

R. Ravikumar Vs The Sub Inspector of Police Sakthikulangara Police Station

Court: High Court Of Kerala

Date of Decision: Nov. 18, 2016

Acts Referred: Constitution of India, 1950 - Article 14, Article 19(1)(g), Article 226

Citation: (2016) 4 KLT 799

Hon'ble Judges: Mr. K.T. Sankaran and Mr. K. Abraham Mathew, JJ.

Bench: Division Bench

Advocate: Sri. A.J. Varghese, Senior Government Pleader, for the Respondent; Sri K.B. Dayal, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

K.T. Sankaran, J. - The question involved in this Writ Petition is whether a Sub Inspector of Police can issue an order directing the owner of a

hotel to close down the hotel after 11 p.m. on the ground that anti social elements used to go to the hotel during night and also on the ground that

traffic block would occur as a result of parking of container lorries and goods vehicles near the hotel premises.

2. The petitioner is running Sree Bhadra Hotel at Sakthikulangara. He has got the necessary licences, registration and certificates from the

authorities to run the hotel. Ext.P1 Health Card and the licence issued by the Corporation of Kollam and the identity card issued by the Food,

Safety and Standards Authority of India would show that he is entitled to run the hotel. The hotel has no lodging facility. In the area where the hotel

is situated, fishing operations take place during day and night. It is stated that there are three or four petrol bunks and more than four hotels in the

locality. Two workshops are situated nearby. It is stated that even during midnight, business activities are going on in the place. Boats will be taken

to sea during midnight and early morning for fishing. Sakthikulangara police station is situated about 150 metres away from the hotel in question.

The petitioner resides with his family near to the said hotel. The hotel works during 24 hours a day. Business also takes place during these hours.

3. While so, the first respondent (Sub Inspector of Police, Sakthikulangara Police Station) issued Ext.P5 order, that too without hearing the

petitioner, directing the petitioner to close down the hotel after 11 p.m. It is stated in Ext.P5 that the premises of the hotel have become the centre

of activities by the anti social elements. It is stated that several warnings were given to the petitioner, he ignored the same. Hassles used to take

place in the hotel premises. Due to the parking of huge container lorries and trucks, even traffic block used to occur. On these grounds, the

petitioner was directed to close down the hotel after 11 p.m.

4. The main grounds taken by the petitioner in the Writ Petition are that (1) Ext.P5 order is arbitrary, discriminatory and without jurisdiction ; (2)

the petitioner was not afforded an opportunity of being heard before passing Ext.P5 order and thus Ext.P5 order is violative of the principles of

natural justice ; and (3) the fundamental right of the petitioner under Article 19(1)(g) has been infringed as a result of Ext.P5 order.

5. The reliefs prayed for by the petitioner are to issue a writ of certiorari to quash Ext.P5 order and to issue a writ of mandamus directing the first

respondent not to harass the petitioner or not to interfere with his business.

6. The first respondent, in his counter affidavit stated, inter alia, the following: On the basis of the information that attempts for thefts and thefts are

rampant in Sakthikulangara, Kavanadu and nearby areas, instructions were being given that shops and markets should not be opened and

functioned from 11 p.m. to 4 a.m. Theft was reported from some textile shops, bakery etc. Thieves and anti social elements camped near

Kavanadu junction during midnight and ""unfavourable hours in the night"". Notorious thief, namely, Navayikulam Deepu, who is involved in a crime

registered at Sakthikulangara police station, has made a visit to Sree Bhadra Hotel on 23.3.2016. Deepu and Santhosh were arrested. Clashes

occurred at Sree Bhadra Hotel and crimes were registered. Road blocks used to occur due to unfair parking of vehicles when the drivers and

other workers visited the hotel during night hours. To check these activities, Ext.P5 order was issued. Only to prevent anti social elements during

night at Kavanadu junction, action was taken by the police. The petitioner was never harassed by the police.

7. Ext.P1 Health Card, which contains several conditions for running the hotel, does not provide that the hotel shall not function after 11 p.m. The

Food, Safety and Standards Authority of India also did not stipulate any such condition. No authority had made any such stipulation while issuing

the licences for running the hotel.

