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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11619/2015 & CM No.30816/2015 (for stay)

VANDANA KHANNA ..... Petitioner

Through: Mr. P.S. Bindra & Mr. Vineet Chaudhary, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through: Ms. Mahua Kalra, Adv. for Mr. Peeyoosh Kalra, Adv. for R-1&3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **15.12.2015**

CM No.30817/2015 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) 11619/2015

3. The petition impugns the order dated 28th October, 2015 of the Commissioner (Excise) of the respondent no.1 Government of NCT of Delhi (GNCTD) of dismissal of appeal preferred by the petitioner against the order dated 15th September, 2015 of the Deputy Commissioner (Excise) acting as the Licensing Authority for grant of L-6 License for setting up a liquor vend in the property of the petitioner.

4. The petitioner claims to be the owner of the Shop no.23, South Patel Nagar Market, New Delhi and had entered into an agreement with the respondent No.2 Delhi Tourism and Transportation Development Corporation Ltd. (DTTDC) and whereunder the said DTTDC was to run its liquor vend from the said shop of the petitioner as a tenant under the petitioner. It is the case of the petitioner that the petitioner under the said

agreement, besides rent was also entitled to 15% of the gross profit earned from the sale of liquor from the said shop.

5. Though the Excise Authority had earlier granted permission for opening of liquor vend from the said shop, but subsequently upon opposition from the residents of the locality, the Excise Authorities directed DTTDC to shift the liquor vend from the said shop to some other locality. The petitioner, aggrieved therefrom filed W.P.(C) No.253/2015 in this Court and which was disposed of vide order dated 4th February, 2015 directing the Excise Authorities to consider the matter afresh after hearing the petitioner. It was in pursuance thereto that the order dated 15th September, 2015 and in an appeal preferred by the petitioner therefrom, the order dated 28th October, 2015 impugned in this petition were passed.

6. What has prevailed with the authorities is the opposition of the residents of the locality and the existence within a distance of 100 mtrs. of the subject shop of three other liquor vends.

7. The contention of the petitioner is that though the subject shop satisfies all the criteria laid down in the Delhi Excise Act, 2009 and Delhi Excise Rules, 2010 for grant of a licence to vend liquor from a premises, as has been also recorded in the order dated 15th September, 2015, the authorities have notwithstanding the same directed DTTDC to shift its vend to some other location for extraneous considerations. It is contended that the so called opposition from the residents has found favour with the Excise Authorities for the reason of being backed by a Member of Parliament who had written a letter to the Lieutenant Governor in this regard.

8. I am of the view that this is not a matter in which interference by this Court in its power of judicial review is called for. There is no absolute right

to carry on business in sale of liquor and the trade therein is a controlled one. (Reference in this regard be made to ***Khoday Distilleries Vs. State of Karnataka*** (1995) 1 SCC 574 and ***Krishna Kumar Narula Vs. State of Jammu & Kashmir*** AIR 1967 SC 1368).

9. Once the authorities concerned and competent to assess the "public will" have in their wisdom assessed that the residents of the locality are against grant of permission / licence for sale of liquor from the subject shop, the said finding is a finding of fact which ordinarily would not be interfered with in writ jurisdiction. I am also of the view that the said factor would be a relevant factor in the matter of grant of such permission / licence.

10. So far as reference to the letter of the Member of Parliament is concerned, I do not see anything wrong therein also. The residents of the locality expect the candidate elected by them to act in their interest and to take up issues on their behalf and even if the authorities concerned have been activated to take a decision in this regard owing to the letter of the Member of Parliament, the fact remains that the authorities have satisfied themselves of the residents being opposed thereto. It is not the case of the petitioner that the Member of Parliament was acting with any oblique motives or on any personal interest or otherwise in the matter. The existence of a liquor vend when opposed by the residents is likely to cause law and order situation.

11. Moreover, in the present case DTTDC who had obtained the licence appears to have accepted the said decision and is not aggrieved therefrom. The petitioner did not have any locus before the authorities concerned and cannot, without the DTTDC, run the said trade from her shop.

12. I have also enquired from the counsel for the petitioner whether the petitioner is willing to keep her shop vacant if the petition was to be entertained.

13. The counsel for the petitioner states that the petitioner would keep the shop vacant until she does not get a better offer.

14. Considering all these factors, this is not a case for entertaining the petition in exercise of powers of judicial review.

15. The petition is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 15, 2015
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