
(2010) 04 RAJ CK 0015
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Mahendra Pratap, Vijay Kumar and Another, Balraj Gera and
Another and Smt. Neelam
 Tusli Ram and Another Vs
State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 356

Citation : (2010) 04 RAJ CK 0015

Hon'ble Judges : Jagdish Bhalla, C.J.; Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—These intra-court appeals, having been preferred against the common order dated 30.03.2010 as passed by the learned Single Judge of this Court in the respective writ petitions and involving similar facts and identical issues, have been considered together; and are taken up for disposal by this common order.

2. The grievance of the appellants in these appeals being against the interim directions as issued by the learned Single Judge in the order impugned and else, the writ petitions being pending, suffice it shall be to take note of the background aspects and the facts so far relevant for the present purpose.

3. The writ petitions wherefrom these intra-court appeals arise, have been preferred by the contesting respondents (hereinafter referred to as the writ petitioners) who had been the holders of the licences issued by the Excise Department of the Government of Rajasthan under the Rajasthan Excise Act, 1950 (the Act) and the Rajasthan Excise Rules, 1956 (the Rules) for the year 2009-2010 for sale of Indian Made Foreign Liquor (IMFL)/Beer at the respective places and on the respective shops as specified in their licences. The writ petitioners have stated their grievance essentially against: (i) denial of renewal of their licences for the year 2010-2011; (ii) the proposition of granting

composite licence to the holders of country liquor licences; and (iii) the terms operating against them as contained in the advertisement dated 10.02.2010 inviting applications for renewal of the licences for the year 2010-2011. The writ petitioners in CWP Nos. 1904/2010, 1905/2010 and 2042/2010 (related with SAW Nos. 181/2010, 182/2010 and 183/2010 respectively) have sought the reliefs in the following terms (being reproduced from CWP No. 1905/2010):

I. by an appropriate writ, order or direction, the advertisement dated 10.2.2010 qua the petitioners may kindly be quashed and set aside and the respondents may kindly be directed to renew the license of the petitioners and petitioners may also be permitted to submit their renewal fees and other applicable fees and the respondents may kindly be permitted to run the shops as per the license.

II. by an appropriate writ, order or direction, the respondents may kindly be directed to invite fresh applications for allotment of the shops and by way of draw of lots and/or by way of auction, the shops may be allotted to the licensees.

III. by an appropriate writ, order or direction, in the alternative, it is prayed that the petitioners may be given the composite license for IMFL/beer and country liquor for which they are ready and willing to deposit the requisite fees etc.

IV. by an appropriate writ, order or direction, the alleged policy of the respondents may kindly be quashed and set aside to the extent treating the IMFL/Beer to the composite.

4. The writ petitioners in CWP No. 2038/2010 (related with SAW No. 180/2010) have sought the similar nature reliefs but in slightly different terms as follows:

I. the Clause (4) of the advertisement dated 10.02.2010 may kindly be declared illegal and the same may kindly be quashed and set aside and the respondents may kindly be directed to renew the license of the petitioner and petitioner may also be permitted to submit his renewal fees and other applicable fees and the petitioner may kindly be permitted to run the shop as per the license.

II. In the alternative, it is prayed that the petitioner may be given the composite license for IMFL/Beer and country liquor for which he is ready and willing to deposit the requisite fees etc.

5. The reliefs aforesaid have been claimed by the writ petitioners essentially with the averments that though the licences as issued to them were valid until 31.03.2010 but were subject to renewal; but when they approached the authorities for renewal, the same was declined on the pretext that the area of their shop/s having now fallen within the Gram Panchayat area, therefore, as per the alleged policy decision, a composite licence would be given to the persons having the licence to sell country liquor. The writ petitioners have averred that on one hand the alleged policy was not supplied to them and on the other hand, the department proceeded to issue the questioned advertisement dated 10.02.2010 wherein, though renewal fees had been prescribed for IMFL/Beer and so also for Country Liquor but in regard to the shops related with the writ petitioners, which

had fallen in the Gram Panchayat areas, such renewal was not to be granted in terms of the following stipulation:

4- ,sls "kgjh {ks=ksa ?uxj fuxe @ uxj ifj"kn @ uxj ikfydk? tks xzke iapk;r {ks= esa ifjofrZr gq, gS eSa vofLFkr Hkk-u-fo-e-@ch;j dh fjVsy vkQ nqdkuksa dk uohuhdj.k ugh fd;k tk,xkA

6. While questioning the aforesaid actions of the department where they were being denied renewal of licences and at the same time the licencees of country liquor were being issued composite licences for country liquor as well as IMFL/Beer, the writ petitioners have sought the reliefs abovementioned; and also moved the stay applications seeking interim reliefs in the nature that during the pendency of the writ petitions, the respondents be directed to renew their licences, to allow them to operate their shops, and not to allot composite shops in terms of the questioned advertisement dated 10.02.2010.

