

Court No. - 2

Case :- WRIT - C No. - 5578 of 2024

Petitioner :- C/M, Waqf Masjid And Takla Dalmir Shah, Lucknow Thru. Secy., Mohd. Nasir Khan

Respondent :- State Of U.P. Thru. Prin. Secy., Excise Deptt., Lucknow And Others

Counsel for Petitioner :- Raj Priya Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Learned Standing Counsel has submitted instructions received from District Excise Officer, Lucknow, today in Court, which is taken on record.
2. Heard Sri Raj Priya Srivastava, learned counsel for the petitioner and learned Standing Counsel for respondent nos.1 to 3.
3. In light of the proposed order, notice to respondent no.4 is dispensed with.
4. The petitioner is a Waqf Committee of Waqf No.505 registered under the Waqf Act situated at Kapoor Thala, Aliganj, District-Lucknow.
5. The grievance of the petitioner is with regard to a foreign liquor shop which is situated at boundary of the graveyard, bearing Waqf No.505, Lucknow Takla Dalmir Shah, Aliganj, Lucknow, which according to the petitioner has been granted a license contrary to the provisions contained in the Excise Act and the Rules framed thereunder. It has been submitted that according to the Rule 4(a) of the U.P. Number and Location of Excise Shop Rules, 1968 (hereinafter referred to as 'the Rules, 1968'), the said shop is situated within 50 mtrs from the mosque while according to the aforesaid provision, no license can be issued to a shop which is within the said distance.
6. Learned Standing Counsel on the other hand on the basis of the instructions received from District Excise Officer, Lucknow has submitted

that measurements have been done and the said shop is situated at the distance of 60 mtrs from the mosque and hence there is no violation of the provisions contained in the Rules, 1968. Accordingly, this court does not find any material on record to doubt the instructions received by learned Standing Counsel, nor the petitioner has stated that he had made any physical measurement with regard to distance of the liquor shop from the mosque, and therefore, no interference is required by this court in exercise of power under Article 226 of the Constitution of India.

7. In case the petitioner disputes the measurement made by the respondents then he will be at liberty to move an appropriate application before respondent no.2 who on receipt of the said representation would conduct a fresh measurement in presence of the petitioner and pass appropriate orders on the basis of the said measurement.

8. Accordingly, this court is of the view that in case this shop is situated more than 50 mtrs from the mosque on the boundary of the graveyard then there is no violation of the statutory rules and hence there is no illegality in issuance of the license in favour of respondent no.4.

9. With the aforesaid observations, the present petition is **disposed of**.

Order Date :- 25.6.2024

S.Chaurasia

(Arun Kumar Singh Deshwal, J.) (Alok Mathur, J.)