(2003) 12 CHH CK 0001

In the Chhattisgarh High Court

Case No : Writ Petition No. 3859 of 2003

Lallan Singh APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Chhattisgarh Excise Act, 1915 — Section 24, 24(1)
Constitution of India, 1950 — Article 226, 227, 324
Representation of the People Act, 1951 — Section 135C, 135C(1)

Citation : (2005) 1 MPJR 38

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, Awadh Tripathi, Prashant Mishra, Abhishek Sinha and B.P. Sharma, for the Appellant; N.K. Shukla, Addl. AG and Sanjay K. Agrawal, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.

By filing Writ Petition No. 3859/2003 under Article 226/227 of the Constitution of India the petitioner Lallan Singh who is licencee of the liquor shop situated at Ratanpur, District-Bilaspur has challenged the order dated 19.11.2003 passed by Respondent No.2, Collector, Bilaspur, declaring 4th of December, 2003 as ''Dry-day'' and for closer of the wine shops on account of counting of the votes of Assembly Elections.

By filling writ petition No. 3891/2003 under Article 226/227 of the Constitution of India the petitioner Ashok Singh, who is licencee of the liquor shop situated at Navagarh, District- Janjgir Champa has challenged the order dated 21.11.2003 passed by Respondent No. 2, Collector, Janjgir Champa, declaring 4th of December, 2003 as ''Dry-day'' and for closer of the wine shops on account of counting of the votes of Assembly Elections.

By filing Writ Petition No. 3946/2003 under Article 226/227 of the Constitution of India the petitioner Ajay Sharma and Ashok Kumar Raut who are licencee of the liquor shops situated at Lakhanpur, Bhatgaon and Soorajpur, District- Surguja and Baikunthpur in District-Korea have challenged the orders dated 21.11.2003 passed by respondent No.2, Collector, Korea and Respondent No.4 Collector, Surguja, declaring 4th of December, 2003 as Dry-day'' and for closer of the wine shops on account of counting of the votes of Assembly Elections.

By filing Writ Petition No. 3931 2003 under Article 226/227 of the Constitution of India the petitioner Kamta Prasad Choubey who is licencee of the liquor shops situtated at Kunkuri Group District- Jashpur Nagar has challenged the order dated 14.11.2003 passed by Respondent No.2, Collector, Jashpur Nagar, declaring 4th of December, 2003 as Dry-day'' and for closer of the wine shops on account of counting of the votes of Assembly Elections.

By filing writ petition No. 3915/2003 under Article 226/227 of the Constitution of India the petitioner Sanjay Singh who is licencee of the liquor shop situated at Maro, District-Durg has challenged the order dated 13.11.2003 passed by Respondent No.2, Collector, Durg, declaring 4th of December, 2003 as Dry-day'' and for closer of the wine shops on account of counting of the votes of Assembly Elections.

The main grievance of the writ petitioners is that the Collectors of the respective districts have issued the impugned orders u/s 24(1) of the Chhattisgarh Excise Act, 1915 for closer of the wine shops for preservation of the public peace on 1st December, 2003 being a polling day for the State Legislative Assembly of Chhattisgarh and on 4th of December, 2003 being the day for counting of the votes of the assembly segments. These orders are issued pursuant to the directions given by the Election Commission of India under the provisions of sub-section (1) of Section 135C of the Representation of Peoples Act 1951. During the last Vidhansabha elections which were taken place in the year 1998 on the date of counting of votes the shops were closed only of those area which were situated within the boundaries of the municipalities/municipal corporations at the places where counting of votes were held. Whereas the petitioners shops are not situated at the places where the counting of votes is going to take place on 4th of December 2003.

Learned counsel for the petitioners argued that since these orders have been issued by the respective Collectors of the districts pursuant to the direction given by the Election Commission u/s 135C of the Representation of Peoples Act and as per the provisions of this Section, only on the date of polling the selling of intoxicants and liquor could be prohibited and the closer of the shops can be ordered but here is no provision under sub-section (1) of Section 135C of the Act for closer of the shops on the date of counting of votes, therefore the orders passed by the respective Collectors are contrary of the provisions of law, arbitrary, unreasonable as such the impugned orders should be quashed.

