(1987) 07 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1713 of 1987

Gram Panchayat, Iserhari — APPELLANT

Vs

State of Haryana and others — RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Citation : (1988) 1 CurLJ 6 : (1987) PLJ 494 : (1987) 2 PLR 377 : (1988) 1 RRR 126

Hon'ble Judges : D.S.Tewatia, J and S.S.Sodhi, J

Advocate : K.S. Ahluwalia, Advocate., Advocates for appearing Parties

Judgement

D.S. Tewatia, J. (Oral)

1. The petitioner Gram Panchayat has questioned the action of respondentExcise and Taxation Authorities of reestablishing liquor vends One for English wine and the other for country made liquor within the jurisdiction of the petitionerGram Panchayat and auctioning the same for the year 198788.

2. The case set in the petition is that the liquor vends functioned within the jurisdiction of the petitionerGram Panchayat upto the year 1985, when on 5th September, 1985 the petitionerGram Panchayat passed the resolution, Annexure P.1, in terms of section 26 of the Punjab Gram Panchayat Act, 1952, as applicable to the State of Haryana (hereinafter referred to as `the Act''). In pursuance of the said resolution, the liquor vends were closed with effect from 1st April, 1986, and, therefore, for the year 198687 the liquor vends were not auctioned. The petitionerGram Panchayat, however, came to know on 4th March, 1987, that Excise and Taxation Authorities were contemplating reestablishment of the liquor vends and for the auctioning thereof for the year 198788. Acting on this information, the petitioner represented against this to the concerned Deputy Commissioner. The Deputy Commissioner on 6th March, 1987, held an inquiry on the spot and on 7th March, 1987, forwarded his report, Annexure P 6, to the Deputy Excise and Taxation Commissioner, Rohtak, in which he express the opinion that the department should not insist upon the opening of liquor vends in

Village Iserhari and instead it should select an alternative suitable site for locating the liquor vends. The petitioner also wrote to the Deputy Superintendent of Police of Bahadurgarh Subdivision, seeking information regarding case of illicit distillation in the petitioner''s area, if any, on 21st March, 1987, who after examining the Police record of the Bahadurgarh Police Station supplied the information to the petitionerGram Panchayat which is reproduced in paragraph 11 of the writ petition in which he has mentioned that since 1981 there had been no case of illicit distillation within the jurisdiction of the petitionerGram Panchayat, whereas, on the contrary there had been eight cases as a result of the opening of the liquor vend in question in the said village. It is alleged in the petition that the petitionerGram Panchayat is opposed to the opening of the liquor vend in the Village at the given site, because that place happened to be located on DelhiNajafgarh Road, which is frequented by truck drivers and it is located on the passage where the women folk of the village go to fetch water and that a Primary School is also located nearby.

3. The case up in reply on behalf of respondents 1 to 3, in brief is two fold one that the Excise and Taxation Authorities wee competent to reauction the liquor vends for the year 198788, because the Gram Panchayat vide resolution dated 17th February, 1987, Annexure Rule 1/A had sought for the reopening of the vends within its jurisdiction at the given place and secondly, the earlier resolution, Annexure P. 1, exhausted its efficacy after 31st March, 1987. The petitionerGram Panchayat ought to have passed in 1986, a fresh resolution like the one it has passed in the year 1985.

4. The petitioner Gram Panchayat through a replication contested the fact that the resolution, Annexure Rule 1/A had been passed by the Gram Panchayat.

5. It is further stated in the said replication that neither any meeting was called on the given date nor the said three members who had alleged to have signed that resolution, had signed any such resolution. It is pointed out that rather all the six members of the Gram Panchayat excluding the Sarpanch, have filed their affidavits in this Court (Annexures P. 7 to P. 12) in which they have stated that no exures P.7 to P.12) in which they have stated that no such meeting was convened by the Sarpanch, nor any such resolution was passed on the 17th of February, 1987, nor it was signed by any of them and that the said resolution had been forged by the Sarpanch.

6. Respondent No. 3 in the rejoinder to the aforesaid assertion in the replication has merely stated the they had received the resolution from the Sarpanch and they therefore had acted upon that.

7. Before proceeding to examine the contention advanced on behalf of the petitioner, a reference to the relevant provisions of the Act and the provisions of the Punjab Intoxicating Licence and Sale Orders, 1956, deserve noticing :

Punjab Gram Panchayat Act, 1952 : "Section 26. Power to introduce prohibition. Subsections (1) and (2) for Haryana.

(1) A Gram Panchayat may, at any time, during the period commencing on the 1st day of April and ending with the 30th day of September of any year, by resolution passed by majority of Panches holding office for the time being, direct that intoxicating liquor may not be soled at any licensed shop within the local area of the Gram Panchayat.

(2) When a resolution has been passed under subsection (1) and is received in the office of the Excise and Taxation Commissioner, Haryana on or before the 31st day of October, it shall take effect from the 1st day of April of the year next after such resolution.

