

(1991) 05 KAR CK 0007

In the Karnataka High Court

Case No : W.Ps. No"s. 11452 to 11457 of 1991

Dasappa and Brothers

APPELLANT

Vs

Election Commission

RESPONDENT

Date of Decision : 18-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 324 (1)

Citation : (1991) ILR (Kar) 3038

Hon'ble Judges : Venkatachala, J;Murgod, J

Bench : Division Bench

Advocate : P. Vishwanatha Shetty, for the Appellant; N.K. Gupta, Government Advocate for R-4 to R-21, for the Respondent

Final Decision : Dismissed

Judgement

Venkatachala, J.—These are common Writ Petitions filed under Articles 226 and 227 of the Constitution by six partnership firms, which are Excise Contractors in the State of Karnataka, impugning the validity of a Teleprinter Message (Annexure-A), which reads:

"To

The Deputy Commissioner of
all Districts except Bangalore
and Bangalore Rural Districts.

From

The Chief Electoral

Officer, Karnataka, Bangalore.

No. DPAR 4 CHU MA NI 91 - Election Commission in their message No. 576/14/91/9273 dated 14-5-1991 regarding prohibition of sale of liquor during

election period has since directed as follows: (.) Quote (.) The ban on sale of liquor shall come into force with effect from 18th May 1991 and shall remain in force till repeat till the date of completion of election in the State (.) These instructions apply uniformly in respect of all States irrespective of the date of which poll takes place (.) It is further clarified that in case the date of completion of election in any constituency is extended due to any reason the ban shall remain in effect in that constituency till the relaxations are obtained from the Election Commission (.) In respect of all other constituencies the ban will come to an end with the date on which the election is completed in that constituency (.) un-quote (.) Please issue revised orders immediately under intimation to this office (.)

No. DPAR 4 CHU MA NI 91 Bangalore, Dated the 16th May, 1991

Forwarded to the T.P. Operator, Office of the Director General & Inspector General of Police, Bangalore, with a request to transmit the above message immediately. Sd/- (A.S. Nagaraja) Joint Chief Electoral Officer and Ex-Officio Joint Secretary to Government, D.P.A.R. (Elections) Post copy in confirmation to the Deputy Commissioners of all Districts except Bangalore and Bangalore Rural Districts. The instructions issued in this office letter of even number dated 29-4-1991 (is) stands modified to this extent."

2. The letter of even number dated 29-4-1991 which is said to have stood modified by the above message, produced as Annexure-L along with the Writ Petitions, reads thus:

"GOVERNMENT OF KARNATAKA

No. DPAR 4 CHU MA NI 91 Office of the Chief Electoral Officer & Secretary to Govt., Dept. of Personnel & Administrative Reforms, Bangalore, Dated: 29-4-1991. To

The Deputy Commissioners of all

Districts in the State

Sir,

Sub: General election to Lok Sabha and bye-election to 34-Hospet Legislative Assembly 1991 - Declaration of dry days.

General Election to Lok Sabha and bye-election to State Legislative Assembly from 34-Hospet Assembly Constituency will be held on 23rd and 26th May, 1991. According to the directions issued by the Election Commission of India, during the general/bye-election, apart from enforcing restrictions in the storage of liquor, dry days are to be declared on the day of poll and two days immediately preceding it, in the constituency and in the areas adjoining to it.

In view of these directions of the Election Commission, action is required to be taken as follows:-

- i) Dry days should be declared in the entire constituency and surrounding areas on the day of poll and two days immediately preceding it;
- ii) Storage of liquor by individuals in the constituency and surrounding areas should be reduced drastically during the said period of three days; and
- iii) The restrictions provided in the Excise law on storage of liquor in unlicensed premises in the constituency should be strictly enforced during the said period of three days.

Necessary orders may kindly be issued and copies thereof be sent to this Office for information.

Yours faithfully, Sd/- (A.S Nagaraja) Joint Chief Electoral Officer and Ex-Officio Joint Secretary to Govt., D.P.A.R. (Elections). Copy to:

1. The Commissioner for Excise, Karnataka, Bangalore for immediate necessary action.
2. The Superintendents of Police of All Districts in the State.
3. The Returning Officers of all Lok Sabha Constituencies and 34- Hospet Legislative Assembly Constituency in the State.

