



2022:APHC:15225

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE D.V.S.S. SOMAYAJULU**

WRIT PETITION (PIL) No.80 of 2022

(Proceedings through Physical Mode)

Kanumuri Raghu Ramakrishna Raju,
S/o. Sri K.V.S. Suryanarayana Raju,
aged about 59 years, Member of Parliament,
458/1, Block-4, Ai Bhimavaram,
Akidu Mandal, West Godavari District,
Andhra Pradesh, currently residing at
Plot No.18 New MP Villas, New Bungalows,
North Avenue, Raisina Hills, New Delhi 110001, India
Mobile: 900092222, Aadhaar No.5124 8007 7921,
A/c.38485294597, State Bank of India, Parliament
House Branch, New Delhi,
PAN No ALTPK9688G

... Petitioner

Versus

Union of India, Secretary to Government of
India, Department of Economic Affairs,
Ministry of Finance, North Block,
New Delhi-110001, rep. by its Secretary (EA),
and others

... Respondents

Counsel for the petitioner : Mr. Ambati Sudhakara Rao
Counsel for respondents 1 to 3 : Mr.N.Harinath, ASG
Counsel for respondents 7 to 14 : The Advocate General

ORDER

Dt: 24.06.2022

(Prashant Kumar Mishra, CJ)

The petitioner has preferred this Writ Petition (Public Interest Litigation) praying to declare:

- a) Act No.31 of 2021, namely Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor, Foreign Liquor) (Amendment) Act, 2021, as illegal, arbitrary and violative of Articles 266 and 293 of



the Constitution of India and contrary to Sections 4-A, 4-B and 4-C of Act No.15 of 1993 and Sections 23, 23-A and 23-B of Act 17/1968, i.e. A.P. Excise Act, 1968 and consequently to set aside the same;

b) Act No.9 of 2022, namely Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor, Foreign Liquor) (Amendment) Act 2022, as illegal, arbitrary and violative of Articles 266 and 293 of the Constitution of India and contrary to Sections 4-A, 4-B and 4-C of Act No.15 of 1993 and Sections 23, 23-A and 23-B of Act 17/1968, i.e. A.P. Excise Act, 1968 and consequently to set aside the same;

c) the earnings of the 14th respondent Corporation as the earnings of Government of Andhra Pradesh by virtue of Sections 4-A, 4-B and 4-C of the Act 15 of 1993, i.e. Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor) Act, 1993 and Sections 23, 23-A and 23-B of the A.P. Excise Act, 1968 and forms part of;

d) the attempts of the 14th respondent Corporation to borrow loans by mortgaging the Special Margin money from any nationalized or commercial bank, financial institution or any other entity as illegal and against the provisions of Sections 4-A, 4-B and 4-C of Act No.15 of 1993 and Sections 23, 23-A and 23-B of the A.P. Excise Act, 1968 and violative of Article 293(3) of the Constitution of India, in the interest of public good and in the interest of justice and pass such other order or orders as this Court deems fit and proper in the circumstances of the case.



2. According to the learned counsel for the petitioner, the 14th respondent, i.e. A.P. State Beverages Corporation Ltd., has been granted exclusive rights and privileges to manage the wholesale as well as the retail trade of alcohol by invoking Section 6 of the Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor, Foreign Liquor) Act, 1993 (in short, 'Act No.15 of 1993'). Vide Section 4-A of Act No.15 of 1993, the Government was entitled to specify the trade margin, privilege fee or any other levy, by whatever name called, to be collected by the Andhra Pradesh Beverages Corporation from the holders of licences. Under Section 4-B of Act No.15 of 1993, the amount realised under Section 4-A being the income of the Government, shall be remitted by the Corporation to the Government in the manner specified by the Government. Similarly, under Section 4-C of Act No.15 of 1993, all amounts paid by the Corporation from 21.07.1993 to the Commissioner of Prohibition and Excise or the Government as privilege fee or special privilege fee or any fee or cess, by whatever name called, in consideration of the privilege conferred on the Corporation, as per the provisions of Sections 23(1), 23-A and 23-B of the Andhra Pradesh Excise Act, 1968 (in short, 'the 1968 Act'), shall be deemed to be and always deemed to have been the income of the Government and due payment for the relevant years in terms of Section 4-B of Act No.15 of 1993.

3. It is argued by the learned counsel that the Corporation, being an instrumentality of the State and having been granted exclusive privilege to run liquor shops in the State of Andhra Pradesh as also for importing/exporting and carrying out wholesale trade and distribution in



Indian liquor, foreign liquor, wine and beer, discharges governmental function. Under Article 265 of the Constitution of India, it is provided that no tax shall be levied or collected except by authority of law, and further, under Article 266, no money out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. The 14th respondent-Corporation has no independent income except the mandate for which it is constituted and its income is deemed to be the income of the Government; therefore, the impugned amendment conferring statutory status on the Corporation to implement welfare schemes of the Government by utilizing its income, is contrary to the statutory provisions and for the said purpose, the Corporation has been authorised to borrow huge amount of money from banks/banks consortium.

4. It is the case of the petitioner that the Government of Andhra Pradesh does not have any scope of borrowing money from the Reserve Bank of India, as it has already borrowed huge amounts and the impugned amendment entitling the Corporation to borrow money for implementing the welfare schemes of the Government, is an act in violation of the Constitutional provisions as also various provisions of the 1968 Act and Act No.15 of 1993. The Corporation, which does not have any income as the entire income is that of the State Government, ought not to have been authorized to borrow amount from banks or financial institutions.