On the other hand learned Additional Advocate General Dr. N.K. Shukla argued that u/s 24(1) of the Chhattisgarh Excise Act, 1915 the district Collector/District Magistrate is empowered to issue directions for closer of the wine shops in the districts on any day for preservation of the public peace. He further argued that even during earlier elections in the State of Madhya Pradesh in the year 1998 and in 1999 also such directions were issued for whole of the districts on the date of counting of the votes of Assembly and Parliament Elections, therefore all the writ petitions be dismissed.

In this connection the relevant provision of sub-section (1) of Section 24 of the Chhattisgarh Excise Act, 1915 is reproduced herein below which envisage that:-

24. Closing of shops for the sake of public peace.-(1) The District Magistrate, by notice in writing to the licensee, may require, that any shops in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

If we look into the above provisions it is the satisfaction of the concerned Collector/District Magistrate that if he is satisfied looking to the facts and circumstances prevailing on a given date and time that in order to preserve the public peace it is necessary to issue orders for closer of the shops of any intoxicant then he is entitled to issue such directions. It is not disputed that on 4th of December the counting of votes of the State Legislative Assembly segments of Chhattisgarh at all the district headquarters is to take place, therefore in the above matters the Collectors being satisfied with the situation, in order to preserve the public peace thought it necessary to close of the liquor shops/intoxicant shops of the respective areas.

Now coming to the question as argued by the learned counsel for the petitioners that the petitioners shops are not situated at the places where the counting of the votes will take place on 4th of December, 2003, therefore as per the past practice the respective Collectors ought not to have ordered for closer of all the wine shops situated in the respective districts which were not situated within the municipal/municipal corporations limits of the places where the counting of the votes will take place. I don''t find any substances if this argument of learned counsel for the petitioners for the reason that with the change of time and with the past experience if the District Magistrate/Collectors reached to the conclusion that in order to preserve the public peace it is necessary to close the wine shops of the whole district then they can pass such orders also and it is no ground for challenge of the order of the District Magitrate/Collector. It is of common knowledge that on the day of counting of votes the supporters of the winning candidates take out processions and even in order to celebrate the victory of their candidate some of them consume wine in large quantity and even the processions are taken in the streets and residential colonies and if the persons after consuming liquor take procession that will definitely going to create problem for law and order and preservation of public peace. More over if the wine shops are kept open of the nearby areas of the counting place that may also lead to disturbance of the public peace because the persons can go to that area and can purchase wine from those shops which ultimately defeats the very purpose of closer of the wine shops on the day of counting of votes. Therefore, on this count also the impugned orders are not unreasonable, arbitrary or in violation of the provisions of sub-section (1) of Section 24 of the Act, 1915.

As far as the arguments advanced by learned counsel for the petitioners that in the past only on the polling day the wine shops were closed and not on the date of counting. There is no force in this argument because during the Assembly Elections of 1998 on 27.11.1998 the Govt, of Madhya Pradesh issued the orders regarding closer of the wine shops on the date of counting of votes and also similar orders were passed on 24th September, 1999 on the date of counting of votes of the Parliament Elections in the whole district. Because on the date of polling the wine is consumed by the supporters of the various candidates and also wine is supplied to the general public, similarly closer of wine shops is also necessary on the date of counting of votes for the reason that on that day also the people consumed liquor in large quantity in order to celebrate the victory of their candidates and for this reason problem for preservatiosn of public peace may arise in the area. Therefore on this count also the orders of the Collectors are not unreasonable, violative of the provisions of sub-section (1) of Section 24 of the Act, 1915.

Now coming to the question that the Collectors of the respective Districts have issued the impugned orders pursuant to the directions given by the Election Commission of India under sub-section (1) of Section 135C of the Representation of Peoples Act, 1951 and the provisions of this section does not empowers the Election Commission of India to issue directions for closer of wine shops on the day of counting of votes. The provisions empowers the Election Commission of India only for closer of wine shops on the date of polling day. It is true that sub-section (1) of Section 135C of the Act 1951 does not give powers to the Election Commission to issue direction for prohibition of sale of liquor/intoxicants on the date of counting of votes, but if we look in to the provisions of sub-section (1) of Section 135C of the Act 1951 it simply says that "no spirituous, fermented or intoxicating liquors or other substances of a like nature 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 forty-eight hours ending with the hours fixed for the conclusion of poll for any election of that polling area". This is a general section which prohibits the sale, distribution or supply of the intoxicant substances like liquor and other things. In this section it has not been mentioned that the Election Commission is empowered to issue directions under this section.

