

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-306 of 2020

Petitioner : Samira Mahamadi, in person.

Respondents : Province of Sindh and Department of
Nos.1 and 3 : Excise and Taxation, through
Shahryar Mehar, AAG, along with
Iqbal Laghari, Director (Excise)
Karachi and Muhammad Tariq
Khan, Deputy Director (Excise),
South, Karachi.

Respondent No.6 : United Wine Merchants, through
Zameer Ahmed Ghumro, Advocate

Date of hearing : 08.09.2020

JUDGMENT

YOUSUF ALI SAYEED, J - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution through a Petition impugning the sale of intoxicating liquor by the Respondent No.6 at a commercial premises situated on Main Korangi Road, Phase 1, DHA, Karachi.

2. As prosaically averred in the Petition, the purpose of the Petitioner's challenge, is that of "safeguarding the lives, property, dignity and way of life of the residents of Phase 1, DHA", and as can best be discerned by sifting through the protracted diatribe that constitutes the pleadings, the relevant excerpts setting out the few intelligible points raised (as reproduced verbatim) are *inter alia* that:

- Alcohol trade is an abhorrent practice, according to the generally accepted norms of an Islamic culture and society.

- DHA failed to uphold the residents' fundamental right to preserve their culture under Article 28 of the Constitution of Pakistan, by ignoring all complaints and protests against the said wine shop, the presence of which has drastically changed the fundamental character and culture of the entire area. DHA-1, is a Muslim majority area and the residents reserve the right to preserve the Muslim culture in the collective sphere, which leaves no possibility of provision of intoxicating alcohol in a public place, which has led to loss of sobriety in our neighbourhood, by the clientele that frequent the wine shop, as they do not hold the same values as the resident majority, thereby there is a clash of morality.
- The grant of license to a wine shop against the collective will of the residents has infringed our fundamental right of liberty (Article 9 of the Constitution) to pursue the Islamic way of life in individual and collective spheres of life and to protect our children from undue exposure to the prohibitions of our religion.
- Our fundamental right of freedom of movement and assembly (Article 15 and 16 of the Constitution) in our own neighbourhood is severely hampered as our neighbourhood has been taken over by the continuous flow of frequent visitors of the wine shop, from a greater part of Town, who come regularly for intoxicating alcohol for personal consumption or that they are drug peddlers, both types jeopardise our security (Article 9 of the Constitution) and keep us bound for security reasons. A neighbourhood shopping place has thus turned into a major alcohol hub serving an unknown community from far and wide, which keeps the local community wary, restricted and restrained. The neighbours have thus stopped shopping from the shops in our own area and prefer going elsewhere, which is unfair to other shops in the area.
- As the HADD Ordinance prohibits sale and possession of alcohol by/to Muslims, it makes no sense in licensing a wine shop in a Muslim majority area. The intent of inviting objections before granting of licenses in a Muslim majority area is definitely a questionable practice, which is tantamount to challenging, insulting and defamation of our religious beliefs or to incite the Muslim population to apostasy;

- The said shop is selling alcohol throughout the year, which is not justified by the HADD Order;
- “drug abuse” in the locality and the collateral damage caused to the fabric of the prevalent culture violates the fundamental rights of residents.
- Wine shop licenses are not transferable; in case of death or transfer of residence of any licensee, the license stands terminated, any renewal thereafter is illegal and will be defined as a benami operation.
- According to the Sind Shops and Establishment Rules; every shop needs to display its license, yet the DG Excise took no notice of irregularity in the said case, when intimated.

[Sic]

3. On that basis, the Petitioner has seen fit to advance the following prayers:

- “It is most humbly prayed to this Honourable Court that the instant Petition be decided on its own merits and not be heard alongside any other case, also no one should be allowed to join as party to the said case as this is a petition based not only on the law of the land but on religious beliefs and practices, as well as territorial integrity, which cannot be combined or forsaken.
- The status of license of United Wine Merchants be ascertained to either shut it down immediately if its license is not bonafied, or to let it operate until the end of its current licensing year after which it should not be granted a renewal of license.
- The Administrator DHA Karachi be instructed to have an open door policy and schedule a weekly meeting with the residents to redress their grievances.
- Similar instructions may graciously be given to the respected Governor and MNA to meet the public more than once a month to answer their questions and settle their grievances.”

[Sic]

4. Whilst proceeding with her submissions, the Petitioner, appearing in person, fell back on merely reading from the Petition and broadly regurgitated the points noted herein above.

