

Supreme Court of India

The State Of Tamil Nadu Rep. By ... vs K. Balu & Anr on 15 December, 2016

Author: D Y Chandrachud

Bench: T.S. Thakur, D.Y. Chandrachud, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos .12164-12166 OF 2016
[Arising out of SLP (C) Nos.14911-14913 of 2013]

THE STATE OF TAMILNADUAPPELLANTS
REP. BY ITS SECRETARY HOME,
PROHOBITION & EXCISE DEPT & ORS

Versus

K BALU & ANRRESPONDENTS

WITH

CIVIL APPEAL No. 12167 OF 2016
[Arising out of SLP (C)No.8267 OF 2014]

CIVIL APPEAL Nos. 12168 OF 2016
[Arising out of SLP(C) No.8971 OF 2014]

CIVIL APPEAL No. 12169 OF 2016
[Arising out of SLP (C) No.35454 OF 2014]

CIVIL APPEAL No.12170 OF 2016
[S.L.P.(C) No.36787 of 2016 @ of CC No.231 OF 2015]

CIVIL APPEAL Nos. 12171-12172 OF 2016
[S.L.P.(C) Nos.36788-36789 of 2016 @ of CC Nos.18587-18588 OF 2015]

CIVIL APPEAL No.12173 OF 2016
[Arising out of SLP(C) No.34525 OF 2015]

AND

T.P.(C) No.739-7410F 2016

J U D G M E N T

Dr D Y CHANDRACHUD, J Delay condoned.

Leave granted.

The issue which we address in this case is about the presence of liquor vends on national and state highways across the country. The backdrop to the case is provided by alarming statistics on the occurrence of road accidents. They have claimed human lives and caused debility and injury. Both on a personal scale (in terms of the injuries and loss of life) as well as in a social context, restitution in the form of mandatory awards of compensation can never undo the trauma of loss and the pain of suffering. The law can only imperfectly alleviate the consequences of road accidents. In terms of personal suffering caused to individuals and families as well as in terms of deprivation caused to society of its productive social capital, road accidents impose unacceptable costs. We will analyse the issues which have been raised in this case on the basis of facts which are not in dispute and on the foundation of policy statements of the Union government which have been formulated after careful consideration. In doing that, the court must ensure that the parameters for the exercise of its jurisdiction are confined to the familiar terrain of enforcing the constitutional right to lead a life of dignity and self-worth.

2 The Union and the State Lists of the Seventh Schedule to the Constitution distribute (in conjunction with Articles 245 and 246) legislative jurisdiction over the highways which traverse the length and breadth of India, between Parliament and the State Legislatures. The constitutional pattern in relation to the distribution of legislative heads is replicated in this area : what is national is reserved to Parliament while that which has a state-centric orientation is reserved to the state legislatures. Entry 23 of the Union List is thus :

“23. Highways declared by or under law made by Parliament to be national highways”.

Entry 13 of the State List is thus :

“13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.”³ The Union Ministry of Road Transport and Highways in its Transport Research Wing has brought out a publication titled “Road Accidents in India

- 2015”. The cover depicts in rather graphic terms vehicles involved in car crashes. There is a large group of persons assembled in the foreground, an ambulance bearing the ‘108’ logo and a police car. Familiar sights on Indian roads. The publication tells us that :

“11.1 During 2015, within the category of drivers’ fault, accidents caused and persons killed due to ‘Exceeding lawful speed’, accounted for a high share of 62.2 per cent (2,40,463 out of 3,86,481 accidents) and 61.0 per cent (64,633 out of 1,06,021 deaths), respectively.

However taking into account the total road accidents and total road accident killings, the share of over speeding comes to 47.9 per cent (2,40,463 out of 5,01,423 accidents) and 44.2 per cent (64,633 out of 1,46,133 deaths) respectively.

11.2 Intake of alcohol/drugs by drivers resulted in 16,298 road accidents and 6,755 fatalities in 2015 within the category of drivers’ fault, intake of alcohol/drugs accounted for 4.2 per cent and

6.4 per cent respectively.

