
(2001) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1450 of 2001

Ram Kumar Tumram and Others

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Constitution of India, 1950 — Article 243A, 244

Madhya Pradesh Anusuchit Kshetra Kee Gram Sabha Gathan, Sammelan Kee Prakriya

Tatha Karya Sanchalan, Niyam, 1998 — Rule 10, 14

Madhya Pradesh Excise Act, 1915 — Section 61B, 61C, 61D, 61D(1), 61E

Citation : (2001) 5 MPHT 649

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—The petitioner Nos. 1 & 2 are Panch and Sarpanch of the Gram Panchayat, Ghoda Dongri, in district of Betul respectively and the petitioner No. 3 is the Sarpanch of Gram Panchayat Bhoura, Block Shahpur. Both the Panchayats are in the scheduled areas of the State as per the notification issued by the President of India in exercise of powers vested under Article 244 read with 5th Schedule of the Constitution of India. It is put forth in the petition that the functions of the Excise Department are regulated and governed by the provisions of M.P. Excise Act, 1915 (hereinafter referred to as 1st Act"). Section 61-E of the Act empowers the Gram Sabha to regulate and prohibit manufacture, sale, possession, transport and consumption of the intoxicants within its territorial jurisdiction. Sub-Section (2) of the same provides 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. Sub-section (3) provides that if a Gram Sabha prohibits manufacture, possession, sale and consumption of any intoxicant in its

area, no new manufactory of the intoxicants shall be established within the jurisdiction of the Gram Sabha; no new outlets for sale of any intoxicants shall be opened and the existing outlets, if any, shall be closed with effect from the first day of the next financial year immediately following the issue of order of prohibition and no person shall manufacture, possession, transport, sell or consume any intoxicant within the Gram Sabha. It is set forth in the petition that the Gram Panchayats of Ghoda Dongri and Bhoura have passed resolutions for not auctioning the government liquor shops. They have further resolved that the government liquor shops as existing would be run by the government and be not auctioned. The resolutions have been passed with a view that if these government liquor shops are auctioned on contract basis it would be prejudicial to the interest of the inhabitants of the area and they would be harassed and humiliated by the contractor, excise officials and police officials as they belong to Scheduled Tribes who manufacture liquor for their own consumption at their homes. The resolutions passed by both the Gram Sabhas have been brought on record as Annexure P. 2 and Annexure P. 3. The aforesaid resolutions have been communicated to the Collector, Betul and District Excise Officer, Betul as per Annexure P. 2A and Annexure P. 3A. According to the writ petitioners the State Government has framed a new policy relating to the auction of intoxicants which has been notified in the M.P. Gazette (Extra Ordinary) published on 8-3-2001 as per Annexure P. 4. As per the said policy the State Government has decided to auction the depots of intoxicants in Betul District. It is urged in the petition that the decision taken by the State Government to put the shops in auction contravenes the resolution of the Gram Sabha and thereby violates the mandate enshrined u/s 61-E of the Act. It is also urged that such an action of the State Government affects the sovereignty of the Gram Sabhas as provided under the Panchayats (Extension of Scheduled Areas) Act, 1996. It has been pleaded that in the year 1994 the State Government under the Adivasi Up Yojna Kshetron Ke Antargat Abkari Vibhag Dwara Sanchalit Deshi Madira Dukan Sarnbandhi Nirदेश (in short the "1994 Instructions") specially provided that in the 18 districts of Adivasi Up Yojna Areas the Country Liquor Shops would be run by the department and the decision had been taken keeping in view the Tribes living in the Scheduled Areas manufacture, use and consume the liquor made by themselves. It is averred in the petition that the notification issued vide Annexure P. 4 has totally ignored the law in vogue and the sentiments of the Scheduled Tribes and the harassment that is likely to be caused to them. With the aforesaid averments prayer has been made for quashment of the notification contained in Annexure P. 4 as far as it relates to the auctioning of excise contracts and opening of liquor shops through contractors in the Scheduled Areas of the State, particularly in Tahsil Betul within the territorial jurisdiction of Gram Sabha of Ghoda Dongri and Bhoura and to issue a mandamus restraining the respondents from auctioning the excise contracts in the aforesaid places.

