(1994) 02 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4530 of 1993

Ashok Kumar Sahu and Another — APPELLANT

Vs

State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 62
Madhya Pradesh Excise Rules, 1960 — Rule 8

Citation : AIR 1994 MP 130 : (1994) ILR (MP) 85 : (1994) 1 MPJR 315

Hon'ble Judges : U.L. Bhatt, C.J;P.P. Naolekar, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; S.L. Saxena, Addl. Advocate Gen. and A.S. Jha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

The petitioners in these writ petitions are contractors of different kinds of liquor. They have purchased the privilege of vending liquor in specified shops by offering the highest bid at the auctions conducted for the year 1993-94. On account of the recent general election for the Madhya Pradesh Legislative Assembly, they were required by the Collectors of the respective districts to close the shops and refrain from vending liquor for several days in excess of three days. The petitioners have no grievance about closure of shops for three days. The main relief asked namely to quash the orders has become infructuous. The petitioners have sought two alternative reliefs, namely -- remission of the proportionate licence fees as also proportionate reduction of the minimum gurantee quota of liquor which they are expected to lift from the Government warehouses. On behalf of the respondents, returns have been filed in few of the cases and they are treated as returns in order cases also.

The closure is of 11 days in M.P. No. 61 of 1994, 9 days in M.P. No. 4676 of 1993, 7 days in M.P. No. 4677 of 1993 and M.P. No. 4530 of 1993 and 4 days in

M.P. No. 4678 of 1993. Reference can be made to Annex-ures P4, P7 and P8 in M.P. No. 4530 of 1993. Annexure-P7 is the order passed by the Collector. It states that as per the wishes of the Election Commission to maintain law and order in the district, liquor shops should be closed on the date of polling two days prior to polling, one day after the polling, date of counting, one day prior to counting and one day after the counting. Annexure-P4 is a copy of conditions of licence which form part of the auction sale notice which is accepted by all the persons who offered bids at auctions. It indicates that liquor shops will be closed on six national holidays, namely -- 26th January, 30th January, 15th August, 2nd October, Holiday and Moharram day. It also states that in addition, the Collector has power to close shops for a maximum of 6 days in administrative exigencies and in public interest. It further states that all shops will be closed in connection with elections to Parliament, Assemblies and local bodies on the date of polling and two days immediately prior to polling. Annexure P8 is another extract of the sale notice relating to the remission of licence fees and the like. The terms of Annexure P4 referred to above are taken from the Government order.

The relevant Act is M.P. Excise Act, 1960 (sic). It contains provisions regarding the requirement of licence, payment of licence fees and lease of privilege of vending liquor. Section 62 confers on the State Government powers to make rules for purposes of carrying out the provisions of the Act. Rules framed under the Central Provinces Excise Act have been adopted in the State. Rule C enumerates general licence conditions. Sub-rule (viii) of Rule C reads as follows:

"VIII. Shops to be kept open and adequately stocked:

(1) Shops shall be kept open every day throughout the year unless their temporary or permanent closure has been authorised by the Collector. Such supply of liquor or intoxicating drugs as the Collector may consider sufficient to meet the local requirement shall be maintained. Subject to the provisions of Section 38 of the Act, and to the exceptions specified in Rule XIV, sales be made to all comers on payment at the current rate of sale. Shops for the sale of tari may be closed during the rains, i.e. from the 1st June to the 14th October.

(2) Shops shall remain closed for the whole day on such days as the Collector may announce at the time of auctions.

Provided that the Collector, or District Excise Officer, or in their absence a Deputy Collector, duly authorised by the Collector, may require foreign liquor licencees holding licenses in Forms F.L. 1 and F.L. 2 to open the shops on such days for sale of foreign liquor to bona fide foreign visitors.

(3) Shops shall be closed, if the Collector orders, while a regiment or detachment of soldiers is passing or encamped in the vicinity.

Provided that, when a shop is closed under this rule, the Collator may, with the previous sanction of the Excise Commissioners, award compensation to the licensee for loss of profits."

We propose to consider the above rule inasmuch as sanction for the Collectors'' actions must be sought from the statute or the statutory rules, Clause (2) of Sub-rule VIII states that shops shall remain closed for the whole day on such days as the Collector may announce at the time of auctions. Admittedly, in these cases, the announcement at the time of auctions was to the effect that shops shall remain closed for three whole days, namely polling day and two days immediately prior thereto. It is for this reasons that the petitioners have no grievance about the closure directed for three days.

