(1973) 08 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1026 of 1973

Gram Panchayat, Mehtabgarh APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 10-08-1973

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab Excise Act, 1914 — Section 26(3), 41

Citation : AIR 1974 P&H 89

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Judgement

1. This petition under Article 226 of the Constitution has been filed by Gram Panchayat Mehtabgarh, tehsil and district Patiala.

It is alleged that respondent No. 3 auctioned a country-liquor vend in the petitioner''s village for the first time in the year 1968-69. Before sanctioning the liquor vend in this village, no prior consultation with the Gram Panchayat was made. There is a Government School in this village and the Gram Panchayat received a large number of complaints about the rowdy behaviour of some of the persons who used to purchase liquor from his vend. There are about 40 houses in this village and no police is posted there. Most of time of the Panchayat is consumed in deciding such complaints. With a view to improving the atmosphere of the village, the Gram Panchayat held a meeting on February 12, 1973, and unanimously passed a resolution requesting the authorities to shift the liquor vend from village Mehtabgarh. A copy of this resolution was also sent to the office of the Excise and Taxation Commissioner, Punjab, the same day. Respondent No. 2, however, took no decision on this resolution.

2. Section 26 of the Gram Panchayat Act (hereinafter called the Act) provides that a Gram Panchayat may, by a vote of at least two thirds majority of Panches, direct that intoxicating liquor may not be sold at any licensed shop within the local area of the Gram Panchayat. The proviso to this section lays down that if

the Excise and Taxation Commissioner is of the opinion for reasons to be recorded in writing that illicit distillation or smuggling of alcohol was being carried on or connived at in such local area within the last two years, then the resolution passed by the Gram Panchayat shall not be binding upon him. Section 26(3) of the Act lays down that such a resolution shall be binding on the Collector notwithstanding anything to the contrary contained in the Punjab Excise Act, 1914, and the Rules framed there under.

3. A reading of these provisions shows that a Gram Panchayat has been given wide powers of enforcing prohibition within the area of its jurisdiction, provided, of course, it acts honestly in this behalf. The Excise and Taxation Commissioner can ignore such a resolution only if he records an opinion that illicit distillation or smuggling of alcohol has been carried on or connived at within the two years preceding the date of the passing of the resolution by the Panchayat. It is not the case of the respondents that the Excise and Taxation Commissioner applied his mind to the facts and circumstances of this case and came to the conclusion that the excise vend at this village should continue to function in spite of the resolution passed by the Panchayat. The resolution passed by the Panchayat takes effect from the first day of the April of the year next after such a resolution. In the instant case, the resolution was passed on February 12, 1973, and so it became effective with effect from April 1, 1973. It is a matter of regret that in spite of these clear provisions of law, the authorities concerned treated the resolution of the Panchayat with scant respect and proceeded to auction the liquor vend. Such an action ill-becomes responsible officers of a Government which is expected to enforce prohibition as envisaged in Article 47 of the Constitution appearing in the Chapter relating to the Directive Principles of State Policy.

4. The learned counsel for the respondents submits that the contractor who has acquired valuable rights of selling liquor in this village during the current financial year has not been impleaded as a party to this petition. So, this petition should be dismissed. There is no merit in this submission because the writ petition was actually filed on March 26, 1973, by which time the vend had not been auctioned. Notice of motion to the learned Advocate-General. Punjab was issued for March 30, 1973. The petition came up before the Motion Bench on March 30, 1973, when the State of Punjab was duly represented by a law officer. The rights of the liquor contractor came into existence on April 1, 1973. It is settled law that a party to a cause cannot take any action to the detriment of the other side during the pendency of the litigation. The casual manner in which the authorities concerned treated this case deserves condemnation in the strongest terms. These considerations apart, Section 26(3) of the Act says that a resolution of a Gram Panchayat shall take effect notwithstanding anything contained in the Punjab Excise Act and the Rules framed thereunder with regard to the powers and functions of the Collector under the said Act. This implies that even if the Collector auctions a country-liquor vend, the said auction would not stand in the way of the resolution passed by the Gram Panchayat. In this view of the matter,

the petition cannot be thrown out on the ground that the liquor contractor has not been impleaded as a party. It has already been noticed that at the time when the petition was filed the rights of the present liquor contractor had not come into existence. The petition prayed for a relief that the respondents be restrained from auctioning this vend. The authorities by acting contrary to the mandatory provisions of law cannot create impediments in the way of the petitioner, for getting relief under Article 226 of the Constitution, during the pendency of the writ petition. Furthermore, u/s 41 of the Punjab Excise Act, a contractor can be duly compensated, if the sale of liquor is stopped by cancelling his licence. Instead of raising a technical objection of the instant type, the authorities would be well-advised to take action under this provision of law.

5. In my considered opinion, it is a fit case in which relief should be granted to the petitioner. Though the petition prayed for a direction that the respondents should be restrained from auctioning the liquor vend, yet the same was auctioned during the pendency of this petition. It is, however, open to a Court of law to mould the relief to be granted to a petitioner in accordance with the circumstances of the case. If the authorities concerned take action u/s 41 of the Punjab Excise Act, they will have to give prior notice to the liquor contractor. Besides, the contractor would also need some time for shifting the vend. The interests of justice would the best served if the respondents are directed to shift the liquor vend from the village of the petitioner within a period of one month of the service of this writ. I order accordingly. The petitioner will have his costs which are assessed at Rs. 300/-.

6. Petition allowed.

