

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.12.2014

+ **W.P.(C) 8053/2012 & CM No. 20086/2012**

RESIDENTS WELFARE ASSOCIATION

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Anshum Jain.

For the Respondents : Mr Vijay Chandra and Ms Sonia Sharma
for R-1 & R-3.

Mr Manika Tripathy Pandey with
Mr Ashutosh Kaushik for DDA.
Mr S.B. Upadhyay, Sr. Advocate with
Mr Abhimanyu Garg, Mr Param Mishra
and Ms Puja Dewan for R-4/DTDC.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is a Residents Welfare Association of residents of "C, G and DDA Flats" East of Kailash, New Delhi and has filed the present petition, *inter alia*, praying for a direction to be issued for closure of a liquor shop operating in Convenient Shopping Centre at "C" Block Market, East of Kailash, New Delhi.

2. According, to the petitioners, a liquor vend operating at a Convenient Shopping Centre (hereinafter referred to as 'CSC') violates the relevant

Excise Laws and, thus, the wine shop in the CSC at C Block Market, East of Kailash (hereinafter referred to as the 'wine shop') is operating illegally.

3. The controversy to be addressed is whether the wine shop operated by the Delhi Tourism and Transport Development Corporation (respondent No. 4, hereafter referred to as 'DTTDC') is in violation of applicable laws.

4. The wine shop in question has been operating since the year 1986 and the license issued by the Excise Commissioner has been renewed on yearly basis.

5. The petitioner has contended that in the year 2012, it received complaints from its members, who were residents of C,G and DDA Flats in East of Kailash, New Delhi, that existence of the wine shop has resulted in bad atmosphere around the wine shop and the same is derogatory to the safety of children and women in the locality.

6. The learned counsel for the petitioner contended that there is no provision for opening a liquor shop in a CSC as per Master Plan of Delhi-2021 (MPD-2021) and, therefore, the wine shop could not be permitted at the CSC.

7. The learned counsel for the petitioner further contended that in terms of Rule 51(9) of the Delhi Excise Rules, 2010, a license to operate a liquor vend at a CSC could not be granted. It was submitted that operating a liquor shop at a CSC was also not permissible as per the Master Plan in force on 17.04.1986. It was urged that since there was no right to carry on

a trade in liquor, the same was impermissible in absence of an express provision in the Master Plan of Delhi permitting the liquor vends in a CSC.

8. The learned counsel for the petitioner referred to the minutes of the meeting of the Technical Committee of Delhi Development Authority (DDA) and contended that permission for operating a liquor shop could be granted in a local shopping centre but not at a CSC.

9. It was lastly submitted that respondent nos.1 & 3 had already taken a view that liquor license was not permissible for operating a liquor shop at a CSC and accordingly, this Court had passed an order dated 15.12.2011 in **Sarita Vihar Pocket A Resident Welfare Association v. Government of NCT of Delhi and Ors.: W.P.(C) 7983/2010**, recording the same.

10. The learned counsel for DTTDC submitted that the license for operating a liquor vend was granted in terms of the relevant Excise laws i.e. Punjab Excise Act, 1914 and was in terms of Rule 33(1A) of the Delhi Liquor License Rules, 1976 (hereafter 'DLLR 1976'). He further submitted that the reference by the petitioner to the minutes of the meeting of the Technical Committee of DDA (hereafter 'Technical Committee') was misplaced, as the recommendation had not been accepted by the Advisory Group of DDA (hereafter 'Advisory Group') in its meeting held on 23.08.2013. It was also submitted that the CSC in question could not be considered as a CSC since the number of shops was more than 50 and the neighbourhood consisted of more than 5000 persons.

11. I have heard the learned counsel for the parties.

12. This Court by an order dated 29.11.2013 had directed DDA to *'file an affidavit of its Commissioner (Planning) stating therein as to whether liquor shop in a convenient shopping centre, was allowed or not under the Master Plan which was in force on 17.04.1986.'* In compliance with the said order, the Commissioner (Planning), DDA had filed an affidavit, *inter alia*, stating as under:-

“That it is humbly submitted that pursuant to the orders of the Hon’ble Court, the provisions of the Master Plan has been examined as per the one of 1962, 2001 and 2021 and it was noticed that there is no mention of permitting liquor shops in the Convenient Shopping Centre in any of the Master Plans.”

