

Before Pritpal Singh, J.

GRAM PANCHAYAT,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 1111 of 1985

September 3, 1985

Punjab Gram Panchayat Act (IV of 1953)—Section 26—Constitution of India 1950—Article 47—Gram Panchayat resolving that intoxicating liquor be not sold at any licensed shop within its local area—Resolution, however, passed after 30th September, the date specified in Section 26—Such resolution—Whether invalid—Provisions of section 26(1)—Whether directory.

Held, that the provisions of sub-section (1) of section 26 of the Punjab Gram Panchayat Act, 1952 are not mandatory. Any resolution passed by the Gram Panchayat before the first day of April or after 30th day of September of any year is not invalidated. The purpose of section 26 is manifestly to carry out the directive principle of prohibition contained in Article 47 of the Indian Constitution. This section has been introduced in the Gram Panchayat Act authorising the Gram Panchayat to decide whether it wants the sale of intoxicating liquor within its local area in a particular year or not. No doubt, a period has been fixed in sub-section (1), i.e. from 1st of April to 30th of September each year during which the Gram Panchayat should normally pass a resolution by majority of Panches directing that intoxicating liquor may not be sold at any licensed shop within its local area, but evidently the fixation of this period is directory in nature and not mandatory. It is, no doubt, desirable that a resolution should be passed by a Gram Panchayat within this period, but simply because a Gram Panchayat passes a resolution a few days outside this period would not make the resolution invalid. Analysis of the provisions of section 26 clearly shows that sub-section (1), which provides that the Gram Panchayat may pass the resolution during the period commencing on 1st April and ending on the 30th of September of any year, only concerns the working of the Gram Panchayat. It has nothing to do with the Excise and Taxation Commissioner. The intention of the Legislature in laying down a specific period for the passing of the resolution in sub-section (1) is obviously to regulate the functioning of the Gram Panchayat and since this provision does not prejudice the functioning of the Excise and Taxation Commissioner in any manner it is plainly a directory provision and not mandatory.

Petition Under Articles 226 and 227 of the Constitution of India praying that :—

- (i) *A writ in the nature of Mandamus be issued directing the respondents not to open any liquor shop in the vicinity of the Gram Panchayat Chirya, Tehsil Charkhi Dadri, District Bhiwani.*
- (ii) *Any other writ, order or direction which this Hon'ble Court deems just and proper in the circumstances of the case, be passed.*
- (iii) *The writ petition be allowed with costs.*
- (iv) *Filing of the certified copies of Annexures may be dispensed with.*
- (v) *The issuance of advance notices of motion to the respondents as required under the Rules be dispensed with.*

It is further prayed that till the disposal of this Writ Petition, an ad-interim order may be passed restraining the respondents from auctioning or opening any liquor vend/shop in the village Chirya, Tehsil Charkhi Dadri, District Bhiwani.

I. S. Balhara, Advocate, for the Petitioner.

H. K. Mukhi, Advocate, for A.G. Haryana.

JUDGMENT

Pritpal Singh J.:

(1) Gram Panchayat of village Chirya, Tehsil Charkhi-Dadri, District Bhiwani, through its Sarpanch Sube Singh, has sought a writ of *mandamus* for stopping the sale of intoxicating liquor at any licensed liquor vend within the local area of the Gram Panchayat.

2. The petition Gram Panchayat in its meeting held on October, 19, 1984 passed a resolution (Annexure P.1) asking the State Government not to open any liquor shop in its local area. This resolution was sent to the Excise and Taxation Commissioner, Haryana. The Excise and Taxation Commissioner sent a memorandum, dated January 28, 1985 (Annexure P.2) to the Gram

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Panchayat informing them that their resolution (Annexure P.1) had been ignored. Subsequently it was advertised that an auction for the opening of a liquor vend within the area of the Gram Panchayat would take place on March 19, 1985. The Gram Panchayat thereupon filed the present writ petition seeking directions to the respondents not to auction the liquor vend.

3. The Excise and Taxation Commissioner, Haryana, on behalf of all the respondents, filed a written statement stating that the resolution of the Gram Panchayat (Annexure P.1) is invalid on two grounds. Firstly that four Panches, namely, Mir Singh, Nand Lal, Balbira and Daryao Singh had filed a written statement before the Excise Inspector, Dadri, stating that they had not signed the resolution. Secondly, that the resolution was passed on October 19, 1984 in violation of the provisions of section 26 of the Punjab Gram Panchayat Act, 1952, (hereinafter called 'the Act') as applicable to the State of Haryana. It is, therefore, said that the resolution of the Gram Panchayat had been rightly rejected.

4. In order to determine the controversy between the parties, it is necessary to notice section 26 of the Act, which is as follows:—

“26(1):

A Gram Panchayat may, at any time, during the period commencing on the 1st day of April and ending with the 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 power 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 reason to be recorded in writing that within such local area illicit distillation or smuggling of alcohol has been carried on 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."

