

(1978) 11 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1645 of 1978

Piccadili Restaurant

APPELLANT

Vs

Excise and Taxation Commissioner and Another

RESPONDENT

Date of Decision : 30-11-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 21, 47
Punjab Excise Act, 1914 — Section 34, 35, 55, 58(2), 59
Punjab Liquor Licence Rules, 1956 — Rule 12A, 38

Citation : (1979) 2 ILR (P&H) 374

Hon'ble Judges : Prem Chand Jain, J;J.M. Tandon, J

Bench : Division Bench

Advocate : T.S. Munjral and H.L. Sibal and R.N. Narula, in With Petition No. 2066, for the Appellant; Anand Swarup and M.L. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—This order will dispose of C.W.N. 1645 1978 Piccadily Restaurant Chandigarh v. The Excise and Taxation Commissioner Chandigarh and Anr. and 1973 C.W.N. 2066 , Northern India Caterers (Pvt.) Limited Chandigarh v. The Union Territory Chandigarh and Ors. wherein similar points are involved.

2. M/s Piccadily Restaurant, Chandigarh and M/s Northern India Caterers (Private) Limited, who own Hotel Mountview, Chandigarh, held licenses in form L. 4 (retail vend of foreign liquor in the Restaurant) and in form L. 5 (retail vend of a bar attached to the Restaurant) till 1977-78, without any extra condition attached thereto other than those prescribed in the Punjab Liquor License Rules, 1956 (hereinafter referred to as the Rules). The Petitioners applied to the authorities for the renewal of their licenses in January, 1978, for the year 1978-79, that is from April 1, 1978, to March 31, 1979. Under the Rules, such applications are required to be submitted before 31st of January and the Collector is competent to grant renewal till 28th of February. In the event of non-renewal of a license till 28th of February by the Collector, it can be renewed with

the special sanction of the Excise Commissioner. The Collector, Excise, did not renew the licenses of the Petitioners till 28th of February awaiting the excise policy decision of the Government for 1978-79 and ultimately recommended the renewal to the Excise and Taxation Commissioner, exercising the powers of the Financial Commissioner,--vide his note dated March 15, 1978, who in turn informed the Petitioners,--vide memorandum dated March 30, 1978, that their licenses had been renewed for the year 1978-79, on the following terms and conditions:

1. The bar service will be restricted to foreign tourists only.
2. The foreigners shall not be permitted to offer drinks to an Indian at the bar.
3. The dry days already declared for the year 1978-79 by the Chandigarh Administration shall be applicable to the bar also.

The Petitioners having failed to get the conditions attached to their licenses deleted, have filed the present writ petitions challenging their imposition on various grounds, inter alia, being ultra vires the powers of the Financial Commissioner as also being vague and discriminatory. The Petitioners have prayed for an appropriate writ being issued to the authorities to treat the licenses issued in their favour for the years 1978-79 without special conditions attached thereto.

3. The writ petitions have been contested by the Union Territory Administration and the Excise authorities. They denied in their written statements that the special conditions attached to the licenses issued to the Petitioners for the year 1978-79 are bad or ultra vires the powers of the Financial Commissioner or vague or discriminatory.

4. One of the grounds of attack taken by the Petitioners was that u/s 55 of the Punjab Excise Act, 1914 (hereinafter referred to as the Act), it was the Collector who was competent to renew the licenses of the Petitioners and not the Excise Commissioner or the financial Commissioner. The Collector,--vide his note dated March 15, 1978, recommended the renewal of the licenses. He made such recommendation to the Excise Commissioner because he could renew the licenses at his own level till 28th of February and thereafter special sanction of the Excise Commissioner was necessary under Rule 12-A of the Rules. The Excise Commissioner, exercising the powers of the financial Commissioner, renewed the licenses of the Petitioner subject to the impugned conditions and he could not do so the order of the Financial Commissioner, being without jurisdiction, is non est and the recommendation of the Collector dated March 15, 1978, shall operate as a valid renewal order and no conditions were imposed therein. Keeping in view the hollowness of this ground, the learned Counsel for the Petitioners in both the petitions did not press it during arguments. The learned Counsel for the Petitioners also gave up their attack vis-a-vis condition No. 3 relating to the applicability of dry days declared for the year 1978-79 by the Chandigarh Administration. The writ petitions consequently survive only qua the other two

conditions at Nos. 1 and 2.

