

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.617 OF 2000

EXCISE & TAXATION COMMISSIONER PUNJAB
T

... APPELLAN

VERSUS

GRAM PANCHAYAT, TERKHERI KALA & ANR.

...

RESPONDENT

WITH

C.A. 618 OF 2000

O R D E R

C.A. 618 OF 2000

Learned counsel for the appellant submits that this appeal has become

infructuous. The appeal is disposed of as having become infructuous.

C.A. 617 OF 2000

Learned counsel for the appellant. Ms. Suresh Kumari,

learned counsel appeared for the respondent.

The challenge in this appeal is to the order dated 12.5.1999 passed by the Division Bench of the High Court setting aside the order passed by the Excise and

Taxation Commissioner dated 10.3.1999.

While issuing notice this Court has noticed that the High Court did not

consider the effect of the proviso to sub-section (2) of Section 40 of the Punjab

2

Panchayati Raj Act (Punjab Act 9 of 1994)(hereinafter referred to as 'the Act').

Briefly stated the facts are as follows :

The village Panchayat of village Tarkheri Kalan passed a resolution on

1.3.1995 for opening a liquor vend for the village. Thereafter the new Panchayat was

elected and the new Panchayat by a subsequent resolution 12.8.1998 represented to the

Excise and Taxation Commissioner for the withdrawal of the permission granted to

open the liquor vend pursuant to the resolution passed by the village Panchayat on

1.3.1995. This representation was rejected by the Excise and Taxation Commissioner,

Punjab, Patiala by his order dated 26.2.1999. The Commissioner after examining the

various facts placed before him was of the view that there is large scale of illicit

distillation and smuggling of liquor in the village and as many as three cases of illicit

distillation have been detected and the FIR has been filed. Considering this fact the

Commissioner in exercise of power under proviso to sub-section (2) of Section 40 of the

Act declined the request made by the new Panchayat by the said resolution. Aggrieved

thereby the respondent herein filed a writ petition before the High Court. The Division

Bench of the High Court was of the view that no material has been placed before the

Commissioner on which it could have been concluded that illicit distillation or

smuggling of alcohol has been carried on or connived at and, therefore, on this ground

the High Court had set aside the order of the Commissioner.

Before the High Court the appellant-respondent herein filed counter-

affidavit. In sub-para B of the counter-affidavit the appellant recited the entire facts

3

including the FIR which have been filed against the persons running illicit distillation.

In the said paragraph it is disclosed that as many as five FIRs have been filed against

the illicit distillation. This fact was brought before the Commissioner and on the basis

of which the Commissioner has exercised his power under proviso to sub-section (2) of

Section 40 of the Act.

The proviso to sub-section (2) of Section 40 of the Act reads:

"Provided that if the Excise and Taxation Commissioner, Punjab is of opinion for reasons 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 State Government orders that it shall be so binding."

It is clear from the proviso to sub-section (2) of Section 40 of the Act that

the Excise and Taxation Commissioner is of the opinion for reasons 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 passing such

resolution, in such local area, such resolution shall not be binding upon him, unless the

State Government orders that it shall be so binding. The Commissioner was of the

view that the illicit distillation or smuggling of alcohol has been carried on or connived

at. This finding of the Commissioner was passed on the material fact, namely, the

FIRs as stated above. When such instances were brought to the notice of the

Commissioner, the resolution of the village Panchayat shall not be binding upon him,

unless the State Government orders that it shall be so binding.

4

In the instant case there is no such order passed by the State Government

that resolution passed by the village Panchayat shall be binding upon him. Therefore,

in our view, the Excise and Taxation Commissioner has validly exercised his power

under the Act. The High Court ought not to have interfered with the power exercised

by the Commissioner under the Act.

For the reasons aforesaid, the order of the High Court is quashed and

set aside. The appeal is allowed with no order as to costs.

.....J.

(H.K. SEMA)

...

.....J.

(A.K. MATHUR)

NEW DELHI,

MAY 04, 2006.

5

ITEM NO.104

COURT NO.8

SECTION IV

RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 617 OF 2000

EXCISE & TAXATION COMMNR. PUNJAB

Appellant (s)

VERSUS

GRAM PANCHAYAT, TERKHERI KALA & ANR

Respondent(s)

(With office report)

WITH Civil Appeal NO. 618 of 2000

(With office report)

Date: 04/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Sarup Singh, Sr.AAG.Pb.

Mr. R.K. Pandey, Adv.

Mr. Arun K. Sinha, Adv.

Ms. S. Janani, Adv.

For Respondent(s)

Ms. Suresh Kumari, Adv.

Mr. R.D. Upadhyay, Adv.

UPON hearing counsel the Court made the following

O R D E R

C.A. 618 OF 2000

Learned counsel for the appellant submits that this appeal has become infructuous. The appeal is disposed of as having become infructuous.

C.A. 617 OF 2000

Heard learned counsel for the appellant. Ms. Suresh Kumari
, learned
counsel appeared for the respondent.

The order of the High Court is quashed and set aside.
The appeal is
allowed in terms of the signed order with no order as to costs.

(PAWAN KUMAR)

(ANAND SINGH)

COURT MASTER

COURT MASTER

(signed order is placed on the file)