

CASE NO.:

Appeal (civil) 3630-3631 of 2003
Appeal (civil) 4648-4653 of 2003
Appeal (civil) 8123 of 2003
Appeal (civil) 8124 of 2003

PETITIONER:

The Prohibition & Excise Supdt., A.P. & Ors.

RESPONDENT:

Toddy Tappers Coop. Society, Marredpally & Ors.

DATE OF JUDGMENT: 17/11/2003

BENCH:

CJI., & Dr. AR. Lakshmanan

JUDGMENT:

J U D G M E N T

Dr. AR. Lakshmanan, J.

These appeals were filed by the Prohibition and Excise Superintendent of various divisions and districts of Andhra Pradesh against the final judgment dated 10.01.2003 of the High Court of Judicature, Andhra Pradesh in Writ Petition Nos. 19186 and 21096 of 2002 etc. batch wherein the High Court allowed the writ petitions filed by the respondents herein, who are having licenses for selling toddy at their respective shops, striking down the amended Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969 (hereinafter referred to as 'the A.P. Excise Rules') of its retrospective effect. The High Court held it as prospective in its operation and quashed the suspension of licenses and show-cause notices issued for cancellation with regard to the various toddy shops of the respondents in this batch of appeals.

The facts leading to these appeals being practically are the same, they are being disposed of by this common judgment by consent of parties. The short facts leading to the filing of these appeals are as under:-

The respondents herein are all members of Toddy Tappers Cooperative Societies. On 26.08.2002, 42 shops were raided out of which 29 shops were found to contain no adulterated toddy on the spot and the F.I.Rs were registered. As the Government Laboratories are not well equipped with sophisticated technology for detecting adulteration, the concerned excise officials sought permission of the trial Court for sending the samples to the Indian Institute of Chemical Technology and Forensic Sciences Laboratory, Hyderabad for chemical analysis. The trial Court permitted and accordingly the samples were sent to the above laboratories for chemical analysis. The above laboratories, after chemical analysis, sent their reports stating that the toddy samples contain Alprazolam, which substance is injurious to health. After receipt of the above reports, the concerned Prohibition and Excise officials, by their various proceedings, suspended licenses of the respondents herein. The respondents filed various writ petitions challenging the suspension order before the High Court and contended that the instant chemical analysis at the time of seizure does not disclose any adulteration and sending the samples to the independent laboratories other than the Government laboratories is violative of Rule 24 of the A.P. Excise Rules. Counter affidavits and additional counter affidavits were filed on behalf of the appellants herein before the High Court explaining the legal and factual position. The Division Bench of the High Court, by its common judgment, dated 10.01.2003 while upholding the amendment of Rule 24 struck down the same with regard to giving retrospective effect and quashed the suspension of the licenses and show-cause notices for cancellation and allowed the writ petitions filed by the respondents herein accordingly. The appellants herein filed Review Petition before the High Court seeking review of the said order which was also dismissed by the High Court. Aggrieved by the same, the State has preferred all the above appeals questioning the correctness and legality of the order impugned in these appeals. The High Court, while allowing the writ petitions, has

observed thus:

"The learned senior counsel Mr. S. Ramachandra Rao further submitted at the bar that the amended rule cannot have a retrospective effect. It was also pointed out that the amendment was made on 21.11.2002 by way of subordinate legislation and the subordinate legislation has no retrospective effect and, therefore, the said amended rule has to be struck down.

While rebutting the aforesaid arguments of the learned counsel for the petitioners, the learned Advocate-General submitted at the bar that the Government do not have a laboratory having sophisticated machinery and equipment to analysis the toddy so as to ascertain whether there is any type of adulteration or not, which is injurious to the health of the public at large and, therefore, the Government was constrained to issue the aforesaid G.O. so that the Government officers can send the sample drawn to the independent laboratory having sophisticated machinery and equipment. This was done to protect the health of the public at large and, therefore, it cannot be said to be unreasonable and arbitrary.

