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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPPIL No. 31 of 2017**Order reserved on 24-03-2017Order delivered on 31-03-2017

1. Mamta Sharma W/o Shri Sanjay Sharma, aged about 50 Years, R/o New Rajendra Nagar, Bajaj Colony, Sector 1, 34/ A, Raipur, District Raipur (Chhattisgarh)
2. Indrajit Singh Chhabda, S/o Shri Mohar Singh Chhabda, aged about 65 Years R/o Harsh Vihar, 1/2, Daldalseoni, Mova, Raipur, District Raipur (Chhattisgarh)

**---- Petitioners****Versus**

1. State of Chhattisgarh Through : The Secretary, Excise Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. The Secretary, General Administration and Urban Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
3. The Secretary, Commercial Tax Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
4. The Director, Urban Administration and Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
5. The Commissioner (Excise), Chhattisgarh, Sunita Park, Lamandi, Excise Building, Raipur (Chhattisgarh)

**---- Respondents**


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For Petitioners	:	Shri S.C. Verma, Advocate
For Respondents	:	Shri J.K. Gilda, Advocate General & Shri A.S. Kachhwaha, Additional AG

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice &  
Hon'ble Shri Justice Pritinker Diwaker**

**C A V Order****By Pritinker Diwaker, J****31/03/2017**

The Present Writ Petition styled as Public Interest Litigation has been filed

by the petitioners claiming themselves to be the public spirited persons mainly seeking a direction to the respondents for complete prohibition of the sale of liquor in the State of Chhattisgarh and further to take all welfare measures in relation to the health and nutrition of the citizens of the State. The petitioners have also sought a direction to the respondents to produce entire record in relation to Annexures P-1, P-4 and P-6.

2. According to petitioner No.1, earlier she had filed a Writ Petition for removing the liquor shops situated at the National and State Highways and ultimately the stand taken by her in the said petition was up-held by the Supreme Court in Civil Appeal Nos. 12164 – 12166 of 2016 which were decided on 15.12.2016. The main thrust of the petitioners in this petition is that in the past few years the sale and consumption of liquor in the State of Chhattisgarh has gone up alarmingly causing innumerable hardships and sufferings to the common people, in particular, the ones who belong to the poor financial background. The other concern of the petitioners in this petition is that the rampant sale and consumption of alcoholic drinks is not only imperiling the health of poor people of the State but is also detrimental to their moral and ethical values.

3. Referring to Article 47 of the Constitution of India it is argued by the counsel for the petitioners that it is the duty of the State to raise the level of nutrition and the standard of living and to improve public health. According to the counsel for the petitioners, instead of adhering to Article 47 of the Constitution of India, the respondents are trying to promote the liquor business and thereby causing health hazards to the poor citizens of the State. Counsel for the petitioner submits that even otherwise, State of Chhattisgarh is so sound financially that it does not require the revenue from such harmful sources which ultimately adversely affects the public at large. According to him, the directions have been given to the local authorities for construction of liquor shops in their respective areas so that liquor

can be sold comfortably from these shops which are within the premises of the local bodies. It is argued that although the local bodies are against making any such construction but yet the State Government is entirely bent upon doing so. Several newspaper clippings have been filed by the petitioners to demonstrate the alleged ill-effects of the liquor consumption including that of sharp rise in crime graph in the society. According to the petitioners, even though certain representations were also made against this high-handed and adamant attitude of the Government yet it did not bear any fruit. During the course of argument, it has been pointed out by the counsel for the petitioners that the act of the State Government in showing indifferent attitude is in utter violation of the Article 21 of the Constitution of India.

4. On the other hand, it has been argued by the learned Advocate General that Article 47 of the Constitution of India is not enforceable in law and it is only the legislature and the executive who can consider the policy as enshrined in part IV of the Constitution of India which includes Article 47 in it. Learned Advocate General further argued that the Courts may not interfere with the policy making decision of the State Government and no such direction can be issued regarding prohibition of sale of liquor in the State. He argued that though the petitioners have prayed for production of record in relation to documents of Annexures P-1, P-4 and P-6 but he has not made it clear as to for what purpose such record is required because there is no challenge to the same in the writ petition.

5. We have heard counsel for the parties and perused the documents on record.

6. Article 47 of the Constitution of India, which is one of the directive principles of the State policy, reads as under:

“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.”

This article enjoins upon and in turn enables the State to take measures to raise the level of nutrition and the standard of living of its people and to improve the public health. Towards this end, the State is required to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health. The prohibition may be complete or partial and it would also include regulation. It cannot be disputed that liquor is one such drink.

7. Article 47 also forms a part of Part IV of the Constitution. The provisions of Part IV of the Constitution are not enforceable in law. It is open for the State Government to consider and make policy as enshrined in Part IV of the Constitution, and if any such policy is made by the State Government and any law has been enacted by the legislature, it would be for the Court to consider the validity and constitutionality of the same if it is challenged before the Court and if it is urged that same is in violation of any legal or constitutional right of the citizen of India.

8. Almost in a similar situation where Public Interest Litigation was filed before the Supreme Court seeking direction to the State Government to enforce the policy of total prohibition and impose restriction on manufacture, sale and consumption of intoxicating drinks, it has been held in the matter of **B. Krishna Bhat v. Union of India** reported in **(1990) 3 SCC 65** as under:

“4. 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 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 Karamchari 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 legislation. 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.”

