

Gram Panchayat, Patiala

Vs

State of Punjab and others

Petition for Special Leave to Appeal No. 5322 of 1990

(M. N. Venkatachaliah, P. B. Sawant JJ)

20.04.1992

ORDER

1. We have heard learned counsel for the parties.

2. The petitioner - The Gram Panchayat, Chanarathal Kalan - seeks special leave to appeal to this Court from the order dated 21st March, 1990 of the High Court of Punjab and Haryana in C.W.P. No. 3563 of 1990 dismissing the petitioner's writ petition which in turn challenged the order dated 6th February, 1990 of the Excise and Taxation Commissioner, Punjab. The Commissioner had overruled and set at naught the resolution dated 21 st Sept. 1989 of the petitioner-Gram Panchayat under S. 26 of the Punjab Gram Panchayats Act, 1952 (Act) with the requisite 2/3rd majority directing that intoxicating liquor be not sold in the liquor vend situate in the village Chanarthal Kalan.

3. The resolution of the Gram Panchayat took note that the liquor vend was at a distance of 20 yards from the Government High School right opposite to Bus Stand and was just 100 yards away from the Primary Health Centre. Such a resolution, if made after the 1st day of April and before 30th day of September of any year, would under S. 26 be effective from the 1st day of April of the following year and would also be binding on the Excise and Taxation Commissioner. But the proviso to the Section, however, authorises the Commissioner, if he be of the opinion for reasons to be recorded, that within such local area illicit distillation or smuggling of alcohol in the local area has been carried on or connived at, within two years preceding the date of the passing of such resolution, such resolution shall not be binding upon the Commissioner. The Commissioner by his order dated 13-2-1990 exercising powers conferred by the said proviso overruled the said resolution. The Commissioner's order referred to the registration of offences of illicit distillation under three F. I. Rs. which were all long prior to the period of two years prior to the resolution. The Commissioner held:

"This vend was auctioned for Rs. 12,44,913/- for the year 1989-90 and its daily quota is of 90 bottles. In case the vend is closed, not only the State will suffer heavy loss of revenue but it will give boost to smuggling of liquor and illicit distillation in the area. The vend has been functioning in this village for last 9-10 years.

I have considered the arguments advanced by the parties and have also perused the relevant record of the case. The arguments advanced by the Sarpanch are not supported by any documentary evidence. However, from the arguments of the

departmental representative, it is proved beyond doubt that the villagers are habitual drinkers and illicit distillation is also taking place at a large scale. "

"This order of the Commissioner was challenged by the Gram Panchayat before the High Court. The High Court dismissed the writ petition in limine.

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 defence mechanism in Section 26 and made manifest an insensitive over-anxiety for the former ignoring the statutorily recognised democratic 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. But, now that the period of the licence has since expired, the issue-has ceased to be a live one. But, Shri Hardev Singh submitted that the same story had repeated itself for the current year also and a similar resolution passed by the Gram Panchayat had again been overruled in the same casual manner by the Commissioner and the privilege to vend liquor at the place granted. This is a separate and distinct cause of action. Moreover, the grantee is not before us. It is open to the Gram Panchayat to assail the order in an appropriate legal proceedings. If any writ petition is brought before the High Court in this behalf, it would be appropriate to deal with and dispose of the matter expeditiously.

6. So far as the present special leave petition is concerned, the same is disposed of as having become infructuous. Order accordingly.

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