

COMMENTS

Synopsis

1. *Scope*
2. *Procedure of Auction sale*
3. *Annual auctions*
4. *Excise shops sold on taluk-wise basis*

1. Scope

Section 17 of the Act deals with Power to grant lease of right to manufacture etc.

2. Procedure of Auction sale

Section 17 — Auction sale — Procedure — Variation of demands — Not mandatory to issue fresh Gazette notification. — *Government of Karnataka v M.R. Thammaiah*, ILR 1987 Kar. 3538 (DB).

3. Annual auctions

Section 17 — Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969, Rule 3 — Licence for vend of arrack — Annual auctions — Disposal of retail vend by interim arrangement — Government has got power under Section 17 read with Rule 3 for making interim arrangement — It is within parameters of Karnataka Excise Act and Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules — Court must while adjudging constitutional validity of an executive decision relating to economic matters grant certain measures of freedom or 'play' in 'joints' to the executive.

In view of the declaration of the general elections and in the absence of a regular Government, the State Government is unable to take a final decision for disposal of retail vend of arrack and hence, the sale of arrack is made purely on interim arrangement basis by securing uniform increase over and above the rentals previous year of for each taluk/unit from the existing excise contractors. This interim arrangement has been made in view of the fact that, there is a total bar under the Constitution that a care taker Government is not supposed to take any major policy decisions in strict adherence of the code of conduct prescribed by the Chief Election Commissioner. Therefore, the State Government has got the power under Section 17 read with Rule 3 of the Lease Rules for making the impugned interim arrangement under the heading "in any other manner" mentioned in Rule 3 of Lease Rules. The exclusive right to manufacture and sell liquor and sell that right to raise revenue vests in the State. In view of the dangerous character of the trade, the citizen has no fundamental right to carry on a trade in intoxicating liquor as this commodity is *Res Extra Commmercium*. But, if the law, or the policy of Government, allows a trade in liquor, then there can be a right to trade in liquor if it is allowed to be brought and sold. Therefore, having regard to all these factors, it can be very well said that, the power exercised by the State is well-within the parameters of the Excise Act and the Lease Rules. . . . The Government is the guardian of the finances of the State. It is expected to protect the financial interests of the State. When, the Government, after collecting the material from the concerned Department

interference by Court does not arise and the same is uncalled for in view of the well-settled principles of law. . . . The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or 'play' in the 'joints' to the executive. — *D. Sudhakar v State of Karnataka and Another*, 2004(7) Kar. L.J. 611 : ILR 2004 Kar. 4904.

4. Excise shops sold on taluk-wise basis

Section 17(1)(c) — Sale talukwise — Increase in the number of shops — Karnataka Excise (Disposal of Privileges of Retail Vend of Liquors) Rules, Rule 26.

When excise shops are sold on taluk-wise basis, the person who purchases the right acquires exclusive right to sell arrack within the entire area of the taluk in which these shops are situate.

When there is increase in the number of shops by the Excise Commissioner, there is no necessity for a sale of the right to sell arrack in those shops, as the purchaser on taluk-wise basis acquires right to sell in the entire taluk — *N.R. Sharaon v State of Karnataka*, 1968(2) Kar. L.J. 438.

18. Lessee's permission to draw toddy.—Where a right to manufacture toddy has been leased under Section 17, the State Government may declare that the written permission of the lessee to draw toddy shall have the same force and effect as a licence under Section 13 from the Deputy Commissioner for that purpose.

19. Duties of licensees with regard to measurement and testing.—Every person, who manufactures or sells any intoxicant under a licence granted under this Act shall be bound—

- (a) to provide himself with such measures, weights and instruments as the Excise commissioner may prescribe and to keep the same in good condition and on the licensed premises; and
- (b) on the requisition of the Excise Officer duly empowered in that behalf, at any time to measure, weigh or test any intoxicant in his possession in such manner as the said Excise Officer may require.

20. Prohibition of employment of children and of women.—(1) No person who is licensed to sell any intoxicant for consumption on his premises shall, during the hours in which such premises are kept open for persons, employ or permit to be employed, either with or without remuneration, any children under such age as the State Government may, by rule, prescribe in this behalf, in any part of such premises in which such excisable article is consumed by the public.

(2) No person who is licensed to sell any intoxicant for consumption at his premises shall, without the previous permission in writing of the Deputy Commissioner, during the hours in which such premises are kept open for persons, employ or permit to be employed, either with or without remuneration, any women in any part of such premises in

the town. Therefore, classification cannot be stated to be bad, for it is based on discernible grounds. Highway specified in the Schedule means except such parts thereof as are situated within any Municipal areas, is hereby declared to be a National Highway and, in the definition, it is made clear that any 'Municipal area' means with a population of 20,000 or more, the control or management of which is entrusted to Corporation or a Municipal Council or a Town Area Council, a Town Committee or any other authority. The definition of the areas falling within the Municipal area and outside is recognised in the National Highways Act also. Similar is the position even in regard to nationalisation of routes arising under the Motor Vehicles Act, wherein the operation of any transport vehicle on a route is nationalised, exception is made to the areas falling within the Municipality or a local authority. In that way, it is accepted in all enactments the difference between the areas falling within the Municipal area or outside the Municipal area, even though the route or road is a Highway. Therefore, the difference noticed by the Department is not irrational. — *Karnataka Wine Merchants' Association (R), Bangalore and Others v State of Karnataka and Others*, 1994(2) Kar. L.J. 570 (O.B).

