(1992) 04 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3432 of 1992

Gram Panchayat		APPELLANT
	Vs	
The State of Haryana and Others		RESPONDENT

Date of Decision: April 28, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 47
- Punjab Gram Panchayat Act, 1952 - Section 26, 26(1), 26(3)

Citation: (1992) 102 PLR 247

Hon'ble Judges: V.K. Bali, J; Amrit Lal Bahri, J

Bench: Division Bench

Advocate: Dhara Singh, Sarpanch of Gram Panchayat, for the Appellant; R.P. Vij, District Attorney, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.
This judgment would dispose of Civil Writ Petition No. 3841 of 1992, the decision of which was announced on April 23, 1992 itself after arguments in the matter were heard, as also Civil Writ Petition No. 4059 of 1992, "Gram Panchayat Badli v. The State of Haryana and Ors., Civil Writ Petition No. 4210 of 1992". "The Gram Panchayat Imlota v. State of Haryana and Ors." and Civil Writ Petition No. 3432 of 1992 "Gram Panchayat. Dubaldhan v. The State of Haryana and Ors.", in which the judgment was reserved on April 23, 1992 as common question of fact and law are involved in all these petitions

2. The petitioner Gram Panchayats in the various aforesaid Writ Petitions question the action of respondent Excise and Taxation Commissioner by which liquor vends have been established within the jurist diction of petitioner Gram Panchayats by auctioning the same for the year 1992-93 in teeth of unanimous resolutions passed by the Gram Panchayats recommending prohibition in their respective areas and in that direction

requesting that no liquor vend be auctioned. Gram Panchayat Fatehpur Billoch passed resolution for enforcing prohibition in its area of operation on January 17, 1991 repeating the same very resolution on September 19, 1991. Even the newly elected Gram Pranchayat moved the authorities for same request by passing fresh resolution on February 3, 1992. It is asserted that the Sarpanch and other respectables of the village met the Excise & Taxation Commissioner and the Deputy Commissioner for ensuring that the resolution passed by the Gram Panchayat was given effect to. They were accorded personal hearing in the month of February, 1992 and were told that the liquor vend already operating within the jurisdiction of Gram Panchayat shall not be auctioned again and with effect from 1.4.1992 there shall be a complete prohibition in the locality of the Gram Panchayat. It is pleaded by the Gram Panchayat that under the influence of certain vested interests, the liquor vend was auctioned on March 17, 1992 to respondent No. 4 inspite of the fact that the assurances given to the members of panchayat were in the other direction. They were told by the officers that the same had been done with a view to earn more revenue and as they were told by the higher authorities to ignore the resolution passed by the. Gram Panchayat, they had no option in the matter. The positive case of the petitioner is that there was no illicit distillation or smuggling of alcohol in its area and, therefore, the unanimous resolution passed by the Gram Panchayat should not be ignored.

3. In the reply filed, the cause of the petitioner is sought to be negatived on the solitary ground that the resolution dated January 17, 1991 was passed by the Gram Panchayat but the same was received on September 19, 1991, and that second resolution dated February 3, 1992 had not been received by respondent No. 2. Inasmuch resolution which was passed on January 17, 1991 was received on September 19, 1991, the same was not in accordance with the provisions of Section 26 of the Gram Panchayat Act and was, thus, not valid. In so far as the assertion of petitioner that there has been absolutely no illicit distillation or smuggling in its area is concerned, the same has not been denied.

4. Gram Panchayat Badli passed resolution with full quorum and absolute majority on September 25, 1991 for enforcing prohibition in the area of its operation and the same was sent to the appropriate authorities who further forwarded the same to respondent No. 1 i. e. Financial Commissioner and Secretary to Government Haryana, Excise and Taxation department Chandigarh. The said respondent sent a letter summoning Gram Panchayat to appear before him on January 30, 1992 at 11-00 A. M. in his office. No case was brought to the notice of Gram Panchayat with regard to illicit distillation or smuggling of liquor and yet the resolution passed by the Gram panchayat was not accepted on the ground that there were nine cases pending against various persons under the Excise Act from the period 30.12.1989 to 27.1.1991. In all the cases, there was recovery of country liquor ranging from five bottles to 84 bottles and that being the position, the resolution passed by Gram Panchayat could not be accepted.

5. This petition has also been opposed by the respendents on the strength of recovery of country made liquor from the year 1989 to 1991. On the strength of aforesaid cases of

recovery of liquor it is sought to be made out that there was lot of activity manifesting illicit distillation and smuggling of liquor. It requires to be mentioned here that the petitioner has pleaded that out of 9 cases reference of which has been given above, as also the impugned order Annexure P/3, the persons involved in recovery of country made liquor were not residents of the villag except Rajinder son of Mange and Bhagat Ram son of Shri Lekh Ram from whom 5 and 6 bottles respectively were recovered in June, 1990 and February, 1991.