7. The appellants related with the Excise Department of the Government of Rajasthan have submitted their reply stating, inter alia, that the writ petitioners have no legal or fundamental right to trade in liquor and hence, are not entitled to maintain the writ petitions. On the dispute raised by the writ petitioners, the appellants submit that the areas of operation of the writ petitioners having now fallen within Gram Panchayat, the Government had decided not to renew such licences for IMFL/Beer as per its policy decision that in the Gram Panchayat, no independent shop for IMFL/Beer is to be allotted but there shall be a composite shop; all the licencees of the country liquor shall be permitted to operate the shop as composite; and the licences of composite shop shall be granted in such areas. While maintaining that they were entitled to formulate the requisite policy that was not as such subject to judicial review, the appellants have contended that the writ petitioners, who were having the licences for the financial year 2009-2010, have no subsisting right after the expiry of the said financial year; and are no more eligible for the ensuing financial year 2010-2011.

8. In the rejoinder to the reply, the writ petitioners have pleaded, inter alia, that there was no policy framed for the alleged composite shops and without application of mind, the advertisement had been issued for the alleged composite shops that would even result in the loss to the public exchequer. The appellants have submitted a sur-rejoinder and have placed on record as Annex.R-1/3 the policy of the State Government dated 10.02.2010 and as Annex.R-1/4 the order dated 24.02.2010 to assert that the shops in question have been shifted for the financial year 2010-2011 to the municipal area of Bhiwadi, District Alwar.

9. On 30.03.2010, while considering the aforesaid four similar nature writ petitions, the learned Single Judge of this Court noticed the fact situation of the cases and the submissions as made on behalf of the petitioners that composite licence was being given to the persons who were having the licence to sell country liquor; that the impugned advertisement had been issued even prior to the passing of appropriate orders by the Government or issuance of requisite

notification; and that refusal to renew the petitioners licences and denial of composite licences to them for country liquor as well as IMFL was wholly arbitrary and discriminatory particularly when the country liquor licencees of the year 2009-2010 were being given composite licences for country liquor as well as IMFL for the year 2010-2011. The learned Single also took note of the submission on behalf of the present appellants that grant of licence was not a matter of right of the writ petitioners; and the scope of judicial review in such matters was a limited one.

10. After taking note of the rival submissions, the learned Single Judge found a prima facie case worth consideration essentially for the reason that on hand the licencees of IMFL were not being given the licences in the Gram Panchayat areas and on the other, the country liquor licencees were being given the licence of IMFL too by charging the composite fees. Accordingly, the learned Single Judge proceeded to admit the writ petitions; and ordered for priority hearing after service on the unrepresented respondents. However, the learned Single Judge further proceeded to issue interim directions to the effect that in the meanwhile, the writ petitioners may opt for composite licence by depositing the requisite fees as would be applicable for the licensee of country liquor in Gram Panchayat area; and in case of the writ petitioners so opting, the respondents shall consider their case in the same manner as that of country liquor licensee of Gram Panchayat area. These interim directions are the bone of contention in these intra-court appeals. Apposite it shall be to take note of the operative operation of the impugned order dated 30.03.2010 that reads as under:

Having regard to the submissions made by the counsels for the rival parties, I am of the considered opinion that the matter does require consideration by this Court, keeping in view the undisputed position that on the one hand the licensee of IMFL are not to be given licence (s) in Gram Panchayat area whereas the country made liquor licensee are being given license also of IMFL by charging composite fees.

Admit. Issue notice to the remaining respondent. Rule is made returnable within two weeks. Notices be given "dasti" to learned Counsel for the petitioners.

Taking into consideration the facts and circumstances, and the nature of the controversy involved herein, I deem it proper to order that after service on the remaining respondent this matter be taken up for final hearing on priority.

Meanwhile, the petitioners may opt for composite license of IMFL and country liquor by depositing the requisite fees as would be applicable and prescribed for the licensee of country liquor in Gram Panchayat area. In case the petitioners so opt, then respondents shall consider their case in the same manner as that of country made liquor licensee of Gram Panchayat area.

11. The aforesaid interim directions having been issued in four writ petitions, the State of Rajasthan and the officers related with the Excise Department have preferred four of these appeals whereas the other appeal (SAW No. 188/2010)

has been preferred by the private respondents in CWP No. 1905/2010 (the country liquor licence holders for Beriyanwali).