Rule 5(1) — Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 — As amended by Karnataka Excise (Sale of Indian and Foreign Liquors) (Second Amendment) Rules, 2000, Rule 5-A — Bar licence — Renewal of — Rejection of application for renewal on ground that school is likely to be opened in future within distance of 100 metres from premises licensed to run bar — Rejection of application on such ground is to be held bad in law — Licence has to be renewed if condition regarding location of licensed premises is satisfied on date of renewal.

It is not in dispute the applications filed by the petitioners have to be considered by the authorities based on the location of the premises as on the date of considering renewal or granting licence afresh. Just because a person is going to construct a school building or a school will be inaugurated in the near future that cannot be a ground for the authorities to reject in anticipation of opening of a school. Either the Excise Act or the Rules do not provide for rejection of the renewal application on the ground that in the near future a school will be opened. In the instant case, the authorities have held that the Gnana Deepika School building is under progress and therefore the renewal application of the petitioner has been rejected. If the theory of the respondent is adopted, it will be difficult in the future to grant any licence in favour of any person. A rival businessman may object on the ground that either a school or a temple will be established within the prohibited distance from the shop in question by applying the above principle all such applications have to be rejected. Under the circumstances, the reasonings given by the authorities to reject the renewal of the petitioners are also bad in law. Therefore, in anticipation that a school building will be opened in the future cannot be a ground for the authorities to reject the renewal applications of the petitioners. — *S.N. Chinappa v State of Karnataka and Others*, 2001(5) Kar. L.J. 234.

Rule 5(4) — Licensed premises — Order to shift — Giving of opportunity to licensee of being heard is necessary before directing him to shift his premises.

The respondents have not provided reasonable opportunity to the petitioners as required under sub-rule (4) of Rule 5 of the Karnataka Excise Licence (General Conditions) Rules, 1967. So, under these circumstances, before calling upon the petitioners to shift their business premises to any other

premises, the respondents have to give an opportunity for the petitioners and only after hearing the petitioners the respondents can pass such an order. Under these circumstances, the matter has to be reconsidered by the licensing authority after affording an opportunity to the petitioners and till such time the respondents shall have no right to interfere with the business of the petitioners as the respondents have collected licence fee for the whole of the year. — *S.N. Chinappa v State of Karnataka and Others*, 2001(5) Kar. L.J. 234.

6. Sign Boards, etc.—Every licensee shall affix a sign board in a conspicuous place of the shop showing the nature of the shop, number of licence and retail price in such language as may be understood by the majority of the residents in the locality.

7. Entrance and Exit.—There shall be only one and the same entrance and exit for the shop.

8. Mixture Prohibited.—The licensee shall not mix any material injurious to the health or mix anything to decrease or increase the strength of the liquor or its intoxicating power.

9. Employment of Women and Certain others prohibited.—(1) The licensee shall not employ any women [xxx].

(2) He shall not employ any person who has been convicted.

(3) The licensee shall not employ, in any capacity, a person who is below the age of 18 years or a person who is suffering from any contagious disease.

CASE LAW

Rule 9 — Employment of women — Prohibition of — Rule must be understood as forbidding women being employed to serve liquor to customers — Rule must be interpreted strictly and must not be allowed to affect right of employer or employee beyond what is absolutely essential — Rule cannot be pressed into service to prevent employment of women artists in restaurants for purpose of singing or playing musical instruments.

Tirath S. Thakur, J., Held: The Rule, is in three parts, one dealing with employment of woman, the other employment of convicts and the third suffering from any contagious disease. Sub-rules (1) and (2) simply provide that the licensee shall not employ any woman or any person who has been convicted. If the intention was to forbid the licensee from employing women or convicts also "in any capacity" nothing prevented it from making a provision to that effect as indeed it has done in the case of minors and persons suffering from any contagious disease. This would imply that in so far as women are concerned, their employment is forbidden but not in every capacity. Such employment may in certain capacities and situations, be permissible. Employment of women under Rule 9 of the General Conditions Rules, is forbidden only in so far as the sale and service of liquor is concerned. There may be other capacities in which a woman may be employed by the licensee, which capacities may be wholly unconnected with the actual service of liquor to the customers. Rule 9 imposes a restriction which must be interpreted

1. The words "other than his family member" omitted by GSR 171, dated 6-5-1969, w.e.f. 15-5-1969.