(2006) 04 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 201 of 1997

Gagan Hotel and Restaurant — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 47

Citation : (2006) 144 PLR 772 : (2006) 4 RCR(Civil) 80

Hon'ble Judges : Harjit Singh Bedi, Acting C.J.;Ranjit Singh, J

Bench : Division Bench

Advocate : None, for the Appellant; A.S. Grewal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Harjit Singh Bedi, Acting C.J.—This Letters Patent Appeal is directed against the judgment of the learned Single Judge dated 2.4.1997, whereby the writ petition filed by the appellant has been dismissed. The appellant-petitioner M/s Gagan Hotel and Restaurant, Muktsar obtained a licence in the year 1982 in form L-4A and L-5A for running a Beer Bar in the municipal limits of Muktsar City. In January, 1995, the State Government took a decision to declare Muktsar as a holy city, whereby sale of liquor within its municipal limits was prohibited. As per the appellant''s case, despite the decision aforesaid, liquor vends were auctioned on 15.3.1995 and the appellant too deposited a sum of Rs. 30,000/- towards the licence fee for running a Beer Bar. the respondents, however, refused to renew the licence on the ground that Muktsar had been declared to be a holy city and the sale of liquor had been prohibited therein. This action was challenged by way of aforesaid writ petition.

2. In the written statement filed by the respondents, the facts as above stated, were not denied and it was pointed out by way of justification that the licence for the year 1995-96 had not been renewed in view of the excise policy framed by the Sate Government, in which the Muktsar had been declared a holy city and as the Hotel of the appellant was situated within the limits of the holy city, the

application would have to be dismissed. The learned Single Judge held that the fact that the appellant''s Hotel was situated within the municipal limits of Muktsar and that Muktsar had been notified as a holy city was not disputed. The learned Single Judge also referred to the excise policy for the year 1995-96, in which it had been laid down that no licence for sale of liquor in the municipal limits of Muktsar would be issued. On these facts, the learned Single Judge also observed that there was no inherent right in any person or body to carry on a business for the sale of liquor as had been held in the case of Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, . Applying this judgment to the facts of the present case, the learned Single Judge dismissed the writ petition leading to the present appeal.

3. During the pendency of this appeal, various documents have been filed by the appellant to show that, as a matter of fact, various organizations, such as the Muktsar City Club had been permitted to sell liquor within the municipal limits. This averment has been denied by the respondent State in the affidavit of Shri Lal Pal Singh, E.T.O. (Excise) Muktsar dated 13.2.2004, wherein it has been specifically denied that the Muktsar City Club had been granted a licence for running a Beer Bar or for sale of liquor. It has further been pleaded that, as a matter of fact, no application had been received by the Excise Department from the Muktsar Club for the grant of a licence.

4. We have heard the learned Counsel for the State. We too art of the opinion that there is absolutely no merit in the appeal. We quote herein the judgment of the Hon''ble supreme Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, . In this case, the Hon''ble Supreme Court was dealing with the status of a person, who was dealing in the manufacture, sale and purchase of liquor. In paragraph 60 of the judgment, it is observed as under:

We may now summarise the law on the subject as culled from the aforesaid decisions:

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by Clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e. res extra commercium (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful. A citizen-has therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition on the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself, or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitation and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions and limitations on the trade or business in portable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of other and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable, liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence, the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(I) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their base or diversion for use as or in beverage.

5. The judgment in Khoday Distilleries''s case (supra) was affirmed in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., . In paragraph 39 of Para 41 of AIR the cited judgment, it was observed as under:

39. The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in Khoday Distilleries. It is raised before us again. In Khoday Distilleries, this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to res extra commercium (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reason, the Bench held, the State can create a monopoly either in itself or in any agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in Clauses (e) and (f) of the summary contained in para 60 of the decision. In these clauses, it was observed that

creation of a monopoly in the State deal in intoxicating liquors and the powers to impose restrictions, limitations and even prohibition thereon can be imposed both under Clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(g). If it were not so, asked the learned Counsel, reference to Article 19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In Clause (e), the Bench held, a monopoly in the State or its agency can be created "under Article 19(6) or even otherwise". Similarly, in Clause (f), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) or otherwise". The said words cannot be read as militating against the express propositions enunciated in Clauses (b), (c), (d), (e) and (f) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, that a citizen has no fundamental right to trade in intoxicating liquors. In this(view of the matter, any argument based upon Article 19(1)(g) is out of place." We, therefore, find no merit in the appeal.

