(2012) 03 KAR CK 0183

In the Karnataka High Court

Case No : Writ Petition No. 45041 of 2011 (GM-Police)

Smt. Manjula APPELLANT

Vs

The Commissioner of Police and Another RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Karnataka Excise Act, 1965 — Section 51, 54, 55
Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 9
Karnataka Police Act, 1963 — Section 20, 31(1)(w)

Citation : (2013) 2 KarLJ 369

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : G.K. Bhat, for the Appellant; K.M. Nataraj, Additional Advocate General for Smt. M.C. Nagashree, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The petitioner is a CL-9 licence holder under the Karnataka Excise Act, 1965 (''Excise Act'' for short) and the Rules made thereunder. She has been carrying on the business at No. 45/1, Mission Road, Bangalore. Under the said licence, she is authorised to provide liquor along with refreshment or food for the customers. The contention of the petitioner is that her business is under the control of Excise Department created under the provisions of the Excise Act. It is further contended that she has been carrying on the business within the territorial limits of the local police. Respondents are periodically visiting her business premises and are exercising control in their own way though they are not vested with such powers and jurisdiction in view of the bar contained u/s 51 of the Act and the corresponding Rules, namely, Karnataka Excise (Entry, Inspection and Investigation Authorisation) Rules, 1967. It is further contended that under the guise of exercising the power vested in them under the Licensing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989, made by the Commissioner of Police, Bangalore, under the

Karnataka Police Act, 1963, the respondents tried to interfere with the business of the petitioner with regard to the facilities provided like live music, songs sung by men and women along with musical instruments. The respondents have further tried to enforce the powers on the ground of restriction for employment of women u/s 20 of the Act and Rule 9 of the Karnataka Excise Licences (General Conditions) Rules. 1967. The affected persons like the petitioner challenged the said action of the police by filing writ petitions in W.P. No. 3743 of 2008 and other connected matter. This Court by its order dated 24-9-2008 has declared Rule 9 as ultra vires and unenforceable. Sub-section (2) of Section 20 of the Police Act was declared as unconstitutional. Inspite of the said position of law, the respondents continued their illegal interference with the business of the petitioner. Therefore, the petitioner has filed this writ petition for a mandamus directing the respondents not to disturb the petitioner from carrying on the business in the premises in question and for certain other reliefs. I have heard Sri G.K. Bhat, learned Counsel for the petitioner and Sri K.M. Nataraj, learned Additional Advocate General for the respondents.

2. Learned Counsel for the petitioner submits that the business of the petitioner is regulated under the provisions of the Karnataka Excise Act and the Rules made thereunder. Therefore, the Police have no jurisdiction to enter the premises of the petitioner. He has drawn my attention to Section 51 of the Excise Act and submits that the Excise Commissioner or a Deputy Commissioner or any Excise Officer not below such rank as may be prescribed under the Act or any Police Officer duly empowered in that behalf may enter and inspect the premises of the petitioner for the purposes mentioned therein. The Police Officers are not duly empowered to enter the inspect the premises of the petitioner u/s 51 of the Act. In this connection, he has relied on the decisions of this Court in The State of Karnataka Vs. Guruva Poojari, L. Srinivas Vs. The Authorised Officer and Superintendent of Excise, Bangalore Rural District, Bangalore, and R. Shankaregouda Vs. The Commissioner of Police, Bangalore, It is his further submission that when the petitioner is carrying on the business peacefully within the framework of law, the respondents should not be allowed to obstruct her from doing the business. Having regard to the Karnataka Excise (Entry, Inspection and Investigation Authorisation) Rules, 1967, the Officers authorised therein aloe can exercise the powers under Sections 51, 54 and 55 of the Excise Act.