5. The impugned conditions have been imposed by the Financial Commissioner by an order purportingly in exercise of his power u/s 34 of the Act. The Rules make no mention of such conditions. Had it been so provided in the Rules, the conditions would have been applicable per se and the occasion for passing an order to make them applicable to the Petitioners would not have arisen. The crucial point to be considered, therefore, is whether the Financial Commissioner could impose the impugned conditions in exercise of his power u/s 34 of the Act.

6. The contention of the learned Counsel for the Petitioners is that the Financial Commissioner could not impose the impugned conditions u/s 34 of the Act inasmuch as the power under this section could only be exercised by framing rules u/s 59 and in support has relied on *State of Uttar Pradesh and Others Vs. K.P. Sui and Another*, . His contention further is that in view of the provisions contained in Section 58(2)(g), conditions Nos. 1 and 2 could only be imposed by the State Government and that too by framing rules and not otherwise with the result that to that extent the authority of the Financial Commissioner under the Act stood negated.

7. The learned Counsel for the Respondents has argued that the powers of the Financial Commissioner under Sections 34 and 59 of the Act are independent of each other subject to the condition that the order passed u/s 34 will not be in contradiction to the Rules framed u/s 59. In the instant case, the conditions imposed are not in contradiction of the Rules and are in fact supplemental thereto. The Financial Commissioner is competent to pass a valid order u/s 34 of the Act to supplement the Rules and as such the order passed in the present cases imposing impugned conditions is intra vires his powers and not otherwise. Reliance has been placed on *Sant Ram Sharma v. State of Rajasthan* and *Anr. 1967 S.L.R. 906*, wherein the contention that in the absence of statutory rules the Government could not issue administrative instructions imposing restrictions not found in the Rules already framed, was repelled and it was held that the Government was competent to issue administrative instructions if the rules were silent on any particular point to fill the gaps and supplement the rules till statutory rules were framed. It was observed that the administrative instructions could not amend or supersede statutory rules. It has further been argued that the authority given to the State Government u/s 58(2)(g) and (o) does not necessarily negative a similar power of the Financial Commissioner u/s 59(f) exercisable by framing rules and u/s 34 by an order.

8. It will be appropriate to reproduce the relevant provisions contained in Sections 34, 35, 58 and 59 of the Act:

34(1) Every license, permit or pass granted under this Act shall be granted:

(a) on payment of such fees, if any,

(b) subject to such restrictions and on such conditions,

(c) in such form and containing such particulars,

(d) for such period,

as the Financial Commissioner may direct.

(2) Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in lieu of security, as such authority may think fit.

35 (1) Grant of licences for sale.--Subject to rule made by the Financial Commissioner under the powers conferred by this Act, the Collector may grant licenses for the sale of any intoxicant within his district.

58(1) The State Government may by notification make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenue.

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules:

* * * *

* * * *

(g) for the prohibition of the sale of an intoxicant to any person or class of persons ;

* * * *

(o) implementing generally the policy of prohibition.

59. Powers of Financial Commissioner to make rules.--The Financial Commissioner may by notification make rules:

* * * *

(f) prescribing the authority by, the restrictions under and the conditions on which, any license, permit or pass may be granted including provisions for the following matters.

* * * *

9. The Financial Commissioner, in exercise of his power u/s 59 of the Act, has framed the Rules and Rule 38 deals with special conditions subject to which the licenses can be issued. Clauses (4) and (5) of Rule 38 relate to licenses in form L. 4 and L. 5 respectively The relevant parts of these clauses read as under:

38(4)(a) The licensee shall sell foreign liquor retail for consumption on the premises only to persons taking meals in the licensed premises.

(b) The licensee shall not set up or maintain on his licensed premises any bar without taking out a separate bar license.

