

(2010) 09 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3790 of 2010 (PIL)

Nepal Singh Rajput

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 6, 61D, 61E, 62(2)

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 7H

Citation : (2010) 4 MPLJ 445

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : K.C. Ghildiyal, for the Appellant; Kumaresh Pathak, Dy. A.G. for respondent Nos. 1 to 4, for the Respondent

Judgement

Alok Aradhe, J.

In this petition, which has been filed as public interest litigation, petitioner, inter alia, has sought a writ of certiorari seeking the quashing of the proceedings for allotment of foreign liquor shop in favour of respondent No. 5 in Village Dhooma, Tehsil Lakhnadaon, District Seoni. Petitioner has also sought a direction restraining respondent Nos. 1 to 4 from allotting foreign liquor shop in village Dhooma to anybody.

Facts leading to filing of the instant writ petition briefly stated are that petitioner claims to be President of Shri Ram Yuva Dal, Dhooma. The aforesaid Dal is engaged in social welfare activities. Petitioner claims to be local correspondent of a daily newspaper namely "Sandhya Dainik" published from Jabalpur. It is averred in the writ petition that Excise Policy was notified and published in the Gazette by the Government of Madhya Pradesh on 28-1-2010. Clause 1.2 of the Excise Policy, provides that liquor shop in scheduled areas can be opened only after obtaining consent from the concerned Gram Sabha. Before issuance of Excise Policy for the year 2010-2011, consent of out-going elected body of the Gram Sabha was obtained on 1-11-2009 vide Annexure-P/2. Thereafter, tenders

were invited and decision for allotment of foreign liquor shop to respondent No. 5 in Village Dhooma has been taken on 26-2-2010. It has further averred in the writ petition that elections of Panchayat in the State of Madhya Pradesh were held in the month of January, 2010 and thereafter the first meeting of Gram Sabha was held on 8-3-2010. Gram Sabha in its meeting on 8-3-2010 decided not to permit opening of the liquor shop in Village Dhooma. Copy of the resolution of the Gram Sabha has been annexed as Annexure-P/3. In the aforesaid factual backdrop, petitioner has prayed for the reliefs referred to supra.

Return has been filed on behalf of respondent Nos. 1 to 4 in which inter alia it is pleaded that proceedings for allotment of foreign liquor shop in favour of respondent No. 5 have been taken in accordance with law and the petition filed by the petitioner cannot be entertained as public interest litigation. It has further been averred that there is no element of public interest involved in the writ petition. The locus of the petitioner to file the writ petition has also been questioned. It has been pleaded that as per requirement of section 61-E of the M.P. Excise Act, 1915, permission of Gram Sabha is required for opening the foreign liquor shop in scheduled area. Therefore, permission was obtained from Gram Sabha which was given vide resolution dated 2-11-2009. The District Excise Officer forwarded the resolution to the Excise Commissioner and thereafter the shop at Dhooma was notified in the Excise Policy which was published in the Gazette dated 28-1-2010. No objection was taken by any villagers even after publication of the notification dated 28-1-2010. The Sarpanch and Panchas of Gram Panchayat Dhooma after declaration of the result of election assumed charge on 11-2-2010. The facts that a new liquor shop would be opened at Village Dhooma was well within the knowledge of Sarpanch and Panchas. However, neither any villager nor the Sarpanch or Panchas or any other office bearers of Gram Panchayat took any objection with regard to opening of the Foreign Liquor Shop till finalization of tender process i.e. 26-2-2010. It is also averred in the return that one Deepak Jaiswal who is running the country liquor shop at Dhooma has filed a writ petition namely W.P. No. 2242/2010 in which action of the State Government in opening the foreign liquor shop at Dhooma has been challenged. Thus, the instant writ petition is not a genuine public interest litigation but is a sponsored petition.

Objection with regard to maintainability of the writ petition has also been taken on the ground that against the resolution passed by the Gram Sabha an appeal u/s 7-H of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the 1993 Act") is provided. The petitioner ought to have availed of the statutory remedy of the appeal.

Respondent No. 5 has filed a separate return in which it is averred that petitioner has no locus standi to file the petition and the instant writ petition is not a genuine public interest litigation. No harm or prejudice would be caused if foreign liquor shop is allotted in favour of respondent No. 5. The fact that petitioner has not raised any objection with regard to running the country liquor shop goes to

show that petitioner is having a personal grudge against respondent No. 5. It has further been averred that the petition is a sponsored petition.

Respondent Nos. 1 to 4 have filed the additional return in which it has been stated that in Village Dhooma, a country liquor shop is already being run. However, no objection has been raised by the petitioner or any other villager. It has further been submitted that action for opening a new liquor shop in scheduled area is required to be taken in accordance with provisions of section 61-E of the M.P. Excise Act, 1915.

