

(1996) 09 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 5091 of 1989 (J)

Shatrughanlal and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Excise Act, 1915 — Section 24

Citation : (1997) 1 MPJR 294

Hon'ble Judges : A.K. Mathur, C.J; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; K.S. Wadhwa, Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

All these petitions involve common questions of law; therefore, they are disposed of by a common order, M.P. No. 5091 of 1989 and M.P. No. and 5067 of 1989 relate to the grant of licence for the period from 1.4.1989 to 31st March 1990.

The writ petitions M.P. Nos. 913/93, 914/93, 1818/93 1884/93, 1943/93 and 1969/93 relate to the grant of licence for the period 1992-93.

For convenient disposal of all these writ petitions, the facts given in M.P. No. 5091/89, Shatrughanlal Shrivastava and others Vs. State of M.P. and others are taken into consideration.

Petitioners by this petition have prayed that Section 24 of the M.P. Excise Act, 1915, (for short the Act) and Rule II (3) of the General Licence Conditions Rules may be declared as ultra vires of the Act and Art. 14 of the Constitution of India; that notice dated 8.10.89 (Annexure-F) may be quashed; that respondents may be restrained from giving effect to the aforesaid notice for closure of the liquor shops; that the petitioners may be granted remission of proportionate licence fee

for the period the shops remained closed in pursuance of the aforesaid notice; and that they may be paid compensation against the profit and loss to the extent as detailed in Annexure G.

Petitioner No. 1 holds a licence in Form C. S. 3 for retail sale of country liquor in respect of Ujjain and Seoni groups of country liquor shops comprising 34 shops. The shops were auctioned in favour of petitioner No. 1 for an annual licence fee of Rs. 1.23 crores. Petitioner No. 2 holds a foreign liquor licence in Form F.L. 1 in respect of Sonkachha foreign liquor shop on an annual licence fee of Rs. 3,10,000.00 petitioner No. 3 also holds a country liquor licence in Form C.S. 3 in respect of Ujjain and Seoni group of country liquor shops. Petitioner No. 4 holds foreign liquor licence in Form F. L. 1 in respect of Station Road Foreign Liquor shop at Ujjain. Petitioner No. 5 holds a foreign liquor licence in Form F.L. 1 in respect of foreign liquor shops at Indore Gate and Chawk, Ujjain. Petitioner No. 6 also holds a foregin liquor licence in Form F.L. 1 for Freegunj foreign liquor shop. Petitioner No. 7 holds foreign liquor licence in Form F.L. 1 in respect of Nai Sadak, Ujjain. All these petitioners obtained the licences in pursuance of an auction held by the slate of M.P. According to the terms of the licence, the monthly and each day break up of the licence fee was required to be paid to the respondent, as per details furnished in Annexure D to the petition.

Rule 8 of the General Licence Condition Rules framed u/s 62 of the Act provides that the shops shall be kept open every day throughout the year unless temporary closure has been authorised by the Collector. It further lays down that the shops shall remain closed on such days as the Collector may announce at the time of auction. At the time of auction, certain dry days were notified and six more days on account of Holi. Moharram etc. had to be observed as dry days. In addition to this, the Collector has been further authorised to declare dry days according to local festivals. Copy of the list of dry days and other days as may be declared by the Collector was issued along with the licence by Notification dated 22.1.1986, (Annexure E).

The petitioners were informed by respondents 4 and 5 that the State Government, by order dated 8.10.89, had ordered closure of all excise shops on 8, 9, 10, 11 and 13 October 1989 as dry days, (Annexure F). Therefore, the petitioners have filed these petitions challenging the order of the District Excise Officer and the decision of the Government and the Collector for closure of these shops for 5 days on various grounds. It is also prayed that for closure of the shops for 5 days, proportionate reduction in the licence fee may be given and loss which has been occasioned for these 5 days, should also be made good by the State Government.

In order to appreciate the contentions of learned counsel for the petitioners, it will be relevant to refer to certain provisions of the Act and the Rules. Section 24 of the Act empowers the District Magistrate to close down the shops for the sake of public peace. Section 24 of the Act reads as under:

24. Closing of shops for the sake of public peace -

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

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any shops a Magistrate of any class who is present, may require such shop to be kept closed for such period as he may think necessary:

Provided that when any such riot or unlawful assembly occurs, a licensee shall, in the absence of the Magistrate, close his shop without any order.