* * * *

38(5)(a) The licensee shall only sell foreign liquor retail for consumption "on" the premises by the glass or by opened bottles at a bar or on other parts of the premises specially prescribed in the license. Such bottles must on no account be removed by customers from the premises.

* * * *

10. The licenses are granted by the Collector u/s 35 of the Act and it is specifically provided therein that the licenses so granted shall be subject to the Rules made by the Financial Commissioner under the powers conferred by the Act. A harmonious reading of Sections 34 and 35 makes it clear that whatever rules are framed by the Financial Commissioner in exercise of his powers under the Act shall be binding on the licensee. It is significant to note that the Rules so framed shall be binding on the licensee per se and it need not be so specifically mentioned in the licenses. The Financial Commissioner can formulate rules u/s 59 of the Act. Assuming that the Financial Commissioner has not formulated the rules u/s 59, a question arises whether he can exercise the powers by an order u/s 34 of the Act. A similar point was examined in State of Uttar Pradesh and Ors. v. K.P. Sui and Anr. (supra) and was replied in the negative. The view expressed in this authority does not appear to be correct as it is based on factually incorrect premises. Section 31 of the U.P. Excise Act, which is reproduced in the judgment, is almost parallel to Section 34 of the Act. While discussing this section, it was assumed that the Excise Commissioner, who had a power to direct, identical to that of the Financial Commissioner u/s 34 of the Act, could exercise it by prescribing the fee, restrictions and conditions, etc. in relation to a license. The word "prescribe" was imported during discussion whereas factually the word used in Section 31 is "direct". The wrong assumption regarding the phraseology did change the complexion. In case the Legislature had used the word "prescribe" instead of "direct" in Section 31 of the U.P. Excise Act, the interpretation given in the judgment that the power conferred therein could be used by making rules would have been apt. In view of the wrong assumption raised, the Petitioners cannot take advantage therefrom. The executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws and it is so provided under Article 162 of the Constitution of India. It is, therefore, difficult to conceive that in the absence of rules u/s 59, the Financial Commissioner shall not be competent to issue a valid direction or pass an effective order u/s 34. The applicability of such an order of the Financial Commissioner shall, of course, be restricted to the licensee specifically named therein and it shall not be binding upon every licensee per se which would have been the case if he had framed rules to that effect u/s 59 of the Act. It is also clear that the Financial Commissioner shall be competent to exercise jurisdiction u/s 34 of the Act only in the absence of rules framed by him u/s 59.

11. The State Government is competent to make rules for the prohibition of sale

of an intoxicant to any person or class of persons u/s 58(2)(g) of the Act and for implementing generally the policy of prohibition u/s 58(2)(o). A wide power is given to the Financial Commissioner u/s 59(f) to impose restrictions under which a license can be granted. A similar power is exercisable by him u/s 34. It is evident that the authority of the State Government and that of the Financial Commissioner overlap each other on the point of laying restrictions in the matter of sale of an intoxicant to a person or class of persons. The contention of the learned Counsel for the Petitioners is that the State Government being an authority higher than the Financial Commissioner, the latter will forfeit his right to exercise it and the State Government only will remain competent to make rules with respect thereto. We find no force in this contention. The Legislature can delegate power to make subordinate legislation in the form of rules to more than one authorities and in the event of the two authorities being made so competent to make rules on the same subject, the inferior authority will not forfeit its right to the superior till it is exercised by the latter. Applying this ratio to the instant case, the provisions contained in Section 58(2)(g) and (o) will not negative the authority of the Financial Commissioner to make rules u/s 59(f) and for the same reason to pass an order u/s 34 of the Act.

The Financial Commissioner has framed rules with respect to the licenses in form L. 4 and L. 5 and they are contained in Clauses (4) and (5) of Rule 38 of the Rules. The learned Counsel for the Petitioners have argued that the extra conditions imposed by the Financial Commissioner to the licenses issued in favour of the Petitioners are contradictory to the Rules whereas the contention of the learned Counsel for the Respondents is that they are supplemental thereto. It is the common case of the learned Counsel for the parties that should the extra conditions imposed by the Financial Commissioner in exercise of power u/s 34 of the Act run counter to the statutory rules framed u/s 59, they shall have to be stamped invalid being beyond his competence. In that case, the Financial Commissioner would be competent to lay the desired restrictions by suitably amending the Rules and not otherwise.

