
(2023) 03 KL CK 0119

In the High Court Of Kerala

Case No : Writ Appeal Nos. 489, 491, 494, 495, 497, 498, Of 2023 Writ Petition
(C) Nos. 6678, 6774, 6777, 6816, 6878, 6917 Of 2023

Hotel Hillway Park

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : (2023) 03 KL CK 0119

Hon'ble Judges : K.Vinod Chandran, J;C.Jayachandran, J

Bench : Division Bench

Advocate : Thomas Abraham, Merciamma Mathew, Aswin.P.John,
R.Ananthapadmanaban, Paul Baby, T.K.Vipindas

Final Decision : Dismissed

Judgement

K.Vinod Chandran, J.

1. The writ appeals arise from the refusal of the learned Single Judge to stay the separate impugned orders passed by two District Collectors prohibiting sale of liquor by FL3 licensees and licensed toddy shops existing within an area surrounding three different locations where religious festivals are being held. The orders passed were identical and one of such orders followed the earlier orders. We called for the writ petitions also on consent of the parties, since the disposal of the appeals either way would dispose of the writ petitions also.

2. We have to notice the facts insofar as the location, the genesis and the area of prohibition as coming out from the separate impugned orders in the writ petitions. In W.A No.489/23 the District Collector, Kollam issued Ext.P2 order dt. 16.02.2023 prohibiting sale of liquor within the Police Station limits of Kadakkal, Chithara and Chadayamangalam on 02.03.2023, in connection with the 'Kumbhathiruvathira' festival in Kadakkal Devi Temple. The very same order is challenged in W.A No.494/2023 by another FL 3 licensee within the same area, the order produced as Ext.P2. In W.A No.491/2023 the impugned order Ext.P2 is

dt. 17.02.2023 issued by the District Collector, Palakkad in connection with Manappullikkavu Vela proposed to be conducted on 02.03.2023, again specifically prohibiting sale of liquor by Bars including Toddy Shops located within Palakkad Municipality, Kannadi and Marutha Road Panchayaths on the said day. W.A No.498/2023 also challenges the order dt 16.02.2023 and W.A No.497/2023 challenges the order dt.17.02.2023 issued respectively by the District Collectors of Kollam and Palakkad; the challenge being raised by an FL3 licensee and licensees of Toddy Shops respectively. W.A 495/2023 is an order issued by the District Collector, Palakkad of a similar prohibition in connection with Pattambi Nercha within the Pattambi Municipal limits by the shops and outlets and the Karimban Kadavu outlet of the Kerala Beverages Corporation on two days, 04.03.2023 and 05.03.2023.

3. The learned Single Judge looked at S.54 of the Act and from the order, found the District Magistrate having adverted to adverse reports regarding the apprehension of disruption of law and order including that of the District Police Chief. The decision of a Division Bench in State of Kerala v. Mary Kurian and others in W.A No.391/2018 and connected cases dated 12.02.2018 was distinguished and reliance was placed on Aneesh V. District Collector [2012(2) KLT 91] to uphold the impugned orders.

4. Learned Counsel appearing for the appellants, Sri Thomas Abraham specifically relied on Mary Kurian (supra) to contend that the Division Bench had followed an earlier Division Bench decision, both with reference to Maramon Convention held yearly at Kozhanchery, Pathanamthitta; which earlier decision is produced as Ext.P3 in W.A No.495/2023 and the recent one as Ext.P5. It was argued that unlike Toddy Shops the FL3 licensees are spending huge amounts for taking such license and prohibition imposed even for a single day would cause immense prejudice to the licensees and eat into their profits, especially since there is no remission of licence fee granted by reason of the prohibition. In Mary Kurian (supra) this Court had specifically deprecated the conduct of the District Collector in having acted upon the complaint raised by the General Secretary of the Convention which is almost similar in the instant cases also; the request having been generated by the Committee conducting such festival. S.54 is pointed out to show that the first limb requires a notice, which also brings within it an opportunity of hearing; which was not afforded to the appellants who were the licensees. It is also argued that the second limb empowers any Magistrate or even a Police Officer present in a location to require a licensed shop to be closed, on a real apprehension of a riot or unlawful assembly within the vicinity of the said shop. As noticed in Mary Kurian (supra) the District authorities have to ensure law and order, even in areas where festivals are conducted and they cannot abdicate their powers by issuing blanket orders imposing prohibition in such areas. For the purpose of obtaining FL3 licenses the appellants are classified hotels, who have expended considerable money in developing infrastructure also in promotion of tourism. The blanket ban issued would also affect the customers housed in the premises who would be prohibited from taking liquor on the