(3). When any Magistrate issues an order under sub-section (2), he shall forthwith inform the Collector of his action and his reasons thereof.

Section 62 empowers the State Government, to frame the Rules in pursuance of which the State Government has framed the Rules known as General Licence Conditions Rules. Rule 8 which is relevant for the purpose, reads as under :

VIII. Shops to be kept open and adequately stocked -

(1). Shops shall be kept open every day throughout the year unless their temporary or permanent closure has been authorised by the Collector. Such Supply of liquor or intoxicating drugs as the Collector may consider sufficient to meet the local requirement, shall be maintained. Subject to the provisions of Section 38 of the Act and to the exceptions specified in Rule XIV, sales be made to all comers on payment at the current rate of sale. Shops for the sale of tari may be closed during the rains, i.e. from 1st June to the 14th October.

(2). Shops shall remain closed for the whole day on such days as the Collector may announce at the time of auctions", (Provided that the Collector, or District Excise Officer, or in their absence a Deputy Collector duly authorised by the Collector, may require foreign liquor licensee holding licenses in Forms F.L. 1 and F.L. 2 to open the shops on such days for sale of foreign liquor to bona fide foreign visitors).

(2-a) Subject to sub-rule (2), shops having licence in Form F.L. 1, F.L. 1-A, F.L. 1-B, F.L. 1-C, C.S. 2, C.S. 2-A, C.S. 3, T-1 and restaurant bar having licence in form F.L. 2 shall remain open from 10 A.M. to 10.30 P.M. throughout the year.

(3). Shops shall also remain closed in any area or areas for such period as the State Government may, in public interest, deem necessary so to do. An intimation to the effect shall be given to the licensee through the Collector of the district well in advance as far as possible.

Provided that when a shop is closed under this Rule, the Collector may, with the previous sanction of the Excise Commissioner award compensation to the licensee for loss or profits.

In this background learned counsel for the petitioners submitted that Section 24

of the Act is ultra vires as no guidelines have been provided as to in what conditions the shops will be closed and, therefore, this Section suffers from arbitrariness and the same may be declared ultra vires. Learned counsel also submitted that if Section 24 is considered to be intra vires, then too the order passed by the State Government is without jurisdiction, as Section 24 empowers the District Magistrate to close the shops, but the State Govt. has no authority to close the shops. Therefore, the order dated 8.10.89, (Annexure F) is beyond the power of the State Government.

Reply has been filed by the respondent State. The State has contested the matter and submitted that Section 24 of the Act is intra vires and the order dated 8.10.89 was issued by the State Govt. directing the District Magistrates that all the shops from 8th October to 11th October and 13th October shall remain closed and in pursuance thereof, the District Magistrate, Dewas had issued the order and communicated it through the District Excise Officer. It was pointed out that this closure was warranted, because Dashehra Festival was being celebrated on 10th and 11th October and Muslim festival fell on 13.10.89. Since both these festivals were to be celebrated in close proximity, it was apprehended that it may give rise to law and order situation. At the State level meeting held on 7.10.89, it was decided that in view of both these festivals falling in close proximity there was likelihood of communal tension. Therefore, in order to avoid any kind of such tension, all these liquor shops were closed from 8th to 11th and 13th October 1989. This decision was taken at State level, vide Annexure R-1. This was communicated to the Commissioner Excise, M.P. Gwalior and Collectors Indore, Khandwa, Khargone, Raisen, Vidisha, Jabalpur, Mandasaur, Rajgarh, Shajapur, Sehore, Chhindwara, Ujjain, Ratlam, Seoni Sagar, Raigarh, Damoh, Dewas, Seoni and Dhar. In pursuance of the State decision, the District Magistrate issued the order closing the shops and it was communicated through the District Excise Officer.