3. On the other hand, Sri K.M. Nataraj, learned Additional Advocate General submits that bar and restaurant comes within the definition of ''Place of Public Entertainment'' as defined in Section 2(15) of the Karnataka Police Act, 1963 (for short, ''the Police Act''). Section 65 of the Police Act provides for the duties of a Police Officer and Section 66 of the said Act authorises the Police Officer to enter for any of the purpose referred to Section 65 without a warrant and inspect any place of public resort which he has reason to believe is used as a shop for the sale of liquor or intoxicating drugs or a place of resort of loose and disorderly characters. Section 31 of the Police Act authorises the Commissioner and the

District Magistrate in the areas under their respective charges or any part thereof to make, alter or rescind orders not inconsistent with the said Act. In exercise of the powers conferred in Section 31(1)(w) of the Police Act, a notification as per Annexure-R2, dated 9-12-2005 has been made under sub-section (6) of Section 31 of the said Act. Clause (5) of the said notification authorises the licensing authority or any officer not below the rank of Inspector of Police, as may be authorised by the licensing authority may for the purpose of granting licence, if necessary hold an inspection of the site or premises. The licensing authority or the officer so authorised may, if need be, seek assistance of any other authority or authorities during such inspection. Therefore, once the place in question is a public place, the Police have access as a matter of right to enter the premises.

4. It is further argued that the definition of the expression ''place'' as provided in Section 2(21) of the Excise Act includes a house, building, shop, booth, tent, vessel, raft and vehicle. Having regard to sub-section (2) of Section 52 of the Excise Act, when any person is accused or is reasonably suspected of committing an offence, other than an offence u/s 32, 33, 34, 36 or 37 and on demand of any such officer as aforesaid, refuses to give his name and residence or gives a name and residence which such officer has reason to believe is false, he may be arrested by such Officer, in order that his name and residence may be ascertained. Section 54 of the Excise Act authorises the Police Officer not below the rank of an officer-in-charge of a police station has reason to believe that an offence u/s 32, 33, 34, 36 or 37 has been, is being, or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity to escape or of concealing evidence of the offence, he may, after recording the grounds in that behalf at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under the Act and detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid. He concludes by submitting that having regard to the different provisions of the Excise Act and the Police Act, petitioner is not right in contending that the Police have no power or authority to enter and inspect the business premises of the petitioner.

5. I have carefully considered the contentions of the learned Counsel for the parties.

6. The sum and substance of the contention of the petitioner is that the Excise Commissioner or a Deputy Commissioner or any Excise Officer not below such rank as may be prescribed alone can enter and inspect at any time within the hours during which sale is permitted and at any other time during, which the same may be open, any place in which any intoxicant is kept for sale by any person holding a licence under the Act. However, unless a Police Officer is duly empowered in that behalf cannot exercise the said power. In the instant case, the respondents are not empowered to exercise the power u/s 51 of the Act. Therefore, they have no authority to interfere with the business carried on by the

petitioner in running the bar and restaurant after obtaining CL-9 licence under the Excise Act. In order to answer the said contentions, we have to examine the relevant provisions of the Excise Act and the Police Act.

7. Karnataka Excise Act, 1965 was enacted to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka, and for certain other matters connected therewith. Chapter VIII of the Excise Act provides for detection, investigation and trial of offences. Section 51 of the Act reads as under:

Section 51. Power to enter and inspect places of manufacture and sale.--The Excise Commissioner or a Deputy Commissioner or any Excise Officer not below such rank as may be prescribed or any Police Officer duly empowered in that behalf may.--

(a) enter and inspect, at any time, by day or by night, any place in which any licensed manufacturer manufactures or stores any intoxicant; and

(b) enter and inspect at any time within the hours during which sale is permitted and at any other time during which the same may be open, any place in which any intoxicant is kept for sale by any person holding a licence under this Act; and

(c) examine the accounts and registers, and examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, or intoxicant found in such place.

8. It is evident from the above provision that the Excise Commissioner or a Deputy Commissioner or any Excise Officer not below such rank are authorised to perform the duties mentioned in clauses (a), (b) and (c) of Section 51. However, a Police Officer, who is duly empowered, is alone authorised to enter and inspect at any time within the hours during which sale is permitted and at any other time during which the same may be open, any place in which any intoxicant is kept for sale by any person holding a licence under the Act.