particular day. There is absolutely no real apprehension as can be discerned from the various orders and the offences referred in one of such orders are all minor offences under S.151 of the Cr.P.C. There is total violation of the guidelines issued by the Government, produced as Ext. P5 in W.A 495/2023. Sri.Nireesh Mathew, learned Counsel appearing in two appeals adopts the arguments already addressed and specifically emphasise the virtues of toddy and the attraction it offers for tourists to visit the State. It is pointed out that despite the prohibition having been extended to large areas it does not prevent a person from having liquor from outside the prohibited area and coming to the festival. The prohibition does not offer any mitigation to violence or unruly behaviour by reason of intoxication.

5. Sri. T K Vipindas, Senior Government Pleader, meticulously took us through the individual orders to show the real apprehension entertained by the District Collector on the basis of the crimes reported in the area previously, also during the festival times and the reports of the District Police Chief which sought for such prohibition. It is on a real apprehension that the orders have been issued and there would be convergence of people of different hues and faith in the festival grounds and there would be many coming to the festival for mere merry making and not necessarily with a religious bend of mind. Specific reference is made to Manappullikavu Vela where there is convergence of persons from three different desoms at one spot. In fact, these occasions often lead to settling of scores between goonda gangs and the common man always bear the brunt when such violent incidents erupt, oftener than ever triggered by intoxication. The learned Senior Government Pleader seeks for dismissal of the writ appeals.

6. The bulwark of the contention of the appellants is the decision in Mary Kurian (supra) of another Division Bench, penned by one of us (KVC, J). Therein an identical ban was imposed for a period of nine days and within one kilo-metre radius of the Convention venue;

which in effect prohibited the sale of liquor only from the sole licenced premises of the respondents 1 and 2. The decisions placed before the Court upholding and interfering with such similar prohibitions were dealt with. It was found that in the cases where prohibitions were upheld, there was minimal impact of one or at the worst, three days. The Division Bench in W.A 673/2014 dt 9.5.2014 upholding the order of prohibition, did so on specific grounds raised of the report of the police as to one person having died on account of intoxication, a specific instance of attack unleashed against one religious denomination and a hartal called by another religious denomination. The orders upholding prohibition on account of elections were distinguished since there is a specific provision, enabling it in the Abkari Act. The Division Bench found that as in the earlier case dealt with in WP(C) No.5187/2005 there was no cogent material available of reasonable apprehension of breach of peace and the orders were passed mechanically as were issued in consecutive years; all of which were also verbatim reproductions of the earlier orders. It was in these circumstances that the impugned order

therein was interfered with.

7. We are quite satisfied that the distinction on facts, drawn by the learned Single Judge, in the instant cases, from that of the decision in *Mary Kurian* (supra) is perfectly in order. In the present cases the prohibition is for a single day and in one case for two days. The area is also quite vast covering police station limits, Panchayat and Municipal areas and so on and so forth. The contention raised by the appellants that any person could still come intoxicated to the festival, does not permit us to digress from the immediate effects of consumption of liquor, especially when it is readily available at the spot and the deleterious consequences on the unsuspecting public, if the intoxicated person or persons turn violent and engage in criminal activities.

8. We also notice from S.54 that the notice does not necessarily speak of an opportunity for hearing. The notice in writing is only insofar as notice to the licensee to close down a shop, in which intoxicating liquor or drug is sold, for the purpose of preservation of public peace, which notice is only to enable the licensee to arrange his affairs accordingly. In fact, the licensee of a liquor shop has absolutely no say in the preservation of public peace and a hearing conducted would be futile since they cannot instruct the District Administration as to how the law-and-order situation within their jurisdictional limits is to be maintained peacefully. We cannot also countenance the argument of the appellants that the second limb would be sufficient to allay any outbreak of violence since prevention is always better than cure.

