
(2000) 07 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1292 of 2000

Mangal Singh Moti Singh and Party

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 RLW 60 : (2000) 4 WLC 707 : (2000) 3 WLN 230

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : T.S. Champawat, for the Appellant; Jai Kishan Bhaiya for Dinesh Maheshwari, for the Respondent

Judgement

Shethna, J.

(1). The Petitioner is a licence holder for country liquor, I.M.F.L. and Beer for the year 2000-2001 w.e.f. 26.5.1999 to 31.3.2000. According to him, he was granted licence for the shops including the Mokhampura shop. The said shop was approved by an order dated 27.5.99 Annex. 21. The liquor shop was running from 27.5.99 till 14.12.99. However, the licence for the said shop was cancelled and the respondent Excise Department registered a criminal case on 14.12.99 and also seized the liquor from the said shop. The F.I.R. is at Annex.3.

(2). The grievance made by the petitioner in this petition is that without giving any opportunity of hearing or notice to show cause, the licence was cancelled and the sale of liquor is stopped verbally. Thus, the respondents are acting high handedly against the petitioner and without any order in writing, the petitioner's shop at Mokhampura is illegally closed. It was, therefore, prayed that the verbal orders issued by the respondents of not running the shop at Mokhampura be quashed and set aside and the respondents be restrained from interfering with the running or liquor shop at Mokhampura.

(3). On 8.5.2000, after hearing teamed counsel for Mr. Champawat for the

petitioner by a speaking order notice was ordered to be issued, which I would like to reproduce which is as under:-

"Learned counsel Mr. Champawat states that as per the verbal instructions given by the respondents, the petitioner has closed down his shops.

In view of the above, notice is ordered to be issued to the respondents. Notice returnable on 15.5.2000.

The respondents may enquire as to whether the shops in question is really closed down by the petitioner or not and made a definite statement before this Court on the returnable date of the notice.

On that day, the respondents shall also produce the order of closing down of the shops in writing. Notice be served by dasti as well as by registered post A.D. at the cost of the petitioner."

(4). On 15th May, 2000 at the request of the learned counsel for the parties, it was put up on 18.5.2000. On 18.5.2000, Mr. Maheshwari for the respondents filed reply affidavit and at the request of learned counsel for the parties, it was ordered to be placed on 22.5.2000. On 22.5.2000, the petitioner filed rejoinder affidavit and after hearing the learned counsel for the parties, order was reserved.

(5). At the time of hearing of this petition, on the basis of reply affidavit, learned counsel Mr. Maheshwari for the respondents vehemently submitted that this Court should dismiss this petition on the ground of false statement made in the petition. It was pointed out in the reply affidavit that the petitioner was granted licence to run liquor shop at Mokhampura but he had opened the shop for retail sale at a different place than the place and location at Mokhampura which was approved by the department, therefore, proceedings were initiated against him on 14.12.99.

(6). From the above, it is clear that the petitioner has suppressed the material fact from this Court about the change effected by him regarding the place and location of the liquor shop at Mokhampura, therefore, this petition should be dismissed without going into the merits of the case. However, by way of an affidavit in rejoinder, the petitioner has tried to explain that the petitioner himself has annexed criminal proceedings registered against him on 14.12.99 as per Annex. And the petitioner had not suppressed any material facts from this Court.

(7). It is true that the petitioner has annexed the F.I.R. at Annex. 3 dated 14.12.99 but it was never stated in the petition that the said F.I.R. was filed against the petitioner for changing the place and location of the liquor shop. In my considered opinion, there was a material suppression of fact on the part of the petitioner in not bringing to the notice of this Court that the F.I.R. at Annex. 3 was registered against the petitioner for selling the liquor in the shop at a different place and location than the place and location approved by the department. If it was pointed out in the petition, this Court might not have

entertained this petition and issued notice to the respondents, therefore, without going into the merits of the case, this petition is required to be dismissed.

(8). Learned Counsel Mr. Champawat for the petitioner submitted that it was never the intention of the petitioner to mis-lead this Court by non-stating the fact in the petition that his shop was ordered to be closed because it was run at the different place and location than the place and location for which the licence was granted. He submitted that at the most it can be said to be an incorrect statement for which this Court should not dismiss the petition. In support of this submission, reliance was placed upon a judgment of the Division Bench of this Court in the case of Vandana Meena vs. State of Rajasthan (1).

(9). Co-incidentally, writ petition no. 707/99 filed by the petitioner Vandana had come up for admission before me wherein specific contention was raised on oath and with all vehemence, it was submitted by learned counsel Mr. K.L. Jasmatia, who remained as an Additional Advocate General for several years, that there was no such provision either under the Act or the Rules regarding the filling up the post of Zila Pramukh by nomination and it could be filled up only by election.