6. Gram Panchayat Imlota passed resolution with absolute majority on September 18, 1991 for enforcing prohibition in the area of operation of the said Gram Panchayat. The resolution was sent by the Gram Panchayat to the appropriate authorities which was further forwarded to the Financial Commissioner and Secretary to Government, Har-yana, Excise and Taxation Department, Chandigarh. The Gram Panchayat was summoned to appear before respondent No. 1 on January 21, 1992 at 11.00 A. M. but once again without disclosing any case of smuggling and illicit distillation of liquor, the resolution of the Gram Panchayat was rejected vide orders dated January 22, 1992 Annexure P/3.

7. This petition, too, has been opposed by the respondents on the plea that in the area in question, there was lot of illicit distillation and smuggling, by way of instance, three cases have been mentioned which pertain to 2-1 1990,24-4-1990 and 29-6-1990. Whereas in the first two cases, 12 bottles of country liquor were recovered from Kewal son of Pyara Lal and Sammunder Singh son of Bhim Singh, in the last case three bottles of country made liquor were recovered from one Mahabir son of Shri Rati Ram. All the aforesaid cases are stated to be pending trial and have not been decided so far.

8. Gram Panchayat Dubaldhan passed resolution by absolute majority on September 27, 1991 for enforcing prohibition in the area of its operation. The resolution aforesaid was sent to the appropriate authorities who further forwarded it to the Financial Commissioner and Secretary to Government, Haryana, Excise and Taxation Department, Chandigarh who summoned the Gram Panchayat to appear before him on January 30, 1992 at 11.00 A.M. Once again without disclosing any case of smuggling and illicit distillation of liquor, the resolution was rejected.. The case of Gram Paachayat is that in the impugned order, the grounds mentioned for declining the resolution of the Gram Panchayat were factually incorrect.

9. This petition is too opposed on the solitary ground that in the area of operation of Gram Panchayat concerned, the people were indulging in lot of illicit distillation and smuggling of liquor. By way of example, seven cases have been cited which are for the period 1989 to August 1991. In all the matters, there is recovery of 5 to 18 bottles of country made liquor but in the matter pertaining to the year 1989, there is recovery of 20 bottles of country made liquor and 12 bottles of Rum. All the cases are stated to be pending in the Court of Judicial Magistrate 1st Class Jhajjar. However, regarding the last case, it is stated that the same is under investigation.

10. We have heard Sarpanch Mam Chand in Civil Writ Petition No. 3841 of 1992 and Mr. R. P. Vij, District Attorney in all the cases and after perusing the records of the case, we are of the view that the cause of petitioner panchayats for enforcing prohibition in their area is well made out from the directive principles of State policy as enshrined in Article 47 of the Constitution of India as also the mandate of law as contained in Section 26 of the Punjab Gram Panchayat Act, 1952 as applicable to the State of Haryana. In fact, it is keeping in view the endeavour of the State to bring about prohibition of intoxicating drinks and of drugs which are injurious to health that the State of Haryana moved forward for bringing about legislation so that the object sought to be achieved from the directive principles of State policy does not remain in the realm of a fond wish and hope and the same may become enforceable. It shall be, at this stage, useful to reproduce Article 47 of the Constitution of India as also relevant part of Section 26 of the Punjab Gram Panchayat Act, 1952 which run as under:-

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.--The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health".

"26. Power to introduce prohibition.

(1) A Gram Panchayat, at any time, during the period commencing on the 1st day of April and ending with 30th day of September of any year, by resolution passed by majority of Panches holding office for the time being, direct that intoxicating liquor may not be sold at any licensed shop within the local area of the Gram Panchayat.

(2) When a resolution has been passed under sub-section (1) and is received in the office of the Excise and Taxation Commissioner, Haryana on or before the 31st day of October, it shall take effect from the 1st day of April of the year next, after such resolution.

(3) Notwithstanding anything contained in the Punjab Excise Act, 1914 (or any other Act for the time being in force) and the rules made thereunder, with regard to the powers and functions of the Collector, under the said act, such a resolution will be binding upon the Excise and Taxation Commissioner.

Provided that if the Excise and Taxation Commissioner is of the opinion, for the reason to be recorded in writing that within such local area illicit distillation or smuggling of alcohol has been carried or connived at, within two years preceding the date of the passing of such resolution, in such local area, such resolution shall not be binding upon him, unless the Government orders that it shall be so binding".