9. We also looked at the Circular alleged to have been not complied with, in letter and spirit; which in any event is in the nature of a guideline, the strict compliance of which should get subsumed in the objective of the statutory provision being satisfied and the discretion of the authorities who are responsible to maintain law and order. The notice, as spoken of in the guidelines is only to ensure that legal remedies are not stifled by issuance of orders at the last moment. Despite the seven days prescribed it cannot be taken as a mandate since emergent situations may have to be dealt with. We also notice the learned Senior Government Pleader's submission that such notice may result in illegal stocking and even illicit brewing. Here admittedly all the orders were issued on 16.02.2023 & 17.02.2023 and served respectively on 17.02.2023 and 20.02.2023. All the orders were challenged by Writ Petitions before the date on which such prohibition is contemplated.

10. The learned Counsel also had a contention that there was no cogent material to apprehend breach of peace or disruption of law and order situation, on account of opening of liquor shops and here also the prohibition is only on a subjective satisfaction of the District Collector which is based on a perpetual apprehension that, when there is convergence of large number of people in a particular locality during festival times there could be drunken behaviour, which is not justified.

11. We have also looked at the individual orders. The order dt 16.02.2023 issued by the District Collector, Kollam noticed that in the previous years there were untoward incidents in the premises of a Bar Hotel which in one case even led to a murder. There were frequent reports of unruly incidents leading to disruption of law and order as also clashes between members of political parties who take the opportunity of a crowd during the festivals to settle scores and escape unidentified. It was specifically noticed that in most of these cases the accused acted under intoxication. The District Collector Palakkad in the order dt 17.02.2023, imposing prohibition on the day of Manappullikavu Vela noticed a number of crimes which are specifically adverted to in the order; which the appellants assert to be of no import since they are all under S.151 of the Cr.P.C. S.151 of Cr.P.C specifically deals with arrest to prevent the commission of cognizable offences, which puts the police personnel under pressure especially when they are also enjoined upon to control a crowd converging in a particular spot in which the festival is held. In fact, the registration of such crimes and detention of persons, would also result in depletion of manpower deployed to control the crowd. It is common knowledge that often unruly behaviour leading to crimes arise with intoxication and escalates into violence. The order dt 17.02.2023 imposing prohibition of two days in connection with Pattambi Nercha also refers to the crimes registered in connection with the very same festival in 2022 and the group clashes which took place in Bars kept open on that particular day. The crimes that arose solely due to the consumption of liquor are also detailed, where serious offences under IPC are seen charged.

12. We are convinced that the separate orders passed are not mechanical in nature or verbatim reproduction of earlier orders. True, in one of the orders, ie, the order issued by District Collector, Kollam, there was a request made by the Temple Advisory Committee and a report called for from the Rural District Police Chief; both of which were referred to by District Collector. In the other two orders the references are only to the communication received from the District Police Chief and the Inspector of Police. The decision in Mary Kurian (supra) was not to the effect that a request made by an Advisory Committee or the Convenor of a festival cannot be acted upon by the District Collector. What was found fault with in Mary Kurian (supra) was the lackadaisical report obtained from the police authority and the vague apprehensions expressed as also the verbatim reproduction of the orders passed in earlier years. None of these grounds arise in the impugned orders and we find no reason to interfere with the order of the learned Single Judge.

13. We quite understand that the licensees have made substantial investments to carry on liquor vending, both foreign liquor and toddy. The disruption of sales for one or two days especially with the object of maintaining peace, for public good and preservation of public order, relegates commercial considerations to the back seat. We also notice a judgment by one of us, (KVC, J) sitting single and extract paragraph 5 from E.S Manoj v. District Collector (WP(C) No.12886/2015 and con.case)[MANU/KE/0490/2015].

"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."

We, sitting in Division, endorse the above view. As is the case with Thrissur Pooram, the festivities in all the three sites have a profusion of pyrotechnics, musical ensemble, colourful displays on caparisoned elephants, exhibitions, fares and the like, providing sufficient entertainment without being further enthused and infused with the toxicity of liquor. True, there could still be drunkenness and brawls resulting from that; but there would be sufficient mitigation and reduced instances, if proximate access to liquor is prohibited. We dismiss the appeals and the writ petitions and leave the parties to suffer their respective costs.