12. The learned Counsel Mr. M.R. Singhvi appearing for the State has vehemently argued that the writ petitioners who were given the licences for the year 2009-2010 valid up to 31.03.2010, have no right to ask for renewal and have no subsisting legal right to seek issuance of any writ or direction; that as per the existing policy for the financial year 2010-2011, for the areas in question, the country liquor shop licensee has been given an option to have composite shop and it has also been decided that licensee of IMFL/Beer for the year 2009-2010 shall not be allowed to have renewal of shop and hence, the writ petitioners were not entitled for any relief, much less an interim relief; that under the existing policy for the financial year 2010-2011, the writ petitioners being not even eligible, the learned Single Judge has erred in making them eligible by way of the impugned interim directions; that the relief granted by the learned Single Judge is unsustainable and in the face of the existing policy, no such relief could be granted whereby the writ petitioners, the licence holders for the previous financial year for IMFL/Beer be granted composite licence; that in the matter of excise policy and policy decisions, the scope of interference by the Courts is narrow and limited; and that the ratio of the cited decisions has not been considered by the learned Single Judge. The learned Counsel further submitted that no interim relief having the effect of allowing the writ petition could be granted; and in the present case, by way of the interim order, the learned Single Judge has allowed the relief even beyond the writ petition. The learned Counsel submitted that the impugned order deserves to be set aside and the stay applications deserve to be dismissed; and has referred to and relied upon several decisions including those in *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.* (2008) 1 SCC 683, *Kuldeep Singh Vs. Govt. of NCT of Delhi, State of U.P. and Others Vs. Desh Raj*, and *State of U.P. and Ors. v. Ram Sukhi Devi* 2005 SCC (L&S) 560. The learned Counsel Mr. Sandeep Mehta appearing for the other appellants, while assailing the impugned order on the same lines, has further submitted that the learned Single Judge has erred in passing the interim order having serious impact on the rights of the appellants represented by him, without even notice to them and hence, the impugned order deserves to be set aside.

13. Per contra, the learned Counsel Mr. D. S. Rajvi and Mr. Sanjeet Purohit appearing for the contesting respondents (the writ petitioners) have strongly argued in support of the order impugned and submitted that the action on the part of authorities in these matters being arbitrary and irrational on the face of the record, and for such irrationality only the writ petitioners being to suffer, they have rightly invoked the writ jurisdiction; and the learned Single Judge has rightly issued the interim order in balance of equities. The learned Counsel submitted that as per the provisions contained in Rule 72A of the Rules, *ibid*, the writ petitioners have the right to seek renewal of licences and such a right cannot be denied in an arbitrary and unreasonable manner; that when the appellants are indeed allowing renewal to the other licence holders, there is no reason that the

writ petitioners are chosen for a different treatment; that when the holder of country liquor licences are being given the option to have composite licence for country liquor as well as IMFL, there is no reason that the same option is being denied to the persons like the petitioners who are the holders of IMFL licences. The learned Counsel submitted that irrational and unreasonable approach of the State Government directly results in infringement of Fundamental Rights of the petitioners as enshrined in Article 14 of the Constitution of India and hence, the learned Single Judge has rightly interfered in these matters. The learned Counsel yet further contended that the appellants acted in a wholly arbitrary manner in issuing the questioned advertisement on 10.02.2010 without there being any specific decision taken in relation to the shops like the one held by the writ petitioners; and in fact, the so called office order dated 24.02.2010 was issued only after filing of the writ petitions wherein the appellants related with the Excise Department had appeared in caveat. According to the learned Counsel, even the so called policy has not come into operation in accordance with law particularly for want of compliance of the Act and Rule *ibid*; and in the given fact situation, the learned Single has rightly issued the interim directions so as to protect the rights and interest of the petitioners. The learned Counsel have referred to and relied upon the decisions in *Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others*, *S.R. Bommai and others Vs. Union of India and others etc. etc.*, *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, *Grag Martin Distillery Private Limited Vs. State of Andhra Pradesh and Others*, and the order dated 31.03.2008 as passed by the learned Single Judge of this Court in a batch of petitions led by S.B. Civil Writ Petition No. 1960/2008: *Suresh Swalka and Anr. v. The State of Rajasthan and Ors.* The learned Counsel further submitted that the writ petitioners have indeed deposited substantial amount pursuant to the directions issued by the learned Single Judge and in the balance of equities, the impugned deserves not to be interfered with, more particularly when the writ petitions have been ordered to be heard in priority.