2. A return has been filed by the answering respondents contending, inter alia, that the petitioners have completely misconstrued the scope and nature of

powers conferred on Gram Sabha u/s 61-E of the Act and hence, the resolutions passed by them vide Annexures P. 2 and P. 3 demanding the continuance of system of running of liquor shops through department instead of private contractors is untenable. It is put forth that the State Government has exclusive jurisdiction to ensure revenue generation and the Gram Sabha has no authority to dictate any rider or condition in that regard in the garb of exercise of powers conferred on it u/s 61-E of the Act. It has been asserted that Section 61-E does not empower the Gram Sabha to decide the mode through which an existing liquor shop is to be run and managed. It is pleaded that the State Government has unfettered right and authority to opt or select any of the recognised or accepted modes. It has been put forth that the 1994 Instructions have been superseded by subsequent instructions issued on 8-3-2001. The new instructions have been brought on record as Annexure R. 1. Quite apart from the above it has been set forth that the resolutions brought on record are illegal as they have been passed in gross violation of mandatory provisions contained in M.P. Anusuchit Kshetra Kee Gram Sabha Gathan, Sammelan Kee Prakriya Tatha Karya Sanchalan, Niyam, 1998 and Rules 10 & 14 of the aforesaid rules have not been followed. It has also been set forth that the consent of the Gram Sabha was not necessary as no new outlet was being opened.

3. I have heard Mr. R.K. Gupta, learned counsel for the petitioners and Mr. R.S. Jha, learned Dy. Advocate General for the respondents.

4. It is contended by Mr. Gupta that if the language employed in Section 61-E of the Act is appreciated in proper perspective it would be crystal clear that the Gram Sabha has the jurisdiction to regulate and prohibit manufacture, possession, transport, sale and consumption of intoxicants within its territorial jurisdiction and in its sweep and ambit would include the mode of sale. It is his further submission that by the resolution passed by the Gram Sabha there has been partial prohibition and the term prohibition would encompass partial prohibition. The learned counsel has also argued that the resolutions passed by the Gram Sabha are in accordance with the Rules in vogue and the irregularities pointed out in the return are of no consequence.

Mr. Jha, learned Dy. A.G., on the contrary, has contended that the stand taken by the petitioners is not sound inasmuch as the Gram Sabha has no authority or jurisdiction to specify the mode as that would be interfering in the function of the State and overriding the policy formulated by it. It is canvassed by him that the fixation of a particular mode for settlement of privileges in respect of liquor shops is within the exclusive domain of the State Government and they are governed by the policy decisions and cannot be questioned by the Gram Sabha as such a power is not conferred on it. The learned State counsel submits that Chapter VIII-A was brought into the statute by M.P. Excise (Amendment) Act, 1997 by which special provisions for Scheduled Areas have been introduced and on a scanning of the amended provision it is luminously clear that the Gram Sabha cannot specify a specified mode for running of a retail outlet. Learned

counsel has pressed hard to ignore the resolutions as they have not been passed in accordance with the Rules in vogue.

5. It is not disputed at the Bar the areas in question fall in Scheduled Areas. It is also not disputed that the State Government has formed a new policy dated 8-3-2001 for grant of privilege in respect of liquor shops. The main crux of the matter is that whether the respective Gram Sabhas could have passed the resolutions as has been passed by them. Mr. Gupta, learned counsel for the petitioner has drawn the attention of this Court to Article 243 A of the Constitution of India. It reads as under :

"243 A- A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide."

6. Submission of the learned counsel for the petitioner is that by the constitutional mandate powers have been conferred on the Gram Sabha and the State Legislature keeping in view the constitutional mandate has passed law by amending the Act and, therefore, the State Government is bound by the resolutions passed by the Gram Sabha and its authority cannot be curbed or curtailed by the Executive fiat. In essence, it is urged by him that the policy to auction the shops could not have been introduced by the State Government. The aforesaid submission of the learned counsel for the petitioner does not impress me inasmuch as the State Government has the authority to frame policies for settlement of liquor shops in accordance with the terms and conditions enshrined on the policy. Submission of Mr. Gupta is correct to the extent that the policy cannot over-ride Section 61-E of the Act. To elaborate, if the Gram Sabha passes a resolution prohibiting manufacture, possession, transport, sale or consumption any intoxicant within the Gram Sabha area the policy would not be applicable to the said area. In this context I think it apposite to refer to the amended provisions. Section 61-B of the Act defines Scheduled Areas, Gram Panchayat and Gram Sabha and Scheduled Tribes. Section 61-C stipulates that the provisions of Chapter VIII-A shall apply to the Scheduled Areas, and if there is anything repugnant in this Act, the provisions of this Chapter shall prevail. Section 61-D deals with Exemption of members of the Scheduled Tribes from certain provisions of the Act. As the learned counsel has drawn the attention of this Court to the aforesaid provision, it is appropriate to reproduce the same. It reads as under :-

"61-D.- (1) The provision of this Act in respect of manufacture of country spirit by distillation, its possession and consumption shall not apply to the members of the Scheduled Tribes in the Scheduled Area.