9. Section 52 of the Act authorises any officer of the State Government employed in the Excise Department or any officer of the Police or Revenue Department empowered by the State Government in the behalf subject to such restrictions as may be prescribed, may, arrest without warrant any person for an offence punishable u/s 32, 33, 34, 36 or 37 of the Act, seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under the Act or any other law for the time being in force, relating to excise revenue and detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article. Section 54 of the Act authorises the Excise Commissioner or a Deputy Commissioner or any Police Officer not below the rank of an Officer incharge of the Police Station or any Excise Officer not below such rank as may be prescribed, has reason to believe that an offence u/s 32, 33, 34,

36 or 37 has been or is being or is likely to be committed and that a search warrant cannot be obtained without affording the offender an opportunity to escape or of concealing evidence of the offence, he may, after recording the grounds in that behalf at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under the Act and detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid. Sub-section (2) of Section 55 states that for the purposes of Section 156 of the Criminal Procedure Code, 1973, the area in regard to which an Inspector of Excise or a Sub-Inspector of Excise or an Excise Officer is empowered under sub-section (1) of Section 55, shall be deemed to be a police station and such officer shall be deemed to be the officer-in-charge of such station.

10. Thus, both Section 51 and Section 54 of the Excise Act contain the expression ''any place''. The expression ''place'' has been defined in subsection (21) of Section 2 of the Act as under:

"Place" includes a house, building, shop, booth, tent, vessel, raft and vehicle.

11. For the purpose of carrying out the functions u/s 51 of the Excise Act, the Police Officer should be duly empowered. However, for the purpose of search without warrant of any place, any Police Officer not below the rank of an officer-in-charge of a Police Station has reason to believe that an offence u/s 32, 33, 34, 36 or 37 has been, is being or is likely to be committed and that a search warrant cannot be obtaining without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief to any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under the Act.

12. Therefore, it is also relevant to note the scope of Sections 32, 33, 34, 36 and 37 of the Act, which are found in Chapter VII of the Act. Section 32 of the Act provides for imposition of penalty contravention of the provisions of the Act or any rule, notification or order made, issued or given thereunder or of any licence or permit granted under the Act. Sections 33, 34, 36 and 37 provide for penalty for rendering denatured spirit fit for human consumption for illegal possession of any intoxicant, for penalty for misconduct of licensee and Section 37 authorises the Competent Authority to levy penalty for adulterations, etc., by licensed vendor or manufacturer. A combined reading of Section 54 and Sections 32, 33, 34, 36 and 37 of the Excise Act would clearly show that any Police Officer not below the rank of an Officer-in-charge of the Police Station is authorised to enter and search any place at any time by day or by night and seize anything found therein which he has reason to believe to be liable to confiscation under the Act provided he is of the opinion that he has reason to believe that an offence u/s 32, 33, 34, 36 or 37 has been, is being or is likely to be committed and a search warrant cannot be obtained without affording the offender an opportunity to

escape or of concealing evidence of the offence, he may, after recording the grounds in the behalf. He is also authorised to detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty such offence as aforesaid. In order to ascertain as to whether a licensee has committed offences under Sections 32, 33, 34, 36 and 37 and if he is of the opinion that the offender may escape or conceal the evidence of the offence, he has the power to enter into any place as defined under the Act. The empowerment u/s 51 is necessary only for the purpose mentioned in clauses (a) to (c) and for the purpose of Section 54, the Police Officer has authority to enter any place as defined under the Act. A conjoint reading of these provisions would clearly indicate that the Police Officer is authorised to enter the premises of the petitioner holding CL-9 licence and carrying on the business of bar and restaurant.

