

(1956) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 45 of 1955

Lumsden Club, Rambagh Gardens, Amritsar

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 29-06-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(6)
Punjab Excise Act, 1914 — Section 2(18), 24(4), 26, 35, 54

Citation : AIR 1957 P&H 20

Hon'ble Judges : Bhandari, C.J.;Khosla, J

Bench : Division Bench

Advocate : Partap Singh, for the Appellant; S.M. Sikri, General, for the Respondent

Judgement

Bhandari, C.J.—The principal point for decision which has been somewhat obscured by the raising of a number of subsidiary issues is whether the Excise and Taxation Commissioner was justified in declining to issue an excise licence to the Lumsden Club at Amritsar. ,

2. The petitioner in this case is the Lumsden Club, Amritsar, a society registered under the Indian Companies Act, 1913, with the object of promoting social intercourse encouraging literature and sport and providing rational entertainment and amusement.

The income of the club which is derived almost entirely from entrance fees, membership fees and money paid by the members for the food and drinks consumed by them or their friends and is expended for defraying the day to day expenses of the organisation.

Prior to 1954 the intoxicating liquors purchased by the club were supplied to the members or their specially invited guests at a price fixed by, the Executive Committee of the Club.

3. On 4-1-1949 the Excise and Taxation commissioner issued a notification u/s

54,. Punjab Excise Act, which declared that no club, "bona fide" or proprietary shall be at liberty to sell foreign liquor by retail unless it had obtained a licence in form L. 12. C. The Lumsden Club which had been supplying liquor to its members in the past, as a mere incident of the general purposes of the club, applied for and was granted a licence in the prescribed form.

Early in 1954 Government announced its decision to prohibit licensed drinking of liquor at civilian clubs throughout the State and in pursuance of this decision the Excise Commissioner rejected the Club's application for renewal of the licence-for the year 1954-55. The members of the Club who were deprived of the right to take liquor" from the Club decided-to purchase their own liquor and" to place it in their own separate lockers, but on 2-2-1955 the Punjab Government issued a notification u/s 24 (4), Punjab Excise Act, declaring that no person shall be at liberty to keep intoxicating liquors on the premises of an unlicensed club.

The Club which is aggrieved by the order of Government has presented two separate petitions under Article 226 of the Constitution -- one assailing the validity of the order preventing it from distributing liquor to its members and the other challenging the validity of the order prohibiting members of the Club from keeping their own intoxicating liquor in the Club.

4. The first point for decision In the present case is whether the supply of intoxicating liquor by a club to its members, as a mere incident of the general purposes of club, constitutes a "sale within the meaning of S, 26, of the Punjab Excise Act.

A number of authorities appear to propound the proposition that when a bona fide members" club supplies intoxicating liquor to its members only, whether for consumption on or off the premises, the transaction cannot be regarded as a sale, for the title to the liquor vests in the members in common and not in the club, and the supply of liquor to a member who orders and pays for it-is not a sale at all but a transaction by which all the other members of the club transfer their special property in the liquor to the consumer in consideration of the price paid : *Graff v. Evans* (1882) 8 Q.B.D. 373(A); *Humphrey v. TucJgar* (1915) I K.B. 119 (B).

The reasoning adopted by these authorities has been characterised as "unsound, strained and sophistical" and the organisation of social clubs for dispensing liquor to its members has been declared to be a clumsy device to evade the liquor laws. The weight of authority in America appears to favour the proposition that the distribution and consumption of liquor in a club by its members is a "sale" within the Inhibition of liquor laws. Whatever may be the position in regard to ordinary clubs, the case of Incorporated clubs is completely different, for whereas the liquor supplied by an ordinary club belongs to the members in common, the liquor supplied by an incorporated club belongs to the corporation which is a separate legal entity from the individual members of whom it is composed *Wurzel v. Houghton Main Home Delivery Service Ltd.* (1937) 1 KB 380 (C).

If some of the shareholders of an incorporated social club are not members of the club or if some of the members are not shareholders, though most of them may be, the distribution of liquor by the club constitutes a sale: *National Sporting Club Ltd. v. Cope* (1900) 82 L. T. 352 (D). It is not necessary, in my opinion, to examine any authorities on this point, for there can be no manner of doubt that when a club in the Punjab dispenses an intoxicating liquor to one of its members, the transaction which takes place between the parties is one of sale.

This is clear from the fact that the expression "sale" as defined in Section 2(18) includes any transfer otherwise than by way of gift. If all the members of a club transfer their special property in liquor to the consumer in consideration of a price it is obvious that the transaction is a sale within the inhibition of the liquor laws.

5. Nor is there any substance in the protest that the two orders, the validity of which is now being challenged, constitute a direct interference with the liberty of the subject or violate the fundamental rights guaranteed by Article 19 of the Constitution.

The harmful effects of intoxicating liquors and their tendency to deprave public morals have been known and recognised ever since the dawn of civilization; and the State in its capacity as the guardian of the public welfare has always assumed to itself the powers to regulate or prohibit the manufacture, possession and sale of intoxicating liquors, to prohibit sales to persons of tender years and to prescribe the hours of the day and days of the week during which places of sale may be open.