5. It is further argued that the State Government has established a Corporation called A.P. State Development Corporation under the



Companies Act, 2013, which has borrowed an amount of Rs.25,000 crores from SBI Capital consortium for implementation of the State Government direct money transfer freebie schemes. The SBI Capital consortium allowed the borrowing in favour of A.P. State Development Corporation knowing fully well that it does not have any business operation/activities; therefore, to overcome the legal hurdle, the impugned amendment has been made by conferring statutory backing in favour of A.P. State Beverages Corporation Ltd. to enable it to borrow money for carrying out the welfare schemes of the State Government. This amounts to financial impropriety and undermining the provisions of the Constitution of India, Reserve Bank of India Act, 1934 and Andhra Pradesh Fiscal Responsibility and Budget Management Act, 2005, which shall occasion a major financial threat to the people of the State in the days to come.

6. We have heard learned counsel for the petitioner at length and perused the material on record.

7. The primary object of the writ petition appears to be to prevent A.P. State Beverages Corporation Ltd., from borrowing money from banks/financial institutions for carrying out welfare schemes of the State Government. The object itself, prima facie, seems to be contrary to public interest inasmuch as if the State Government or the Corporation is prevented from borrowing money, it will affect implementation of various welfare schemes of the State Government. Even otherwise, Courts should be very slow in interfering in matters having adverse financial implications on the Government. Such matters should be left to be managed by the Government because Courts are neither economists nor financial experts.



Except making a statement that if the 14th respondent-Corporation is allowed to borrow money, it shall become a major financial threat to the people of the State, no other particulars have been given as to how borrowing money will become a major financial threat to the people of the State.

8. At this stage, we deem it appropriate to refer to a few judgments of the Hon'ble Supreme Court, wherein the issue regarding maintainability of public interest litigations has been considered.

9. In ***Manohar Lal Sharma v. Union of India and others***¹, petitioner therein questioned allocation of funds by the Central Government to the State of Jammu and Kashmir. The Hon'ble Supreme Court observed that such grant of funds to the State of Jammu and Kashmir for its security or otherwise is within the exclusive domain of the Government and in a matter like this, a public interest litigation does not deserve to be entertained and, further, that it is not a judicially manageable proceeding and the Court should refrain from entering into the said area.

10. In ***State of Uttaranchal v. Balwant Singh Chaufal and others***², the Hon'ble Supreme Court has observed that public interest litigation is a product of realisation of constitutional obligation of the court. It was further observed that while exercising its jurisdiction of judicial review, it realised that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy has been denied justice from times immemorial and in fact they have no access to justice.

¹ (2016) 13 SCC 710

² (2010) 3 SCC 402



Therefore, predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalised sections of the society, the Hon'ble Supreme Court has initiated, encouraged and propelled the concept of public interest litigation, which is an upshot and product of the Court's deep and intense urge to fulfil its bounden duty and constitutional obligation. It was also observed that High Courts exercise same jurisdiction under Article 226 of the Constitution of India; the rule of *locus standi* was diluted and the traditional meaning of "aggrieved person" was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system.

11. In ***Balwant Singh Chaufal*** (supra), the Hon'ble Supreme Court, referring to ***Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India***³, ***Bandhua Mukti Morcha v. Union of India***⁴, ***Fertilizer Corpn. Kamgar Union v. Union of India***⁵ and ***Ramsharan Autyanuprasi v. Union of India***⁶, observed thus in paragraphs 36 and 75:

"36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic

³ (1981) 1 SCC 246

⁴ (1984) 3 SCC 161

⁵ (1981) 1 SCC 568

⁶ 1989 Supp (1) SCC 251



justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements."

"75. We would not like to overburden the judgment by multiplying these cases, but a brief resume of these cases demonstrates that in order to preserve and protect the fundamental rights of marginalised, deprived and poor sections of the society, the courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and orders. We would like to term cases of this period where the Court relaxed the rule of locus standi as the first phase of the public interest litigation. The Supreme Court and the High Courts earned great respect and acquired great credibility in the eyes of public



because of their innovative efforts to protect and preserve the fundamental rights of people belonging to the poor and marginalised sections of the society.”

12. In ***Balwant Singh Chauhan*** (supra), the Hon'ble Supreme Court has discussed phase two of evolution of public interest litigation and in various judgments, the Hon'ble Supreme Court issued directions to preserve and protect ecology and environment. Similarly, in phase three of evolution of public interest litigation, probity in governance has been discussed. In phase three, the Hon'ble Supreme Court entertained public interest litigations relating to cases where investigating agencies failed to perform their legal obligation or where large scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees has taken place. The above issues were discussed by the Hon'ble Supreme Court in ***Vineet Narain v. Union of India***⁷, ***Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India***⁸ and ***Centre for Public Interest Litigation v. Union of India***⁹.

13. Considering the present petition on the anvil of the law laid down by the Hon'ble Supreme Court in the judgments referred hereinabove, it is to be noted that the petitioner has neither espoused the cause of poor, downtrodden or marginalised sections of society nor he is alleging defalcation of public money, rampant corruption or fraudulent activities of the Government. The petitioner has challenged Act No.31 of 2021, namely Andhra Pradesh (Regulation of Trade in Indian Made Foreign Liquor,

⁷ (1998) 1 SCC 226

⁸ (2006) 6 SCC 613

⁹ (2003) 7 SCC 532



Foreign Liquor) (Amendment) Act, 2021, only on the ground of violation of constitutional provisions, which has nothing to do with welfare of poor, marginalised or oppressed section of society. It is well settled that writ court does not entertain a petition for a mere academic purpose and it should refrain from considering abstract legal principles in public interest litigations, more so when they concern Government's financial affairs.

14. In view of the foregoing discussion, we are not inclined to entertain this Writ Petition (Public Interest Litigation), which deserves to be, and is accordingly, dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

Sd/-

PRASHANT KUMAR MISHRA, CJ
MRR

Sd/-

D.V.S.S. SOMAYAJULU, J