

(2013) 05 P&H CK 0196

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No"s. 10712, 10713, 19015 and 19018 of 2007

Chaman Lal and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 2, 2013

Citation: (2013) 171 PLR 409

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: J.P. Sharma, for the Appellant; Pavit Mattewal, D.A.G., Punjab for State, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

This order shall dispose of aforementioned four writ petitions giving rise to similar question of law and facts. In CWP Nos. 10712 & 10713 of 2007, the prayer is for quashing of order dated 10.07.2007, whereby the District Magistrate has passed an order of closure of liquor vends for a period of two months i.e. from 10.07.2007 to 09.09.2007, whereas in the other two writ petitions i.e. CWP Nos. 19015 & 19018 of 2007, the prayer is for refund or adjust the proportionate amount of licence fee payable on account of closure of liquor vends by virtue of the order dated 10.07.2007. The District Magistrate, Amritsar on 10.07.2007 has passed an order for closure of liquor vends from 10.07.2007 to 09.09.2007 apprehending that peace will be disturbed and there is possibility of riots, if the residents of the area start agitation. Challenge to the said order is, inter alia, on the ground that there were no sufficient material with the District Magistrate to pass an order of closure of liquor vends and that in exercise of judicial review, this Court can examine the legality and validity of the order passed. Reliance is placed upon the judgments of Supreme Court in [Gulam Abbas and Others Vs. State of Uttar Pradesh and Others](#), and that of Gauhati High Court [Premoda Medhi and Another Vs. Gauhati Roller Flour Mills Ltd. and Another](#),

2. We have heard learned counsel for the parties and find that in terms of Gulam Abbas case (supra), an order passed by the District Magistrate is in exercise of the executive powers in performance of executive functions amenable to the writ jurisdiction, but this Court in exercise of judicial review cannot sit into the arm chair of the District Magistrate to return a finding that there is no likelihood of breach of peace. In fact, Para 26 of the said judgment shows that the order of the District Magistrate cannot be in relation to adjudication of disputes, titles or entitlements to rights. In the said case, the rival parties had litigation and the order passed by the District Magistrate was not to prevent apprehension of breach of peace. Nothing of that as sought has been done by the District Magistrate in the present case.

3. The District Magistrate has passed an order of closure of liquor vends in apprehension of breach of peace. Exercise of such power by the District Magistrate in the absence of any mala fide cannot be interfered with by this Court in exercise of its writ jurisdiction.

4. It may be noticed that vide order dated 09.08.2007 this Court has stayed the operation of the order passed by the District Magistrate. Thus, practically the order passed by the District Magistrate has remained valid from 10.07.2007 till 08.08.2007. Thus, the liquor vends remain closed for one month only. The question that there can be any refund or adjustment of the amount of proportionate licence fee payable on account of closure of liquor vends has been examined by this Court in CWP No. 652 of 1997 titled "M/s. Satnam Singh & Co. v. State of Punjab and others", decided on 29.05.1997. It was held to the following effect:

A bare reading of Section 54(1) shows that the District Magistrate or the Sub-Divisional Magistrate can order the closure of any shop in which an intoxicant is sold if he thinks that it is necessary to do so for preservation of public peace. u/s 54(2), the Executive Magistrate can order the closure of such shop if any riot or unlawful assembly is apprehended or occurs in the vicinity of such shop. If riot or unlawful assembly occurs, the licensee is required to close his shop without any order. The exercise of power u/s 54(1) is subject to two conditions namely, (i) District Magistrate or the Sub-Divisional Magistrate must be satisfied that the closure of liquor vends is necessary for the preservation of public peace and (ii) notice in writing is issued to the licensees. Neither u/s 54(1) nor u/s 54(2) there is any limitation on the duration for which a shop selling intoxicant can be closed. The use of expression - "at such time or for such period as he may think necessary" in Section 54(1) and the use of expression "for such period as he may think necessary" in Section 54(2) shows that the legislature has intentionally refrained from restricting or limiting the time period for which an order, passed u/s 54(1) or Section 54(2) may remain operative. Rather, complete freedom has been given to the competent authority to exercise the power to order the closure of any shop selling intoxicant if it is satisfied that such an order is necessary for preservation of public peace or to prevent riot or unlawful assembly. ...

In our opinion, Shri Sibal is right in his submission that the petitioners are neither entitled to any compensation for the alleged loss of business nor are they entitled to remission in the amount of licence fee. Para No. 5 of the conditions of auction notified by the respondents clearly mentions that no remission of licence fee shall be granted except in accordance with the provisions of law and no representation from the licensed vendors for the grant of relief on account of sales falling short of their expectations shall be entertained. Proviso to clause 5 of the conditions of auction entitles the government to consider the grant of appropriate relief in the light of prevailing situation. Similarly, clause 16(1) unequivocally speaks against the grant of compensation or damages for alleged short, supply to the licensee of country liquor. That apart, Rule 37(35) contain an express bar against the grant of compensation due to the closure of liquor vends u/s 54. In view of this statutory provision, it is not possible for the High Court to issue a mandamus to the respondents to compensate the petitioners for the alleged loss suffered by them or to direct the respondents to give remission in the licence fee. ...

5. Another case i.e. CWP No. 17157 of 2011 titled "Kuldeep Kumar v. State of Punjab and another", wherein claim was of refund of proportionate licence fee in view of the directions of the District Magistrate keeping in view Gurdwara elections was also dismissed on 11.11.2011 by this Court relying upon M/s. Satnam Singh & Co. case (supra). In view of the above, we do not find any merit in the present writ petitions. The same are accordingly dismissed.