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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th September, 2019.

+ W.P.(C) 5680/2018

KUSH KALRA

..... Petitioner

Through: Dr. Charu Walikhanna, Adv.

versus

STATE OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Ramesh Singh, SC-
GNCTD with Mr. Chirayu Jain, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

26.09.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 5680/2018

1. This Public Interest Litigation has been preferred with the following prayers :

“a) Issue a writ in the nature of MANDAMUS, or any other appropriate WRIT, order directing for quashing of section 23 of Delhi Excise act, 2009 which prescribes 25 years as legal age of drinking in the NCT of Delhi as discriminatory against residents of National Capital Territory of Delhi as compared to

citizen of the India residing in different states in India where the legal age of drinking is less than 25 years; AND DIRECT Respondents 1-2 to formulate minimum legal drinking age in NCT of Delhi in consonance with other laws in India while focusing on responsible consumption and responsible sale of alcohol in Delhi.

b) Issue writ of Mandamus or any other appropriate writ directing Respondent No 1-2 to inform this Hon'ble Court as to what steps it has taken towards prohibiting/regulation of Sale and Supply of consumption of alcohol to persons under the age of 25 years in the National Capital Territory of Delhi.

c) Issue writ of Mandamus or any other appropriate writ directing Respondent No.'s 1-2 to conduct awareness programmes on responsible consumption of alcohol among College and School going Students by including it in curriculum.

d) Issue writ of Mandamus or any other appropriate writ directing Respondent No.'s 1-2 to promote responsible drinking through public communication i.e. films in cinema halls among others.

e) Issue such other Writ, direction or order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

2. Having heard counsel for the petitioner and looking to the facts and circumstances of the case, it appears that this petition has been preferred for quashing of Section 23 of the Delhi Excise Act, 2009 which prescribes 25 years of age as the legal age for buying or accepting delivery of alcohol. It is a wrong notion in the mind of the petitioner, that 25 years is the legal age for drinking alcohol. What is prohibited under Section 23 has nothing to do with the age of drinking. It is a prohibition upon a licensee to sell or deliver alcohol to persons under the age of 25 years.

3. Much has been argued by counsel for the petitioner that the age of 25 years for drinking alcohol should be made at par with other states. Counsel appearing for the petitioner has taken this Court to various annexures of this writ petition and submits that different states have different legal ages for drinking alcohol. It ought to be kept in mind that the age of drinking has nothing to do with the prohibition imposed by the Delhi Excise Act, 2009, or the rules made thereunder.

4. For ready reference, Sections 23, 24, 42 and 47 of the Delhi Excise Act, 2009 read as under :

“Section 23 - Prohibition of sale to certain persons

No person or licensed vendor or his employee or agent shall sell or deliver any liquor to any person apparently under the age of twenty five years, whether for consumption by self or others.

Section 24 - Prohibition of employment of certain persons

No licensee shall employ or permit to be employed in his premises any person under the age of twenty one years, or suffering from contagious disease.

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Section 42 - Penalty for employing minors or selling liquor to minors

(1) If any license holder or any person acting on his behalf, sells or delivers any liquor to any person apparently under the age of twenty five years, he shall be punishable with fine which may extend to ten thousand rupees.

(2) If a licence holder employs any person under the age of twenty one years, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to fifty thousand rupees, or with both.

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Section 47 - Penalty for allowing premises, etc., to be used for commission of an offence

Whoever, being a licensee under this Act and having the control or use of any house, room, enclosure, space, anima, or conveyance, knowingly permits it to be used for commission by any other person of an offence punishable under any provision of this Act,

shall be punishable in the same manner as if he had himself committed the said offence.”

5. In view of the aforesaid provisions, we see no reason to quash Section 23 of the Delhi Excise Act, 2009, which prohibits the licensee to sell or deliver alcohol to a person who is less than 25 years of age. In fact, the petitioner has presumed that it is age of drinking which is prescribed, which is a wrong notion in the mind of the petitioner. This cannot be the reason for quashing Section 23 of the Delhi Excise Act, 2009. Even otherwise also, we see no reason to quash and set aside Section 23 of the Delhi Excise Act, 2009 for the reason that it is a policy decision regarding the legal age for buying or accepting delivery of alcohol.

6. It is not obligatory on the part of Government of Delhi to follow what is prescribed by the other states as the legal age. The cut-off age which is prescribed for the sale or delivery of alcohol under Section 23 prescribes a valid classification and there is a reasonable nexus which is sought to be achieved. Hence, we see no reason to quash and set aside Section 23 of the Delhi Excise Act, 2009. There is no substance in this Writ Petition, and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

SEPTEMBER 26, 2019/kr