(3) Notwithstanding contained in the Punjab Excise Act, 1914, (or any other Act) for the time being in force and the Rules made thereunder with regard the powers and functions of the Collector under the said Act, such a resolution will be binding upon the Excise and Taxation Commissioner.

(4) Provided that if the Excise and Taxation Commissioner is of the opinion for reason 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 the passing of such resolution in such local area, such resolution shall not be binding upon, him, unless the Government orders that it shall be so binding."

Punjab Intoxicating Licence and Sale Orders, 1956 : "CI. (5). No licence for the sale of liquor and intoxicating drugs may be given unless either there is an ascertained demand for such liquor or drugs in locality concerned, or it is granted to counteract the illicit supply of liquor or drugs in the locality nor in the case of liquor licenses for consumption without the inquiry prescribed by Orders 8 to 15 of these Orders........."

8. It has been contended on behalf of the petitioner that once the Panchayat passed a resolution (Annexure P.1), and it was given effect in terms of section 26 of the Act, as applicable to Haryana, with effect from 1st April, 1986, than the prohibition was to remain in force in the area within the jurisdiction of the petitionerGram Panchayat and no liquor vend could be established or auctioned therein unless conditions and circumstances envisaged in clause (5) of the Punjab Intoxicating License and Sale Orders, 1956 (for short `the Orders'') obtained.

9. The learned counsel for the petitioners stressed that there existed no demand for the liquor in the Village. The Collector ascertained the views of the villagers who were unanimous with the exception of the Sarpanch in telling him that they did not want liquor vend in the village. The other condition of illicit supply or the distillation of liquor envisaged in clause (5) also did not exist in the present case as asserted on the basis of the letter of the Deputy Superintendent of Police, in para 11 of the petition. He is alleged to have informed the petitionerGram Panchayat that there had been no case of illicit distillation in its jurisdiction since the year 1981 upto the date of his report.

10. On behalf of the respondents, however, it has been argued that the resolution, Annexure P.1, passed by the petitionerGram Panchayat was effective only for the ensuing year i.e. from 1st April, 1986 to 31st March, 1987 and unless the resolution was repeated in the year 1986, within the stipulated time, the respondentExcise and Taxation Authorities were well within their right to auction the vend for the year 198788 and clause (5) of the Orders was not attracted.

11. In the alternative, it has argued on behalf of the respondents that in fact the Gram Panchayat had passed resolution, Annexure R. 1/A, requestion the respondentAuthorities to auction the vends and, therefore, even the requirement of clause (5) of the Orders stood satisfied.

12. As to the first limb of the argument advanced on behalf of the respondents, it may be observed that provisions of section 26 of the Act does not lend itself to the interpretation sought to be put on behalf of the respondents. A combined reading of subsections (1) and (2) of section 26 of the Act, in substance means that a Gram Panchayat, which does not want that a liquor vend functioning within its area should continue to function and wants to impose prohibition within the area of its jurisdiction, then it must pass a resolution in the year in which it intends to pass the resolution between two dates i.e. 1st April of that year upto 30th of September of that year and transmit the same to the Excise and Taxation Commissioner before the 31st day of October of that year. When that is done, the prohibition shall become effective in that area from the 1st of April of the ensuing year. The Gram Panchayat having given expression of its opposition to the continuance of the liquor vend within its area, it is not to repeat its intention every year by passing a resolution of the kind. The resolution once passed by the Gram Panchayat in terms of the provision of section 26 of the Act shall remain in force in future and no liquor vend could be established within its territory thereafter unless conditions of cause (5) of the Orders obtained and were satisfied.

13. As to the stand of the respondents that the existence of resolution of the Gram Panchayat Annexure R. 1/A satisfied the requirement of existence of demand for the liquor in the given area, it may be mentioned that keeping in view of the fact that Deputy Commissioner of the District in his report, Annexure P 6, had stated that he visited the village in order to ascertain the views of the villagers and that inter alia out of the seven members of the Panchayat, six members of the Panchayat were opposed to the establishment of the liquor vend in the village and that only the Sarpanch was in favour and he was doing so, according to the Deputy Commissioner, for mala fide reason, and also having regard to the fact that six Members of the Panchayat had filed an affidavit in this Court that no meeting took place on 7th February, 1987, and they had not signed any such resolution, the resolution Annexure Rule 1/A showing the signatures of three of the members of the Panchayat thereon clearly appears to be a forgery and the respondents could not say that there existed a demand for liquor vend in

the village.

14. The information transmitted to the petitionerGram Panchayat by the Deputy Superintendent of Police as mentioned in para 11 of the petition, which had not been denied on behalf of the respondents, makes it evident that there had been no illicit supply or distillation of liquor in the village. Hence, we have no hesitation in holding that neither of the conditions envisaged included (5) of the Orders were satisfied before ordering establishment of the vend and auctioning thereof by the respondentExcise and Taxation Authorities.

15. We, therefore, allow the petition and quash the impugned auction dated 10th March, 1987. The petitionerGram Panchayat shall have costs, which are fixed at Rs. 500/. Respondent No. 1 shall pay the same to the petitionerGram Panchayat within two months by a Bank Draft.