

(2024) 05 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 14153 Of 2024 (EXCISE)

Kushal Raj S, S/O Shantaraj

APPELLANT

Vs

State Of Karnataka Represented By Its Additional Chief
Secretary, Department Of Finance And Excise, Vidhana
Soudha Bengaluru - 560001 & Others

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Representation Of People Act, 1951 — Section 135C
Karnataka Excise (General Conditions Of Licences) Rules, 1967 — Rule 10B

Citation : (2024) 05 KAR CK 0021

Hon'ble Judges : Hemant Chandangoudar, J

Bench : Single Bench

Advocate : Mohan Mahabaleshwar Bhat, Prathima Honnapur, Radha
Ramaswamy, S.R. Dodwad

Final Decision : Disposed Of

Judgement

Hemant Chandangoudar, J

1. The order dated 17.05.2024 passed by respondent no.3 and the order dated 15.05.2024 passed by respondent no.4, by which, sale of liquor is prohibited from 4.00 p.m. of 01.06.2024 till 4.00 p.m. of 03.06.2024, and from 6.00 a.m. to midnight of 06.06.2024 in view of ensuing elections to the Members of Legislative Council scheduled to be held on 03.06.2024 and the counting of votes scheduled on 06.06.2024, are impugned in this petition.

2. Heard the learned Counsel for the petitioner, learned Additional Advocate General for respondent nos.1 to 4 and the learned Counsel for respondent no.5.

3. Petitioner's contention is, that despite the Returning Officer having instructed the State authorities to prohibit sale of liquor on the polling date and the counting date, the State authorities have prohibited sale of liquor contrary to the direction, from 4.00 p.m. of 01.06.2024 till 4.00 p.m. of 03.06.2024 and from

6.00 a.m. to midnight of 06.06.2024.

4. Respondent no.5 has filed an affidavit enclosing the copy of the calendar of events for conducting biennial election to the Karnataka Legislative Council from Three Graduates' and Three Teachers' constituencies scheduled to be held on 03.06.2024. The Election Commission of India vide communication dated 02.05.2024 has directed the State, stating that Model Code of Conduct has come into force with immediate effect, and to follow the instructions issued vide communication dated 26.12.2016. Although the Returning Officer has restricted the sale of liquor on the polling date and counting date in the communication, however, he has filed an affidavit stating that the word "polling date" cannot be restricted to the date of poll and it has to be interpreted in accordance with Section 135C of the Representation of People Act, 1951, which mandates prohibition of sale of liquor 48 hours prior to the date of polling.

5. Section 135C of the Representation of People Act, 1951, states that no liquor shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of 48 years ending with the hour fixed for the conclusion of the poll for any election in that polling area.

6. Rule 10-B of the Karnataka Excise (General Conditions of Licences) Rules 1967, empowers the District Magistrate to close any shop in which any liquor is sold or supplied as the Election Commission concerned may consider necessary for conduct of peaceful, fair and free elections.

7. Respondent Nos.3 & 4 in exercise of the power under Rule 10 B with reference to the communication dated 02.05.2024 issued by the Election Commission of India and also with reference to the communication issued by the Returning Officer has prohibited sale of liquor under the impugned orders.

8. I do not find any illegality in the impugned orders which are passed in accordance with Section 135C of the Representation of People Act, and the communication of the Election Commission of India, & also Rule 10-B of Rules, 1967.

9. Accordingly, petition stands disposed of.

10. The respondent Nos.3 & 4 are directed not to restrain the petitioner and other similarly situated persons from serving food in the Bar and restaurants.