We agree with the submission made by the learned Advocate-General that there may be laudable intention on the part of the Government to protect the health of the public at large those who were interested in consuming toddy. It being a subordinate legislation, it cannot have retrospective effect.

The learned counsel Mr. S. Ramachandra Rao further submitted that the intention of taking the sample as laid down under the Act and sending the same to the Government Laboratory is not only the procedural aspect as submitted by the Advocate-General but it is a substantive one as well as procedural law as contained in the Excise Act.

We are not prepared to hold that the amended rule is violative of any article. It was done with a laudable object of protecting the health of the public at large. But it cannot have a retrospective effect. Therefore, in our considered view that the suspension of licenses and issuing show cause notices etc., for cancelling the licenses are only illegal and arbitrary and any other action taken by the respondents against the petitioners under the A.P. Excise Act is also illegal and arbitrary in the present situation."

In the above facts and circumstances, the following three questions of law would emerge for our consideration:

- a) Whether the High Court is justified in striking down the retrospective effect of Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969 in the facts and circumstances of the case which was amended in the larger public interest;
- b) Whether the amended Rule is not procedural in nature and as such can its retrospective effect be struck down;
- c) Whether the High Court is justified in quashing the suspension of licenses and show-cause notices in the facts and circumstances of the case.

We heard the arguments of Mr. Sudhir Chandra Aggarwal, learned senior counsel for the appellants and Mr. K.K. Venugopal, learned senior counsel for the respondents. Learned senior counsel for the appellants submitted that the High Court has erred in striking down amended Rule 24 of the A.P. Excise Rules of its retrospective effect in the facts and circumstances of the case which was amended in the larger public interest and to detect and prevent selling of adulterated toddy. According to learned senior counsel for the appellants, the amended Rule 24 is procedural in nature and as such there is nothing illegality in it in giving retrospective effect. He would further submit that the amended Rule 24 enables to send the samples to the independent laboratories for analysis of the toddy and such rule having retrospective effect is not violating any provisions of the said rules. According to learned senior counsel for the appellants, the High Court has failed to notice that the Government in its Memo dated 01.07.2002 permitted the Commissioner of Prohibition and Excise for sending the samples seized to the independent laboratories for chemical analysis.

Mr. K.K. Venugopal, learned senior counsel appearing for the licensees submitted that G.O.Ms. No. 973 Revenue (Excise-II) Department dated 21.11.2002 amending Rule 24 of the A.P. Excise Rules issued by the appellants cannot have

retrospective effect. According to him, Section 72 (3) of the A.P. Excise Act, 1968 stipulates that any rule made under the Act may be made with retrospective effect and when such a rule is made, the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature. He would further submit that Section 72 (4) of the A.P. Excise Act mandates that every rule made under Section 72 of the Act, shall, immediately after it is made be laid before each House of the State Legislature if it is in Session and if it is not in Session, in the Session immediately following for a total period of 14 days, which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the Rule or in the annulment of the Rule. In the instant case, while amending Rule 24, the same was admittedly not placed before the State Legislature, which was in session from 17.02.2003 till 29.03.2003 as such G.O.Ms. 973 Revenue (Excise II) is void and ineffective.

Mr. Venugopal, learned senior counsel, further contended that the amendment was made by way of subordinate legislation, which cannot have retrospective effect. The Rule 24 of the A.P. Excise Rules is not procedural but confers substantial rights to the parties and, therefore, the enactment of the Rule with retrospective effect violates Section 6 of the General Clauses Act. He would further submit that the Metropolitan Magistrate exercised his non-existent jurisdiction of referring the sample bottle to the Forensic Science Laboratories and Indian Institute of Chemical Technology violating the then existing Rule 24, acting on the request of the authorities and as such the aforesaid action is void ab initio and the said void action cannot confer any rights to the appellants

herein.