14. After having given our anxious consideration to the rival submissions and after have examined the material placed on record with reference to the law applicable we are, with respect, unable to concur with the learned Single Judge so far the question of grant of interim relief is concerned; and we are of the considered view that the interim order as passed in these matters cannot sustain itself.

15. As noticed, the writ petitions filed by the contesting respondents remain pending with the learned Single Judge for final hearing; and the only question in these appeals is about the legality and validity of the interim directions issued by the learned Single Judge. In this view of the matter and lest there be any likelihood of prejudice to the case of either of the parties, we would not be expressing any final opinion on the merits of the case in this order and hence, we do not consider it necessary and expedient to deal with all the decision cited by the learned Counsel for the parties particularly those related with the merits of the case or to dilate on all the aspects related with the contentious issues as

argued before us. However, a few aspects related with prima facie case, which, per force, arise for consideration are being dealt with hereafter.

16. It appears that the learned Single Judge proceeded to assume a strong prima facie case in favour of the writ petitioners only for the reason that the matter appeared to be of unwarranted and unjustified discrimination between the licence holders where on one hand the country liquor licence holders are being given the option to have composite licence, and thereby the privilege to sell country liquor as well as IMFL/Beer in the areas in question whereas the other set of licencees like the petitioners, who were IMFL/Beer licence holders, are being denied the right of renewal and such right of seeking composite licence. It may prima facie appear to be a case of discrimination when seen in abstract; but not so when viewed in the light of the law applicable and so also the attending facts and surrounding circumstances.

17. The very basis of the writ petitions as filed by the contesting respondents has been the averments that while they were holding the licences for IMFL/Beer valid until 31.03.2010, such licences were subject to renewal. Such averments do not appear correct, whether in law or on facts. The licences as issued to the writ petitioners were valid until 31.03.2010 and we are unable to find any such term in the licences wherefor the petitioners could be treated having a legal right of renewal. Rule 72A *ibid* as referred on behalf of the writ petitioners essentially deals with the procedure for moving the applications for grant or for renewal of licence; and the said provisions cannot be treated as if conferring a legal right of renewal of licence. On the contrary, Section 37 of the Act in specific terms denies the claim for renewal while providing thus:

37. No renewal of licence or compensation on determination or renewal of licence claimable—No person to whom a licence has been granted under this Act shall have any claim to the renewal of such licence, or to any claim for compensation on the determination or non-renewal thereof.

18. In the face of the provision aforesaid, we are unable to find if the writ petitions relate to infringement of an existing legal of the writ petitioners. With the writ petitioners not having a direct legal right to claim renewal of their licence, we have serious reservations on the submissions that because of renewal of licences of other persons, the petitioners stand discriminated. Moreover, even when the Department proceeded to issue advertisement inviting applications for renewal, so far the petitioners are concerned, they fell in a class different for the fundamental reason that the shops operated by them fell in Gram Panchayat area, where the Excise Department, as a matter of policy, was not issuing licences only for IMFL but intended to issue composite licences for country liquor and IMFL. In our view, it was essentially within the domain of the State Government to decide on the mode and method to be applied for the ensuing financial year in relation to the shops operated by the petitioners because of the event that they have now fallen within Gram Panchayat area; and the decision as taken by the Government to provide composite licences for such areas to the

holders of country liquor licences cannot outrightly be dubbed as unreasonable, discriminatory or unjustified.

19. We would hasten to reiterate that the matters herein are being considered only in relation to the legality, validity, and propriety of the impugned interim order; and we are not pronouncing finally on the merits of the case either way. However, for the reasons foregoing, we are unable to find a case of infringement of such legal right that required passing of interim order in favour of the writ petitioners.

20. Apart from the aforesaid and even if it be assumed for the sake for arguments that the writ petitioners were able to show some semblance of prima facie case worth consideration in the writ petitions, we are clearly of opinion that no case whatsoever was made out for issuance of such interim mandamus during the pendency of the writ petitions as has been issued by the learned Single Judge in the order impugned.

21. In the case of *Desh Raj* (supra), the Honble Supreme Court disapproved granting of a relief in the impugned order that could only be granted at the final hearing while saying,

6 ...the learned Single Judge for all intent and purport had allowed the writ petition on the very first day, which in our opinion, was not justified. It is now well settled that a relief which can be granted only at the final hearing of the matter, should not ordinarily be granted by way of an interim order....

22. In the case of *Ram Sukhi Devi* (supra), the Honble Supreme Court said,

8 ...This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations....