13. In the circumstances, the contention that the operation of a liquor shop in a CSC was prohibited by the Master Plan in force at the material time is without merit.

14. Although, it has been affirmed by respondent no.3 that fresh licenses are not being issued for liquor vends in a CSC, the same does not lead to the conclusion that the wine shop at the CSC is illegal or was impermissible.

15. The reliance placed by the petitioner on the minutes of the meeting of the Technical Committee is also misplaced. Apparently, the Technical Committee at its meeting held on 16.06.2010 had decided *“to permit the liquor shops in local shopping centre”*. According to the petitioner, the same implies that the Technical Committee had rejected the proposal to operate liquor vends in CSCs. The respondents have disputed this interpretation. In my view, it is not necessary to examine the same since

the decision of the Technical Committee has not translated in a review or amendment of the MPD-2021. Further the Management Action Group (MAG) of DDA on “common platform for building approvals” had observed that the decision of the Technical Committee related to the review of MPD-2021 and pertained to the office of Commissioner of Excise. Accordingly, the said decision of Technical Committee was not approved by MAG. Respondent no.4 has further pointed out that this decision also did not meet the approval of the Advisory Group. The minutes of the 11th meeting of the Advisory Group held on 23.08.2013 under the Chairmanship of the Lt. Governor, Delhi indicates that the proposal to prohibit sale of liquor in a CSC was not accepted by the Advisory Group. The relevant extract of the said minutes read as under:-

“The above proposed modification is to prohibit hazardous, bulky material, nuisance creating activities like firewood, building material, liquor, etc. in Convenience Shopping Centres (CSC). The Hon’ble LG, Delhi desired that instead of prohibiting sale of liquor in Convenience Shopping Centres (CSC), a suitable framework shall be formulated so as to curb the nuisance associated with consumption of liquor around CSC in residential neighbourhood. In view of this, the above proposed modification was not agreed by the Advisory Group.”

16. The Commissioner of Excise (respondent no.3) has further pointed out that it had requested that MPD-2021 be amended to expressly include operation of liquor vend in a CSC since there was no specific mention of this activity. The relevant extract of letter dated 26.02.2013 addressed by the Office of Commissioner (Excise) is quoted below:-

“Government of NCT of Delhi decided that the matter of appropriate amendments in the Master Plan Delhi (MPD) 2021

for allowing opening liquor shops in areas other than approved commercial areas may also be taken up with the Government of India, Ministry of Urban Development. In pursuance of the said decision it was requested to :

1. Amend MPD-2021 to allow opening of new retail liquor shops in notified commercial streets/areas which for other business purposes have been taken at par with the local shopping centres, as also in mixed land use areas.
2. Amend MPD-2021 to allow opening of retail liquor vends in Convenient Shopping Centres (CSC), as there is no specific mention of this activity in MPD-2021 and also in view of the fact that there is no negative list of trade for CSCs.

Uneven distribution of retail vends in Delhi has created several problems for both the people and Government of Delhi and it requires an immediate attention.”

17. Although MPD-2021 does not expressly indicate that liquor vends can be operated in a CSC, there is no specific mention that such activity is prohibited. It is also not disputed that retail activity is permissible at CSCs and there is no specific reason why sale of liquor should be excluded.

18. In the present case, DTTDC has been operating the liquor vend for the past 28 years i.e. even prior to MPD-2021 coming into force.

19. In view of the above, I find it difficult to accept that operating of a liquor vend in a CSC is prohibited under the MPD-2021 or was prohibited under the Master Plan in force as on 17.04.1986.

20. The next question to be examined is whether a grant of license for operating a liquor vend in a CSC, is contrary to the Delhi Excise Act, 2009 (hereafter the ‘Excise Act’) or the Rules made therein.