Courts in America have held that the right to sell liquor is not a natural or fundamental right of a citizen, but a privilege which the State may grant or deny, and consequently that a person has no inherent right to engage in such business or to receive a licence to do so. If a person must engage in selling liquor he must do so on such terms as the appropriate authority may consider necessary or reasonable. The position in India is not widely different.

It may be that in the absence of a restraining enactment a citizen of this country has a right to carry on business in the purchase and sale of intoxicating liquor, but it is within the power of the Legislature, in view of the provisions of Article 19(6), to impose such reasonable restrictions on the exercise of this right as it may consider fit or proper. India is wedded to the policy of prohibition and the State Legislature has directed that the State Government shall take steps to implement the said policy.

I can see nothing wrong or improper -- either legally or morally -- in the State endeavouring to carry out the mandate of the Legislature and, as a first step, in introducing prohibition in social clubs. In the peculiar circumstances of this case the power of regulation is wide enough to embrace the power of prohibition, *Commonwealth of Australia v. Bank of New South Wales* 1949 2 All ER 755(E).

6. A considerable amount of emphasis was laid on the fact that the Punjab Excise Act has conferred naked arbitrary power on certain executive officers to grant or withhold licences without laying down any rules or tests for the guidance of the officials in the execution of their discretionary power, and consequently that the provisions of the Punjab Excise Act which confer these wide powers must be deemed to be void and of no effect.

It is true that statutes which confer discretionary powers on executive officers without prescribing rules for guidance can be successfully attacked on the ground that they confer arbitrary and uncontrolled powers which render them invalid; but there are certain cases in which this general rule does not apply.

American Courts appear to have drawn a distinction between statutes which vest arbitrary discretion with respect to an ordinarily lawful business and statutes which vest such discretion with respect to a business which tends to be injurious and the carrying on of which is a matter of privilege.

If the first class of statutes authorise the issuing or withholding of licences without being controlled or guided by any rule or specified conditions to which all similarly situated might conform, they must be regarded as unconstitutional and void, for, as pointed out in *Yick Wo v. Hopkins* (1886) 118 US 356 (F), the very idea that one man may be compelled to hold his life and the means of living, or any natural right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

7. But there are at least four well-recognised exceptions to the broad general proposition propounded in the preceding paragraph. In the first place the validity of a statute cannot be called into question where, for example, it vests arbitrary power in a public servant when it is difficult or impracticable to lay down a definite or comprehensive rule.

In *Ex parte, Whitley*, 1 Ann. Cas. 13 (G), discretion was granted to the board of dental examiners to determine, in granting licences to practise dentistry, what constituted a "reputable dental college". It was contended that the statute was obnoxious to the Constitution,

"because it delegates to the board of examiners the power to decide what colleges are reputable, not from any standard furnished by the Legislature, but from their own arbitrary view on the subject".

This contention was overruled on the ground that it was Impracticable, if not impossible, for the Legislature itself to have adopted any fixed standard by which such matter could be determined in advance.

8. Secondly, statutes conferring discretion on public servants to grant or to deny applications for licences have been upheld where the discretion [was to be exercised with respect to the personal fitness of the applicant. In *State ex rel. Minces v. Schoening* (1898) 7 Minn. 528 (H). It was observed as follows:

"Granting or refusing a licence always involves the exercise of a reasonable discretion in determining whether the applicant is or is not a fit person to whom to issue a licence. A City Council is not absolutely bound to issue a licence to conduct such sales to every applicant, regardless of his character, who will pay the required fees.

If the applicant is notoriously dishonest in the habit of resorting to fraudulent tricks and devices in conducting sales, the City Council would be Justified in refusing him a licence. The power to grant licences implies the power to refuse to do so for good cause.

If they should arbitrarily and not in the honest exercise of a sound discretion refuse to grant a licence for the purpose either of discriminating between citizens or of prohibiting the business altogether, no doubt the aggrieved party would have his legal remedy."

9. Thirdly, the Courts are reluctant to in validate a statute when the arbitrary or uncontrolled power relates merely to matters involving the exercise of discretion as to details in enforcing valid statutes: (Oakley v. Richards (1918) 275 Mo. 266 (I), and Mehlos v. Milwaukee (1914) 156 Wis. 591 (J).

10. Fourthly, arbitrary discretion as to the granting of licences may be delegated to public officials without prescribing definite rules of action where such discretion relates to a business the carrying on of which is harmful to the public and has been given in order to protect the welfare of the public, such as business In the purchase and sale of intoxicating liquors.

In State ex rel. Cnilmington v. Montgomery (1912) 117 Ala. 212 (K), the Court made the following observations:

"It is universally recognised that the act of engaging in the sale of intoxicants may be wholly forbidden, and that license to engage in the traffic in liquors is a privilege merely, revocable at the will of the supervisor granting power; that there is in it no element of property right or vested interest of any kind.