9. While considering the enforceability of the directive principles by the Court of law in the matter of **Lily Thomas and others v. Union of India and others** reported in **(2000) 6 SCC 224** it has been held by the Supreme Court as under:

“68...Learned counsel appearing on behalf of the Jamat-e-Ulema Hind and learned counsel appearing on behalf of the Muslim Personal Law Board have rightly argued that this Court has no power to give directions for the enforcement of the Directive Principles of State Policy as detailed in Chapter IV of the Constitution which includes Article 44. This Court has time and again reiterated the position that directives, as detailed in part IV of the Constitution are not enforceable in courts as they do not create any justiciable rights in favour of any person. Reference in this behalf can be made to the judgments of this Court in *P.M. Ashwathanarayana Setty v. State of Karnataka – 1989 Supp (1) SCC 696* and *Kesavananda Bharati v. State of Kerala – (1973) 4 SCC 225*.”

10. Similarly, in the case of **Suresth Seth v. Commr. Indore Municipal Corpon. And others** reported in **(2005) 13 SCC 287** it has been held by the Apex Court as under:

“5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation, In *Supreme Court Employees' Welfare Assn. v. Union of India* (1989) 4 SCC 187 (Para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J&K v. A.R. Zakki* 1992 Supp 1 SCC 548. In *A.K. Roy v. Union of India* (1982) 1 SCC 271 it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the admission made by the learned counsel for the appellant cannot be accepted.”

11. Further, in the case of **Census Commissioner and others v. R. Krishnamurthy** reported in (2015) 2 SCC 796 it has been held by the Supreme Court as under:

“25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.”

12. Likewise, in the matter of **S. Subramaniam BalaJi v. State of Tamil**

**Nadu and others** reported in **(2013) 9 SCC 659** it has been held by the Apex Court as under:

“75. Further, the appellant contended by referring to various foreign cases to highlight the principle that public money cannot be used to create private assets. In our opinion, there is no merit in this contention also. The purpose of the schemes is to enforce the directive principles of State policy. In what way the State chooses to implement the directive principles of State policy is a policy decision of the State and this Court cannot interfere with such decisions. Ordinarily, this Court cannot interfere with policy decisions of the Government unless they are clearly in violation of some statutory or constitutional provision or is shockingly arbitrary in nature.”

The aforesaid view has been further fortified by the Apex Court in the matter of *Suresh Chand Gautam v. State of Uttar Pradesh and others* – (2016) 11 SCC 113.

13. Thus it is a settled legal position that in the cases where such policy matters are involved, the Courts cannot issue a writ of mandamus asking the State Government to frame a policy in a particular manner as such exercise is not within the domain of the Court to legislate. Of course, if a policy decision taken or a notification issued by the legislature or the executive, as the case may be, appears to be arbitrary, the frown of Article 14 of the Constitution can be put in operation. But in the case in hand, no policy as on date, has been made by the State Government in respect of prohibiting the sale and consumption of liquor. we find it difficult to issue any direction to the State Government to make any such policy as it is not within the domain of this Court to issue any such direction to the State Government to make any such policy. So far as the contention of the counsel for the petitioner that increase of sale of liquor is there for last few years is concerned, it is for the State Government to take appropriate steps to curb this social problem and this Court is helpless to issue any direction to check such menace. In the matter of **Supreme Court Employees' Welfare Association v. Union of**

**India** reported in **(1989) 4 SCC 187** it has been held by the Apex Court as under:

“51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.”

14. Thus from the afore-noted judicial pronouncement what can be culled out is that the interference with the policy decision and the issuance of a writ of mandamus to frame a policy in a particular manner are absolutely different. Issuance of notification regarding the manner in which the business of liquor has to be carried out in the State is well within its power. It is not within the domain of the Court to legislate by plunging into the policy making process or issuing a direction for making a particular policy in a specific manner. Here this Court feels it apposite to refer to yet another decision of the Apex Court dealing with the similar issue in the matter of *Khoday Distilleries Ltd. v. State of Karnataka (1995) 1 SCC 574*.

15. Further, though the petitioner has also sought for a direction to the respondents for production of complete record in relation to the documents of Annexures P-1, P-4 and P-6, but as it has not been clarified as to for what purpose such record is required, nor any assertion has been made by the petitioners for the same as required under the law, such direction cannot be issued by this Court. However, if any construction is made by a local body in violation of the law, the affected party would be at liberty to challenge the same in accordance with law.

16. By way of IA No. 3 filed on 5.3.2017 the petitioners have also prayed for issuance of appropriate direction to the respondents as according to them the State Government itself has taken a decision to do the complete business of purchase and sale of liquor. That subject matter is completely different from that of the present petition. However, if the petitioners are really so aggrieved by the



issuance of notification whereby the State Government has decided to run the liquor shops of its own, they are at liberty to challenge the said action, if so advised, by filing appropriate writ petition.

17. Pleadings made in the said application are not the subject matter of this petition, nor any specific challenge has been made to the same herein. Thus merely making a prayer for issuance of such direction cannot be entertained and the petitioners reserve the right to do so at appropriate stage, if necessary.

18. Thus in view of the afore-stated factual and legal position, this Court does not see any reason to grant the reliefs as prayed for by the petitioners by entertaining this petition styled as Public Interest Litigation. Accordingly, the petition being without any substance is liable to be dismissed and it is hereby dismissed.

Sd/-

(Thottathil B. Radhakrishnan)

Chief Justice

Sd/-

(Pritinker Diwaker)

Judge