Sd/- Joint Chief Electoral Officer."

3. Respondent-1 in these Writ Petitions is the Election Commission; respondent-2 is the Chief Electoral Officer and Secretary to Government, Department of Personnel and Administrative Reforms; respondent-3 is the Joint Chief Electoral Officer and Ex-Officio Joint Secretary to Government; respondent-4 is the State of Karnataka; respondent-5 is the Excise Commissioner and respondents 6 to 21 are the Deputy Commissioners of the Districts in the State of Karnataka.

4: The prayer made in the said Writ Petitions runs thus:

"Therefore, it is prayed that this Hon"ble Court may be pleased to -

(a) call for the records respondents-1 and 2 which ultimately result in passing the order dated 14-5-1991 in No. 576/14/91/9273 and order dated 16-5-1991 in No. DPAR 4 CHU MA NI 91 passed by the Respondents 1 and 2,

(b) issue an order or direction or Writ in the nature of Writ of Certiorari or any other appropriate order, direction quashing the order dated 14-5-1991 in No. 576/14/91/9273 passed by the first respondent and order dated 16-5-1991 in No. DPAR 4 DHU MA NI 91 passed by the 2nd Respondent declaring that the notification Annexure-A is illegal and void in law. Or in the alternative direct the respondents 4 to 21 to give proportionate remission to the extent of 45% of monthly Kisth Amount each of the petitioners are liable to pay to the State of Karnataka.

(c) Issue such other relief/s as this Hon"ble Court may deem fit to grant in the

facts and circumstances of the case, in the ends of justice."

The interim prayer made therein reads thus:

"Issue an order of stay, staying the operation of the order Annexure-A dated 14-5-1991 made in No. 576/14/91/9273 by the first respondent and order dated 16-5-1991 made in No. DPAR 4 CHU MA NI 91 by the second respondent and all further proceedings pursuant to the State order pending disposal of the above Writ Petition or in the alternative direct the respondent-4 to 21 to give remission to the extent of 45% of the monthly Kisth Amount each of the petitioners are to pay for the month of May 1991 in respect of various Taluks in respect of which the petitioners have purchased the Right to Vend Arrack in the State of Karnataka, pending disposal of the above Writ Petitions, in the interest of justice."

5. At the Preliminary Hearing of these Writ Petitions, Sri N.K. Gupta, learned Government Advocate, who took notice for respondents 4 to 21, produced before the Court two Fax Messages -one dated 17-5-1991 and another dated 18-5-1991 said to have been sent by the Chief Secretary to the Government of Karnataka to the Secretary to the Election Commission of India, New Delhi. The Fax Message dated 17-5-1991 reads thus:

"Sir,

Sub: Ban order for sale of liquor in Karnataka State - reg.

Kindly refer to your Telex Message No. 576/14/9273 dated 14th May 1991. There are no elections in Karnataka State on 20th May 1991. There are elections to only 9 Parliamentary Constituencies on 23-5-1991. They are:-

1. Mandya 2. Bangalore 3. Udipi 4. Hassan 5. Chickmagalore 6. Shimoga 7. Karwar 8. Belgaum 9. Chikkodi

Elections to other 19 constituencies will be held only on 26-5-1991.

In all previous elections, the conversion has always been that closure of liquor shops under Excise Act on the day of the election and on the day prior to the elections has been ordered. Closure of liquor shops for 2 days has been rigorously implemented in all previous elections. We presume that this procedure is intended to be continued. In the event of closure of any liquor shops being ordered with effect from more than one day prior to elections on 23-5-1991 in more constituencies, and more than one day prior to elections on 26-5-1991 in 19 Constituencies, the State Government will be forced to be helpless spectator to inevitable litigation. The State Government would also be subject to very heavy responsibility to prevent inevitable rampant illicit distillation. In the year 1981, there was an unparalleled tragedy in Bangalore and Mysore whereby such illicitly distilled liquor caused the death of 336 people. The Government of Karnataka desire that as in the past the two day closure of liquor shops, in the day prior to and in the day after poll be rigorously implemented in this month's elections without causing legal problems for the administration, grave health

hazards for the citizens and other unforeseen dangerous consequences. The State Government draws attention to the fact that the closure of shops for an unwarranted and unduly long time will cause very heavy loss of revenue and litigation, which will be caused in the event of the closure of liquor shops being prematurely ordered in the name of conducting peaceful elections.