23. The learned Counsel for the contesting respondents have referred to the decision in *S.R.Bomma's* case (supra) wherein the Honble Supreme Court was essentially concerned with the nature and scope of Article 356 of the Constitution of India, the powers of the President in case of failure of constitutional machinery in a State, and the extent of judicial review permissible of the proclamation under Article 356; and, in the context, it was observed in paragraph 115 of the report as relied upon by the learned Counsel for the writ petitioners that grant of interim relief in such cases would depend upon various circumstances including the expeditiousness with which the Court is moved, prima facie case with regard to invalidity of the proclamation, steps which are contemplated pursuant to the proclamation etc. The Honble Apex Court observed that if other conditions were

satisfied, the purpose of judicial review shall be defeated if interim relief was denied; and the least relief that could be granted in such circumstances was of injunction restraining holding of fresh elections while taking precaution to hear the matter expeditiously. However, the Honble Court further pointed out that the interim relief that could be granted on such challenge is to prevent frustration of constitutional remedy and not to prevent the constitutional authority from exercising its powers and discharging its functions. In the case of Zenit Mataplast (supra), the Honble Supreme Court has extensively dealt with the parameters of grant of interim relief and in paragraphs 29 and 30 of the report, as relied upon by the learned Counsel for the writ petitioners, the Honble Court said,-

29. In a case like this, when the applicant approaches the court complaining against the statutory authority alleging arbitrariness, bias or favouritism, the court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations. Such a course is also required to be followed while deciding the application for interim relief.

30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the finding hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

24. In Zenit Mataplast, the Honble Apex Court further referred to various decisions on the issue of grant of interim relief and summed up in paragraph 37 thus:

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss.

25. Viewed and examined in the light of the principles aforesaid, we are unable to affirm the interim directions as issued by the learned Single Judge for more than one reason. In the first place, it is apparent that the directions as issued by the learned Single Judge, instead of being of preventive measure, lead to bringing about an entirely new state of affairs whereby the writ petitioners have been given the right to apply for composite licence of IMFL and country liquor and the respondents have been directed to consider their case in the same manner as that of country liquor licensee of the Gram Panchayat area. The writ petitioners, who had been the licensees in the previous year for IMFL/Beer only,

have not been given any such right whether in the statute or in the policy formulated by the appellants that they could also seek composite licence for country liquor as well as IMFL/Beer in the ensuing year. It remains doubtful if the writ petitioners could be granted such a relief even while deciding finally the writ petitions but in any case, such a relief, in our opinion, could not have been granted by way of interim measure so as to enjoin upon the appellants to grant the writ petitioners composite licences.

26. Moreover, we are unable to find, with respect, any reason wherefor such a new state of affairs as contemplated by the interim directions was required to be brought about. Such a new state of affairs, in our opinion, cannot be said to be necessary for protection of any of the legal rights of the writ petitioners or for preservation of the subject of dispute.

27. Yet further, we are of the view that interim mandamus, being an extreme measure, could only be issued in the cases of extreme hardship and that too after considering all the pros and cons of the case and all the relevant factors including balance of convenience, public interest and irreparable injury. With respect, we feel that such relevant considerations escaped attention and application while passing the impugned order. We are clearly of the view that even if the writ petitioners could be said to have made out an arguable case in the writ petition, the other essential ingredients for an interim relief i.e., balance of convenience and irreparable injury do not exist in their favour and the stay applications were required to be rejected. In the matter of the present nature, it cannot be said that the writ petitioners would suffer irreparable injury if the interim relief was not granted; and in any case, balance of convenience is not in their favour at all. While comparing the inconvenience likely to be suffered by the parties with grant or refusal of interim relief, it is at once apparent that the inconvenience that could be suggested by the writ petitioners for refusal of interim relief would not even be comparable with the inconvenience that the State Government and the public interest would suffer with grant of interim relief and that too of mandatory directions as issued in the present cases.

28. In view of what has been discussed above, we are of the considered opinion that the impugned order, insofar it relates to the grant of interim relief, deserves to be set aside. However, and even while allowing these appeals, we make it clear that the observations herein are relevant only for the purpose of the subject matter of these appeals i.e., the interim directions as issued by the learned Single Judge and else, the writ petitions shall be considered and decided on their merits; and expeditiously, as already observed.

29. In the result, the appeals succeed and are allowed to the extent indicated and with the observation above; the impugned order dated 30.03.2010 insofar it relates to the grant of interim relief, is set aside; and the stay applications as moved by the writ petitioners stand rejected. In the circumstances, the parties are left to bear their own costs of these appeals.