

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No.D-1931 of 2011
(Vishandas versus Province of Sindh & others)

C.P No.D-503 of 2017
(Vishandas versus Province of Sindh & others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner(s) : Through Mr. Parkash Kumar advocate

Respondent No.4 : Mr. Pirbhulal-U-Goklani advocate

Respondents No.5to7: Nemo

Official respondents: Through Mr. Rafique A. Dahri, Assistant A.G

Date of hearing : 08.12.2021

Date of decision : 08.12.2021

O R D E R

ADNAN-UL-KARIM MEMON, J: The petitioner, finding no other efficacious remedy has filed the instant petition with the following prayer(s):-

- i. Declaration that orders dated 05.05.2011 (Annex-I) and dated 19.11.2011 (Annex-N) the directive dated 15.02.2017 (Annex-U/3) and letters dated 16.02.2017 and 17.02.2017 (Annex-U/2&1) respectively having been issued by the official respondents without any lawful authority are of no legal effect.
- ii. Declaration that the order if any by official respondents No. 1 to 3 and 8 allowing respondent No. 4 to open Retail Off Shop at Mithi is illegal, void, and malafide.
- iii. That permanent injunction be issued restraining the respondents from acting upon the orders dated 19.11.2011 and 15.02.2017 and in any manner from interfering with the working of the shop of the petitioner in Shahi Bazar Mithi.
- iv. Permanent injunction be issued restraining the respondents No. 1 to 4 from acting upon the order dated 5.5.2011 and in any manner from shifting the shop of respondent No.4 to Mithi town.

2. At the very outset, learned Counsel for the petitioner has pointed out that petition bearing C.P No.D-1931 of 2011 was dismissed as having become infructuous vide order dated 10.11.2016 in terms of order dated 27.10.2016 passed by a learned Division Bench of this Court in C.P No.D-2570 of 2016 & C.P No.D-5226 of 2016. He pointed out that the aforesaid decision was assailed in Civil Petitions No.3532, 3538, 3547 & 3550 of 2016, before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 23.11.2016 allowed the appeals and remanded the matters to this Court for decisions afresh. Per learned counsel in the line of directions of Hon'ble Supreme Court petitioner opted to apply under Section 151 CPC (M.A No.1825/2017) for recalling of the order dated 10.11.2016 and restoration of petition (*C.P No.D-1931 of 2011*) to its original position; and, since then the said applications are pending adjudication; however, in the meanwhile, respondents issued fresh letters dated 15.02.2017, 16.02.2017 & 17.02.2017, with certain directions to the petitioner, which action of the respondents have been impugned in the petition C.P No.D-503 of 2017. He, therefore, submits that since the letters dated 05.05.2011 & 19.11.2011 have also been impugned in the subsequently connected petition, therefore, restoration of C.P No.D-1931 of 2011 will serve no purpose, therefore, he does not press the applications pending therein. Because of the above position of the case, applications pending in C.P No.D-1931 of 2011 stand dismissed as not pressed.

3. Mr. Parkash Kumar, learned counsel for the petitioner has submitted that the petitioner was granted license of Retail Wine Shop in the year 1992 with the name and style of M/s H.S. Wine Shop under the provisions of Sindh Prohibition Rules 1979, which was renewed from time to time up to 30.06.2017. He next submitted that petitioner's shop was sanctioned by respondent No.2 strictly under the law and the same shop is situated at Shahi Bazar Mithi, which is a commercial place; and, at the time of grant of license, there was no worship place and/or Mandir, so also all the residents of the locality had given their no objection. Per learned counsel the petitioner has been paying millions of rupees per year towards fees and taxes and has not violated any condition of the license; that respondent No.4 is highly influential person, respondent No.5 is his friend while respondents 6 and 7 are his cast fellows, who influenced the competent authority to disturb the petitioner from the present

location of his shop; that since 1997 respondent No.4 had Wine Shop under the name of Crystal Wine Star Shop at Moosa Market District Umerkot; that from Kunri respondent No.4 obtained order dated 7.9.2008 for shifting his wine shop to Karachi; thereafter he got his shop shifted to Shop No.4 Mubarak Manzil Mirwah Road Digri District Mirpurkhas; thereafter, respondent No.4 applied for shifting of his shop from Digri to Mithi; that respondents 2 & 3 invited objections from the public, upon which the residents of Mithi raised objections but respondents 2 & 3 did not pay any heed; therefore, the residents of Mithi filed CP No. D-789 2011 before this court and filed another CP No. D-2340 of 2011 at principal seat at Karachi; that this Court vide order dated 4.5.2011 directed official respondents to act strictly under the law and not to issue any license of liquor shop; despite that respondent No.2 issued illegal order dated 5.5.2011 for shifting of the shop of respondent No.4 to Shahi Bazar Mithi; that to have the monopoly, respondent No.4 setup respondents 5 to 7 and others to object to the established wine shop of the petitioner, hence they filed false and frivolous application before District Judge / Director Human Rights, who without lawful authority directed Secretary of respondent No.1 to resolve the controversy between the parties for redressal of their grievances; that respondents 5 to 7 filed CP No. D-1631 of 2011 against the petitioner which is pending after filing of Counter Affidavit by the petitioner; that without any notice and any lawful authority respondents 2 and 3 directed the petitioner to apply for shifting of his wine shop which was settled since last 2 decades; the petitioner, therefore, filed CP No. D-1931 of 2011 wherein vide order dated 22.12.2011 status quo order was passed; subsequently respondent No.4 filed CP. No. D-694 of 2012; that all the above petitions were connected; that subsequently vide order dated 27.10.2016 learned Division Bench at principal seat dismissed all the four petition having become infructuous; that the above order of this Court was set aside by Honourable Apex Court vide order dated 23.11.2016 and matter was remanded to this Court at principal seat; that during pendency of these proceedings at principal seat, the respondent No.4 surreptitiously obtained order from official respondents 2 and 3 to open his Retail Off Shop at Mithi; that the official respondents 2 and 3 while being in collusion with respondent No.4 have threatened the petitioner to close his Retail Off Shop, hence on 11.2.2017 petitioner filed an application under Section 151 CPC (CMA 1825 of 2017) for re-admission of CP No. D-1931 of 2011;

