(2007) 05 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Sh. Ram Singh Ex. Sarpanch APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:
Constitution of India, 1950 — Article 226, 47

Citation : (2007) 147 PLR 561 : (2007) 4 RCR(Civil) 628

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution of India prays for issuance of a direction to the respondents to cancel the allotment of the liquor vend which have been located within the abadi of village Panjokhra Sahib or in the alternative to shift the same beyond 1 kilometer from the abadi of the village.

2. Brief fact of the case are that the Gram Panchayat had submitted a resolution or 3.9.2006 which was passed in its meeting held on that day. According to the resolution the residents of the village as well as the Principal of the Government Senior Secondary School, Panjokhra Sahib have sent requests to close liquor vend located in the village or to remove the same. Earlier to that, a letter dated 18.9.2000 was also sent by the management of the Gurudwara Panjokhra Sahib which was addressed to the Deputy Commissioner, Ambala, whereby a request was made not to permit setting up of any liquor vend in that religious place. A copy of the resolution was sent to respondents which was duly received by the Deputy Excise & Taxation Commissioner (Excise) Ambala on 7.3.2007. The Sarpanch of the village Iqbal Singh also appeared before the Excise and Taxation Commissioner, Haryana as advised by his letter dated 23.2.2007. He prayed for closing the liquor vend. Despite the promise made by the Commissioner Excise & Taxation to look into the matter, no action was taken.

3. In their reply filed on behalf of respondents No. 1 to 4 only technical objections have been raised challenging the locus-standi of the petitioner and

pointing out that the Gram Panchayat, Gurudwara Panjokhra Sahib or the Principal of the School have not joined as petitioner. It has also been asserted that the liquor vend is not within close proximity of either the Gurudwara or the School or the inhabitants within the Lal Dora of the Village. It is submitted that the liquor vend is more than 1.2 kms away from the Gurudwara and far away from the vicinity of the village Panjokhra Sahib. In that regard, reliance has been placed on resolution passed by the Gram Panchyat where it is mentioned that the Sarpanch has informed the Panches that there is a liquor vend on Naraingarh high way road which itself explains that the liquor vend is away from the Gurudwara and the School. The respondents have also placed reliance on the order dated 17.3.2007 passed by the Excise & Taxation Commissioner, Haryana (Annexure R1) whereby the case of the petitioner has been rejected holding that there was no case of illegal sale of liquor during the previous three years.

4. On behalf of the respondents No. 6 and 7 the stand is similar as is taken by the respondents No. 1 to 5. They have however, pointed out that this petition has emanated from the mala fide of the petitioner to file this petition because the negotiation for hiring his land for construction of wooden khokha had failed and respondents No. 6 and 7 got an offer from the owner of the adjoining land for setting up the liquor vend. It has also been pointed out that the petitioner has never been a Sarpanch of the Village and he is an Ex-convict who has served sentence of life imprisonment.

5. We have heard the learned Counsel for the parties and have perused the pleadings along with documents with their able assistance. We find that the writ petition deserves to be allowed because Section 31 of the Haryana Panchayati Raj Act, 1994 (for brevity, ''the Act'') seeks to introduce and give effect to the directive principles of State Policy as enshrined under Article 47 of the Constitution. According to Article 47 of the Constitution a duty is cast on the State to make endeavour to bring about prohibition of the consumption of intoxicating drinks and all products which are injurious to health. The only exception carved out is when such intoxicating drinks and product are required for medicinal purposes. Section 31 of the Act seeks to introduce prohibition at a micro level by balancing interests of the revenue as well as interests of a village community which has passed a resolution in compliance with Section 31 of the Act. The aforementioned Section 31 of the Act reads as under:

Power to introduce prohibition.- (1) A gram Panchayat may, at any time, during the period commencing on the 1st day of April and ending with the 30th day of September of any year by resolution passed by majority of Panches holding office for the time being, direct that intoxicating liquor may not be sold at any licensed shop within the local area of the Gram Panchayat.

(2) When a resolution has been passed under Sub-section (1) and is received in the office of Excise and Taxation Commissioner, Haryana on or before the 31st day of October, it shall take effect from the 1st day of April of the year next after such resolution.

(3) Notwithstanding anything contained in the Punjab Excise Act, 1914 (Punjab Act 1 of 1914) or any other Act for the time being in force and the rules made thereunder with regard to the powers and functions of the Collector under the said Act, such a resolution will be binding upon the Excise and Taxation Commissioner.

Provided that if the Excise and Taxation Commissioner is of the opinion for reasons to be recorded in writing that within such local area illicit distillation or smuggling of alcohol has been carried on or connived at within two years preceding the date of the passing of such resolution is such local area, such resolution shall not be binding upon him, unless the Government orders that it shall be so binding.

6. A perusal of the aforementioned provision shows that Gram Panchayat during the period of 1st of April to 30th September, may pass by majority of Panches a resolution and direct that intoxicating liquor may not be allowed at any licensed shop within the local area of the Gram Panchayat. Such a resolution is to take effect from 1st of April of the year next following. It is also clear from sub-Section 3 of Section 31 of the Act that such a resolution would be binding upon the Excise & Taxation Commissioner notwithstanding anything contained in the Punjab Excise Act, 1914 or any other Acts or the rules. However, only one exception has been carved out. If the Excise & Taxation Commissioner records in writing that in the local area of a Gram Panchayat illicit distillation or smuggling of alcohol is being carried out within two years preceding the date of passing of the resolution then such a resolution is not to be binding on him unless the Government orders otherwise.