11. A perusal of Article 47 of the Constitution of India and Section; 26 of the Punjab Gram Panchayat Act would manifest that the prohibition for consuming intoxicating drinks has

been given a statutory recognition more so when the same is self imposed. Admittedly, the resolutions of the Gram Panchayats particularly when the same are passed unanimously reflected the view of the inhabitants of the village for which a particular Panchayat is constituted and if the elected representatives of the people as also the inhabitants of the village impose upon themselves a restriction for not consuming liquor, the same has not only to be appreciated but given full effect. The moment resolution is passed under Sub-Section (1) of Section 26 and received in the office ''of the Excise and Taxation Commissioner, it takes effect from the 1st day of April of the year next, after such resolution. But for the exceptions that might be available from the provisions of the Punjab Excise Act as made out from Sub-Section (3) of Section 26 as also from proviso to Sub-Section (3), the Collector has no .choice but for to give effect to the resolution passed by the Gram Panchayat. In fact the said resolution is binding upon the Excise and Taxation Commissioner.

12. In the light of the principles that have been mentioned above, if we examine the defence of the respondents, it would immediately look to be the one which would not attract any of the exceptions under which resolution of the panchayat may be declined, Coming to the defence as projected by the respondents -in Civil Writ Petition No. 3841 of 1992 which is with regard to resolution having been passed on January 17, 1991 and received on September 19, 1991 suffice it to say that the same is of no consequence and appears to have been taken just with view to contest the petition. The resolution can be passed during the period commencing on the first day of April and ending on 30th day of September every year. If between the day when the resolution was passed i e. January 17, 1991 and 1st day of April there was some change in the resolve of Panchayat some arguable defence may be available to respondents but admittedly the stand of the Gram Panchayat was consistent and the resolution passed on January 17, 1991 was repeated by another resolution dated February 3, 1992. The fact, however, remains that the authorities had received the resolution passed by the Gram Panchayat before 30th day of September. It appears that 30th day of September has been fixed as last date for receipt of resolution by the panchayat for the only reason that all the matters with regard to auction of vend have to be finalised in time so that the vend can be auctioned for the ensuing year. The last date fixed may have, therefore, some importance but in so far as the earliest day for passing the resolution is concerned, the same is of no consequence whatsoever Further, the provision of specific period commencing from 1st day of April ending on 30th day of September in any year in passing resolution seeking enforcement of prohibition is not mandatory. The time frame prescribed is not mandatory and is only directory. In "Gram Panchayat, Chirya v. State of Haryana" (1985) 88 P.L. R. 435. it was held that the provisions of Section 26 have to be given liberal construction so that the object sought to be achieved thereby is not defeated.

13. Coming now to the defence projected in Civil Writ Petition No. 4059 of 1992, it shall be seen that (sic) respondents have relied upon proviso to sub Section (3) of Section 26 of the Punjab Gram Panchayat Act and in that endeavour list of 9 cases have been given

which pertain to recovery of bottles of country made liquor within two years preceding the passing of resolution. Even a cursory look at the list of cases would make out that but for--one case which pertains to recovery of 84 bottles of country liquor, all other cases pertain to the recovery of 5 to 9 bottles of country made liquor and that but for the case mentioned at Serial No. 1 which pertains to the year 1989 and in which conviction was recorded, all other cases are pending trial. Further, all cases pertain to recovery of country made liquor which as admitted even by Mr. R. P. Vij, District Attorney appearing for the respondents were not cases of illicit distillation. In fact the liquor so recovered was distilled at licensed places and came to the market after excise duty was paid. The cases under the Excise Act were registered for the simple reason that even though the liquor is distilled at licensed places and has come to the market after excise duty has been paid and all the formalities have been done, carrying of more than one bottle at a time is itself an offence. Recovery of country made liquor which, as referred to above, was distilled at licensed places and proper excise duty was paid would neither be a case of illicit distillation nor smuggling of. liquor. Besides, the fact that all the cases are pending trial and the veracity of the prosecution in the said cases has, so far, not been tested and proved, the fact remains that but for the case pertaining to the year 1989 which cannot be taken into account being prior to two years of the date of consideration of the matter, the same were not of illicit distillation or of smuggling. Smuggling necessarily entails some element of profit earning by bringing an article in a place where it may be sold costlier than from where it has been brought or the same has been brought into an area where bringing of such thing is prohibited The material relied upon by the respondents has nothing to do with the illicit distillation or smuggling The plea of the respondents to defend the present petition is devoid of merit.

14. The defence raised in Civil Writ Petition No. 4210 of 1992 is far more weak than the one raised in the earlier case. In this case, there are only three instances showing recovery of 3 to 12 bottles of country made liquor pertaining to January 1990, April 1990 and June 1991 All these cases are also pending trial. For the reasons that have been mentioned in negating the plea of respondents in Civil Writ Petition No. 4059 of 1992, the action of the respondents in rejecting the resolution of the Gram Panchayat, in this case too has to be struck down.