8. Chapter V of the Kerala Police Act contains provisions providing for the duties and responsibilities of a police officer. Chapter VI of the Kerala

Police Act contains Sections 72 to 83. Section 76 provides power to the District Police Chief to reserve any street or public place for any public

purpose and to prohibit persons from entering the area so reserved. Such orders shall be passed subject to the orders of the Government and by

giving public notice. Section 77 empowers the District Police Chief to issue necessary special or general directions. Section 78 gives power to the

District Police Chief to take necessary action for preservation of public peace or public safety. Section 79 empowers the District Police Chief to

take such action in the interest of maintenance of law and order or preservation of public peace or public safety. Section 80 provides power to the

District Magistrate, in consultation with the Local Self Government and with the District Police Chief, to make and notify regulations, from time to

time, in any local area for the purposes mentioned therein. Section 81 provides for issuing appropriate orders in the manner mentioned in the

Section for maintenance of law and order at assemblies where disputes exist. None of the provisions in the Kerala Police Act provides for any

power to a Sub Inspector of Police to issue any order like Ext.P5 directing the owner of a hotel to close down the same after certain hours during

night. Learned Government Pleader could not point out any provision of law empowering the Sub Inspector of Police to issue Ext.P5 order.

9. All citizens shall have the right to practise any profession or to carry on any occupation, trade or business as enshrined in Article 19(1)(g) of the

Constitution of India. The restriction to such right is contained in clause (6) of Article 19 which provides that nothing in sub-clause (g) shall affect

the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public,

reasonable restrictions on the exercise of the right conferred by sub-clause (g). There is no existing law imposing restrictions as contained in

Ext.P5.

10. It is the rights which are fundamental, not the limitations and it is the duty of the Supreme Court and all Courts in the land to guard and defend

those rights, zealously. The question whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject

matter of control. As far as Article 19 is concerned, what is fundamental is the freedom and not the exception. Restraints are permissible only to

the extent they have a nexus with the approved object. Limitations imposed by Articles 19(2) to 19(6) on the freedoms guaranteed by Articles

19(1)(a) to (g) serve a two-fold purpose, viz., on the one hand, they specify that these freedoms are not absolute, but are subject to regulations ;

on the other hand, they put a limitation on the power of the legislature to restrict those freedoms. A legislature cannot restrict these freedoms

beyond the requirement of Article 19(2) to 19(6). (See: Durga Das Basu - Commentaries on the Constitution of India, 8th Edition Vol.2 page

2122 - Ram Singh v. State of Delhi : AIR 1951 SC 270 ; T.M.A. Pai Foundation v. State of Karnataka : (2002) 8 SCC 481 and Maneka Gandhi

v. Union of India : AIR 1978 SC 597 referred to.)

11. Running of a hotel is not detrimental to the interests of the public. On the other hand, it caters to the needs of the general public. There is no

case for the fifth respondent that the petitioner committed any offence. No crime is registered against him. That anti social elements used to visit the

hotel is not a ground to direct the owner of a hotel to close down the hotel after 11 p.m. That offences are being committed in the locality by anti

social elements is also not a ground to stop the running of the hotel after 11 p.m. If any offence is committed by any person, it is for the police to

investigate and apprehend the accused. The police can also prevent commission of offences. So long as the first respondent has no case that the

petitioner has committed any offence or that any conspiracy to commit any offence took place in the hotel premises, he was not justified in

preventing the petitioner from running the hotel during permitted hours.

12. Ext.P5 order was passed in violation of the principles of natural justice. On that ground also, Ext.P5 order is unsustainable.

13. For the aforesaid reasons, we hold that Ext.P5 order is illegal and it violates the fundamental right of the petitioner as aforesaid. Accordingly,

Ext.P5 order is quashed. Since the petitioner has not pointed out any specific instance of police harassment, it is not necessary to issue any order in

that regard.

In the result, the Writ Petition is allowed to the extent indicated above.