Petitioner has filed the rejoinder inter alia stating that issue with regard to opening of liquor shop is an issue which is directly related to the public and, therefore, any member of the society has a right to sponsor the cause. It has been stated that Gram Panchayat is the best judge to decide whether or not liquor shop would be opened in the area of Gram Panchayat. It has also been submitted that in view of resolution of Gram Sabha dated 8-3-2010, the foreign liquor shop cannot be permitted to run in view of section 61-E(3)(b) of the M.P. Excise Act. It has further been stated that the consent of the Gram Sabha ought to have been obtained after publication of the Excise Policy i.e. 28-1-2010. The resolution dated 1-11-2009 is no resolution in the eye of law.

Shri K. C. Ghildiyal, Learned Counsel for the petitioner has submitted that a specific provision namely section 61-E has been incorporated in M.P. Excise Act. Sub-section (2) of section 61-E requires that no new manufactory for manufacture of any intoxicant shall be established and no new outlets for sale of intoxicants in any area comprised within the territorial jurisdiction of the Gram Sabha shall be opened by the State Government without the consent or permission of the Gram Sabha. It has further been submitted that there is no power to relax any of the condition and, therefore, the requirements with regard to opening of the liquor shop have to be strictly construed. In support of aforesaid proposition, Learned Counsel has placed reliance on decision of Supreme Court reported in Ashok Lenka Vs. Rishi Dikshit and Others, It has further been submitted that requirement of quorum which is prescribed u/s 6 of the Act is sine qua non for passing of a valid resolution. Since the requirement of quorum was not fulfilled when previous resolution was passed, therefore, no legal sanctity can be attached to the aforesaid resolution. It has further been contended that resolution ought to have been passed after the notification of the Excise Policy in the Gazette. In order to highlight the importance of the quorum, Learned Counsel has referred to decision of this Court in Than Singh and others vs. State of M.P., 2005(2) MPU 353. It has further been contended that public interest litigation at the instance of the petitioner is maintainable. In this connection, Learned Counsel has placed reliance on decisions of Supreme Court in Ashok Lanka and Another Vs. Rishi Dixit and Others, and The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others,

On the other hand, Mr. Kumaresh Pathak, learned Dy. Advocate General while opposing the submissions made on behalf of the petitioner submitted that in the

writ petition, no averment has been made to show, what is the element of public interest involved in the writ petition. The petitioner has even failed to aver as to how public interest would be adversely affected in case a foreign liquor shop is opened at Village Dhooma. He further submitted that country liquor shop is already being run at Village Dhooma. However, no objection has been raised by anybody. The permission for opening the liquor shop has been obtained in the month of November, 2009 and thereafter the shop in question was notified in the Excise Policy dated 21-8-2010. Thus, the villagers of the village as well as the petitioner were aware that foreign liquor shop is going to be opened at Village Dhooma. However, till the contract was finalized i.e. on 26-2-2010, no objection was raised by anybody. The aforesaid facts clearly show that instant writ petition is not a genuine and bona fide public interest litigation but is a sponsored petition. Learned Counsel further submitted that against the resolution passed by the Gram Sabha, an appeal is provided u/s 7-H of the 1993 Act and, therefore, an alternative efficacious remedy is available to the petitioner. It has further been contended that under Appeal and revision rules framed in exercise of powers u/s 62(2)(c) of the M.P. Excise Act, an appeal is provided against the allotment of the liquor shop. It was further submitted that subsequent resolution dated 8-3-2010 which has allegedly been passed by the Gram Sabha was not communicated to any authority. Learned Dy. Advocate General has drawn our attention to section 61-D of the Excise Act and has argued that members of Scheduled Tribe have been exempted from certain provisions of the Act. The requirement of obtaining the permission from the Gram Sabha is contained in the Act and, therefore, the contention that after notification of the Excise Policy, consent from Gram Sabha should have been obtained is misconceived. Clause 1.2 in the Excise Policy has been incorporated in consonance with the requirements of section 61-E of the M.P. Excise Act, 1915. It has further been contended that Directive Principles of State Policy are not enforceable and the instant writ petition is not genuine public interest litigation. In support of his contentions, learned Dy. Advocate General has placed reliance on decision of the Supreme Court in B. Krishna Bhat Vs. Union of India (UOI), and decision of the Supreme Court in State of Uttaranchal vs. Balwant Singh Chauhal and others, AIR 2010 SCW 1029.

Shri Sanjay K. Agrawal, Learned Counsel for the licensee has made two fold submissions, (i) The instant writ petition is not genuine public interest litigation and (ii) the nature of controversy which is involved in the instant writ petition is beyond the pale of judicial review that too in public interest litigation in view of availability of alternative remedy. It has been argued that the instant writ petition has been filed at the behest of the person who could not succeed in tender, proceedings. In the entire writ petition, the petitioner has never disclosed that whether or not he was present on 1-11-2009 and whether requirement of quorum was fulfilled. The validity of the resolution has been questioned only in the rejoinder. The petitioner has not furnished the details with regard to his antecedents and has made vague allegations. It has further been submitted that

complete machinery is provided under the Act to decide the issue whether the resolution dated 1-11-2009 has been passed in accordance with law or not.