13. It is also relevant to notice some of the provisions of the Karnataka Police Act, 1963. The Police Act has been enacted to provide uniform law for regulation of police force in the State of Karnataka, maintenance of public order, for prevention of allied matters and for certain other purposes. Section 65 enumerates different duties of the Police Officer. Section 66 authorises the Police Officer to enter the places of public resort. It states that every Police Officer may subject to the rules and orders made by the Government or by a person lawfully authorised, enter for any of the purposes referred to in Section 65 without a warrant and inspect any place of public resort which he has reason to believe is used as a shop for the sale of liquor or intoxicating drugs or a place of resort of loose and disorderly characters. Section 31(1)(w) authorises the Commissioner and the District Magistrate in areas under their respective charges or any part thereof to make, alter or rescind orders not inconsistent with the Act for licensing or controlling places of public amusement or entertainment, prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity and regulating the means of entrance and exit at places of public amusement or entertainment or assembly and providing for the maintenance of public safety and the prevention of disturbance. Section 2(15) defines ''Place of Public Entertainment'', which is as under:

Section 2. (15) "Place of Public Entertainment" means any place to which the public are admitted and where any kind of food or drink is supplied for consumption in the premises by any person owning or having an interest in or managing such place and includes a refreshment room, eating house, coffee house, liquor house, boarding house, lodging house, hotel, tavern, or a shop where wine, beer, spirit, arrack, toddy, ganja or other kind of liquor or intoxicant or any kind of food or drink is supplied to the public for consumption in or near such shop.

14. It is clear that ''place of public entertainment'', means any place to which the public are admitted and where any kind of food or drink is supplied for consumption in the premises by any person owning or having an interest in or

managing such place and includes a refreshment room, eating house, coffee house, liquor house, boarding house, lodging house, hotel, tavern, or a shop where wine, beer, spirit, arrack, toddy, ganja or other kind of liquor or intoxicant or any kind of food or drink is supplied to the public for consumption in or near such shop. A bar and restaurant is a place of public entertainment where liquor along with refreshment or food for the customers is provided. The Competent Authority has issued notifications as per Annexures-R2 and R3 in exercise of the powers conferred u/s 31(1)(w) of the Police Act regulating the places of public entertainment. Since the bar comes within the definition of ''place of public entertainment'', the police have the power to enter the bar and restaurant run by the petitioner to discharge its duties u/s 66 of the Police Act.

15. To sum up, the Police Officer has the power to search without warrant u/s 54 of the Act any place as defined under the Excise Act if he has reason to believe that an offence u/s 32, 33, 34, 36 or 37 has been or is being or is likely to be committed and that a search warrant cannot be obtained without affording the offender an opportunity to escape or of concealing evidence of the offence, to enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under the Act and to detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid. He has also authority to enter a bar and restaurant, which is nothing but a ''place of public entertainment'' for the purposes of Section 65 of the Act.

16. In Guruva Poojari''s case, this Court held that the combined effect of Sections 55, 56, 57 and Section 60(b) of the Excise Act is that the investigation done by an Excise Officer empowered under the provisions of the Act in regard to offences publishable under Sections 32 and 33 is recognised to be an investigation done by a Police Officer-in-charge of a police station and the report filed by such Excise Officer after investigation is deemed to be a report by a Police Officer for the purpose of Section 190 of the Criminal Procedure Code, 1898 (old) and the Magistrate shall take cognizance of the offence as per the provisions of Section 190(1)(b) of the Cr. P.C. (old). Therefore, the report by the Chemical Examiner is admissible in evidence as Section 510 of Cr. P.C. (Old) applies to the case as all the ingredients in it are satisfied. This decision has no application to the facts of the present case. In the present case, the question is whether the police have power or authority to enter the premises of the petitioner where she has been carrying on the business having regard to the different provisions of the Excise Act and the Police Act.

In L. Srinivas case, the Court has held that the seizure of the vehicle is invalid as no reasons are mentioned by the Prosecutor to seize the vehicle without prior permission of the Magistrate. This decision again has no application to the facts of this case.

In R. Shankaregouda''s case, this Court has held that the employment of women under Rule 9 of the Karnataka Excise Licences (General Conditions) Rules, 1967, is forbidden only insofar as the sale and service of the liquor is concerned. This decision has again nothing to do with the instant case.

There is no merit in this writ petition. It is accordingly dismissed. No costs.