Before considering the rival submissions, it is useful to reproduce Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, which read as follows:

"24. Drawal of Samples :- Any Excise Officer, not below the rank of the sub-Inspector of Excise or Food Inspector appointed under the Prevention of Food Adulteration Act, 1954, shall be competent, any time, to take samples of arrack or toddy, in the possession of the licensee or any other person storing arrack or toddy, for the purpose of analysis. Such officer shall take three samples in the presence of the licensee or his agent or any other person in-charge of the licensed premises or who is found selling toddy in the said premises, after conducting a Panchanama. The sample shall be sent to the Court with a requisition to send, one of the samples expeditiously to the Chemical Examiner of the Excise Department having jurisdiction in the region, in which licensed premises are situated, for chemical Examination. If the sample sent to the Chemical Examiner/Laboratory is damaged, in transit or otherwise before the completion of the analysis, the Court may be requested by the concerned officer to send a second sample, to the Chemical Examiner/Laboratory. If the licensee desires that the sample should be sent for analysis to an independent Laboratory, he may apply to the Excise Superintendent within three days of the drawal of the sample. In cases where the licensee or any one of his Nowkarnama holders was not present at the time of taking of samples, the licensee should apply within seven days. The application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the license shall not be entitled to seek analysis by an independent laboratory thereafter. On receipt of the application within the time and with requisite demand draft, the concerned officer shall request the Court to send a sample to the independent laboratory chosen by the licensee."

The Government of Andhra Pradesh, as already noticed, by notification issued in G.O.Ms. No. 973 Revenue (Excise-II), Department dated 21.11.2002 amended Rule 24 providing to send the samples for independent laboratories and the same was given retrospective effect w.e.f. 01.07.2002.

The amended Rule reads as follows:-

"In the said Rules, for Rule 24, the following shall be substituted namely:-

24. Drawal of Samples : Any Excise Officer, not below the rank of the sub-Inspector of Excise or Food Inspector appointed under the Prevention of Food Adulteration Act, 1954, shall be competent, any time, to take samples of arrack or toddy, in the possession of the licensee or any other person storing arrack or toddy, for the purpose of analysis. Such officer shall take three samples in the

presence of the licensee or his agent or any other person in-charge of the licensed premises or who is found selling toddy in the said premises, after conducting a Panchanama. The sample shall be sent to the Court with a requisition to send, one of the samples expeditiously to the Chemical Examiner of the Excise Department having jurisdiction in the region, in which licensed premises are situated, or to any independent laboratory as instructed by the Commissioner of Prohibition and Excise, for chemical Examination. If the sample sent to the Chemical Examiner/Laboratory is damaged, in transit or otherwise before the completion of the analysis, the Court may be requested by the concerned officer to send a second sample, to the Chemical Examiner/Laboratory. If the licensee desires that the sample should be sent for analysis to an independent Laboratory, he may apply to the Excise Superintendent within three days of the drawal of the sample. In cases where the licensee or any one of his Nowkarnama holders was not present at the time of taking of samples, the licensee should apply within seven days. The application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the licensee shall not be entitled to seek analysis by an independent laboratory thereafter. On receipt of the application within the time and with requisite demand draft, the concerned officer shall request the Court to send a sample to the independent laboratory chosen by the licensee."

We have perused the pleadings, annexures and the relevant rules Section 72 of the A.P. Excise Act and other relevant records. We have also perused the report submitted (Annexure-P1) by the Indian Institute of Chemical Technology. It was submitted by the respondents that the entire action is vitiated by malafides and that the authorities are acting under the influence of some powerful lobby and that there is no provision in law enabling the authorities to send the samples to unauthorised institution. We have already extracted Rule 24 and the amended Rule and the decision of the Government. The Government in order to contain the menace of adulteration of toddy and in order to implement the policy guidelines to curb the adulteration of toddy crimes felt necessary to check the toddy shops and raw samples by utilising the services of the prohibition and excise officers for analysis. It was argued on behalf of the State that there is no facility in the Regional Science Laboratory to identify the adulterants like Alprazolam etc. in the toddy and hence the Commissioner, P & E vide his proceedings dated 18.05.2002 addressed the Government seeking the permission to send the toddy samples drawn to different independent laboratories having sophisticated equipment for analysis and identified the possible adulterants in the toddy like Alprazolam, the consumption of which is highly injurious to health. Accordingly, the Government vide Memo No. 320726/Excise-II/2/2002-1 dated 01.07.2002 permitted the Commissioner to send the toddy samples drawn to independent laboratories for analysis in conformity with the policy and purpose of the Act, directions were issued to the subordinate officers. Thus, it is seen that the primary object is to regulate sale of pure toddy without