21. Section 11 of the Excise Act, *inter alia*, prohibits sale or purchase of any intoxicant except under the authority and in accordance with the terms and conditions of a license granted under the Excise Act or the Rules framed thereunder. Under Section 4(a) of the Excise Act, the Excise Commissioner has been granted the power and entrusted with the function “to regulate, control and monitor manufacture, possession, import, export, transport, sale and consumption of liquor and other intoxicants;”

22. Rule 51 of the Delhi Excise Rules, 2010 provides for the conditions dealing with the licensed premises. Rule 51(1) and 51(9) of the Delhi Excise Rules, 2010 are relevant and are quoted below:-

“51. Conditions dealing with licensed premises.- (1) No retail vend of Indian Liquor, Foreign Liquor or Country Liquor shall be located within one hundred meters from the following, namely.-

- (a) major educational institutions;
- (b) religious places.;
- (c) hospitals with fifty beds and above:

Provided that the condition mentioned in clause (c) above shall not apply for retail vend of liquor for consumption “on” the premises:

Provided further that the condition of hundred meters shall apply for the licences granted after the commencement of these rules.

Provided also that if any major educational institution, religious place or hospital with fifty beds or above comes in to existence subsequent to the establishment of the retail vend of Indian Liquor, Foreign Liquor or Country Liquor, the aforesaid distance restrictions shall not apply.

Explanation I- For the purpose of clause (a) above major educational institutions would mean middle and

higher secondary schools, colleges and other institutions of higher learning recognized by the Government.

Explanation II – For the purpose of clause (b) above, a religious place would imply a religious place having a pucca structure with a covered area of more than 400 square feet.

Explanation III – The measurement of distance shall be the shortest traversable distance, from the mid point of the actual main entrance/door of the premises proposed for licence to mid point of the actual main door/entrance of the building of the places mentioned in clauses (a) (b) and (c) above.

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(9) Retail licences for consumption “off” the premises shall be permitted at sites or premises, located in a pucca building, the land use of which is commercial approved and shall conform to the orders and instructions issued by the Excise Commissioner from time to time.”

23. It is apparent from the aforesaid Rules that operating a liquor vend at a CSC does not fall foul of the relevant conditions as prescribed under Rule 51 of the Delhi Excise Rules, 2010.

24. The license to operate a L-2 vend at the CSC was granted to DTTDC by respondent no.3 on 17.04.1986 under the Punjab Excise Act, 1914 and in terms of DLLR 1976. At the material time, there was no prohibition for grant of a license for a liquor vend at a CSC. The restrictions for grant of license were contained in Rule 33(1A) of the DLLR 1976, which, at the material time read as under:-

“33(1A) No retail vend for country liquor or foreign liquor for consumption “off” the premises shall be located within 75 meters from the following namely :-

- (i) irrigation projects;
- (ii) matopma ; highways :

- (iii) major educational institutions ;
- (iv) religious places ;
- (v) factories registered under the Factories Act and Industrial Estates ;
- (vi) railway stations;”

25. It is seen from the above that a license for operating a liquor vend was not prohibited at the relevant time.

26. The reference to an order passed by a Coordinate Bench of this Court on 15.12.2011 in W.P.(C) 7983/2010 also does not assist the petitioner in any manner. In that case the resident welfare association had filed a petition for closure of a liquor shop in the local CSC. The Court was not called upon to adjudicate the merits of the disputes as the Government of NCT had decided to call upon DSIIDC to shift its liquor vend in question.

27. In my view, the said order is not an expression of any opinion of this Court. The fact that the Government of NCT have directed that the shop in question be shifted, cannot be read to mean that the Government of NCT had decided that liquor vends at CSCs were illegal or not permissible.

28. In view of the above, the challenge laid by the petitioner to the license granted to DTTDC to operate the wine shop at the CSC must fail.

29. The writ petition and application are, accordingly, dismissed. No order as to costs.

VIBHU BAKHRU, J

DECEMBER 18, 2014
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