Kindly have the conventions on the subject verified. The communication of revised instructions is requested in the public interest.

Yours faithfully, Sd/- (N.K. Prabhakara Rao)"

The Fax Message dated 18-5-1991 sent by the Chief Secretary to the Secretary, Election Commission of India, reads thus:

"Sir,

Sub: Ban Order for sale of liquor in Karnataka State - reg.

Kindly refer to your Telex Message No. 576/14/9273 dated 14th May, 1991 and to our Fax Message No. Ch.S./452/91 dated 17th May, 1991.

On further examination of the action already taken in the State, the following information is brought to the kind notice of the Election Commission:-

1. Instructions have been received from the Election Commission to the effect that all liquor shops in the State should be closed for 3 days including the date of election.
2. Consequently, the Excise Department have already issued orders directing the closure of the liquor shops for 3 days. The closure will be for 3 days including 23-5-1991 in 9 Parliamentary Constituencies and the closure will be for 3 days including 26-5-1991 in 19 Parliamentary Constituencies.
3. Orders issued to this effect are already under implementation by all the Deputy Commissioners. The Excise Contractors are aware of their obligations to see that the liquor shops are closed in conformity with the orders issued.

The Excise Contractors have represented that the closure of liquor shops this time is for 3 days instead of 2 days which was the earlier practice. However, the Excise Contractors and the liquor shop owners have been informed that this is the uniform policy all over the country and that closure for 3 days in respect of liquor shops is unavoidable.

In view of the action already taken, it will be legally undesirable to extend the period of closure beyond 3 days. It is understood that the period of closure has been ordered as 3 days in the neighbouring State of Andhra Pradesh where excise policy and its implementation is similar to the excise policy as implemented in the Karnataka State. In view of these clarifications, it is requested that the Election Commission may kindly concur in the action taken by the Government of Karnataka by the Excise Department and modify the instructions.

Yours faithfully, Sd/- (N.K. Prabhakara Rao) Chief Secretary to Government of Karnataka." A Memo is filed by the learned Government Advocate on behalf of respondents 4 to 21 and it reads:

"The case of the State Government is as stated in the Telex Messages dated 17-5-1991 and 18-5-1991 sent by the Chief Secretary to the Government of Karnataka to the Secretary, Election Commission of India, New Delhi, The matter is under correspondence, In view of the urgency and in view of the far-reaching consequences as enumerated in the aforesaid letters, the State Government has no objection for grant of an interim order by this Hon"ble Court staying the operation of the impugned order except for the days namely, on the day of election and two days preceding the day of election all over the State of Karnataka.

Bangalore, Sd/- Dated 18-5-1991 Government Advocate."

As could be seen from the letter dated 19-4-1991 (Annexure-L) addressed by the Chief Electoral Officer and Secretary to Government, Department of Personnel and Administrative Reforms, Bangalore, there existed certain directions issued by the Election Commission of India, which were to be carried out by the concerned Government during the General Bye-Elections to be held for Lok Sabha or State Legislative Assembly apart from those requiring imposition of restrictions on the storage of liquor or dry days to be declared on the day of poll and two days immediately preceding it in the constituency and in the areas adjoining to it, and action was required to be taken particularly on matters, such as, (1) declaration of dry days in the entire constituency and surrounding areas on the day of poll and two days immediately preceding it; (2) drastic reduction in storage of liquor by individuals in the constituency and surrounding areas during the said period of three days; and (3) strict enforcement of the restrictions provided in the Excise Law on storage of liquor in unlicensed premises in the constituency during the said period of three days.

6. Then, as could be seen from the impugned Teleprinter Message (Annexure-A), what has been done by it is to state that the ban on sale of liquor required to be imposed by State Governments in Election Commission's message dated 14-5-1991, shall be made to come into force with effect from the 18th of May 1991 itself and shall be made to remain in force till the date of completion of elections in the State and such ban of sale of liquor shall apply uniformly in respect of all States irrespective of the date on which poll takes place. It is the said advancement of the date on the ban on sale of liquor contained in the above impugned message sought to be brought into effect by the Joint Chief Electoral Officer by transmitting that message to the Deputy Commissioners of the State, which is being questioned by the Writ Petitioners - Partnership Firms of Excise Contractors, as invalid in law.

