(1999) 05 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3927 of 1999

Gram Panchayat APPELLANT

Vs

Excise and Taxation Commissioner and Another RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Constitution of India, 1950 — Article 47
Punjab Panchayati Raj Act, 1994 — Section 40

Citation : AIR 1999 P&H 289 : (1999) 123 PLR 36 : (1999) 3 RCR(Civil) 373

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : J.S. Bhandohol, for the Appellant; M.C. Berry, DAG (for No. 1), Sarjit Singh and Vikas Singh, (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The Gram Panchayat of village Tarkheri Kalan is the petitioner. It passed a resolution on September 12, 1998 that there should be no liquor vend in the village. Despite that, the liquor vend in the petitioner''s village was auctioned for the year 1999-2000. Hence, the petitioner has approached this Court with a prayer for the issue of a Writ of Mandamus directing respondent No. 1, the Excise & Taxation Commissioner, Punjab not to open a liquor vend in the village.

2. A written statement has been filed on behalf of respondent No. 1 by the Excise & Taxation Officer (Excise), Patiata. It has been inter alia, averred that the Sarpanch of the petitioner Panchayat had "led a movement against the liquor vend. On 3-4-1998 they forcibly entered the vend, damaged some liquor and the counter........." A complaint was filed in the Court of Judicial Magistrate 1st Class, Nabha. The Sarpanch has been named as one of the accused. On merits, it has been averred that three cases were registered u/s 61 of the Punjab Excise Act, 1914, vide F.I.R. No. 23, dated May 12, 1998, F.I.R. No. 27, dated June 18, 1998 and F.I.R. No. 1, dated January 9, 1999. In view of these cases, it has been

stated that instead of introducing prohibition, there would be encouragement of illicit liquor trade. A copy of the order passed by the Excise & Taxation Commissioner on March 10, 1999 has been produced as Annexure R-3 with the written statement.

3. A separate written statement has been filed by respondent No. 2, the contractor, whose bid for the vend has been accepted.

4. Learned counsel for the parties have been heard.

5. Admittedly, the matter is governed by the provisions contained in Section 40 of the Punjab Panchayati Raj Act, 1994 (for short the ''Act''). The provision reads as under :--

"40. Power to introduce prohibition.-

(1) A Gram Panchayat may by a resolution supported by at least two-thirds of panches holding office for the time being passed at any time on or after the first day of April, and on or before 30th day of September in any year, direct that intoxicating liquor be not sold at any licensed shop within the Gram Sabha area, notwithstanding any resolution passed by an empowered local body u/s 5 of the Punjab Local Option Act, 1923, or any other law for the time being in force, such resolution shall be effective from the first day of April, of the year following the date when it is so passed and shall immediately be communicated to the Excise & Taxation Commissioner, Punjab.

(2) Notwithstanding anything contained in the Punjab Excise Act, 1914, and the rules made thereunder, or any other law for the time being in force, with regard to the powers and functions of the Collector under the said Act, such a resolution will be binding upon the Excise & Taxation Commissioner, Punjab:

Provided that if the Excise and Taxation Commissioner, Punjab is of opinion for reasons to be recorded in writing that within such local area illicit distillation or smuggling of alcohol has been carried on or connived at, within two years, preceding the date of passing of such resolution, in such local area, such resolution shall not be binding upon him unless the Stale Government orders that it shall be so binding."

6. A perusal of the above provision would show that a Gram Panchayat can resolve to introduce prohibition by passing a resolution with "at least two-thirds of the panches" supporting it. It can decide that "intoxicating liquor be not sold at any licensed shop within the Gram Sabha area". Such a resolution, if passed, after the first day of April and before September 30 in a year shall be effective from "the first day of April, of the year following the date when it is so passed........ . . ." The provision further requires that the resolution shall immediately be "communicated to the Excise and Taxation Commissioner, Punjab." These requirements of Section 40(1) have been fully satisfied in the present case. The petitioner-Panchayat had, admittedly, passed a unanimous resolution on September 12, 1998. A translated copy of the resolution has been

produced as Annexure P-2 with the writ petition. Since the translation did not appear to be totally accurate, we had referred to the original resolution, a photostat copy of which has been produced on the record. A perusal of this resolution shows that the Panchayat had unanimously resolved that the liquor vend be removed from the village. It is also not disputed that the resolution was communicated to the Excise & Taxation Commissioner, Punjab.