(10). It was only because of this, I issued notice to the other side and granted stay against the order passed by the State Government filling up the post of Zila Pramukh by nomination. Before the returnable date of notice, an application under Article 226(3) of the Constitution was filed by the other side for vacation of the interim relief along with reply affidavit to the main writ petition contending that there was a specific provision under Sec. 25 of the Act under which the post of Zila Pramukh can be filled up by nomination by the State Government. Thus, it was contended before me that by making false statement on oath in writ petition, the petitioner obtained an order of notice and stay from this Court. At the time of hearing of the application under Article 226(3) of the Constitution, learned counsel Mr. Jasmatia took a somersault and submitted that the post of Zila Pramukh could be filled up by nomination but it can be only by the competent authority and not by the State Government. The said argument was contrary to the averments made by the petitioner on oath and argued before me by learned counsel Mr. Jasmatia at the time of issuing notice and granting stay. Thus, only on this ground of false statement made by the petitioner on oath and argued before me by learned counsel Mr. Jasmatia, the petition was dismissed by me without going into the merits of the case with a special costs of Rs. 10,000/-. The same was challenged by Smt. Vandana in special appeal wherein notice was ordered to be issued to the other side and the same came to be disposed of on 20.12.99 by the Division Bench consisting of Hon'ble Mr. V.S. Kokje and Mohd. Yamin, JJ. and the order of special costs of Rs. 10,000/- was set aside by observing that "To canvass a probable point of view before the Court in pleadings or in arguments, should not be discouraged under the threat of inviting the charge of misleading the Court or hoodwinking that Court, it would clearly be a sad day for our judicial system when the litigants and the lawyers would have to think twice. If not hundred times, before taking a point in the pleadings which

may be probable, though not acceptable to a Judge before whom the lawyer would have ultimately to canvass it. It would be a clog on the freedom of expression guaranteed by the Constitution."

(11). Their Lordships have relied upon two judgments of the Hon"ble Supreme Court (1) Niranjana Patnaik vs. Sashibhusan Kar, reported in (2) and State of Uttar Pradesh vs. Mohammed Nairn reported in (3).

(12). Hon"ble Mr. Kojie, J. speaking for the Division Bench observed in para 17 of the judgment that, "Since then we are aside the impugned order as a whole, it is not necessary to specifically expunge certain portions from it but we certainly express our disapproval of the remarks made against the learned counsel for the appellant. The learned counsel could not have been punished for canvassing a legal point and the petitioner could not have been charged with having made a false statement in the petition or to have come to the Court with unclean hands in the circumstances of the case."

(13), In Niranjana's case (supra), the strictures were passed by the High Court against the witness while deciding the appeal against the conviction. On facts of that case, the Hon"ble Supreme Court held that the remarks were unjustified, therefore, expunged it.

(14). In Mohammad Naim's case (supra), the High Court while deciding the appeal against the order of conviction passed sweeping remarks condemning the entire police of the State and on the facts of that case, the Hon"ble Supreme Court observed that the remarks were not justified nor it was necessary for its disposal, therefore, the same were expunged.

(15). In Mohammad Nairn's case, the Hon"ble Supreme Court clearly observed that "If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrate must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court."

(16). Going through Vandana's case (supra), it appears that the learned Judges of the Division Bench swayed away with the averments made in the memo of appeal and the submission made by the learned counsel Mr. Jasmatia before them that the State Government had no authority in law to nominate any person on the post of Zila Pramukh but the counsel for the appellant was silenced by the Single Judge saying that if the counsel for the appellant will insist for incorporation of all his arguments in the judgment, then he will pass more strictures in the order. This was not the true statement made in the memo of appeal.

(17). Unfortunately, the Division Bench of this Court while deciding Vandana's appeal completely overlooked the judgment of the Hon"ble Supreme Court in the case of State of Maharashtra vs. Ramdas Shrinivas Nayak reported in (4) wherein the Hon"ble Supreme Court held that "The Court is bound to accept the

statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that was to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error."

(18). Instead of asking the appellant and her counsel to approach the Single Judge of this Court by way of review, the Division Bench entertained the appeal and decided the same without lealing any submission of the other side though it had become practically infructuous. Be that as it may.

(19). The submission that the nomination could have been made only by the competent authority and not the State Government is altogether different than the submission that the post of Zila Pramukh cannot be filled up by nomination and it could be only by election. It may be stated that in Vandana's case (supra), her counsel took a somersault and submitted that the nomination could have been made but the same can be by competent authority and not by the State Government only when an application under Article 226(3) of the Constitution was filed for vacation of interim relief on the ground that a false averment was made in the petition on oath by the petitioner that the post of Zila Pramukh cannot be filled up by nomination and it can be filled up only by election. Thus, it was clear that an absolutely false averment was made in the petition, and such a submission was made by the counsel with all vehemence. Under the circumstances, there was no option for the Court but to dismiss the same on the ground of false statement. Unfortunately, the learned Judges of the Division Bench has not at all considered this aspect while deciding the Vandana's case in appeal.

(20). Coming to the facts of the present case, it is clear that the present petitioner misled the Court by suppressing the fact regarding registration of F.I.R. for running the liquor shop at a different place and location than the place and location for which the licence was granted.

(21). Thus, this petition is required to be dismissed only on the ground of suppression of material fact in the petition and accordingly, it is dismissed without going into the merits of the case with a special costs of Rs. 10,000/-. The petitioner shall pay the same to the respondent State of Rajasthan within one month from today.

(22). Slay petition is also dismissed.

(23). Interim relief, if any granted earlier stands vacated forthwith.