However taking into account the total road accidents and total road accident killing, the share of intake of alcohol/drugs comes to 3.3 per cent (16,298 out of 5,01,423 accidents) and 4.6 per cent (6,755 out of 1,46,133 deaths) respectively.”⁴ The total number of persons killed in road accidents on national highways was 48,768 in 2012 and 51,204 in 2015. In 2014, on the national highways there were 1.24 lakh accident cases resulting in 1.35 lakh persons injured and 46,110 deaths. During the same year, on state highways, there were 1.13 lakh accident cases resulting in 1.24 lakh injured and 39,352 deaths. The expressways witnessed 4,208 accident cases, 4,229 injured and 1,802 deaths.[1]. Figures are also available of the distribution of road accidents by causes during 2014. 1.38 lakh persons were injured in road accidents involving dangerous or careless driving and 42,127 deaths occurred. Injuries caused in accidents due to over-speeding stood at 1.81 lakh while there were 48,654 deaths. 7,307 accident cases involving driving under the influence of drugs/alcohol were registered resulting in 7,398 injuries and 2,591 deaths. In regard to the figures of death or injury due to drunken driving there is a tendency to under estimate or under-report in order not to impede the right of victims and/ or their legal heirs to receive compensation.

5 Now in this background, it would be necessary to elucidate the policy adopted by the Union government. The National Road Safety Council (NRSC) is an apex body for road safety established under Section 215 of the Motor Vehicles Act, 1988. NRSC unanimously agreed in a meeting which was held nearly thirteen years ago on 15 January 2004 that licences for liquor shops should not to be given along the national highways. The Ministry of Road Transport and Highways (MoRTH) issued a circular to all the state governments advising them to remove liquor shops situated along national highways and not to issue fresh licenses. Since 26 October 2007, when an advisory was issued, MoRTH has consistently advised all the state governments to remove liquor shops and not to issue fresh licences to liquor vends along national highways.

6 On 1 December 2011, MoRTH in an advisory to the Chief Secretaries of all the States and Union Territories noted that India had reported the highest number of road accident fatalities in the world and data of 2009 indicated that a road accident occurred every four minutes. Drunken driving, it was stated, was a leading cause of road accidents with as many as 27,152 road accidents being caused under the influence of alcohol in that year. The advisory drew attention to the provisions of Section 185 of the Motor Vehicles Act, 1988 and solicited the following enforcement action :

“(i) Strict enforcement of section 185 of MV Act 1988 preferably pursuing cases in various courts for award of penalty of imprisonment followed by adequate publicity which will together act as a deterrent for drunken driving.

(ii) Removal of Liquor shops along National highways.

(iii) No fresh license may be issued to Liquor vendors to open shops along National highways.

(iv) Wherever licenses have been given in the past to open liquor shops along National highways, such cases may be reviewed and corrective action taken under intimation to this Ministry.”
Section 185 to which a reference has been made in the above circular provides as follows :

“185. Driving by a drunken person or by a person under the influence of drugs.

Whoever, while driving, or attempting to drive, a motor vehicle,--

has, in his blood, alcohol in any quantity, howsoever small the quantity may be, or is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.--For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

Section 185 is indicative of a Parliamentary intent to follow a zero- tolerance policy towards driving under the influence of alcohol.

The position was illustrated in another advisory dated 18 March 2013 of MoRTH to the Chief Secretaries of States and Union Territories where it was stated that in 2011, 1.42 lakh people were killed in 4.9 lakhs road accidents. 24,655 road accidents were caused due to drunken driving resulting in 10,553 deaths and injuries to 21,148 persons. The advisory requested the removal of all liquor vends on national highways and a ban on the issuance of fresh licences on the ground that “prevention is better than cure”.

7 In an advisory dated 21 May 2014, MoRTH stated that in 2012, 1.38 lakh people were killed in 4.9 lakh road accidents. 23,979 road accidents were caused due to drunken driving resulting in 7835 deaths and injuries to 23,403 persons.

8 The Union government has constantly issued advisories setting out, as a matter of policy, its position.

9 The material which has been placed on record indicates that :

(i) India has a high rate of road accidents and fatal road accidents – one of the advisories states that it is the highest in the world with an accident occurring every four minutes;

(ii) There is a high incidence of road accidents due to driving under the influence of alcohol;

(iii) The existence of liquor vends on national highways is in the considered view of the National Road Safety Council and MoRTH – expert authorities with domain knowledge – a cause for road accidents on national highways;

(iv) Advisories have been issued to the State Governments and Union Territories to close down liquor vends on national highways and to ensure that no fresh licences are issued in the future. The reason why these advisories are confined to the national highways is because of the distribution of legislative competence between the Union and the States under the Seventh Schedule to the Constitution. State highways fall under the domain of the states.