any adulteration of foreign ingredients or substances which are highly injurious and endanger to the lives of the toddy consuming public. A request was made to the concerned Courts to send the samples for chemical analysis and the Magistrate concerned have ordered to send the sample bottles one each to the independent laboratories for analysis. As per the analysis reports received, it is proved that Alprazolam is present in 28 cases and in the remaining cases the toddy is found free from other foreign substances and as such authorities issued orders suspending the licenses of 29 toddy shops pending inquiry where adulteration is noticed in order to prevent the licensee from indulging in the sale of adulterated toddy any further and to safeguard the health of toddy consuming public.

We have already noticed that the impugned orders were challenged on various grounds on the orders passed by the High Court. In our opinion, as per the amended provision of Rule 24 which have come into force w.e.f. 01.07.2002 vide G.O.Ms. 973 dated 21.11.2002 as instructed by the Commissioner of P & E, toddy samples drawn under the said Rule can be sent to an independent laboratory for chemical examination. Even otherwise, the Court had ordered samples to be sent to the A.P. Forensic Science Laboratories, Red Hills, Hyderabad and the Indian Institute of Technology, Hyderabad. The Department had made out a case that the licensees to toddy shops have violated the provisions of the A.P. Excise Act and the Rules and the licence conditions by selling adulterated toddy with Alprazolam which is injurious to

public health as immediate action was warranted to prevent the licensee from indulging in sales of adulterated toddy any further. The samples were sent to the independent laboratories as per the amended provision. It is stated that Alprazolam is a notified drug under NDPS Act included at serial no. 30 of the schedule to Clause XIII of Section 2 and the licensees of toddy shops have, therefore, violated the provisions of Section 8(c) of the NDPS Act, 1985. The licensees have also violated the provisions of Rule 5 of the A.P. Excise "Trapping of Trees on toddy shops special condition licence" Rules, 1969 and Rule 11 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969 by mixing Alprazolam in toddy which was found in the toddy kept for sale and, therefore, the licensees have rendered themselves liable for action under the provisions of the A.P. Excise Act. It is seen from the counter affidavit filed by the appellants herein that they have totally denied the allegations made in the affidavit filed in the writ petition and stated that it is not possible to detect the adulterants like Allprazolam toddy sample in the Government laboratory and in such circumstances the Commissioner addressed the Government seeking permission to send the toddy samples drawn to different independent laboratories having sophisticated equipment for analysis and identified the possible adulterants in the toddy like Alprazolam consumption of which is highly injurious to health of toddy consuming public. Accordingly, the Government on 01.07.2002 permitted the Commissioner P & E to send the samples drawn to independent laboratories for analysis and the samples were found adulterant like Alprazolam by the laboratories. The procedure followed by the appellants in sending the samples to independent laboratory is correct in accordance with the amended Rule 24 of the A.P. Excise which came into force with retrospective effect from 01.07.2002. This, in our opinion, was done to protect the health of the public at large and, therefore, it cannot be said to be unreasonable and arbitrary. The intention of the Government is laudable since the same has been done to protect the health of the public at large. It is also a settled law by catena of decisions of this Court

that no citizen has got any fundamental right for the trade in liquor and it is for the Government to evolve the excise policy and implement the same in the interest of the public and safeguard the public. There is no merit in the submission of the learned senior counsel for the respondent that the amended provision being the subordinate legislation cannot have retrospective effect. In our opinion, the amended rule is not violative of any article and it was done with a laudable object of protecting the health of public at large and that sending the samples to the independent Government laboratories is only a procedural aspect. Therefore, in our opinion, the order passed by the High Court is liable to be interfered with and we do so accordingly. The High Court has wrongly struck down the amended provision of Rule 24 and quashed the suspension of the licenses and show-cause notices for cancellation and allowed the writ petitions of the respondents accordingly. This apart, the amendment was made in the larger public interest and to detect and prevent selling of adulterated toddy. In our view,

