(2016) 12 SHI CK 0117

In the High Court Of Himachal Pradesh

Case No : CWP No. 2831 of 2016

Sujan Singh APPELLANT

Vs

State of H.P. RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 HimLR 197

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Sanjeev Bhushan, Senior Advocate, with Ms. Abhilasha Kaundal, Advocate, for the Petitioner; Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals and Mr. Kush Sharma, Deputy Advocate General, for th

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—It is for the second time that the petitioner has approached the Court and this time for the grant of the following relief:-

"(i) That writ in the nature of certiorari may very kindly be issued for quashing and setting aside impugned order dated 29.10.2016 Annexure P-8 by further directing the respondents to grant licence in the form of L4 & L5 in respect of M/s Dhruv Tara Restaurant immediately without any further delay.

2. It is not in dispute that the petitioner had applied for and thereafter fulfilled all the eligibility conditions for the grant of licence in form L4 & L5 (Beer Bar) in the name and style of M/s Dhruv Tara Restaurant, Jeori, Tehsil Rampur, District Shimla, H.P. It is further not in dispute that the application complete in all respects including NOC from the MLA-cum-Chief Parliamentary Secretary (Health) had been forwarded to respondent No. 2, and when no licence was issued in favour of the petitioner he initially approached this Court by filing CWP No. 1959 of 2016, wherein he prayed for the following relief:-

"i) That direction may be issued to the respondents to grant licence in the form L4 and L5 in respect of M/s Dhruv Tara Restaurant, Jeori immediately without any further delay, in the interest of justice.

3. It was the specific case of the petitioner that it was on account of the competitor who was already running a Beer Bar at Jeori, that some frivolous objections were being submitted by the Mahila Mandal, women and youth of the area and also on account of the recommendations made by the MLA-cum-Chief Parliamentary Secretary not to grant licence in favour of the petitioner that he was not being granted the licence.

4. In reply filed to the petition, respondents did not deny that the petitioner fulfilled all the requisite conditions, however, it was stated that L4 and L5 licence was not being issued in his favour in view of the objections of the Mahila Mandal, Kochari, Tehsil Rampur, who had objected to grant of licence in favour of the petitioner vide representation dated 25.03.2016. Those objections had been forwarded by the MLA -cum- Chief Parliamentary Secretary along with his recommendations coupled with the recommendations of the Additional Excise and Taxation Commissioner (SZ), Shimla, that the licence should not be granted in favour of the petitioner and therefore the license as sought for was not being granted.

5. This Court after taking into consideration all the facts and circumstances including the fact that there was already a Beer Bar functioning in the vicinity of the restaurant of the petitioner, which fact had otherwise not been denied by the respondents, directed the respondents to take a decision in the matter and the relevant portion of the order reads thus:-

"5. In its reply filed to the petition by the respondent-State, the factum of the recommendations having been issued in favour of the petitioner on account of his fulfilling the requisite condition is not disputed. However, as per respondents L-4 and L-5 licenses in respect of M/s Dhruv Tara Restaurant, Jeori were not issued in view of the objections of Mahila Mandal (Kochri), Jeori, Tehsil Rampur, District Shimla who objected to the grant of the said licences in favour of the petitioner vide representation dated 25.3.2016 which was made to Chief Parliamentary Secretary who in turn forwarded the same to Excise and Taxation Minister. According to respondents, the matter subsequently was inquired through Circle Inspector who submitted his report on 11.8.2016 vide which it was recommended by Additional Excise & Taxation Commissioner (SZ) Shimla not to grant licence. It was on these basis as per the respondents, the licences had not been granted to the petitioner as it was not prudent and advisable to grant licences to the petitioner which were being objected to by the ladies as well as the youth. Incidentally the factum of there being another Beer Bar functioning in the vicinity of the restaurant of the petitioner has not been so refuted by the respondents.

6. In rejoinder filed to the said reply, the petitioner has reiterated his contention

raised in the petition and he has also placed on record the NOCs issued in his favour by the Patwari concerned, Sub Divisional Officer (Civil), Rampur, Sub Divisional Police Officer, Shimla and Pradhan Gram Panchayat Jeori. Petitioner has also appended NOCs for grant of said licences in his favour issued by Superintendent of Police, Shimla dated 18.3.2016 and District Magistrate, Shimla dated 17.5.2016. He has also placed on record Annexure P-13 which is No Objection issued in this regard by Chief Parliamentary Secretary (Health).