10 The figures which are available on the record indicate that the occurrence of a large number of road accidents is not a phenomenon confined to national highways nor is the prevalence of road accidents, including fatalities, confined only to the national highways. Both the national highways and state highways share a common experience of an unacceptably high number of road accidents, the prevalence injuries and fatalities; drunken driving being one of the major causes. Hence, the content of the advisories which have been issued by the Union government as well as their basis, rationale and foundation would equally apply to state highways. Human life is precious. As the road network expands in India, road infrastructure being an integral part of economic development, accidents profoundly impact on the life of the common citizen. For a nation on the cusp of economic development, India can well avoid the tag of being the accident capital of the world. Our highways are expanding, as are the expressways. They provide seamless connectivity and unheralded opportunities for the growth of trade and industry and for the movement of goods, persons and capital. They are the backbone of the freedom of trade and commerce guaranteed by Article 301 of the Constitution. Our highways are dotted with sign boards warning of the dangers of combining speed and alcohol. Together, they constitute a heady cocktail. The availability of liquor along the highways is an opportunity to consume. Easy access to liquor shops allows for drivers of vehicles to partake in alcohol, in callous disregard to their own safety and the safety of others. The advisories of the Union government to the states are founded on a logical and sound rationale.

11 We are conscious of the fact that the policy of the Union government to discontinue liquor vends on national highways may not eliminate drunken driving completely. A driver of a motor vehicle can acquire liquor even before the commencement of a journey or, during a journey at a

place other than a national or state highway. The law on preventing drunken driving also requires proper enforcement. Having said this, the court must accept the policy of the Union government for more than one reason. First and foremost, it is trite law that in matters of policy, in this case a policy on safety, the court will defer to and accept a considered view formed by an expert body. Second as we have seen, this view of the Union government is based on statistics and data which make out a consistent pattern year after year. Third the existence of liquor vends on highways presents a potent source for easy availability of alcohol. The existence of liquor vends; advertisements and sign boards drawing attention to the availability of liquor coupled with the arduous drives particularly in heavy vehicles makes it abundantly necessary to enforce the policy of the Union government to safeguard human life. In doing so, the court does not fashion its own policy but enforces the right to life under Article 21 of the Constitution based on the considered view of expert bodies.

12 There is no fundamental right under Article 19(1)(g) to trade in liquor. Liquor has been regarded as *res extra commercium* : *State of Bihar v. Nirmal Kumar Gupta*, (2013) 2 SCC 565; *Amar Chandra Chakraborty, Appellant v. Collector of Excise, Govt of Tripura, Agartala*, (1972) 2 SCC 442; *Nashirwar v. State of Madhya Pradesh*, (1975) 1 SCC 29; *Har Shankar v. Deputy Excise and Taxation Commissioner*, (1975) 1 SCC 737; *Secretary to Government, Tamil Nadu v. K. Vinayagamurthy*, (2002) 7 SCC 104; *State of Punjab v. Devans Modern Breweries Ltd.* (2004) 11 SCC 26. *State of Kerala v. Kandath Distilleries*, (2013) 6 SCC 573.

13 Liquor licences in respect of potable alcoholic liquor are granted by the state governments. Entry 51 of the state list provides for duties of excise on alcoholic liquors for home consumption manufactured and produced in the state and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India. The power of the states to grant liquor licences is undoubted. The issue is whether such liquor licences should be granted on national and state highways at the cost of endangering human lives and safety. In our view, which is based on the expert determination of the Union government, we hold that the answer should be in the negative. Though, excise duty is an important source of revenue to the states, a prohibition on the grant of liquor licences to liquor shops on the national and state highways would only regulate the grant of such licences in a manner that would ensure that the consumption of alcoholic liquor does not pose dangers to the lives and safety of the users of national and state highways. May we also remind ourselves that among the Directive Principles contained in the Constitution is that in Article 47 :

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health:

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.” 14 Well over a decade ago, the Union government had formulated for consideration and adoption by the states a document titled “Model Policy/taxation/act/rules for alcoholic beverages and alcohol”. The Model Policy *inter alia* made general provisions relating to liquor vends. Para 92(2) of the Model Policy *inter alia* provides as follows :

“(2) No licence for sale of liquor shall be granted to a retail vend selected within a distance of 100 metres from any religious or educational institution or hospital or outside the inhabited site of village /town/city or any Office of the State/Central Government or Local Authorities or within a distance of 220 metres from the middle of the State/National Highways.

Explanation – For the purpose of this rule :

“National Highway” or “State Highway” shall not include such parts of the National Highway or State Highway as are situated within the limits of Municipal Corporation, City or Town Municipal Council or such other authority having a population of twenty thousand or more.” This Model Policy provided for a minimum distance from the state/national highways for locating liquor shops. However, an exception was carved out to the effect that the national or state highways would not include such parts of them as are situated within the limits of the local authorities with