
(2015) 04 KL CK 0019

In the High Court Of Kerala

Case No : W.P(C) Nos. 12886 of 2015-I, 12896, 12897 and 12898 of 2015-J, 12930 of 2015-M, 12991 of 2015-Y and 13158 of 2015-T

E.S. Manoj

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 04 KL CK 0019

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M.A. Asif, for the Appellant; G. Gopakumar, Senior Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.

1. The petitioners are aggrieved with the order dated 10.04.2015 prohibiting sale of liquor in and around the Vadakkumnathan Temple, more specifically in the Corporation area of Thrissur, made by the District Collector; produced in the writ petitions. The order has been passed under Section 54 of the Abkari Act with public interest in view, taking into account the fact that there is a large gathering of people on account of the Thrissur Pooram festival.

2. The petitioners are licensees engaged in the sale of intoxicating liquor, as per licences granted by the State. The petitioners rely on two decisions of this Court; one of a Division Bench in W.P.(C). No. 5187 of 2005 dated 16.02.2005 and another of learned Single Judge in W.P.(C). No. 5748 of 2009 and connected case dated 05.03.2009, to assail the order passed. The petitioners allege that the reasoning of the District Collector is unsustainable and urge procedural infirmity, as in the earlier instances, when such orders were struck down by this Court.

3. The Division Bench in the cited case had set aside an order passed under the above provision on the ground that there was no application of mind and that the

same smacks of arbitrariness for reason of the said order having been passed without any proper notice. The Division Bench specifically spoke of the absence of any policy of the State and found that, in such circumstance the District Magistrate or the Superintendent of Police cannot formulate a policy and any orders passed under Section 54 can neither be a mechanical one nor based on a mere letter of the Superintendent of Police that there is every likelihood of breach of peace. The learned Single Judge in the writ petition also followed the above dictum and issued directions to frame guidelines and also to ensure that orders are passed sufficiently early, so as to enable the aggrieved persons to challenge the matter before the appropriate forum.

4. Going through the impugned orders passed at present, this Court is not satisfied that any of such contentions can be successfully urged. The Government has framed regulations and issued Circular dated 29.04.2009. The District Collector has acted on the basis of the report of the District Police Chief. It has been specifically reported that on earlier instances when prohibition was brought in, the crime rate has considerably been reduced.

5. More than the statistics of registered crimes, in such a huge gathering of devotees and non-devotees; all of whom come to watch the visual and rhythmic delight offered, respectively by the fire works and the percussionists; particularly that associated with the Pooram, it is common knowledge that many untoward incidents happen, which are not reported. The victims are often reduced to mutely suffering such menacing overtures, often motivated and accentuated by the intoxicating effect of liquor. The psychedelic effect of the colours and the adrenalin rush of the "mela" are sufficient intoxication for the crowd and they could do without the inebriation provided by the traditional "watering-holes", called "BAR"'s.

6. The prohibition is also only from 8.00 a.m. on 29.04.2015 to 2.00 a.m. on 30.04.2015 when the festival is carried on in the public roads. This Court perfectly agrees with the order passed by the District administration that law and order and a tranquil atmosphere conducive to the festival would be brought in on such prohibition being effected.

7. The next issue raised is with respect to the delay in publication of the order. It is to be noticed that the notice itself was dated 28.03.2015. The licensees against whom such notices were issued were granted time till 06.04.2015. Many of the petitioners have not filed any objections and in W.P.(C). No. 12930 of 2015 the specific contention raised is that the petitioner therein filed the objection on 07.04.2015, seeking further time. If the petitioner(s) wanted further time, then they should have approached this Court at that point itself, since it was evident that the notice was intended to effectuate an order on 29.04.2015.

8. The order impugned also discloses that the licensees were heard. There is nothing to indicate that the petitioners herein could have raised a unique ground not advanced by the licensees who were already heard; to persuade the District

Collector to desist from passing the order. An order was passed, as evidenced at Exhibit P8 dated 10.04.2015. The petitioners had ample time to approach this Court. Though the present writ petitions cannot be said to be unreasonably delayed in the normal course, in the particular context of the prohibition intended to be made effective from 29.04.2015, the petitioners should have been more vigilant in approaching this Court.

9. In any event, even if the petitioners had approached this Court earlier, this Court is not persuaded, even on merits, to find that the order is bad. The authority to license and the power to regulate both emanate from the statute. The Court's endeavour would be to sustain both. Judicial intervention is not to advance one in favour of another but to fetter any overreach which results in the breach of harmonious co-existence of the provisions. The right to carry on license, at its inception is regulated, and in the case of exercise of power under Section 54; controlled by the guidelines issued by the State. Unless discrimination or arbitrariness is writ large, this Court would steer clear of an interference. No allegation of discrimination is raised. No grounds also exist to find any capricious exercise of the regulatory power. Arbitrariness alleged on procedural irregularity has already been negated.

10. Further, it is also pertinent that a Division Bench of this Court had with respect to the very same issue, concerning the very same festival, upheld the order of a learned Single Judge rejecting stay of the prohibitory order passed under Section 54 for the previous year in W.A. No. 673 of 2014 and connected cases, dated 09.05.2014. It was categorically held by the Division Bench that the District Collector's opinion; as to there being chances of law and order situation arising, to avert which, prohibition of sale and consumption of liquor is necessary; cannot be dismissed outright as unreasonable or untenable. The said principle squarely applies in the present year also.

11. The fact that the prohibition is intended to be made effective from tomorrow, i.e., 29.04.2015, persuaded this Court to take up the matter and dispose it of finally, since otherwise the writ petitions would be rendered infructuous. Taking all the circumstances into account, this Court is of the opinion that the challenge is to be negated.

The writ petitions would stand dismissed. No costs.