(2) The members of the Scheduled Tribes in the Scheduled Areas may manufacture country spirit by distillation subject to the following conditions, namely :-

(i) Manufacture of country spirit shall be for the purpose of domestic consumption and for consumption at social and religious functions only by the

members of the Scheduled Tribes in the Scheduled Areas;

(ii) Country spirit so manufactured shall not be sold;

(iii) The maximum limit for possession of country spirit so manufactured shall be 4.5 liters per individual and 15 liters per household and in special circumstances 45 liters per household on the occasion of a social and religious function:

Provided that the Gram Sabha may reduce the limit of possession of country spirit.

7. On a perusal of the aforesaid provision I do not find any signification in it that would render any assistance to the submission of the learned counsel for the petitioner. As is seen the said provision confers certain rights on the members of the Scheduled Tribes in the Scheduled areas for manufacture of country spirit by distillation subject to certain conditions and the Gram Sabha has been given the power to reduce the limit of possession of country spirit.

8. The real provision which requires to be interpreted in the obtaining factual matrix is Section 61-E. It reads as under :-

"61-E.- (1) The Gram Sabha have the power to regulate and prohibit manufacture, possession, transport, sale and consumption of intoxicants within its territorial jurisdiction :

Provided that an order of prohibition passed by the Gram Sabha shall not apply to a manufactory engaged in the manufacture of any intoxicant and established prior to coming into force of the provisions of this Chapter.

(2) No new manufactory for manufacturer 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 State Government without the consent or permission of the Gram Sabha.

(3) If the Gram Sabha prohibits manufacture, possession, sale and consumption of any intoxicants in its area, the following consequences shall follow:

(a) No new manufactory of intoxicants shall be established within the jurisdiction of the Gram Sabha;

(b) No new outlets for sale of any intoxicants shall be opened, and the existing outlets, if any, shall be closed with effect from the first day of the next financial year immediately following the issue of order of prohibition;

(c) No person shall manufacture, possess, transport, sell or consume any intoxicant within the Gram Sabha Area,"

9. On a reading of the aforesaid provision in proper perspective it is quite clear that the Gram Sabha has the power to regulate and prohibit manufacture, possession, transport, sale and consumption of intoxicants within its territorial jurisdiction. It also stipulates that the order of prohibition shall not apply to a

manufactory engaged in the manufacture of any intoxicants established prior to coming into force of the said provision. There is also a postulate that no new manufactory for manufacture of any intoxicants shall be established and no new outlets for sale of intoxicants shall be opened by the State Government without the consent or permission of the Gram Sabha. Sub-section (3) of the aforesaid Section deals with consequences if there is prohibition. In the case at hand no new outlet is sought to be opened. The outlet was in existence from earlier years. The Gram Sabha vide Annexure P. 2 has passed a resolution that the Gram Sabha recorded protest against holding auction of the outlet in question and further resolved that it must be run departmentally. Though the validity of the resolution was seriously questioned by the learned counsel for the State, I am not inclined to address myself to the same for the simple reason that it does not warrant to be delved into, because of what I am going to state lateron.

10. The question that falls for consideration is whether the resolution is in consonance with the language employed u/s 61-E of the Act. The aforesaid provision empowers the Gram Sabha to regulate and prohibit. As is apparent there is no prohibition. Submission of Mr. Gupta that partial prohibition would come within the ambit of prohibition does not have much substance inasmuch as there is no prohibition whatsoever vide Annexure P. 2. The language used in the resolution does not even say that on certain days the shop would remain closed or there is anything with regard to timing. The learned counsel also contended that the resolution would come within the sweep of the term "regulate". I am afraid the term "regulate" cannot be expanded to encompass the concept of mode of running of a shop even within its connotative expansion. "Regulate" as is understood is to provide measures so that timings or place is fixed, days are fixed but not the mode of settlement. The State Government in my considered opinion can put it to auction. The matter would have been different if the Gram Sabha would have passed a resolution in terms of Sub-section (3) (b) of Section 61-E of the Act. The resolution is not couched in that language. Hence, the Gram Sabha cannot command the State Government to run it departmentally. Thus it can be irresistibly concluded that Annexure P. 2 being not in tune with the language of Section 61-E of the Act is not binding on the State Government and it has the authority to put the shop to auction and, therefore, no illegality is perceivable in the action of the State Government.

11. Resultantly, the writ petition, being devoid of merit, stands dismissed without any order as to costs.