12. Under Clause (4) of Rule 38 of the Rules, a licensee can sell foreign liquor retail for consumption on the premises only to persons taking meals in the licensed premises. The extra conditions laid by the Financial Commissioner in the licenses of the Petitioners restrict such sale of liquor to foreign tourists only. The licensees have thus been forbidden to sell liquor to the Indians or foreigners other than foreign tourists taking meals in the licensed premises. The point for consideration is if the extra conditions are contradictory or supplementary to the Rules.

13. An order of the Financial Commissioner will be contradictory to the Rules if the former runs counter to the latter or tends to negative it. In the event of such contradiction between the two, the Rules will prevail. The conditions prescribed in the Rules are binding on every licensee without any specific mention to that effect in the license. Any relaxation of prescribed conditions or restrictions for a

licensee by the Financial Commissioner u/s 34 shall run counter to the Rules and will be violative thereof. The Financial Commissioner in the cases under consideration has not made any such relaxation. He has imposed further restrictions by limiting the sale of foreign liquor to foreign tourists only. The restrictions imposed by order u/s 34, in addition to that contained in Clause (4) of Rule 38, neither conflict nor tend to negative the latter.

14. Section 59(f) authorises the Financial Commissioner to prescribe restrictions under and conditions on which the license may be granted. It does not authorise him to prescribe concessions or permissions. The rule made by the Financial Commissioner under Sub-section (f) would, therefore, necessarily relate to the restrictions and conditions and not to permissions or concessions. It is, therefore, evident that in the absence of restrictions prescribed under the Rules or by an order u/s 34, a licensee will be at liberty to serve liquor to all persons. The special conditions prescribed by the Financial Commissioner are contained in Rule 38. The condition in Sub-clause (a) of Clause (4) thereof is a restriction qua those who do not take meals in the licensed premises and it does not and cannot operate as superfluous permission to serve liquor to persons who take meals therein. The extra conditions or restrictions imposed in the cases under consideration by the Financial Commissioner u/s 34 are undoubtedly not contradictory to the restrictions prescribed in the Rules. Consequently, they cannot be held violative of the Rules or invalid being ultra vires the powers of the Financial Commissioner.

15. The learned Counsel for the Petitioners have argued that the conditions attached to the licenses of the Petitioners are discriminatory being violative of Article 14 of the Constitution inasmuch as no such conditions are attached to the Beer Bar, Sector 18, Chandigarh, who hold license in form L. 10 for retail vend of beer for consumption on or off the premises. It has been canvassed that beer is foreign liquor and is included in licenses L. 4 and L. 5 which have been renewed in favour of the Petitioners for the year 1978-79. The effect of this discrimination is that the Petitioners have been stopped from selling beer to Indians and foreigners whereas Beer Bar, Sector 18, Chandigarh, is free to make its sale to them including foreign tourists. Apart from unconstitutional hostile discrimination dealerwise, the impugned conditions have effected similar discrimination customer-wise as Indians and foreign tourists on Indian soil have not been treated alike. The impugned conditions thus suffering from this vice are liable to be struck down.

16. The learned Counsel for the Respondents has contended that no discrimination is involved dealerwise because Beer Bar, Sector 18, Chandigarh and the Petitioners are not similarly situated. A licensee in form L. 10 and another in form L. 4 or L. 5 constitute two different categories. The State is competent to make reasonable classification even among customers and on this principle different treatment given to foreign tourists and the Indians in the matter of consuming intoxicant drinks is justified and as such no discrimination is

involved customer-wise as well.

