



## Smt. Mala Banerjee v. State of West Bengal and Ors

2008 (1) CHN 979

**Country:** India

**Region:** Asia

**Year:** 2008

**Court:** High Court - Calcutta

**Health Topics:** Controlled substances

**Human Rights:** Right to health, Right to life

### Facts

In order to regulate the distribution of licenses for liquor shops the Government of West Bengal promulgated the West Bengal Excise (Selection of New Sites and grant of License for retail sale of liquor and certain other intoxicant) Rules, 2003 (the new Rules). Under the earlier Rules, objections were invited from elected representatives from the area in respect of which the license was to be issued. The new Rules deleted this provision.

Mala Banerjee, the Petitioner, filed a public interest litigation in the Calcutta High Court under Article 226 of the Constitution of India (original writ jurisdiction of High Courts). The Petitioner contended that the new Rules would result in growth of liquor shops in the state. According to the Petitioner this would have a deleterious effect on the socio-economic and moral fabric of the society. The Petitioner also contended that the new Rules violated the Directive Principle under Article 47 of the Constitution of India (duty of the state to improve public health) read with Article 21 of the Constitution (right to life).

### Decision and Reasoning

Regarding the scope of the State's duty under Article 47, the Court held that the aim of Article 47 was "total prohibition of consumption of intoxicating drinks except for medicinal purposes." It further held that the State should bear in mind its duty to improve public health while legislating on the subject of intoxicating drinks. The Court, however, held that by merely granting licenses, the State was not compelling people to consume intoxicating drinks. It held that by granting more licenses, the state was, in fact, preventing sale and consumption of illicit alcohol which could be more injurious to public health. The Court, further, held that the sale of intoxicating drinks was being used to generate revenue for the State. It reasoned that this would be the only excuse available to the State to avoid its obligation to promote public health.

On the issue of the validity of the new Rules, the Court held that they were not in violation of any legal or fundamental right of a citizen. It held that though the new Rules were not in furtherance of Directive Principles, the Court was not empowered to "invalidate a law on the ground that the same is in conflict" with them. The Court held that Directive Principles were "fundamental in the governance of the country", but could not be the sole basis for striking down laws and policies.

### Decision Excerpts

"It is not a case where a person is forced to drink impure quality of water or inhale polluted air for the imprudent decision or failure of a State nor is it a case where a substance scientifically found to be harmful to health is permitted to be used as one of the components of a drug sold in a trade name endangering the life of ignorant people; on the other hand, we find substance in the contention of the State that to save the citizens from the peril of illicit liquor, which at times proves to be fatal, the Government has decided to grant more licences keeping in view the actual demand of liquor and the number of the existing licences in a particular area. According to the State, for want of adequate number of licensed retailshops, the peoples are forced to purchase illicit liquor at the risk of their life and in the process, the State suffers huge amount of loss of the revenue." Para. 15.

"The aforesaid observations make it clear that this Court cannot direct the State to legislate law in tune with Article 47 nor can it invalidate a law on the ground that the same is in conflict with the said Article. The Courts should, according to the Supreme Court, while interpreting Statutes, bear in mind that their interpretation of Statute should not frustrate the goals set out in the Directive Principles of the Policy of the States." Para. 27