It is contended by the learned respondents' counsel that the Gram Panchayat having passed the resolution after 30th of September had contravened the provisions of sub-section (1) of section 26 of the Act and, as such, the resolution is invalid. There seems to be no merit in this contention. The reason being that, manifestly, the provisions of sub-section (1) are not mandatory. Any resolution passed by the Gram Panchayat before the first day of April or after 30th day of September of any year is not invalidated. The purpose of section 26 is manifestly to carry out the directive principle of prohibition contained in Article 47 of the Indian Constitution. This Section has been introduced in the Gram Panchayat Act authorising the Gram Panchayat to decide whether it wants the sale of intoxicating liquor within its local area in a particular year or not. No doubt, a period has been fixed in sub-section (1), i.e., from 1st of April to 30th of September each year during which the Gram Panchayat should normally pass a resolution by majority of Panches directing that intoxicating liquor may not be sold at any licensed shop within its local area, but evidently the fixation of this period is directory in nature and not mandatory. It is, no doubt, desirable that a resolution should be passed by a Gram Panchayat within this period, but simply because a Gram Panchayat passes a resolution a few days outside this period would not make the resolution invalid. The scheme of section 26 is that after the Gram Panchayat has passed the resolution directing that intoxicating liquor may not be sold within its local area, the resolution has to reach the office of the Excise and Taxation Commissioner on or before 31st day of October. If the resolution is received in the office of the Excise and Taxation Commissioner on or before this date it takes effect from the 1st day of April of the following year. Sub-section (3) lays down that such a resolution will be binding upon the Excise and

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Taxation Commissioner. Under the proviso attached to section 26 the Excise and Taxation Commissioner can ignore the resolution of the Panchayat only if he is of the opinion that within the local area of the Panchayat illicit distillation or smuggling of alcohol has been carried on within two years preceding the date of the passing of the resolution. Analysis of the provisions of section 26 clearly shows that sub-section (1), which provides that the Gram Panchayat may pass the resolution during the period commencing on 1st April and ending on the 30th of September of any year, only concerns the working of the Gram Panchayat. It has nothing to do with the Excise and Taxation Commissioner. The intention of the Legislature in laying down a specific period for the passing of the resolution in sub-section (1) is obviously to regulate the functioning of the Gram Panchayat and since this provision does not prejudice the functioning of the Excise and Taxation Commissioner in any manner it is plainly a directory provision and not mandatory. Even if the Gram Panchayat passes the resolution in contravention of the provision of sub-section (1), the Excise and Taxation Commissioner cannot object to the same as long as the resolution is received in his office on or before 31st day of October as provided in sub-section (2). In the instant case it is not denied that the resolution had reached the office of the Excise and Taxation Commissioner before the prescribed date. The Excise and Taxation Commissioner is, no doubt, entitled to ensure that the resolution must reach his office on or before 31st day of October, as provided in sub-section (2), because he must have ample time to ascertain whether the Panchayat had really decided to enforce prohibition in its local area so that the resolution could be given effect to with effect from 1st of April of the following year. Further, he must have adequate time to prepare the budget properly so that the income to be derived from the liquor vends may be properly indicated. However, it is entirely immaterial for him whether the Gram Panchayat has passed the resolution within the period prescribed in sub-section (1). Hence in the light of Section 26 of the Act the resolution (Annexure P.1) is binding upon the Excise and Taxation Commissioner even though it was passed a few days after 30th of September.

5. The other objection of the Excise and Taxation Commissioner that four Panches had not signed the resolution and, therefore, it could be ignored by him is plainly untenable. The reason is that he himself did not satisfy that the resolution had not been passed

by majority of Panches. He simply relied upon the information given to him by the Excise Inspector, Dadri. Evidently, he could not abdicate his function of satisfying himself in this respect to the Excise Inspector. In the written statement Excise and Taxation Commissioner has contended that four Panches, namely, Mir Singh, Nand Lal, Balbira and Daryao Singh had informed the Excise Inspector in writing that they had not signed the resolution. This writing has not been produced. The resolution (Annexure P.1) shows that Mir Singh and Nand Lal had not even attended the meeting in which it was passed. Balbira and Daryao Singh had attended the meeting and had signed the resolution. Their affidavits have been filed on the record in this respect. It is, therefore, abundantly clear that simply on the information of the Excise Inspector, Dadri, that the resolution had not been passed by majority of Panches, without satisfying himself, the Excise and Taxation Commissioner could not reject the resolution.

6. For the reasons mentioned above, the resolution (Annexure P.1) is binding on the respondents and they cannot auction any liquor vend within the limits of the petitioner-Panchayat for the year 1985-86.. Resultantly, this writ petition is allowed with costs and the respondents are directed not to open any liquor vend in the local limits of the petitioner—Gram Panchayat during the year 1985-86. The costs are quantified at Rs. 300.

N. K. S.

FULL BENCH

Before; P. C. Jain, C.J., S. P. Goyal and I. S. Tiwana, JJ.

RAM GOPAL BANARSI DASS,—*Petitioner.*

versus

SATISH KUMAR,—*Respondent.*

Civil Revision No. 790 of 1984

September 5, 1985.

Code of Civil Procedure (V of 1908)—Order 39 Rules 1 and 2—Specific Relief Act (XLVII of 1963)—Section 41(g) and (i)—Capital of Punjab (Development Regulation) Act (XXVII of 1952)—Section