the amended Rule 24 is procedural in nature and as such there is nothing illegal or wrong in giving retrospective effect. The High Court, in our view, has failed to notice that Rule 24 only enables the authorities to send the samples to the independent laboratories for analysis of the toddy and such rule having retrospective effect is not violating any provisions of the said rules or the provisions of the Act. It is also not in dispute that the Government laboratories are not well equipped with sophisticated technology to detect adulteration. The rule was amended providing for sending the samples to the well-equipped laboratories to detect and control adulteration of toddy effectively. Thus, we are of the opinion that the Government can get tested the samples from independent laboratories also in the light of the amended Rule 24 which is in the larger public interest. This apart, the High Court has not noticed that even under the unamended Rule 24 the authorities can initiate inquiry after violation of the conditions of the licenses and selling adulterated toddy and can take necessary action and, therefore, the High Court ought not to have quashed the suspension of licenses and the show-cause notices for cancellation.

We shall now consider the argument of Mr. K.K. Venugopal in regard to Section 72(3) of the A.P. Excise Act which stipulates that any rule made under the Act may be made with retrospective effect and when such a rule is made, the reason for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature. Our attention was also invited to Section 72(4) of the said Act which mandates that every rule made under Section 72 of the Act shall immediately be laid before each Houses of the State Legislature if it is in session and if it is not in session in

the session immediately following. Section 72 of the Andhra Pradesh Excise Act, 1968 reads as under:

"72. Power to make rules:-

- (1) The Government may, by notification make rules for carrying out all or any of the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing provision, the Government may make rules-
 - (a) prescribing the powers and duties of Prohibition and Excise Officers;
 - (b) regulating the delegation of any power by the Commissioner or the Collector or the Prohibition and Excise Superintendent under Section 8;
 - (c) prescribing the time and manner of presenting appeals and the procedure for dealing with appeals;
 - (d) regulating the import, export, transport, manufacture, cultivation, possession, supply or storage of any intoxicant and may, by such rules, among other matters-
 - (i) regulate the tapping of excise trees, the drawing of toddy from such excise trees, the making of the same and the maintenance of such marks;
 - (ii) declare the process by which spirit shall be denatured and the denaturation of spirit ascertained;
 - (iii) cause spirit to be denatured through the agency or under the supervision of its own officers; and
 - (iv) regulating the drawing of neera and the sale thereof;
 - (e) regulating the periods and localities in which and the persons or classes of persons to whom, licences for the wholesale or retail sale or buying of any intoxicant, may be granted and regulating the number of such licences which may be granted in any area;
 - (f) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale or buying is granted for any locality;
 - (g) regulating the time, place and manner of payment of any duty or fee and the taking of security for the due payment of any duty or fee;
 - (gg) specifying the factors which should be taken into consideration for according or withholding approval under Section 24 and the period within which, and the manner in which such approval shall be accorded or withheld.
 - (h) prescribing the authority by which, the form in which and the terms and conditions on the subject to which any licence or permit shall be granted or issued and may, by rules, among other matters-
 - (i) fix the period for which any licence or permit shall continue to be in force;
 - (ii) prescribe the scale of fees of the manner of fixing the fees payable in respect of any lease, licence or permit, or the storing of any excisable article;
 - (iii) prescribe the amount of security to be deposited by the holders of any licence or permit for the performance of the conditions of the same;
 - (iv) prescribe the accounts to be maintained and the returns to be submitted by licence holders;
 - (v) prohibit or regulate the transfer of licences; and
 - (vi) prescribe the ages under which it shall be unlawful to employ children and to sell or give to children excisable articles;
 - (i) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use;
 - (j) regulating disposal of confiscated articles;
 - (k) regulating the grant of expenses to witnesses and to persons charged with offences under the Act, and subsequently released or acquitted;
 - (l) regulating the powers of Prohibition and Excise Officers to summon witnesses;
 - (m) prescribing the tax payable to the Government in respect of excise trees from which toddy is drawn;
 - (n) constituting mobile courts of Magistrates in consultation with the High Court, for the trial of offences against any provisions of this Act or the rules or orders made thereunder;
 - (o) any other matter that may be prescribed under this Act;

