

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 427/2012 CMA No. 589/2012

Date of decision: 26.09.2012

Anil Kohli v. State of J&K and ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

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| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
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Appearing counsel:

For appellant(s) : Mr. Ajay Abrol, Advocate
For respondent(s): Mr. H. A. Siddiqui, DAG
Mr. G. S. Thakur, GA

(Oral)

1. With the consent of learned counsel for the parties, this petition is taken up for final disposal.
2. Order dated 8th March, 2012 issued by the District Magistrate, Kishtwar is called in question in this petition, wherein purportedly, under Section 47 of the J&K Excise Act, petitioner was asked to close the liquor sale shop by 31st of March, 2012 on the ground that there is apprehension of breach of public peace. Petitioner was also informed that further extension will not be granted for closing down the shop and on failure, the shop shall be sealed.
3. Learned counsel for the parties submitted that Section 47 of the J&K Excise Act Samvat 1958 (for short the "Act of 1958") would require for closing of the shop at

such time or for such period as District Magistrate may think necessary for preservation of public peace.

Section 47 is taken note of:

“47. Closing of shop for the sake of public peace:

It shall be lawful for the [Deputy Commissioners of the District] to which this Act applies, by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is sold, shall be closed, at such time or for such period as he may think necessary for the preservation of the public peace.”

4. The order impugned appears not to have been passed in accordance with the mandate contained in Section 47 of the Act of 1958. Shop can be ordered to be closed “at such time” or “for such period” as District Magistrate may think necessary for the preservation of the public peace. The District Magistrate, after entering into satisfaction that for preserving public peace it is necessary to order for closure of shop in which liquor or any intoxicating drug is sold, can order for its closure “at such time” or “for such period” as he may think fit. The District Magistrate can pass orders in the manner as provided in Section 47 of the Act of 1958.

5. For the above stated reasons, this petition along with connected CMA(s) is disposed of and the District Magistrate, Kishtwar is directed to pass order in accordance with the mandate contained in Section 47 of J&K Excise Act Samvat 1958. The impugned order shall not be effective till such time the fresh order is passed. It is further provided that petitioner will have right to carry on his business provided he has valid license issued by the competent authority and same will be subject to the orders passed by the District Magistrate in terms of Section 47 of the Act of 1958.

(Muzaffar Hussain Attar)
Judge

JAMMU
26.09.2012
Paramjeet