7. A similar provision came up for consideration of Hon''ble the Supreme Court in the case of Gram Panchayat, Patiala Vs. State of Punjab and others, . In that case proviso to Section 26 of the Punjab Gram Panchayats Act, 1952, which sought to introduce prohibition at micro level and proviso similar to the one as made in Section 31 of the Act, has been considered. Hon''ble the Supreme Court disapproving the approach adopted by this Court dismissing the writ petition of the Gram Panchayat, has accepted the argument of the Gram Panchayat by holding as under:

4. Shri Hardev Singh, learned senior counsel for the petitioners, submitted that the impugned order of the Commissioner was perverse and was based on criteria which were clearly irrelevant and that the High Court was in error in summarily rejecting the writ petition. Learned Counsel urged that the alleged incidents of illicit distillation, even if true, were clearly beyond the statute and could not, therefore, have been taken into account. Shri Hardev Singh urged that the exercise of powers conferred by the proviso called for a judicious and sensitive evaluation and reconciliation of social interests and considerations of the revenue. Shri Hardev Singh submitted that the Excise Commissioner had placed the interests of revenue paramount sacrificing a social defense mechanism in Section 26 and made manifest and insensitive over-anxiety for the former

ignoring the statutorily recognized democrative sentiments.

5. We do think that the submissions of Shri Hardev Singh are not without merit and could not be easily brushed aside. The impugned order of the Commissioner would not manifest a sense of awareness of the need to reconcile certain conflicting interests. It has to take into account considerations of social well-being and public good; provide disincentive to illicit liquor trade and also protect the revenues. The High Court, if we may say so with due respect, was not justified in summarily rejecting the writ petition....

8. A Division Bench of this Court had also an opportunity to consider Section 40(1) and (2) of the Punjab Panchayati Raj Act, 1994, which are akin to Section 31 of the Act, in the case of Gram Panchayat Vs. Excise and Taxation Commissioner and Another, , and expressed the similar view. Another Division Bench of this Court also considered Section 26 of the Punjab Gram Panchayat Act, 1953 in the case of Gram Panchayat, Dubaldhan v. State of Haryana 1994(1) ILR P&H 121 and the matter was decided in favour of micro prohibition and the Gram Panchayat.

9. In the present case, the resolution was passed on 3.9.2006. On the basis of aforementioned resolution, the Excise & Taxation Commissioner passed an order on 7.3.2007 which reads as under:

In pursuance to aforesaid notice Sh. Iqbal Singh, Panch from the side of the Gram Panchayat, Panjokhra, Ambala, appeared and pleaded that sale of liquor is causing resentment in the minds of the villagers and hence the facts are that the Gram Panchayat passed resolution not to open liquor vends for the financial year 2007-08. The resolution passed by the Gram Panchayat was examined by the DETC (Excise), Ambala and he has sent his comments where he has mentioned that there is no case of illegal sale of liquor during previous three years.

In view of above, I have come to the conclusion that there is no crime cases in this village. Hence the vend cannot be closed in the interest of excise revenue. Therefore the resolution of the Panchayat can not be acceded to, however the vend can be shifted at a suitable site during the year 2007-2008.

Pronounced. Sd/- Dated: 07.03.2007. (Arun Kumar) Excise & Taxation Commissioner, Haryana, Chandigarh.

10. It is evident that the Excise & Taxation Commissioner has placed reliance on the report sent by the Deputy Excise & Taxation Commissioner, Ambala which was to the effect that there was no case of illegal sale of liquor during the previous three years. It is on the aforementioned basis that the Excise & Taxation Commissioner has reached the conclusion that the liquor vend cannot be closed because there are ''no crime cases''.

11. The order when examined in the light of Section 31 of the Act, it becomes manifest that the resolution of the Gram Panchayat is binding upon the Excise & Taxation Commissioner who could avoid the resolution only after recording the

reasons in writing that in the local area of the Gram Panchayat, illicit distillation or smuggling of alcohol has been carried out or connived at within two years preceding the date of passing of such resolution. The absence of any such activity would strengthen the case of the petitioner rather than that of the revenue. The object appears to be that in cases where the Gram Panchayat passes a resolution, requesting for refusing the permission to issue licence for a liquor vend, the area has to fit for prohibition and free from boot-legging. The legislative intent is that if in any particular area, the people are accustomed to drinking then it may not be proper to perpetuate their drinking habits and making them dependent on sub-standard liquor. In such cases, the Excise & Taxation Commissioner can always conclude that the resolution of the Gram Panchayat would not bind him. In the present case, the findings as recorded by the Excise & Taxation Commissioner in its orders dated 7.3.2007 show that it was a fit case for introducing prohibition as no case of illegal sale of liquor during the previous three years have been detected. It is amazing that the Excise & Taxation Commissioner has foiled to apply his mind to the plain language of Section 31 of the Act, while passing order on 7.3.2007. Therefore, on principle as well as Precedents, the impugned order is absolutely illegal and we have no hesitation to declare the same as wholly against Section 31 of the Act.

12. For the reasons aforementioned, this petition succeeds, the order dated 7.3.2007 (Annexure R-1) passed by the Excise & Taxation Commissioner, is hereby quashed. The liquor vend which is located in the Gram Panchayat area of the petitioner shall be closed within two weeks from today. The respondents may permit respondents No. 6 and 7 to open their liquor vend at an alternative site or settle accounts with them in accordance with law.