The first sentence of Clause (1) of Sub-rule VIII states that the shops shall be kept open every day throughout the year unless their temporary or permanent closure is authorised by the Collector. According to the learned counsel for the petitioners, the authorisation of closure by the Collector referred to in Clause (1) of Sub-rule VIII is the authorisation dealt with in Clause (2) and Clause (2) is exhaustive of the powers of the Collector. In other words, according to the petitioners, once the Collector announces at the time of auctions that the shops shall remain closed for a particular number of days, his power to authorise closure is exhausted. Besides the closure for three days in connection with election announced by the Collector, it must be taken that he also announced the closure for six national holidays and possible closure for six more days in administrative exigencies and in public interest. Considering the language of the first sentence in Clause (1) of Sub-rule VIII, it does not appear that the authorisation of closure by the Collector dealt with therein has any reference to the announcement required to be made by the Collector under Clause (2) of Sub-rule VIII, It cannot be that the rule making authority contemplated that the Collector will be even at the commencement of the year, able to visualise situations which may arise in the course of the year which may require closure of liquor shops. The power conferred on the Collector under Clause (1) of Sub-rule VIII appears to be a general or plenary power. An aspect of this power is clarified and specified in Clause (2). The exercise of power in Clause (2) of Sub-rule VIII is limited to the stage of conducting the auction. The power is to be exercised by making an announcement. There is nothing in Clause (1) of Sub-rule VIII to restrict the exercise of power to the Collector only in relation to conducting elections and restricting the exercise of the authority by way of announcement. In these circumstances, we are not able to agree that the power referred to in Clause (1) can be exercised only in the manner specified in Clause (2) and only at the time of auction. We hold that the power conferred under Clause (1) is general or plenary power and Clause (2) takes only an aspect of such power. The power of the Collector to order closure of shops is not exhausted with the announcement which he may choose to make as contemplated in Clause (2). It must, therefore, follow that the order of the Collector directing closure of the shops for more than three days announced at the time of elections is sanctioned by Clause (1) of Sub-rule VIII referred to above.

It is not contended before us in this batch of writ petitions that the Collector has exercised this power on the basis of directions given by an extraneous authority such as Election Commission and, therefore, the exercise of power is vitiated. Such a contention has been raised in other writ petitions and, therefore, we do not propose to consider it in these cases. According to the learned counsel for the petitioners, even if the order to close the shops for more than three days in connection with the election is lawful, the petitioners should be entitled to remission of licence fees, as also relief against the burden of lifting minimum stock of liquor during the year. It appears one of the conditions imposed on successful bidders is that they should lift minimum prescribed stock during the currency of the licence. It is argued that on account of unexpected closure of shops, the income of the petitioner has suffered and, therefore, they are entitled to proportionate re-mission of licence fees. Similarly it is contended, on account of the unexpected closure for a few days in excess of three days, they will not be in a position to lift the minimum guarantee quota and must be granted some relief in this behalf.

We have already referred to the conditions of licence forming part of the sale notice. It is clearly contemplated therein that the shops should be closed for six days of national holidays, three days in connection with election and six more days as may be directed by the Collector in administrative exigencies and in public interest. This condition has been imposed on the basis of a Government order which is accepted by the petitioners and is not challenged before us. Thus, it is evident that it was known to all the bidders that they may be required to close their shops on such number of days as indicated therein. They would naturally have taken this aspect into consideration before offering bids. In these circumstances, it is not possible to accept that they offered their bids on the ground that they will be required to close shops only on six national holidays and three days in connection with election, i.e. in all 9 days and consequently, they will be entitled to proportionate remission. For the same reason, it has to be held that no relief in regard to minimum stock guarantee also can be given. We are not impressed with the contention urged by the petitioners based on Clause 16 of conditions of sale. This Clause refers to certain contingencies where contractors will not be entitled to remission or compensation for a loss or both. It is clarified that if on account of prohibition policy implemented in the State or in neighbouring State or on account of additional shops allowed to be opened, the licensee sustains loss, he is not entitled to damage or remission in licence fees. It is also clarified that if on account of natural calamities, communal disturbance law and order problem, rebellion, he incurs losses, he is not entitled to reimbursement of loss. These clarifications have been made by way of abundant caution. It cannot be accepted that these clarifications are exhaustive. It cannot also be accepted that the petitioners are entitled to claim remission of licence fees under Clause 16 of the sale conditions.

We find no merit in the writ petitions. They are dismissed. The petitioners in each writ petition will pay a sum of Rs. 500/- as costs to the respondents.

