

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5375-2021 (O&M)

Date of Decision:05.05.2022

Gram Panchayat Village Dhurkot

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Rishu Garg, Advocate, for the petitioner.

Ms. Sudeepti Sharma, Addl. A.G. Punjab.

TEJINDER SINGH DHINDSA J.

Instant writ petition is at the hands of the Gram Panchayat, Village Dhurkot, District Barnala, Punjab.

Challenge in the petition is to the order dated 11.01.2021 (Annexure P-2) passed by the second respondent i.e. Excise and Taxation Commissioner, Punjab, declining the demand of the petitioner for declaring the Revenue Estate of Village Dhurkot, Block Barnala, District Barnala, as a “Dry Area”. It has been asserted that in Village Dhurkot, Block Barnala, District Barnala, the villagers are becoming habitual of drinking liquor and there have been frequent disputes in the village leading to disturbance of peace and harmony. Further the consumption of excessive liquor has led to the health of the villagers deteriorating. With the intent to curb the habit of consumption of liquor and to save the villagers from the ill-effects of liquor consumption, the petitioner-Gram Panchayat passed a resolution dated 13.09.2020 to close down the liquor vends in the village. Such resolution

came to be considered before the second respondent but the same has been declined vide impugned order dated 11.01.2021 (Annexure P-2).

Counsel for the petitioner has submitted that the impugned order has primarily been passed by taking into account the registration of six FIRs under Section 61 (1) of the Punjab Excise Act, 1914. In this regard, it is contended that most of the FIRs pertain to incidents/allegations falling outside the jurisdiction of Village Dhurkot. Counsel further contends that the excise authorities in-conivance with the police officials are getting FIRs lodged on false and frivolous grounds with the oblique motive that liquor vends are not allowed to be closed. Counsel would argue that since the FIRs are false and frivolous, the same would ultimately result either in discharge of the accused or acquittal. Yet another submission raised is that the resolution dated 13.09.2020 passed by the Gram Panchayat was as per scope and ambit of Section 40 of the Punjab Panchayati Raj Act 1994 (hereinafter to be referred to as the 1994 'Act') and as such was binding upon the second respondent. The impugned order dated 11.01.2021 (Annexure P-2) as such is stated to be erroneous and against the statutory mandate of Section 40 of the Act.

Per contra learned State counsel would justify the passing of the impugned order by submitting that numerous cases of sale of illicit and smuggling of liquor in Village Dhurkot had come forth and as such the impugned order does not suffer from any infirmity. Dismissal of the writ petition is prayed for.

Counsel for the parties have been heard at length.

To examine the validity of the impugned order dated 11.01.2021

(Annexure P-2), Section 40 of the 1994 Act would be relevant and the same reads as under:-

40. Power to introduce prohibition. (1) *A Gram Panchayat, may by a resolution supported by at least two-thirds of panches holding office for the time being passed at any time on or after the first day of April, and on or before 30th day of September in any year, direct that intoxicating liquor be not sold at any licensed shop within the Gram Sabha area, notwithstanding any resolution passed by an empowered local body under section 5 of the Punjab Local Option Act, 1923, or any other law for the time being in force, such resolution shall be effective from 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.*

(2) Notwithstanding anything contained in the Punjab Excise Act, 1914, and the rules made thereunder, or any other law for the time being in force, with regard to the powers and functions of the Collector under the said Act, such a resolution will be binding upon the Excise and Taxation Commissioner, Punjab:

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.”

A bare reading of the statutory provision would make it clear that while the Gram Panchayat has been empowered to pass a resolution seeking prohibition on sale of intoxicating liquor yet proviso to the section lays down that no such resolution will be binding if the Excise Commissioner is of the opinion that illicit distillation or smuggling of liquor has been carried out or is being connived at, within the local area of the village and such incidences have come to light within two years preceding the date of passing of the resolution by the Gram Panchayat concerned.

In the written statement filed by way of affidavit of Assistant Excise and Taxation Commissioner, Barnala, it has been specifically stated that seven FIRs have been registered at Police Station Rureke Kalan under Section 61 of the Punjab Excise Act, 1914 for smuggling of illicit liquor in the previous two years out of which one FIR i.e.07 dated 10.02.2021 has been registered after passing of the impugned order dated 11.01.2021. It has further been averred that challans have already been presented in six out of seven FIRs and the accused persons already stand convicted in two FIRs. In four other FIRs the charges stand framed after presentation of the challan. The details and status of the FIRs have been furnished in a tabulation in para 5 of the preliminary submissions contained in the written statement and as follows:-

Sr. No.	FIR	Accused Person	Recovery	Stage
1.	08 dated 05-02-19	1) Daya @ Bobby S/o Kaur Singh. 2) Gurlal Singh @ Laady s/o Najar	24 bottles PML for sale in Haryana	Charges framed. Evidence

		Singh		
2.	23 dated 26-04-19	Bhinder Singh P.A. s/o Jagraj Singh @ Raju	24 Bottles IMFL	Conviction
3.	29 dated 08-06-19	Sukhvir Singh @ Raja s/o Major Singh	10 litres Lahan, 1.5 bottles illicit liquor alongwith working still	Challan has been presented.
4.	31 dated 14-06-2019	Barinder Singh S/o Avtar Singh @ Mithu S/o Chand Singh	70 litres Lahan	Charges framed. Evidence
5.	98 dated 10-12-2019	Amrik Singh S/o Baghera Singh	7.5 Bottles PML	Conviction
6.	82 dated 08-08-2020	1) Jagsir Singh S/p Sukhdev Singh @ Kaka 2) Sukhdev Singh @ Kaka S/o Munshi Singh	180 litres of Lahan	Charges framed. Conviction
7.	07 dated 10-02-2021	Nirmal Singh	20 litres of Lahan	Under investigation.

Such assertion at the hands of the State as regards numerous FIRs having been lodged pertaining to smuggling of illicit liquor at Police Station Rureke Kalan and within the limit of Village Dhurkot has not met with any rebuttal at the hands of the petitioner.

No replication to the written statement has been filed.

A perusal of the impugned order reveals the basis of forming a view and not acting upon the resolution dated 13.09.2020 passed by the Gram Panchayat-petitioner. There is a specific reference to the various FIRs as also incidences/allegations of smuggling of liquor within a period of two years prior to passing of the resolution.

In terms of proviso to Section 40 (2) a resolution passed by the Gram Panchayat would not have binding effect if within the local area illicit

distillation or smuggling of alcohol has been carried on or connived at, within two years preceding the date of passing of the resolution.

We are of the considered view that the impugned order would stand protected as per proviso to Section 40 (2) and has been passed upon assigning cogent and valid reasons.

There is no infirmity in the view taken by the Excise and Taxation Commissioner, Punjab, while passing the order dated 11.01.2021 (Annexure P-2).

No merit.

Writ petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

05.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No