In the light of the arguments advances by the learned counsel for the petitioners if we look into the orders issued by the Election Commission of India on 10th November, 2003 to all the Chief Secretaries and Chief Electoral Officers of the State in which Assembly Elections are taking place, while referring in this order

Section 135C(1) of the Representation of the People Act, 1951 it has been directed that the polling day should be declared as ''Dry-day'' and the dates of polls are also mentioned at page No. 2. However, clause-3 of the directions is separate from the clause-1. Clause-3 of the directions says that the Commission further directs that the day i.e. 2.12.2003 and 4.12.2003 as the case may be, on which counting of votes in respect of Mizoram, Bihar, Uttar Pradesh and in respect of Chhattisgarh, Madhya Pradesh, Rajashtan, N.C.T. of Delhi, Gujarat and Kerala respectively is to be taken up, shall be declared ''dry-day'' under the relevant laws in the State in order to assist the election authorities in the peaceful and smooth conduct of free and fair poll. Therefore, these are general directions issued by the Election Commission of India in order to ensure free, fair and smooth elections of the Assembly. In this clause-3 it has not been mentioned that these directions are being issued u/s 135C(1) of the Act, 1951. The Election Commission of India is authorized and entitled to issue directions and orders under Article 324 of the Constitution of India in order to ensure smooth, free and fair elections. Therefore, the directions issued by the Election Commission of India are not in any way unreasonable and arbitrary. These directions are general advice to all the respective States to ensure free, fair and smooth elections and in order to preserve the public peace during the election process. It has been mentioned that Collectors should issue directions for closer of wine shops under the relevant Laws. Therefore, I don''t find any force in the arguments of learned counsel for the petitioners on this count also.

Apart from this, if we took into the general and special conditions of the licence issued to the petitioners for liquor shops which the petitioners have accepted at the time of taking of the licence from the State Govt.; these general and special conditions are binding on each and every licencee of the liquor shops. If we look into the condition No. 11 of the licence which envisage that the liquor shops premises will remain close on 15th August, 2nd October, 26th January, 30th January, Holi, Mohorrum and three additional days on which the licencee will be asked to close the liquor shops premises. The licensing authority is also empowered to issue directions regarding closer of the wine shops under the relevant clause in order to preserve the public peace during the process of the general elections. Therefore under this clause also which is binding on the licencee the Licencing Authority/District Magistrate/ Collector is entitled to issue directions during the process of General Elections for closer of the wine shops.

4th of December, 2003 being a day for counting of the votes of the State Legislative Assembly segments, therefore in order to maintain the law and order situation and to preserve the public peace and tranquility the District Magistrates/ Collectors of the respective districts have issued the orders for closer of the wine shops under the provisions of sub-section (1) of Section 24 of the Chhattisgrah Excise Act, 1915.

It may also be mentioned here that it is the subjective satisfaction of the respective Collector that looking to the circumstances at given time during any period including the process of election i.e. polling day and counting day if he reach to the conclusion that in order to preserve the public peace the closer of the wine shop is necessary then such an order passed by the District Magistrate/ Collector cannot be subject to the judicial review under Article 226/227 of the Constitution of India unless that order is malafide or based on irrelevant and non existent grounds or contrary to law. If we look into the facts of the present case, they do not meet the requirement of the above tests as 4th of December, 2003 being day for counting of votes of the State Legislative Assembly. It is the common knowledge that on the date of counting)f votes supporters of the winning candidates in order to celebrate victory of their candidate are taking procession to the streets, roads and in the residential colonies and if during that period they remain in state of intoxicant condition after consuming wine that may lead to the breach of the public peace and tranquility.

For the foregoing reasons, I am of the opinion that the impugned orders in the above writ petitions does not suffer from the vice of arbitratriness and malafide and orders are not passed on the irrelevant and non-existent grounds, therefore all the above writ petitions are liable to be dismissed and the same are dismissed.