

B. KRISHNA BHAT  
v.  
UNION OF INDIA AND ORS.

A

MARCH 19, 1990

[SABYASACHI MUKHARJI, C.J. AND M.M. PUNCHHI, J.]

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*Constitution of India, 1950: Articles 32 & 37—Writ Petition for direction to State of Karnataka to enforce total prohibition—Whether maintainable.*

*Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968: Rule 3(11)(b) as amended by Amendment Rules, 1989—Distributor licence—Monopoly conferred on State—Whether constitutionally valid—Writ Petition under Art. 32 of Constitution for enforcement of policy of prohibition. Whether maintainable.*

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Clause (b) of sub-rule (11) rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 as amended by the Amendment Rules, 1989, requires the State Government to issue distributor licence only to such company owned or controlled by it as may be specified.

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The petitioner assailed the constitutional validity of clause (b) on the ground that the policy of prohibition was not being implemented as enjoined by Article 47 of the Constitution inasmuch as the State of Karnataka instead of bringing total prohibition in the State, had evinced interest in taking up the responsibility of selling liquors to the general public, and sought a direction to the Union and other State Governments to enforce the policy of total prohibition.

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Dismissing the writ petition, the Court,

**HELD:** 1. There is no direct or casual violation of any fundamental right of which the petitioner can legitimately claim enforcement.

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2. Article 47 is in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of this part shall not be enforceable by any court. Article 32 gives the Supreme Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, Directive Principles are not.

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A Directive Principles are aimed at securing certain values or enforcing certain attitudes in the law making and in the administration of law. Directive Principles cannot in the very nature of things be enforced in a court of law.

B *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*, [1981] 1 SCC 246, referred to.

C 3. Whether a law should be made embodying the principles of Directive Principles depends on the legislative will of the legislature. In the instant case, what the petitioner sought to achieve by his application was to inject a sense of priority and urgency in that legislative will. Determining the choice of priorities and formulating perspective thereof, is a matter of policy. Article 32 is not the machinery through which policy preferences or priorities are determined. It is not the nest for all the bees in the bonnet of 'public spirited persons'.

D *Rustom Cavasjee Cooper v. Union of India*, [1970] 3 SCR 550, referred to.

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 42 of 1990.

(Under Article 32 of the Constitution of India)

E N.D.R: Ramachandra Rao and Vineet Kumar for the petitioner.

The Judgment of the Court was delivered by

F SBYASACHI MUKHARJI, C.J. This is a petition under article 32 of the Constitution of India. The petitioner claims to be "a public spirited individual". He further claims to be a person aggrieved and seeks to assail the constitutional validity of the State of Karnataka and the Union of India not promoting, enforcing and carrying out the policy of prohibition i.e. manufacturing, sale and consumption of intoxicating drinks and drugs throughout the country—India—Bharat, and also assails the constitutional validity of clause (b) of sub-rule 11 of rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 as amended by the Karnataka Excise (Sale of Indian and Foreign Liquors) (Amendment) Rules, 1989 which came into force on 10th September, 1989.

H The petitioner refers to the Preamble to the Constitution which,

according to him, explains the general purpose behind the general provisions of the Constitution. He refers to Mahatma Gandhi and his commitment to prohibition. According to the petitioner, manufacture, sale and consumption of intoxicating drinks and drugs have become a stumbling block and a dangerous dragon to the progress and stability of the nation as a whole. The petitioner states that unless this dragon is completely destroyed the country could never think of achieving the objects of the Constitution and justice—social, economic and political. People are flouting the laws of this country, therefore, the petitioner objects that the State should take upon the business of selling liquors. He has asserted that the State of Karnataka instead of bringing total prohibition in the State, has evinced interest in taking up the responsibility of selling liquors to the general public. Hence, it is bad and contrary to the Constitution, and he challenges the amendment which prescribes the licence for sale shall be issued to only such company owned or controlled by the State Government as the State Govt. may specify. According to the petitioner, such a rule is unconstitutional. He draws our attention to Article 47 of the Constitution of India which indicates directive principles.

In the aforesaid view of the matter he claims that this Court should direct the Union of India and other State Governments to enforce the policy of total prohibition throughout the country including the State of Karnataka and to impose restrictions on manufacture, sale and consumption of intoxicating drinks and to declare rule 3 of these rules as void and unconstitutional.

We are unable to entertain this writ petition under article 32 of the Constitution. The petition of the petitioner is that the policy of prohibition is not being implemented as enjoined by article 47 of the Constitution. In our opinion, it is not entertainable. Article 47 of the Constitution, which is part of our Directive Principles of State Policy enjoins that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Article 47 is in Part IV of the Constitution which contains Directive Principles of State Policy. Article 37 enjoins that the provisions of this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It has to be borne in mind that Article

- A 32 of the Constitution gives the Supreme Court the power to enforce rights which are fundamental rights. Fundamental rights are justiciable, Directive Principles are not. Directive Principles are aimed at securing certain values or enforcing certain attitudes in the law making and in the administration of law. Directive Principles cannot in the very nature of things be enforced in a court of law. See in this connection the observations of this Court in *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*, [1981] 1 SCC 246. Whether a law should be made embodying the principles of Directive Principles depends on the legislative will of the legislature. What the petitioner seeks to achieve by this application is to inject a sense of priority and urgency in that legislative will. Determining the choice of priorities and formulating perspective thereof, is a matter of policy. Article 32 is not the machinery through which policy preferences or priorities are determined and this Court is not the forum where the conflicting claims of policies or priorities should be debated. See the observations of this Court in *Rustom Cavasjee Cooper v. Union of India*, [1970] 3 SCR 530 at p. 584.
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We find no direct or casual violation of any fundamental right of which the petitioner can legitimately claim enforcement in this application. To make the State accept a particular policy, desirable and necessary as the policy might be is not the function of Article 32 of the Constitution. Article 32 of the Indian Constitution is not the nest for all the bees in the bonnet of 'public spirited persons'.

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In the aforesaid view of the matter, we decline to entertain this application and the same is accordingly dismissed.

P.S.S.

Petition dismissed.