that on 14.2.2017 this Honourable Court issued notice to respondents and on 21.2.2017 all the respondents appeared through learned AAG and their respective advocates; that after service of notice of above CMA No. 1825 of 2017 the petitioner was served with a notice dated 17.2.2017 by respondent No. 8 along with a letter dated 16.2.2017 by respondent No.3 to respondent No. 8 containing direction dated 15.2.2017 from the office of respondent No.2 to respondent No.3; that official respondents have threatened to close the shop of the petitioner if his shop is not shifted within 15 days; that official respondents have simultaneously allowed respondent No.4 to open his wine shop in Mithi; that respondent No.2 exercised jurisdiction not vested in it in passing the orders dated 19.11.2011; that respondents 5 to 7 and others have/had no concern with the shop of petitioner and the worship places in Mithi; that the said respondents are set up by respondent No.4; that the order dated 19.11.2011 obtained by respondents 4 to 7 through misrepresentation and fraud; that there was no Mandir or worship place in the vicinity of petitioner's shop in 1992; that the shop of petitioner in Shahi Bazar Mithi is sanctioned after performance of all the formalities; that respondent No.2 has no jurisdiction to pass the order on the basis of frivolous grounds raised by respondents 5 to 7; that learned District Judge Mithi / Director Human Rights had no jurisdiction to entertain the application of respondents 5 to 7 and issue directions to respondents 1 to 3 and respondents 1 to 3 had no authority to pass the order on the basis of said direction; that alleged Santoshi Asthan which is opened much after 1992 is operative only on Friday on which day the shop of petitioner remain closed; that the shop of petitioner is sanctioned in Shahi Bazar Mithi which is commercial place; that there are several properties in between the alleged Santoshi Asthan and shop of petitioner; that there is no strict prohibition to sell wine to non-Muslims and no one is allowed to drink wine in open space, the petitioner sells wine in sealed bottle strictly in accordance with the order, law and rules; that he allegations of harassment by the purchasers of wine are false, frivolous malafide and denied. He lastly prayed for allowing the instant petition.

4. On the other hand, learned counsel for respondent No.4 argued that respondent No.4 has no connection with the dispute in the present petition. He also argued that directions were issued to the

petitioner for shifting the subject shop, as the same is situated near the religious place. He prayed that his name may be deleted from the array of respondents.

5. We have heard learned counsel for the parties and perused the material available on record.

6. The questions involved in this petition are that whether the removal/shifting of the shop in question and opening of Retail Off Shop at Mithi, through the impugned orders is definitive and speaking; and, has been passed in violation of the principle of natural justice or otherwise?

7. Petitioner was granted retail of license at Mithi District Tharparkar in the year 1992 under Rule 2(1) of Sindh Prohibition Rules, 1979, which continued to run; however, due to intervention of the official respondents, vide letters dated 15.02.2017, 16.02.2017 and 17.02.2017, whereby the following direction was passed, which have been impugned:

“Licensee should be allowed two weeks to shift licenses without discontinuing operations. After two weeks if they still have not shifted, operations should be discontinued till implementation of orders”

8. Primarily the trade of liquor was / is governed under the Prohibition (Enforcement of Hadd) Order, 1979 and licenses were granted for sale of liquor to non-Muslims only; and, before 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 wine shop; further 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 Nos. D-6738, 5226, 2750, 2919, 4183, 4184, 4185, 4186, 4187, 4188, 4189, 5097, 529, 7207 of 2016 and 111 & 717 of 2017 and finally landed in the Honorable Supreme Court; and now have been remitted to this Court by the Honorable Supreme Court vide order dated 23.11.2016.

9. Prima-facie in the present case, certain factual controversies have been raised by the parties, which could not be determined under Article 199, however, to the extent of any objection falling

within the scope of regulatory framework for renewal of the license or any complaint as to an alleged violation of the terms thereof, the Petitioner could avail and exhaust remedy before the competent authority of respondent-department.

10. We have noticed that the impugned letters issued by the respondent authority directing the petitioner to shift his licensed wine shop is completely bereft of reasons. In this scenario, we deem it appropriate to direct Director-General, Excise to provide proper opportunity of hearing to the Petitioner and private respondent before taking punitive action including shifting of petitioners shop and opening of Retail off Shop at Mithi, and in case of any violation of the applicable terms and conditions of the license, appropriate action ought to be taken under the law. Such exercise is to be carried out within 30 days from the date of this Order.

11. The Petition stands disposed of in the foregoing terms.

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