7. Contentions urged by Sri P. Viswanatha Shetty, learned Counsel for petitioners, against the validity of the Teleprinter Message were - first, that the

Election Commission of India was not vested with any power to issue directions on the ban of sale of liquor by the petitioners - Contractors, as would affect their right to vend liquor under the contracts entered into by them with the State Government. According to the learned Counsel, the exclusive jurisdiction of directing closure of liquor shops for preservation of public peace since vested in the District Magistrates u/s 21 of the Karnataka Excise Act having regard to the law and order situation in the locality, the Election Commission could not have usurped that power and issued the message referred to in the message impugned in these Writ Petitions. Secondly, the impugned message, as it stands, since does not disclose the application of mind of the Election Commission to the local conditions prevailing in the State as would warrant issuance by it of the message referred to therein, the same has to be regarded as a nullity; and thirdly, when the impugned message disclosed that it was a modification of the earlier message, such modification made without disclosing the reasons therefore has to be regarded as one issued arbitrarily contravening Article 14 of the Constitution. Then, explaining the need for this Court to make an expert interim order staying the operation of the message of the Election Commission imposing ban on sale of liquor in the State, by entertaining the Writ Petitions, learned Counsel wanted this Court to take into account the irreparable loss which the petitioners-Contractors may have to suffer by not carrying on their business of vending liquor for a total period of 9 days and the possible hazard to the health of the consumers of liquor who may consume illicit liquor.

8. Sri NX. Gupta, learned Government Advocate, it has to be stated, did not question the power of the Election Commission to issue directions respecting ban on sale of liquor during election period, but stated that the Government was keen on restricting the ban on sale of liquor in a constituency to three days preceding the date of poll in such constituency. Extension of the ban of sale of liquor for a period exceeding three days, it was submitted by him, was likely to create problems of law and order in the State and involve the State in avoidable litigation. Loss of revenue which may arise to the State on account of the ban on sale of liquor for 9 days since could run to several Crores, this Court, he said, has to entertain the Writ Petitions and issue an interim order confining the ban of sale of liquor for a period of three days ending with the date of poll in the concerned constituency.

9. Contentions advanced on behalf of the Writ Petitioners-Contractors and pleas but forth on behalf of the State against the validity of the directions issued by the Election Commission requiring the State to impose ban on sale of liquor during the period of nine days preceding the date of poll in the Parliamentary and State Assembly Constituencies from which elections are to be held, do not merit acceptance for the reasons which we shall presently state.

10. Direction issued by the Election Commission of India to the State Governments respecting the ban of sale of liquor in the areas of Parliamentary and State Legislative Assembly Constituencies, referred to in the impugned

message, and the restrictions imposed by the Election Commission as to the storage of liquor or dry days referred to in Annexure-L are not, as such, before us. We are, therefore, unable to see what exactly are those directions or restrictions imposed by the Election Commission and whether there is any indication in the message containing such directions or restrictions as to the reasons for their issuance. All that the Teleprinter Message (Annexure-A) impugned in these Writ Petitions contains is that the earlier message issued regarding ban on sale of liquor shall become operative all over the country uniformly even from 18th May 1991. Hence, the point to be considered is whether the impugned Teleprinter Message and the messages which have preceded it containing directions to the State Governments as to the ban on sale of liquor and storage of liquor in the areas of the Parliamentary and State Legislative Assembly Constituencies where elections are due to be held, for a period of nine days preceding the date of poll, could be interfered with and invalidated by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution. As already pointed out, we cannot rule out the possibility of there being reasons in the messages of the Election Commission containing directions respecting ban on sale or storage of liquor, as to the reasons warranting issuance of such directions. Even if no reasons are contained in the message of the Election Commission containing directions to the State Governments relating to ban on sale and storage of liquor in the Parliamentary or Assembly Constituencies where elections are due to be held within nine days, we find it not only difficult but also improper to interfere with such directions and invalidate them when this Court's extra-ordinary power under Article 226 of the Constitution is invoked. It is the Election Commission which under our Constitution, is entrusted with the duty and responsibility of conducting all elections to Parliament and Legislature of every State in our Country, as becomes evident from Article 324(1) of the Constitution. Duty and responsibility of conducting such elections invested in the Election Commission, it cannot be disputed, implies investment in it all power necessary for proper conduct of them (elections). If any such election in a constituency to be conducted by the Election Commission has to be free and fair, responsibility of creating an atmosphere in the constituency which could be conducive to free and fair election to be held, lies with the Election Commission itself, cannot be disputed. If that be so, the foremost duty and responsibility of the Election Commission is to take all precautionary measures which it deems necessary and expedient to ensure the conduct of the elections in such constituency freely and fairly. What precautionary measures are required to be taken for ensuring free and fair election in a constituency in a given situation are matters which should be left to the discretion of the Election Commission and its subjective satisfaction, in that, it would alone be the judge to decide upon such precautionary measures giving due regard to the prevailing or developing situations. Such precautionary measures if taken by the Election Commission by means of issuance of directions to the State Governments in the form of messages, letters or orders in exercise of the wide and exclusive powers vested in it under Article 324(1) of the