We have heard learned counsel for the parties and perused the record. So far as validity of Section 24 of the Act is concerned, it only enables the District Magistrate to close the shops in order to maintain public peace. It cannot be said that Section 24 of the Act suffers from lack of any guidelines. Guideline has been provided and it is "public peace". Public peace may be disturbed on account of some riot or some communal tension or any day-to-day law and order problem. Therefore, there is a proper guideline in Section 24 that in the event of public peace likely to be disturbed, the District Magistrate, by notice in writing to the licensees, may require them to close the shops for such period as he thinks necessary for preservation of public peace. In fact, at the time of issuing the licences, the Notification was issued to all the licensees reserving the right of the District Magistrate to close the shops in addition to certain dry days like Independence Day, Mahatma Gandhi Jayanti, Holi, Moharram, Republic Day. Along with that certain more local holidays are also mentioned. In addition to this, in clause (4), power has been conferred on the Collector that for administrative reasons or in public interest, he can also close down the shops for

six days in any year. It is also provided that during the election of Lok Sabha, Vidhan Sabha or Local Bodies, two days prior to the election and on the day of election, liquor shops can be closed. Collector has also been empowered to close the shops on two days in the industrial areas on the day of distribution of salary etc. Therefore, in Section 24 proper guide-line is provided that in what circumstances, the District Magistrate shall exercise his discretion of ordering closure of the shops. In fact he is also empowered to order for loss, if it occasions to the licensees. So far as the validity of Section 24 is concerned, we do not find that this provision suffers from any invalidity of conferring uncanalised and unfettered power on the District Magistrate so as to render it ultra vires of Art. 14 of the Constitution. Hence there is no merit in the submission of the learned counsel for the petitioners and the same is rejected.

Learned counsel for the petitioners next submitted that the order passed by the District Excise Officer (Annexure F) is illegal and without jurisdiction as the order has been passed at the instance of the State Government and power has been conferred on the District Magistrate, and, therefore, the order is prima facie bad. Learned counsel submitted that the power has been conferred on the District Magistrate and it is the District Magistrate who is only competent to close the shops. Learned counsel submitted that if the Statute lays down a particular thing to be done in a particular manner, then it should be done in that manner and none else. In support of this contention, learned counsel invited our attention to Commissioner of Police Bombay Vs. Gordhandas Bhanji AIR 1952 S.C. 76 and M/s. Lilasons Breweries (Pvt.) Ltd. and another Vs. State of Madhya Pradesh and others, . It is true that in Section 24 of the Act, the Legislature has conferred the power on the District Magistrate for closure of the shops on his satisfaction for maintaining public peace. In the present case, the order speaks that the State Government as well as the Collector had directed closure of the shops on 8, 9, 10, 11 and 13th October 1989. In fact this was a general decision taken at the State level that on account of law and order problem being apprehended because of the two festivals of two different communities falling in close proximity, it was realised that it may create explosive situation giving rise to law and order problem in various districts. This decision at the State level was communicated to the Collectors of various districts and accordingly the Collectors had issued the orders and communicated them through the District Excise Officers. Therefore, the order is of the District Magistrates and not of the State Government alone closing all the shops when they were apprised of the apprehended law and order problem in their districts. Therefore, it is an order issued by the District Magistrate in public interest and the orders cannot be said to be orders imposed by the State Government. If the State Govt. has to issue an order, they could have issued it at its level closing all the shops, but they informed about the decision of the State level meeting that such kind of apprehension was there on account of the two festivals falling in close proximity and accordingly the District Magistrate advised to close the shops on these days. Therefore, it cannot be said that the order is without jurisdiction.

It is true that in *Commissioner of Police Bombay Vs. Gordhandas Bhanji* (supra) their Lordships have laid down that public order should be construed on the face of it and no post facto explanation can justify that order and it should be in a manner required by the Statute only and in no other way. There is no dispute about this legal proposition and in the present case, the same has been followed. The District Magistrate had issued the order and the paramount consideration was public peace. Therefore, the order fully satisfied the statutory requirement and it cannot be said to be bad on that count.

Learned counsel next invited our attention to *M/s Lilasons Breweries Pvt. Ltd. Vs. State of M.P. and others* (supra). In this case the validity of Rule 22 of the M.P. Brewery Rules came up to be challenged and it was held to be ultra vires for the reason that recovery of duty to meet the expenses of officers and additional demand of excise duty raised for that part was found to be ultra vires of the Act, and, therefore, it was struck down. But that is not the case here.

