

Before J. M. Tandon, J.

GRAM PANCHAYAT LANDRAN,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 1719 of 1985.

April 30, 1985.

Punjab Gram Panchayat Act (IV of 1963)—Section 26—Punjab Intoxicants Licence and Sales Orders, 1956—Order 5—Resolution passed by the Gram Panchayat after date stipulated in section 26(1)—Such resolution opposing opening of liquor vend sought to be opened for the first time—Gram Panchayat—Whether can stop functioning of liquor vend by such resolution—Order 5 providing for opening of vend on ascertained demand or to counteract supply of illicit liquor—Gram Panchayat not associated while ascertaining demand—Gram Panchayat whether can assail the opening of a vend on such ground.

Held, that the Gram Panchayat did not pass the resolution and communicate the same to the Excise and Taxation Commissioner within the period specified in section 26(1) of the Punjab Gram Panchayat Act, 1953. The provisions contained in section 26(1) shall have to be followed for making a resolution effective irrespective that a liquor vend is being opened in a village for the first time or otherwise. The Gram Panchayat cannot, therefore, justifiably stop the running of a liquor vend on the basis of the resolution passed after the date stipulated in section 26(1).

(Para 3)

Held, that it is doubtful if it is open for the Gram Panchayat to assail the opening of a country liquor vend on the ground that the opening of such vend is neither justified on the ground of ascertained demand nor to counteract the illicit supply of the liquor in terms of Order 5 of the Punjab Intoxicants Licence and Sales Order, 1956. The Gram Panchayat nor any-body else is required to be associated by the competent authority while ascertaining the demand for liquor or to counteract its illicit supply in terms of Order 5. This part of the order is in the nature of a guideline for the competent authority and as such not assailable at the instance of the Gram Panchayat.

(Para 5)

Petition under Article 226 of the Constitution of India praying that this Hon'ble High Court be pleased to issue a Writ in the nature of a Writ of Certiorari for quashing and setting aside the auction and the establishment of the said vend of country made liquor in village Landran for financial year 1985-86 starting from 1st of April, 1985.

It is also prayed that during the pendency of this petition opening of the new liquor vend in village Landran be stayed.

G. S. Grewal, Sr. Advocate, P. S. Mann, Sr. Advocate with H. S. Nagra, Advocate, for the Petitioner.

D. S. Brar, A.A.G., Punjab, Baldev Kapoor, Advocate, for the Respondent No. 4.

JUDGMENT

J. M. Tandon, J.

(1) The *abadis* of villages Landran and Kailon both in Tahsil Kharar, District Ropar, are close to each other. In 1984-85 there was a country liquor vend in Kailon at a distance of about $\frac{1}{2}$ Kilometer from village Landran. This liquor vend has not been auctioned for the year 1985-86 and instead a liquor vend has been auctioned in village Landran at T-junction where the road from Sirhind meets Kharar-Banur road. The vend in village Landran was auctioned on March 25, 1985, and the highest bid offered was of M/s. Chand Singh and Company (respondent No. 4) for Rs. 5,70,000. The Gram Panchayat, Landran, has assailed the auction of country liquor vend for the year 1985-86 in Landran in the present writ.

(2) The learned counsel for the petitioner has argued that the petitioner having passed resolution on March 27, 1985, (R. 2) that the country liquor vend be not opened in village Landran, the Government is estopped from running the country liquor vend in this village with effect from April 1, 1985, in view of the provisions contained in section 26 of the Punjab Gram Panchayat Act (hereafter the Act). The contention is without merit.

Section 26(1) of the Act reads :

“A Gram Panchayat, may be a resolution supported by at least two-thirds of Panches holding office for time being passed at any time on or after the first day of April and on or before the 30th day of September in any year, direct that intoxicating liquor be not sold at any licensed shop within its Sabha area. Notwithstanding any resolution passed by an empowered local body under section 5 of the Punjab Local Option Act, 1923, or any other Act for the time being in force, such resolution shall be effective from

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the first day of April of the year following the date when it is so passed and shall immediately be communicated to the Excise and Taxation Commissioner, Punjab.”

(3) It is not disputed that the Gram Panchayat did not pass the resolution and communicated the same to the Excise and Taxation Commissioner within the period specified in section 26(1). The learned counsel for the petitioner has argued that as the country liquor vend is being started in village Landran for the first time, the Gram Panchayat can stop it by passing a resolution even beyond the period specified in section 26(1). It is difficult to uphold this contention. The provisions contained in section 26(i) shall have to be followed for making a resolution effective irrespective that a country liquor vend is opened in a village for the first time or otherwise. The petitioner, therefore, cannot justifiably stop the running of country liquor vend in village Landran on the basis of the resolution dated March 27, 1985.

(4) Another point argued by the learned counsel for the petitioner is that the country liquor vend in village Landran is violative of Order 5 of the Punjab Intoxicants Licence and Sales Orders, 1956 (hereafter the Orders). This contention is also without force. Order 5 reads:

“No licence for the sale of liquor or drugs may be given unless either there is an ascertained demand for such liquor or drugs in the locality concerned, or it is granted to counteract the illicit supply of liquor or drugs in that locality, nor in the case of liquor licenses for an consumption without the inquiry prescribed by orders 8 to 15 of these orders.”

(5) The argument of the learned counsel for the petitioner is that the country liquor vend in village Landran is neither justified on the ground of ascertained demand nor to counteract the illicit supply of liquor in terms of Order 5. It is doubtful if it is open for the Gram Panchayat to assail the opening of a country liquor vend in village Landran on these grounds. The petitioner or anybody else is not required to be associated by the competent authority while ascertaining the demand for liquor or to counteract its illicit supply in terms of Order 5. This part of the Order is in the nature of a guideline for the competent authority. This apart, the averment

made in the written statement filed by the Excise and Taxation Officer, Ropar, is that the impugned country liquor vend has been opened as a result of detection of cases of illicit distillation, some of which have been detailed in the list R. 1. In view of this averment, there is hardly any justification to conclude that the opening of the impugned country liquor vend in village Landran is liable to be stopped being violative of Order 5.

(6) In the result, the writ petition fails and is dismissed with no order as to costs.

H.S.B.

Before M. M. Punchhi, J.

STATE OF PUNJAB,—*Petitioner.*

versus

BHIM SAIN,—*Respondent.*

Criminal Revision No. 458 of 1984.

May 2, 1985.

Code of Criminal Procedure (II of 1974)—Section 465—Prevention of Corruption Act (II of 1947)—Section 5(2)—Indian Penal Code (XLV of 1860)—Section 161—Criminal trial—Prosecution and defence evidence recorded—Accused raising a plea about the invalidity of the sanction at the stage of arguments—Such plea—Whether should be entertained at that stage—Sanction file put up to the Minister with a self-explanatory note—Minister appending his signatures—Application of the mind by the Minister—Whether to be presumed.

Held, that Section 465 of the Code of Criminal Procedure, 1973 specifically says that subject to the provisions hereinbefore contained, a superior court cannot alter the findings or sentence or order passed by a Court of competent jurisdiction on account of any error or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. Further in determining whether failure of justice has occasioned, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. As is plain, the objection was taken when the trial had practically concluded and the matter was at the argument stage. The accused without showing any cause why the objection could not be raised at an earlier instance and whether in fact any