Constitution for the purpose of conducting a free and fair election, such directions cannot be made justiciable in Courts except where the precautionary measures are ex-facie tainted with malafides or found to have been made in utter violation of the constitutional or statutory provisions or norms of natural justice where ground realities do not make it impracticable. Vitiating of a direction of the Election Commission issued for conduct of a free and fair election as a precautionary measure for being carried out by the concerned Governments on the ground of its non-application of mind or on the ground of the direction not containing the reasons or being arbitrary, can never arise when there is apparent nexus between the direction and the purpose sought to be achieved by such direction. What the petitioners-Contractors want this Court to invalidate in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution is the directions of the Election Commission issued in the form of messages to the State Governments requiring them to ban the sale and storage of liquor in the areas of Parliamentary and Legislative Assembly Constituencies where elections are due to be held, for a period of nine days preceding the date fixed for polling. It is a matter of common knowledge that liquor is a commodity often used during the pre-poll days of elections to foul the atmosphere which could be conducive to conduct of free and fair elections in Constituencies. When maintenance of law and order in the Constituencies where elections are due to be held, has become a difficult task for the Authorities concerned, precautionary measures if are taken by the Election Commission by issuance of directions uniformly to all the State Governments in the Country not to permit sale or storage of liquor, so that it may not be made use of for worsening or aggravating the foul and violent atmosphere prevailing in the Country in the pre-poll election time, it is difficult to think that there can be no nexus between the directions of the Election Commission issued requiring the State Governments to ban sale and storage of liquor in the pre-poll days and the creation of a proper atmosphere needed to conduct free and fair elections in the Constituencies, as sought to be made out. Hence, we are not left in doubt that the contentions and pleas urged against the validity of the directions contained in the message impugned in these Writ Petitions requiring the State Governments to ban the sale and storage of liquor in the Constituencies for a period of 9 days preceding the date of poll, have any force as would warrant their acceptance particularly when the validity of the directions is not challenged on the ground of their vitiating due to malafides or violation of any Constitutional or statutory provisions. However, our view of the matter, it is made clear, cannot come in the way of the State Government pursuing its request made in the Fax Message sent to the Secretary to the Election Commission to modify the directions in the impugned message as to limiting the period of ban on sale or storage of liquor to three pre-poll days on the ground that the law and order situation in the Parliamentary and Legislative Assembly Constituencies where elections are being held, is not polluted as elsewhere requiring ban on such sale and storage of liquor for over a period of 9 pre-poll days and the Election Commission modifying the directions by accepting the request of the State Government if it considers it feasible.

11. Coming to the only other point urged by the learned Counsel for the petitioners that the State Government has to be directed to give proportionate remission to the petitioners-Contractors in the amounts payable by them pursuant to contracts of vending liquor entered into by them with the State Government respecting the period of 9 days during which ban on sale of liquor is ordered by the Election Commission, all that we would like to state is that we do not propose to express any view on the matter as the expression of such view would be premature in its character. Therefore, we would like to make it clear that no need arises for us to decide on the question of remission to be given by the State Government to the petitioners-Contractors and it shall be open to them to approach the Government or any Court as may be advised seeking such relief if the developing situations so warrant.

12. In the result, we dismiss these Writ Petitions in limine.

13. Since we have dismissed the Writ Petitions in timing, question of granting any interim stay of the direction respecting the ban on sale or storage of liquor contained in the impugned message, does not arise.