15. In Civil Writ Petition No. 3432 of 1992, again seven cases of recovery of country made liquor have been cited by the respondents. The cases pertain to the period from November 1989 to August 1991. All the cases are pending trial and the plea of the prosecution in the said cases has, so far, not been proved. For the reasons mentioned above, the action of the respondents for rejecting the resolution of the Gram Panchayat in this case can also not be justified.

16. The authorities had necessarily to keep in mind the importance attached to the enforcement of prohibition by the framers of the Constitution. The unanimous resolution of the petitioners could not be ignored unless a clear case on the basis of sufficient material had been made out to show that illicit distillation and smuggling of alcohol had

been carried on or connived at in the local area. If the importance of public policy enshrined in the Constitutional provisions which the petitioners are seeking to carry out had been kept in mind by the respondents, then on the basis of recovery of country made liquor which is neither a case of illicit distillation nor of smuggling, an opinion to ignore, out of hand the unanimous resolutions of the Gram Panchayat, could not have been framed by the authorities. We, therefore, hold that rejection of resolutions passed by the Gram Panchayats and to auction the liquor vends in the cases aforesaid is against the provisions of law and is, therefore,. held to be illegal. It requires to be mentioned here that such cases have been repeatedly coming to this Court for adjudication and repeatedly it has been held that the kind of defence as has been projected in the present cases is against the mandate of law as contained in Section 26 of the Punjab Gram Panchayat Act. The first judgment in the matter rendered by this Court is "Gram Panchayat Oon v. Excise and Taxation Commissioner 1974 P. L. J. 360. In somewhat similar circumstances in Civil Writ Petition No. 3896 of 1989 the cause of the petitioners in the said case was allowed by a Division Bench of this Court. The Division Bench of this Court held as follows :-

"In fairness to the learned counsel for the respondents, it must be stated that Shri B. S. Malik, learned Additional" Advocate General, Haryana, contended that the writ petition was liable to be dismissed, because the petitioner Gram Panchayat had passed the resolution seeking enforcement of prohibition in the village on November 21, 1988 and the same had been received by tile State Government on January 19, 1989. In view of the clear language of Section 26 of the Punjab Gram Panchayat Act, the resolution of the Gram Panchayat had to be passed before 30th of September and the same had to reach the office of the Excise and Taxation Commissioner, Haryana on or before 31st day of October of the preceding year in which the prohibition is sought to be introduced or retained. Since in this case, the Panchayat had not complied with the provisions of Section 26, the respondents were not bound to act on the resolution. A complete answer to this submission is provided by a decision of this court in Gram Panchayat, Chirya v. State of Haryana and Ors. (1985) 88 P.L.R. 435, wherein it has been held that the provision of the specific period (commencing from 1st day of April and ending on 30th day of September in any year) for passing a resolution seeking enforcement of prohibition was not mandatory. The intention of the Legislature was only to regulate the functioning of the Gram Panchayat. The time frame prescribed is not mandatory and is only directory.

It is conceded that the resolution had been passed and had been received in the office of the competent authority before the liquor vend of the village had been held. In the present case, the auction had taken place on March 15, 1989, whereas; the resolution had reached the hands of the competent authority in January, 1989 itself. The provisions of Section 26 have been enacted in order to comply with the directive principles enshrind in Article 47 of the Constitution.....As such, the provisions of Section 26 to be given liberal construction so that the object to be achieved thereby is not defeated,"

17. I had an occasion to deal with simlar matter singly in Civil Writ Petition No. 3973 of 1990 and even though in the said case, the respondents had cited 4 cases of illicit distillation in the year 1987, 4 in 1988 but 1 in 1989, the action of the respondents in auctioning the liquor vend was invalidated.

18. Even though for the last more than a decade, the consistent view of this Court is to ignore matters which do not strictly fall within the proviso to sub-Section (3) of Section 26 of the Punjab Gram Panchayat while dealing with the resolutions of the Gram Panchayat seeking enforcement of prohibition, the message does not seem to have gone home to those it should have naturally gone. This resulted in spite of petitions filed in this Court every year at the eve of auction of liquor vend which is resulting into complete harassment to the Gram Panchayats as well as to those who may have made successful bid at the auction. We wish and sincerely hope that henceforth the authorities would apply their mind in a more serious manner and would not be swayed by any other consideration but for the one in which the matter has to be dealt with lest a time comes that we are constrained to pass orders for paying damages by those who deal with the matters.

19. For the reasons aforesaid, all the petitions are allowed As referred to above, petition No. 3841 of 1992 was allowed after hearing arguments on April 23 1992 itself and, judgment with regard to the said case shall be considered operative from that date. The orders passed in various cases rejecting the resolutions of the Gram Panchayat are quashed The action of the respondents in auctioning the liquor vends in the cases where auction has already taken place is held to be illegal and, thus, set aside. There shall, however, be no order as to Costs.