamental right to carry on excise business and the Government has the exclusive privilege to

regulate the excise business by issuing policy decisions from time to time as per the requirement, According to the Respondent, the change in policy

decision has been occasioned on consideration of various factors like growth in population, economy and commerce, etc, and the revenue so

generated will be utilized for the welfare schemes.

27. A similar nature of policy decision was challenged in the case of Mohd. Fida Karim and another Vs. State of Bihar and others, wherein Their

Lordships held that the right to vend of excisable articles is exclusively and absolutely owned by the State Government. Hence there is nothing

wrong in changing the policy by the State Government to regulate excise business.

28. In another decision in the case of State of U.P. v. Chaudhari Ran Beer Singh reported in 2008 (4) MLJ 465 (SC), the Supreme Court

observed: (para 12, page 468)

Cabinet''s decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as

was done in Ram Milan case, though learned Counsel for the Respondents prayed that such a direction should be given. As rightly contended by

learned Counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the

Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy

decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to

interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the

propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

29. Similarly, in the case of State of Kerala v. B. Six Holiday Resorts (P) Ltd. reported in AIR 2010 SCW 2168, the Supreme Court considered

the decision of the Government in rejecting the application for PL-3 license. On the question of policy decision, their Lordships held: - (para 17,

page 2175)

Rule 13(3) provides for grant of licences to sell foreign liquor in hotels (restaurants). It contemplates the Excise Commissioner issuing licences

under the orders of the State Government in the interest of promotion of tourism in the State, to hotels and restaurants conforming to standards

specified therein. It also provides for the renewal of such licences. The substitution of the last proviso to Rule 13(3) by the Notification dated 20-

2-2002 provided that no new licences under the said Rule shall be issued. The proviso does not nullify the licences already granted. Nor does it

interfere with renewal of the existing licences. It only prohibits grant of further licences. The issue of such licences was to promote tourism in the

State. The promotion of tourism should be balanced with the general public interest. If on account of the fact that sufficient licences had already

been granted or in public interest, the State takes a policy decision not to grant further licences, it cannot be said to defeat the Rules. It merely

gives effect to the policy of the State not to grant fresh licences until further orders. This is evident from the explanatory note to the amendment

dated 20-2-2002. The introduction of the proviso enabled the State to assess the situation and reframe the excise policy.

30. In the light of the ratio laid down by the Supreme Court, we are of the definite view that the policy decision taken by the Government of

Puducherry in granting IFML license cannot be called in question, particularly when no malafides are alleged against the Government in framing

new policy for regulating and augmenting excise business. Hence, the policy decision of the Government, as contained in the impugned G.O,

cannot be interfered with.

31. For the reasons stated above, we do not see any merit in these petitions, which are accordingly dismissed. No costs. Consequently, connected

miscellaneous petitions are closed.