5. Conversely, the learned AAG, accompanied by the officials of the Excise Department, pointed out with reference to the para-wise comments of the Respondent No.3 that the trade of liquor was governed under the Prohibition (Enforcement of Hadd) Order, 1979 (the "**1979 Order**") and licenses were granted for the sale of liquor to non-Muslims only. It was clarified that the operations of the Respondent No.6 were duly licensed under the name and style of "United Wine Merchants", dating back to the year 1982, whereafter the same had been periodically renewed in accordance with the regulatory framework prescribed under Article 17 of the 1979 Order, read with Rule 23 (1) of the Sindh Prohibition Rules, 1979 (the "**Rules**") and the Sind Excise Manual. It was further clarified that before the opening of a wine shop in any area, the Department ensures as per the Rules that no educational or religious institution is situated within 100 yards of the proposed premises and that the residents of the area have no objection to the operation of the wine shop. It was stated that the partnership firm of M/s. United Wine Merchants had accordingly been licensed after fulfilment of all codal formalities only for the "Off" sale of intoxicating liquor to non-Muslims in a sealed bottle and no "On" shop consumption had been allowed, nor was consumption thereof otherwise allowed in public. Whilst it was accepted that licenses were non-transferable, it was denied that there had been any transfer in the instant case as the license remained in the name of the partnership and there had only been certain changes in its composition with incoming and outgoing partners. It

was also pointed out with reference to the points raised regarding the establishment of wine shops in Muslim majority areas and the alleged sale of alcohol throughout the year that those aspects had been the subject of earlier proceedings before this Court in Constitutional Petitions Numbers CP Nos.D-6738, 5226, 2750, 2919, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 5097, 529, 7207 of 2016 and 111 & 717 of 2017 (the “**Earlier Petitions**”) and were presently *sub judice* before the Honourable Supreme Court. It was submitted that such factual disputes could not be determined under Article 199, however, to the extent of any objection falling within the scope of the regulatory framework for the renewal of the license or any complaint as to an alleged violation of the terms thereof, the Petitioner could make a proper representation to the Director General, Excise.

6. While pleading the status of the Respondent No.6 as a duly licensed entity under the 1979 Order and Rules, learned counsel appearing on behalf of said Respondent also submitted with reference to the Counter-Affidavit submitted in the matter that Article 18 of Constitution guaranteed the freedom of trade business or profession, hence the lawful business being carried on by the Respondent No.6 under a valid license in conformity with the terms thereof did not admit to any objection by or hindrance from the Petitioner, who even otherwise lacked *locus standi* as she was not residing in the immediate vicinity of the wine shop and her fundamental rights were not being disturbed. The allegations as to violation of the terms of license were also denied and it was stated that there was no drug abuse at the premises, nor was liquor sold in an open/unsealed bottle or otherwise allowed to be consumed on the premises, it also being submitted that the officials of the Excise Department frequently undertook surprise inspections for ensuring compliance with the terms of the license, but had not found any illegality or irregularity in that regard. It was also pointed

out that the Respondent No.6 was also a party to the matters that were pending before the Apex Court.

7. Having considered the arguments advanced in light of the material placed on record, it is observed at the outset that neither the vires of the 1979 Order or Rules have been challenged by the Petitioner. As regards the plea taken by the Petitioner with reference to Articles 9 and 20 of the Constitution, we are of view that the same is misconceived, as the life and liberty of the Petitioner has not been impinged, nor has her freedom to profess her religion been curtailed in any manner. As regards Article 28 of the Constitution, the same is also altogether inapplicable under the given circumstances. In fact, on the contrary, it merits consideration that Article 18 of the Constitution safeguards the Respondent No.6's right to engage in trade/business, and in the absence of any violation of the terms of the license granted by the Respondent No.3, the Respondent No.6 is entitled to carry on such trade in conformity with its license while the same remains in subsistence. In the event of any entitled persons purchasing liquor from the shop of the Respondent No.6 and independently proceeding to consume the same in public, whether within the vicinity or otherwise, such a transgression would fall to be curbed by the concerned authorities on a case to case basis rather than being a subject for cancelling the license and closing the operations of the wine shop.

8. Furthermore, as pointed out, the arguments raised in this Petition on the point of the propriety of a wine shop being situated in an allegedly Muslim majority area and the sale thereat allegedly beyond the scope of Article 17 of the Hadd Order was precisely the subject of the Earlier Petitions, wherein certain directions against the operation of wine shops in the Province of Sindh were issued by a learned Divisional Bench vide Order dated 02.03.2017, in

respect of which Civil Petitions Numbers 612, 613 and 681 of 2017 were then filed before the Honourable Supreme Court wherein leave to Appeal was granted on 20.03.2017 with the aforementioned Order of the Divisional Bench being suspended. The relevant excerpts from the Orders dated 02.03.2017 and the complete Order of the Apex Court dated 20.03.2017 are as follows:

From the Order made on 02.03.2017 in the Earlier Petitions

- “Subsequent thereto, while on one hand the Representative of various Non-Muslim communities reiterated their grievance that the current mechanism in terms of which wine shops operate on daily basis selling wine and liquor without having affirmed the religious background of the buyer, nor keeping any quota record thereof are more attuned towards sale of wine/liquor suiting the needs of Muslim community rather than Non-Muslims.”
- “Khawaja Saif-ul-Islam fuelled this line of argument and submitted that as a matter of fact these shops are more concentrated in Muslim majority areas rather than being operative in the areas where Non-Muslim reside, and that was not only the case, he added that a large number of these shops are operating in posh and high income areas (of say Karachi) which usually are inhabited by Muslims.”
- “It was however unanimously put forward by both the sides that the current lack of mechanism for sale of wine/liquor to Non-Muslims in the restricted quantity and on religious occasions only is fuelling the grievance of the Petitioners that wine and liquor is just sold as soft drinks throughout the province. It was also unanimously reiterated that a mechanism has to be put in place in the line of the Hadd Order, 1979 and the Prohibition Rules to ensure that wine and liquor is restrictively sold only to Non-Muslims and that too on their religious occasions. Certain suggestions were also made with regard to Non-Muslims Foreigners whose population is reportedly growing with the development of the economic corridor throughout the country to the extent that provision in-line with Article 17 of the Hadd Order 1979 for such Non-Muslim Foreigners must also be put in place. Both the sides jointly consented that proposals must be put in place to arrest the grievance of the Petitioners as well as to create a sustainable mechanism providing certainty to wine shop’s regulated business.”

- “From the aforementioned it is abundantly clear that the mechanism envisaged by Sindh Prohibition Rules 1979 for granting permit on prescribed Form to Non-Muslims to purchase wine/liquor as per the designated quota are clearly and openly violated to the extent that while there are 120 shops selling wine and liquor throughout the province there is not a single permit holder in the length and breadth of the province, which is in complete violation of the legal framework established for the sale of wine and liquor through the licensed wine shops aiming to ensure that these shops only sell wine/liquor to Non-Muslims, in limited quota and only as a part of their religious ceremonies, therefore until and unless a mechanism as undertaken by the learned Advocate General Sindh is put in place, the wine shops spread all over the province are clearly engaged in illegal sale of wine and liquor without ensuring that it is sold to Non-Muslims alone and that too in the prescribed quota, thus doing business not only in complete violation of the said Prohibition Rules, as well as, they are operating contrary to the injunctions of the Hadd Order 1979.”
- “We accordingly direct the DG Excise to seal all the wine shops throughout the province with immediate effect and order IG Police to ensure compliance and file a report by tomorrow at 3:00 P.M. and grant no more than 30 days’ time to the Provincial Government to evolve a mechanism in consultation with the stakeholders (being Petitioners as well as the wine shop owners) to ensure that a practical, transparent and implementable mechanism is put forward which ensures that the licensed wine shops only sell wine and liquor to Non-Muslims, and Non-Muslims Foreigners in quantities restricted by permissible quota, as part of their religious ceremonies and a proper record of these sales be made, which record shall be available to the public.”

Order of the Honourable Supreme Court

“**Ejaz Afzal Khan J, -** Contends, inter alia, that where the Prohibition (Enforcement of Hadd), Order 1979 is in place and violation of Article 3 or any of its provisions could be dealt by the police and other officers mentioned therein, the High Court in the circumstances could not step in and pass an order directing to close liquor shops.

“2. Pointes raised need consideration. We, therefore, grant leave to appeal in these petitions. As a short point is involved and the order has been passed by a Division

Bench of the High Court, let the appeals be listed within a period of three weeks before a three Member Bench.

3. Since we have granted leave to appeal in these petitions, CMAs seeking suspension of the impugned order stand allowed. However, this order shall not restrain the Police officers to take cognizance of the matter if and when any of the provisions of the Order mentioned above is violated.”

[Sic]

9. Needless to say, in view of pendency of the aforementioned matters before the Honourable Supreme Court, judicial propriety demands that this Court exercise due restraint so as to abstain from touching upon the points overlapping with the proceeding in the Earlier Petitions.

10. Be that as it may, as proposed by the learned AAG, the Director General, Excise is directed to provide proper opportunity of hearing to the Petitioner and Respondent No.6 before renewal of the license, and in case of any violation of the applicable terms and conditions of the licence, appropriate action ought to be taken in accordance with law. Such exercise to be conducted within a period of 20 days from the date of announcement of this Order. The Petition stands disposed of in the foregoing terms.

JUDGE

JUDGE

Karachi
Dated _____