Being so, it may be a necessary consequence that rules of law, protective of vested rights are without influence in respect of such a privilege. It would seem to be axiomatic that even one who is, as he conceives, wrongfully denied participation in a matter of mere privilege, or who is discriminated against in his effort or desire to enjoy that privilege with another no better entitled, has no firm basis of complaint, unless the law of the creation of the privilege and governing the selection of its beneficiaries brings him within its protection, and should and does control the authority to which the selection is committed.

In other words, It would seem-that the selection of the beneficiaries of a mere privilege, not involving a matter of right, may be committed to the discretion of a body created for that purpose, and so without impinging upon any vested right of one who desired to enjoy the privilege, or from whom it was in the discretion of the body, withdrawn."

See also State v. Sherow (1912) 87 Kan 235 (L).

11. But it is possible to argue that although the Punjab Excise Act cannot be declared invalid on the ground that it confers a wide discretion on certain executive officers without prescribing any rules for their guidance, the Excise Commissioner was not at liberty to exercise his discretion arbitrarily, capriciously or fraudulently or without factual basis sufficient to justify the action taken.

In the present case, it is contended, the Excise Commissioner has rejected the application of the Lumsden Club arbitrarily and capriciously, first, because the expression "Civilian club" is not susceptible of a clear and precise definition and secondly, because this expression, in view of the uncertainty of the meaning, has allowed him in exercising his discretion to make unjust and groundless discrimination among various other clubs similarly situated.

12. There is, in my opinion, considerable force, in these submissions. The meaning of the expression "civilian club" is by no means clear. Does it mean a club in which all the members are civilians, or a club in which a majority of the members are civilians, a club which is situated in the heart of a town whether the members are civilians or not, or a club situated in a cantonment most of the members of which are civilians.

I must confess with great regret that I find considerable difficulty in construing this expression or in determining the clubs which are civilian clubs and the clubs which are military clubs. A legislative authority which proceeds to lay down a rule for the guidance of licensing officers should endeavour if possible to prescribe one with sufficient clarity so that all prospective candidates should be in a position to assess their own qualifications and to judge for themselves whether a licence would or would not be granted to them.

In Meyer v. Dacatur C(1908) 143 App 103 (M) while admitting that an ordinance giving officials the exclusive right to determine to whom liquor licences should be granted was not for that reason invalid, it was held that where a municipality seeks to limit the number of licences on a certain street or in a certain locality, it should definitely establish a rule by which the licensing body and the applicants could determine the latter's rights in advance, and not leave the same to the arbitrary discretion of the licensing officials.

13. The contention that the provisions of article 14 have been violated must also be upheld, for although the Excise Commissioner has banned the sale of liquor to the members of the Lumsden Club he has not issued a similar direction in respect of the Jullundur Club, the Sirhind club or the Dhariwal Club, although these institutions fall within the ambit of the expression "civilian club" as much as the Lumsden Club and although their rules are similar in many ways to the rules framed by the Lumsden Club.

The learned Advocate General was unable to invite our attention to any rules or regulations of the Lumsden Club which are materially different from the rules and

regulations of the other clubs. It may be that a discretion has been vested in the Excise Commissioner to grant or withhold- licences at his own will and pleasure, but It must be remembered that a discretion must be used impartially and without unjust discrimination. An application for the issue of a licence should not be rejected arbitrarily or capriciously but in the exercise of a sound discretion after a careful consideration of all the relevant facts and circumstances.

If the Courts come to the conclusion that the facts do not warrant the refusal of a licence and that there has been a manifest abuse of discretion, they will not-hesitate to interfere and give the necessary relief.

I am of the opinion, that as the rules and regulations of the Lumsden Club are similar to the rules and regulations of the clubs to which licences have been issued, there was no warrant for unjust discrimination between these two sets of associations.

14. In Civil Writ 80 of 1955 the petitioner challenges the validity of the notification issued u/s 24(4) on various grounds among others being-

(1) that Section 24 does not confer any power on the State Government- to issue a notification prohibiting the keeping of liquor in an unlicensed club; (2) that the said notification is discriminatory and (3) that the issue of the impugned notification constitutes a gross interference with the liberty of the subject.

15. Sub-section (4) of Section 24 Js in the following terms:

"24 (4). Notwithstanding anything contained in the foregoing sub-sections, the State Government may by notification prohibit the possession of any intoxicant, or restrict such possession by such conditions as it may prescribe."

As this sub-section confers full power on the State Government to prohibit the possession of any intoxicant or to prescribe the conditions on which the possession may be tolerated, and as the State Government has embarked on a policy of prohibition, I can see no objection in principle to a direction that no person should be at liberty to keep any " intoxicating liquor in the premises of an unlicensed social club.

It is obviously within the competence of the State to prohibit the keeping or possession of intoxicating liquor in any locker or other place in any social club whether the liquor is required for personal use or for purposes of sale or for any other purpose.

16. For these reasons I would accept Civil Writ Application No. 45 of 1955 and declare that the order refusing to grant a licence to the Lums-den Club contravenes the provisions of Article 14 and must therefore be deemed to be void and of no effect. Ordered accordingly.

Khosla, J.

17. I agree.