11. Beer Bar, Sector 18, Chandigarh, is holding license in form L. 10 whereas the Petitioners have been granted or renewed licenses in forms L. 4 and L. 5. The license in form L. 10 is a category apart from the licenses in forms L. 4 and L. 5. L. 10. licensees can sell only beer which is classified as foreign liquor as well whereas a licensee under L. 4 and L. 5 is entitled to sell foreign liquor including beer. The license in form L. 4 or L. 5 is issued on payment of fixed fees whereas one has to compete for a L. 10 license in an open auction. The timings of L. 10 license for sale of beer are different from the timings prescribed for the sale of foreign liquor including beer under licenses L. 4 and L. 5. The Petitioners, therefore, cannot justifiably claim treatment at par with a L. 10 licensee, the negation of which would attract Article 14 of the Constitution of India.

18 The founding fathers laid in Article 47 in the Chapter relating to Directive Principles of State Policy, that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about the prohibition of the consumption except for medicinal purposes of intoxicant drinks and of drugs which are injurious to health. In view of the clear cut directive contained in the Constitution on the issue of prohibition, there is hardly any scope left to admit any discussion thereon. The contention of the learned Counsel for the Petitioners is that under Article 21 of the Constitution, no distinction is permissible between an Indian and a foreigner in the matter of life and personal liberty. Foreign tourists and the Indians are, therefore, entitled to be treated alike. Assuming that the impugned conditions have been imposed to improve the health of the Indians and to raise their level of nutrition, the foreign tourists have been discriminated inasmuch as they have been exposed to the hazards of intoxicating drinks. This discrimination would attract Article 14 of the Constitution rendering the impugned conditions bad. We are not impressed by this contention. In the first place, it is doubtful if the Petitioners can take advantage of the foreign tourists being exposed to the hazards of intoxicating drinks. Secondly, it is always open to the State to make reasonable classification retaining nexus with the object. Keeping in view the social, economic and other such conditions of the foreigners, with the added emphasis on attracting foreign tourists for obvious reasons, the latter certainly constitute a class distinct from the Indians for the purpose of imposing the impugned restrictions. This classification retains its nexus with the policy of prohibition. The classification being reasonable and justified, it is difficult to hold that the impugned conditions suffer from the vice of hostile discrimination violative of Article 14.

19. Another point urged by the learned Counsel for the Petitioners is that the restrictions imposed are vague and incapable of implementation. The argument is that the term "foreign tourist" has not been defined and it may not be possible for the licensee sometimes to distinguish between an Indian and a foreigner as also between a foreigner and a foreign tourist. The argument proceeds that

condition No. 2 restricts a foreign tourist from offering drinks to an Indian at the bar. The licensee after having sold a drink to a foreign tourist can exercise no control in restraining him from passing on the drink to an Indian. Condition No. 2 is a restriction upon a foreign tourist and the Excise authorities had no jurisdiction to do so. Conditions Nos. 1 and 2 are therefore, liable to be struck down on this ground. The contention has no force. It is true that the term "foreign tourist" has not been defined but that should not create any problem. It is to be understood as used in common parlance. It is not a hyper technical phrase involving intricate interpretation. A person holding a passport of a foreign country and visiting India as a tourist shall be covered by it. The learned Counsel for the Petitioners endeavoured to make a big argument that the foreign tourists shall have to carry their passports with them always to purchase drinks and it will be very inconvenient for them. This argument deserves to be dismissed summarily being irrelevant in the context of the point under consideration. A person once an Indian and now settled abroad when visiting India as a tourist on a passport issued by a foreign country shall also be a foreign tourist. A confirmed foreigner will not be a foreign tourist if he visits India on some assignment and not as a tourist. The impugned condition No. 2 is essentially directed against the licensee and not against a foreign tourist. It prohibits the licensee from serving liquor to an Indian even at the instance and cost of a foreign tourist. The impugned conditions cast a duty on the licensee to ascertain the eligibility of a person desiring to purchase liquor and in the event of his not being so satisfied to decline its sale. We see no practical insurmountable difficulty in the process of their implementation. We are, therefore, unable to concur that they are vague or incapable of implementation.

20. To recapitulate, the impugned conditions Nos. 1 and 2 are neither ultra vires the powers of the Financial Commissioner u/s 34 of the Act nor do they suffer from the vice of discrimination violative of Article 14 of the Constitution nor are they vague or incapable of implementation.

21. In the result, we find no merit in both the writ petitions and dismiss the same with no order as to costs.