

(2000) 05 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 18689 of 2000

Sadananda Shetty

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 31-05-2000

Acts Referred:

Karnataka Excise Act, 1965 — Section 21

Citation : (2000) 3 KCCR 2170

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K. Chandranat Ariga, for the Appellant; Niloufer Akbar, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard Sri K. Chandranat Ariga, learned Counsel for the Petitioner and Smt. Niloufer Akbar, learned Government Pleader for the Respondent.

2. By this writ petition, the Petitioner has sought for quashing of the notification bearing No. MAB(4). CR. 5 of 2000-2001 dated 29.5.2000 filed as Annexure-B to the writ petition.

3. The facts of the case in brief are; That the Election Commission has declared election to the Zilla Panchayath and Taluk Panchayath, which elections have to be held on 2.6.2000. The Respondent-Deputy Commissioner has issued a notification on 22.5.2000 declaring that from 31.5.2000 to 2.6.2000 in order to maintain peace in the context of ensuing elections, the Deputy Commissioner declared the election days to be dry days and declared that in the district of Dakshina Kannada in the areas of election of Zilla Panchayath and Taluk Panchayath from the midnight of 31.5.2000 till the midnight of 2.6.2000 and on the date of counting i.e., on 8.6.2000. These days will be dry areas and all the liquor shops name therein having excise licence shall be remain closed and the

licence holders were prohibited during those days to sell, distribute liquor in any proprietary clubs, Star Hotels, Clubs etc., keeping in view the letter of request made by the Deputy Superintendent of Police, Dakshina Kannada, as well as after examining the situation ordered and directed that in order to maintain peace and for smooth and peaceful election of Zilla Panchayath and Taluk Panchayath and counting of votes extended the order dated 22.5.2000 to the entire district of Dakshina Kannada and declared from the midnight of 31.5.2000 till the midnight of 2.6.2000 all the liquor shops shall be remain closed and those days will be taken to be dry days.

4. The Petitioner has challenged this notification alleging that the same is illegal and without jurisdiction.

5. The learned Counsel for the Petitioner has contended that the notifications are not covered by Rule 10-B of the Karnataka Excise Licences (General Conditions) Rules, 1967 as under the said rule for banning sale or supply of liquor and intoxicants during the election to the House of the people or State Legislative Assembly, the District Magistrate has been empowered to issue such notification. The learned Counsel for the Petitioner contended that in the present case the elections are with reference to Zilla Panchayath and Taluk Panchayath which are not covered by this rule. He further contended that there was no need to declare those days of elections to be dry days for the entire district of Dakshina Kannada, it could have been declared only with respect to the area or place covering Zilla Panchayath and Taluk Panchayath in respect of which elections were conducted at the most. Therefore, the notifications particularly Annexure-B dated 29.5.2000 to the entire area is illegal, null and void.

6. I am unable to accept this contention of the learned Counsel. There may be some force that Rule 10-B of the Karnataka Excise Licences (General Conditions) Rules, 1967 may not apply, but the District Magistrate is empowered u/s 21 of the Karnataka Excise Act, 1965 prohibit the sale of liquor and intoxicant for such times and for such period as he thinks necessary for the preservation of the public peace.

7. Section 21 of the Karnataka Excise Act, 1965 reads as under-

21. Closing of shops for the preservation of public peace (etc.,).-(1) The District Magistrate may, by notice in writing to the licensee require that any shops in which any intoxicant is sold shall be closed at such times and for such period as he may think necessary for the preservation of the public peace (or the prevention of the spreading of any infectious diseases).

(2) is not material for our purpose.

8. Under this section, if he thinks it necessary for the preservation of the public peace and in the opinion of the District Magistrate in the circumstances existing if so needed to be done then the District Magistrate is empowered to require the licensee may, by notice in writing or it may be in the form of notification that the

shops in which liquor and intoxicants were sold shall be closed during the period to be specified therein. For preservation of the public peace whether it is necessary to do so that District Magistrate under the Act is the authority to opine and determine. There may be various circumstances in which for the preservation of the public peace it may be necessary. The elections whether of the Legislative Assembly or Parliament or Zilla Panchayath or Taluk Panchayath may be taken as in such situation also in enthusiasm for propagation or their candidates, there may be possibility of the workers taking the liquor and intoxicants and then work for the propagation of their candidates may give rise to such situation as after taking of liquor and intoxicant the workers may cross limits of decency and allure poor man to vote after offering liquor as well and create the situations worse.

9. Thus considered, in my opinion the District Magistrate was justified in passing such notification/order prohibiting the sale of liquor and intoxicants during the period of election. To what area or part or with reference to the entire District in which elections are taking place whether or any part of it or entire is to be determined by the District Magistrate. It is not for this Court to make any observation as to what extent or area he can prohibit the sale of liquor and intoxicants, it is for the District Magistrate to examine to determine. The necessity of prohibition or the closure of such shops and whether is essential for the preservation of the public peace in the district, as well as in the area which he has done and no malafides have been alleged. The notification issued by the District Magistrate cannot be and need not be interfered with. In my opinion, the notification issued by the District Magistrate vide Annexures "A" and "B" to this petition are well within his jurisdiction and authority of the District Magistrate. The notifications of the District Magistrate does not suffer from any error of law or jurisdiction. The writ petition being devoid of merits deserves to be and is hereby dismissed.

10. The interim relief prayed for by the Petitioner is also rejected.