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

% *Date of Decision: September 20, 2016*

\+ LPA 176/2016 & CM Nos.9606/2016 *(stay)* & 9607/2016 *(addl. docs.)*

KRISHNA SHARMA ..... Appellant

Through: Mr. Saumya Chakraborty, Sr. Adv. with Mr. Rajesh Pathak, Adv.

Versus

DEPARTMENT OF EXCISE & ANR ..... Respondents

Through: Mr. Peeyoosh Kalra, ASC for GNCTD with Mr. Mahua Kalra, Ms. Paridhi Dixit and Mr. Shiva Sharma, Advs. for R-1/GNCTD.
Mr. Mohit Madan, Adv. for R-2.
A.K. Jain, Asst. Manager.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

: **Ms.G.ROHINI, CHIEF JUSTICE (Oral)**

1. The unsuccessful petitioner in W.P.(C) No.204/2016 preferred this appeal aggrieved by the dismissal of the writ petition by order dated 11.01.2016.

2. We have heard Shri Saumya Chakraborty, the learned counsel appearing for the appellant/writ petitioner as well as the learned counsels appearing for the respondents.

3. As could be seen from the material available on record, the respondent No.2 herein/Delhi Tourism and Transportation Development

Corporation (DTTDC) was granted a licence by the Government of NCT of Delhi (Excise Department) for running a retail vend of IMFL/Beer/Country Liquor for the year 2014-15. For the said purpose, DTTDC entered into a rental agreement dated 14.05.2014 with the appellant herein/writ petitioner and took on rent Shop Nos.19 and 20, Sewa Nagar Market, New Delhi for a period of three years for running the Wine and Beer Shop and accordingly the DTTDC was operating the vend. However, the licence in favour of DTTDC was challenged by Sewa Nagar Market Welfare Association by filing W.P.(C) No.6256/2014 contending that the same was in violation of the guidelines and policy. The said writ petition was disposed of by this Court by order dated 19.09.2014 directing the Department of Excise to treat the writ petition as a representation and pass a speaking order within a period of twelve weeks. Pursuant thereto, the Licensing Authority/Deputy Commissioner (Excise) by order dated 16.12.2014 directed DTTDC to shift their vend to some other suitable location in a commercial area by 31.03.2015 observing that though the vend conforms to Rule 51(1) of Delhi Excise Rules, 2010, the residents of the locality and the users of the lane are being inconvenienced on account of the location of the vend in the premises in question. Aggrieved by the said order, the Delhi State Civil Supplies Corporation filed an appeal before the Commissioner of Excise. The said appeal was disposed of by order dated 31.08.2015 and the matter was remanded back to the Deputy Commissioner (Excise) for consideration afresh since the owner of the premises/the appellant herein (writ petitioner) was not given an opportunity of being heard.

4. In terms thereof, the Deputy Commissioner (Excise) having heard the appellant herein and all other parties passed fresh orders dated 30.10.2015/02.11.2015 reiterating that the vend should be shifted to a different place in larger public interest. Against the said order, the Delhi State Civil Supplies Corporation though preferred an appeal, the same was dismissed by the Commissioner (Excise) by order dated 21.12.2015. The said order dated 21.12.2015 came to be assailed by the appellant herein by filing W.P.(C) No.204/2016 contending *inter alia* that the alleged public disturbance could have been controlled by taking appropriate steps to curb the activity of drinking in open in the vicinity of liquor vends as directed by the Commissioner (Excise) vide Circular dated 09.06.2015. The learned Single Judge dismissed the writ petition by order dated 11.01.2016 holding -

> "6. I have in the order dated 15th December, 2015 in W.P.(C) No.11619/2015 titled ***Vandana Khanna Vs. Government of NCT of Delhi*** *inter alia* held, i) that the locus to challenge such an order can be of the licensee i.e. the DTTDC only and not of the owner of the shop; ii) that the owner of the shop cannot claim any locus on the ground of being deprived of rental and share of profits from sale of liquor in the said shop; iii) that when closure / shifting has been ordered after satisfying that the residents of the locality are opposed to the existence of the liquor vend and that the liquor vend can be a source of nuisance and breach of peace, this is a question of fact which is not interfereble in exercise of power of judicial review; iv) there is no absolute right to carry on business in sale of liquor and trade therein is controlled; reference in this regard was 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); v) once the authorities concerned and

> competent to assess the "public will" have in their wisdom assessed that the said shop is not fit for use as liquor vend, the same would be a relevant factor in the matter of grant of licence / allowing liquor vend to continue.
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> 7. The position here is identical save that in the first round of proceedings before the excise authorities, the petitioner was not heard and was subsequently heard and order was passed after taking into consideration her arguments and contentions. However the same does not affect the reasoning given in ***Vandana Khanna*** supra.
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> 8. The petitioner here has additionally relied upon Circular dated 9th June, 2015 of the Commissioner of Excise, GNCTD requiring liquor vends to have CCTV cameras to record if anyone, contrary to law, consumes liquor outside the liquor vend. The counsel for the petitioner on the basis thereof has contended that the grievance owing to which the liquor vend has been ordered to be shifted can be taken care of by enforcement of the said circular and the said circular and the effect thereof has not been taken into consideration by the excise authorities while ordering the closure / shifting of the liquor vend.
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> 9. In my view the installation of the CCTV cameras would only facilitate apprehending and punishing the violators but once the authorities have concluded that the "public will" is against the existence of the liquor vend in the said shop, the reasoning aforesaid would hold the fray."

5. It is vehemently contended by the learned Senior Counsel appearing for the appellant that having held that the location of the vend in question is in conformity with Rule 51(1) of the Delhi Excise Rules, 2010, the respondent No.1 ought not to have directed shifting of the same merely on the ground of the alleged inconvenience to public. It is also contended that

in the facts and circumstances of the case, it is not open to the licensing authority to invoke Rule 22 of the Rules and thus deprive the appellant/writ petitioner of her livelihood.

6. It is relevant to note that this is a case where the DTTDC which is the licence holder has not assailed the orders dated 21.12.2015 and 30.10.2015 directing shifting of the vend in question. That being so, as rightly held by the learned Single Judge, the appellant/writ petitioner who has nothing to do with the licence has no locus to challenge the said orders merely on the ground that she is the owner of the premises in which the vend is being operated and that she is deprived of the rentals as well as the share of profits from the sale of liquor in the vend.

7. It may also be added that the Commissioner of Excise while confirming the order of the licensing authority and directing shifting of the vend in question vide order dated 21.12.2015 had placed on record the fact that the vend in question is adjacent to the residential area and that the residents of the locality, more particularly, women and the school going boys and girls are put to lot of inconvenience because of the existence of the wine shop in question. It was also recorded that it was reported by the Police that despite deputing the staff the law and order situation has worsened in the locality.

8. Admittedly, the appellant/writ petitioner was given an opportunity of being heard by both the licensing authority and the appellate authority before passing the orders impugned in the writ petition and after considering all the facts and circumstances of the case, the statutory authorities thought it

fit to direct shifting of the vend in question. Such order warrants no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

9. We therefore do not find any justifiable reason to interfere with the order under appeal. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 20, 2016
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