Learned counsel next submitted that even if the closure is not found to be bad, then also the petitioners are entitled to proportionate refund of the licence fee and the losses may be made good on account of the closure of these shops. This argument of the learned counsel is also without any basis for the simple reason that at the time of auction, the petitioners were given notice of the Notification dated 22.1.1986 which is part of licence condition that certain days would be observed as dry days like Independence Day, Republic Day, Mahatma Gandhi Jayanti, Holi, Moharram etc. and they will also have to keep the shops closed on certain local holidays. It also conferred power on the District Magistrate to close the shops on six days at any time for administrative reasons or any reason in public interest and on the election days also and he had also been empowered to close the shops on the days of distribution of salaries in industrial areas. These are part of the licence conditions and on these days, the licensee had to close the shops. Therefore, it is not open for the licensees to claim proportionate rebate in the licence fee to make good their losses as it was part of the condition of licence that festival days and other days will have to be kept as dry days and also on the days ordered by the Collector in public interest or for administrative reasons. Similar question came up before this Court in the case of *Ashok Kumar Sahu and others Vs. State of M.P. and others* M.P. No. 4530/93 Dt. 16.2.1994 = *Ashok Kumar Sahu and Another Vs. State of Madhya Pradesh and Others*, and this contention was rejected. It was observed that -

In these circumstances, we are not able to agree that the power referred to in clause (1) can be exercised only in the manner specified in clause (2) and only at the time of auction, we hold that the power conferred under clause (1) is general or plenary power and clause (2) takes only an aspect of such power. The power of the Collector to order closure of shops is not exhausted with the announcement which he may choose to make as contemplated in clause (2). It must, therefore, follow that the order of the Collector directing closure of the shops for more than three days announced at the time of elections is sanctioned

by clause (1) of sub-rule VIII referred to above.

In this connection, our attention was also invited to Vikray Gyapan Ghosh FL. 1 (sale memo) which was issued at the time of auction of shops for the period 1.4.1992 to 31.3.1993. Sale condition No. 16 and 42 which are relevant for purposes of present petitions read as under:

Thus, at the time of inviting tenders for grant of licenses for this period, the sale memo clearly stipulated for closure of the shops on account of law and order problem and if any loss is occasioned, then the licensee will not be entitled to any compensation for that period. Hence, if on account of certain law and order problem, the situation warranted closure of the shops, then it cannot be said that the licensee would be entitled to be compensated. In 1992-93, shops were closed on account of unfortunate incident which happened on 6.12.1992 due to demolition of Babri Masjid Structure. On account of this law and order problem the Collector had to impose curfew in the entire area of Jabalpur city in the nights of 6.12.1992 to 17.12.1992, from 15.12.1992 to 22.12.1992, curfew was lifted between 6 am and 9 pm. Thus, the curfew had to be imposed because of law and order problem and in view of clear stipulation in the sale-memo aforesaid, the licensee cannot claim any compensation whatsoever.

Our attention was also invited to the case of LIC of India and Another Vs. Consumer Education and Research center and Others, , where Hon"ble Supreme Court held that if the contract is unconscionable, then it can be struck down. It was observed that the terms and conditions of the contract if unreasonable, unfair and irrational, would be open to judicial review. In the present case, as is clearly mentioned above, it was as per terms and conditions of the sale-memo that in the event of law and order problem, the shops could be closed and that would not give rise to any right for grant of compensation. The closure was for law and order problem. The licensees knowing fully well the terms and conditions of the sale-memo entered into contract. Hence it is not open for them to claim any compensation or proportionate reduction in licence fee on account of closure of the shops.

In the case of Balwant Singh Vs. Mool Chand AIR 1971 S.C. 128 a question arose regarding recovery of licence fee for the period for which no supply was made and the petition was dismissed in limine being a contractual matter. In that context, their Lordships of Hon"ble Supreme Court reversed the judgment of this Court and directed the High Court to decided the case on merits. That is not the case in the present case. Here the petitioners have claimed that closure of the shops was illegal and have also claimed compensation and proportionate reduction in licence fee during the period when the shops were closed. As already pointed out above, the shops were closed on account of unprecedented conditions which arose out of demolition of Babri Masjid. As per the sale-memo, in the event of law and order problem, the State Govt. can close down the shops and for that, the licensee is not entitled to claim proportionate reduction in licence fee or compensation whatsoever. Therefore, this case also has no

relevance for the decision of the present case.

In the result, we do not find any merit in all these writ petitions. They are dismissed but without any order as to costs. Security if any be refunded to the petitioners.