We have considered the submissions made by Learned Counsel for the parties. At this stage, we deem it appropriate to deal with the preliminary objection raised by Learned Counsel for the respondents with regard to maintainability of the instant petition as public interest litigation.

In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, the Supreme Court while dealing with the scope and ambit of public interest litigation has held as follows :-

Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.

Similar view was taken by the Supreme Court in *Sheela Barse Vs. Union of India (UOI) and Others*,

In *Krishna Swami Vs. Union of India and another*, the Supreme Court while dealing with the public interest litigation in which challenge was made to proceedings of removal of a Supreme Court Judge held that ordinarily it is person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf.

While summarising the principles evolved by the Supreme Court with regard to maintainability of the public interest litigations, in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, the Supreme Court held that a writ petition can be entertained as public interest litigation by any interested person in the welfare of the people who is in disadvantageous position and not in a position to knock the doors of the Court.

In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, the Supreme Court held that where there is material to show that public interest litigation is nothing but a private interest litigation, such petition deserves to be thrown out at the threshold and in appropriate case with exemplary costs.

The expression "public interest litigation" has been defined in *Stroud's Judicial Dictionary*, Vol. 4, 4th Edition in the following terms :-

public interest. - (1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.

In *Black's Law Dictionary*, 6th Edition "public interest" is defined as follows :-

public interest. - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or National Government.

Similarly, in *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, the Supreme Court once again emphasized the need to preserve the purity and sanctity of PIL and held that the Court should be fully satisfied that substantial public interest is involved before entertaining the petition. The Court should also ensure that public interest litigation is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

On the touchstone of well settled legal principles laid down by the Supreme Court with regard to public interest litigation, the facts of the case may be adverted to. The petitioner is resident of Village Dhooma. A resolution dated 1-11-2009 was passed by the Gram Sabha Dhooma on 1-11-2009. On the basis of aforesaid resolution passed by Gram Sabha Dhooma, new foreign liquor shop at Dhooma was notified on 28-1-2010. Thereafter, the tenders were invited for allotment of foreign liquor shop. Decision was taken to allot the foreign liquor shop in favour of respondent No. 5 on 26-2-2010. The instant writ petition was filed before this Court on 18-3-2010. It is not the case of the petitioner that he was not aware about the resolution dated 1-11-2009 passed by the Gram Sabha or the Excise Policy which was notified by the State Government for the Year 2010-11 on 28-1-2010. It is pertinent to mention here that neither the petitioner nor any office bearer of Gram Panchayat as well as any villager raised any objection with regard to opening of the foreign liquor shop at Village Dhooma. The petition was filed before this Court only when the decision was taken by the State Government to allot the shop in question in favour of respondent No. 5. It is pertinent to mention here that country liquor shop is already being run at Village Dhooma and no objection has been taken with regard to running of country liquor shop. Apart from this, in the facts and circumstances of the case referred to supra, the petitioner is guilty of laches and delay. The petitioner by his conduct has permitted creation of third party interest. It is well settled in law that delay and laches disentitles the petitioner from seeking relief in public interest litigation, as well. In this connection we may refer to the decision of *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*,

In the writ petition, the petitioner has described himself to be President of Shri Ram Yuva Dal. Petitioner claims to be a local correspondent of daily newspaper namely "Sandhya Dainik" published from Jabalpur. The petitioner has failed to give particulars with regard to his antecedents in the writ petition. The petitioner has not disclosed the details and activities of Shri Ram Yuva Dal of which he is

allegedly the President.

It has been held by Supreme Court where statute creates a forum for redressal of grievances, ordinarily a person aggrieved should approach the forum created under the statute and in such case public interest litigation should not be entertained. In this connection reference may be made to the decision of Apex Court in Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, . Thus, the petitioner as well as any other aggrieved person has alternative remedy of ventilation of his grievance u/s 7-H of the 1993 Act wherein the resolution passed by the Gram Sabha can be challenged. Thus, in view of aforesaid enunciation of law by the Supreme Court and in view of availability of the alternative remedy, the instant writ petition cannot be entertained as public interest litigation. Besides that whether or not the resolution dated 1-11-2009 was validly passed necessarily involves adjudication of facts. The question whether or not the resolution dated 1-11 -2009 has been validly passed can be determined appropriately in the forum provided u/s 7-H of the 1993 Act. For this reason also, we decline to entertain the writ petition.

For the aforementioned reasons, the petition cannot be entertained as public interest litigation. The same deserves to and is hereby dismissed. However, there shall be no order as to costs.