7. Sub-section (2) of Section 40 of the Act postulates that the resolution passed by the Panchayat shall be "binding upon the Excise and Taxation Commissioner, Punjab." However, the proviso carves out an exception inasmuch as it provides that if, in the opinion of the Commissioner and "for reasons to be recorded in writing", it is found that "illicit distillation or smuggling of alcohol has been carried on or connived at, within two years preceding the date of the passing of such resolution, in such local area, such resolution shall not be binding upon him. ...." In other words, it is only when the Commissioner comes to a positive conclusion that illicit distillation or smuggling of alcohol has been carried on or connived at within the preceding two years that he would not be bound by the resolution.

8. What is the position in the present case ? According to the order passed by the Commissioner, three cases had been registered. The first of these cases was the FIR registered on May 12, 1998. The accused was Som Nath, resident of village Babhalpur. 8-1/4 bottles of illicit liquor were alleged to have been recovered from him. The second case was registered on June 18, 1998. A substantial quantity consisting of 120 bottles of illicit liquor and 24 bottles of licit liquor was alleged to have been recovered from three persons of village Dittupur Jattan. In the third case registered on January 9, 1999, 4 bottles of illicit liquor were alleged to have been recovered from Dass Singh, resident of village Chahal. In none of the three cases, a resident of the petitioner''s village was involved. No liquor is shown to have been recovered from anyone belonging to the petitioner''s village during the preceding two years. It has not even been averred or suggested that "illicit distillation or smuggling of alcohol has been carried on or connived at within two years preceding the date of the passing of the resolution" in village Tarkheri Kalan.

9. Mr. Berry points out that in paragraph 4 of the order dated March 10, 1999, the Commissioner has observed that "there was large scale illicit distillation in the village and the cases detailed as above were detected." We have perused the order. There is no resident of village Tarkheri Kalan who is even alleged to be involved either in illicit distillation or in smuggling or in sale or even consumption of illicit liquor. There is not even a suggestion of connivance of any of the residents of the petitioner''s village in the three cases referred to in the order of the Commissioner.

10. Faced with this situation, it has been contended on behalf of the respondents that in paragraph 5(A) of the written statement filed by respondent No. 2 it has been, inter alia, averred that "the detail of the cases in respect of village Tarkheri

would show that respondent No. 1 had rightly passed the order dated 10-3-1999." The details of the cases have been provided. The first three of these cases have already been noticed by us above. The other two cases mentioned by the private respondent are FIR Nos. 68 and 69, dated October 28, 1994 registered u/s 61 of the Punjab Excise Act. These cases had not arisen within the preceding two years. Thus, these are of no consequence.

11. In view of the above, it is clear that there was no material before the Commissioner on the basis of which it could have been concluded that "illicit distillation or smuggling of alcohol has been carried on or connived at, within two years, preceding the date of the passing of the resolution" in village Tarkheri Kalan. Thus, the impugned action is based on no evidence and cannot be sustained.

12. It may also be added that prohibition is one of the declared principles of State Policy. Article 47 of the Constitution categorically requires the State to promote prohibition. If a Gram Panchayat, which is an instrumentality of Local Government at the grass-root level, has passed a resolution to introduce prohibition in the village, the State should help it rather than stretch facts to find an excuse to interfere. This is what appears to have happened in this case.

13. In view of the above, we hold that the order passed by the Excise and Taxation Commissioner does not fall within the provisions of Section 40 of the Act. It cannot, thus, be sustained. Resultantly, the respondents are directed to implement the resolution passed by the petitioner.

14. The writ petition is, accordingly, allowed. No costs.