7. Be that as it may, in my considered view though whether or not L-4 and L-5 licneces are to be granted in favour of the petitioner qua M/s Dhruv Tara Restaurant Jeori or not is the prerogative of the respondent-Department, however, the said prerogative cannot be exercised by the respondents arbitrarily to the prejudice of the petitioner. It is a matter of record that vide communication dated 21.6.2016 Excise and Taxation Officer, Rampur has recommended the case of M/s Dhruv Tara Restaurant, Jeori for grant of licence in form of L-4 and L-5. It is not disputed that the present petitioner is the proprietor of the restaurant in issue. Though it is mentioned in the reply by the respondents that it has been recommended by Additional Excise and Taxation Commissioner (SZ) Shimla not to grant said licences however, there is no such communication placed on record by the respondents. Not only this, keeping in view the fact that the recommendation to grant the said licences in favour of the M/s Dhruv Tara Restaurant, Jeori has been made by the authority concerned after certifying that the restaurant in issue fulfils all the conditions as reported by Excise and Taxation Inspector, even otherwise no decision to the prejudice of the petitioner can be taken by the respondents at his back without hearing him.

6. In compliance to the aforesaid directions, respondent No. 2 has now decided the case on 29.10.2016 and operative portion whereof reads as under:-

"5. I have heard the arguments adduced by the parties and have also perused the relevant record. I am of the opinion that issuance of any Liquor License cannot be claimed as a matter of right. It is for the competent authority to decide whether to grant or not to grant a Licence to anyone. In the instant case the opening of Bar has been objected to by the Mahila Mandal, Women and Youth of the concerned area. Moreover, Addl. Excise and Taxation Commissioner (SZ), Shimla has also recommended not to grant the Bar License. In view of above the application of the petitioner for grant of Bar License is rejected." We have heard the learned counsel for the parties and have gone through the material placed on record and also the record of the case which was especially summoned from the office of the respondents.

7. At the outset, we may observe that the impugned order has not been complied with by the respondents either in letter or in spirit and what is more surprising if not shocking is that the respondents while passing the impugned order has only chosen to reiterate what otherwise had been stated in their reply to the earlier petition and such course obviously was impermissible. The subjective satisfaction had to be reached on an objective consideration of the

objections raised by Mahila Mandal, youth etc., that too without being influenced by the recommendations made either by the MLA-cum-Chief Parliamentary Secretary or the Additional Excise and Taxation Commissioner (SZ), Shimla, as it was the MLA-cum-Chief Parliamentary Secretary, who at earlier stage had himself granted no objection certificate in favour of the petitioner. It was only thereafter that a decision ought to have been taken after reasoning out as to why the objectors have only chosen to target the petitioner without objecting to the Beer Bar, which was allegedly already running in the vicinity of the petitioner''s restaurant.

8. In N. Nagendra Rao & Co., v. State of Andhra Pradesh, AIR 1994 SC 2663, the Supreme Court held, as under:-

"24. But there the immunity ends. No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at Par with any other juristic legal entity. Any water right compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the ''financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation,'' or because of ''logical and practical ground,'' or that ''there could be no legal right as against the State which made the law gradually gave way to the movement from, ''State irresponsibility to State responsibility.'' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity. The determination of vicarious liability of the State being linked with negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable the State cannot be sued. The liability of the officers personally was not doubted even in Viscount Cantebury (supra). But the Crown was held immune on doctrine of sovereign immunity. Since the doctrine has become outdated and sovereignty now vests in the people, the State cannot claim any immunity and if a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable."

9. It is more than settled that arbitrariness in the State action can be demonstrated by existence of different circumstances, whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring the relevant facts, such action can normally be termed as arbitrary.

10. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of transparency in the decision making process has also become essential part of our administrative law.

11. In view of the above discussion, we have no option but to quash and set aside the order passed by this Hon''ble Court and remit the matter back to respondent No. 2 to take a decision afresh which should be taken without being influenced by either the recommendations made by the MLA-cum-Chief Parliamentary Secretary or the Additional Excise and Taxation Commissioner (SZ), Shimla and consider both objectively and subjectively the objections preferred by the Mahila Mandal, Kochari, women and youth of the area concerned. The respondent would further consider whether these so-called objections are in fact genuine or not and further find out as to why no objections have been preferred against the existing Beer Bar. This exercise be completed within four weeks from today after associating not only the petitioner but also the person(s) already running the Beer Bar and the persons or their representatives who are likely to be effected by the decision to be taken by the respondents.

12. With these terms, the petition is allowed, leaving the parties to bear their own costs. All pending applications stand disposed of.