(3) Any rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(4) Every rule made under this Act, shall, immediately after it is made be laid before each House of the State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

Section 72 deals with the Government's power to make Rules for carrying out all or any of the purposes of the Andhra Pradesh Excise Act, 1968. Sub-section (3) of Section 72 of the A.P. Excise Act, 1968 confers power on the State Government to give retrospective effect to Rules made thereunder.

We have already elaborately discussed about the retrospectivity given to Rule 24 in paragraphs supra. Rule 24 has been amended by the Government in order to curb menace of adulteration of toddy and in order to implement the policy guidelines to curb the adulteration of toddy crimes and also to check the toddy shops and draw samples by utilising the services of the prohibition and excise officers for analysis. Rule

24 has been amended in the larger public interest which enables the officials to send the samples to the independent laboratories for analysis of the toddy. Such rule having retrospective effect is not violating any provisions of the said Rules. Retrospectivity given to Rule 24, in our opinion, is consistent with Section 72(3) of the A.P. Excise Act, 1968.

Mr. Venugopal submitted even though the legislature was in session from 17.02.2003 till 29.03.2003 the amended rule was not placed before the legislature and, therefore, the said rule is void and ineffective. This argument has no merit and basis. To appreciate the above argument, the following dates may be noticed.

26.08.2002

26.09.2002 & 09.10.2002

30.11.2002

21.11.2002

Inspection by the officials

Writ petitions were filed in the HC

Show-causes notices were issued

G.O.M.S. 973 was issued amending rules which comes into force with retrospective effect from 01.07.2002.

10.01.2003

HC allowed the writ petitions filed by the respondents holding the action initiated by the appellants as illegal and quashed the suspension of licenses and the show-cause notices for cancelling the

licence.

It was argued by the learned senior counsel for the appellants that since the writ petitions were filed on 26.09.2002 and 09.10.2002 in the High Court, the amended rule could not be placed before the State Legislature. This apart, the High Court has allowed the writ petition filed by the respondents herein on 10.01.2003 itself, no useful purpose would be served in placing the amended rule before the legislature which was in session on 17.02.2003 till 29.03.2003. The said order is set aside by the appropriate forum. In view of the above factual position, the amended rule could not be placed before the State legislature and there is every justification for the appellants for not placing the same before the joint legislature. In fact, the Government has challenged the impugned order passed by the High Court by filing a Special Leave Petition in this Court on 24.03.2003 itself. We, therefore, hold that the High Court is not justified in striking down the retrospective effect of Rule 24 of the A.P. Excise Rules, 1969 in the facts and circumstances of this case which was amended in the larger public interest

and that the amended rule is procedural in nature and as such retrospective effect can be given to the said rule. We also hold that the High Court is not justified in quashing the cancellation of licenses and show cause notices for cancellation of licence in the facts and circumstances of the case. In view of this judgment, the appellants are at liberty to place the amended Rule 24 before the State legislature in accordance with Section 72(3) and (4) of the said Act. The Government is also at liberty to proceed further pursuant to the show cause notices issued and dispose of the matter in accordance with law and after affording opportunity to the respondents herein. For the foregoing reasons, all the orders passed by the High Court in writ petitions filed by the respondents are set aside and all the appeals filed by the appellants herein stand allowed reserving liberty to the appellants herein to proceed further pursuant to the show cause notices issued and decide the matter in accordance with law after affording opportunity to the respondents. No costs.

JUDIS