

\$~41

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

+ **W.P.(C) 4610/2015**

V.K. MITTAL

..... Petitioner

Through: Mr Dinesh Kumar, Advocate.

versus

THE CHIEF SECRETARY, GOVT. OF NCT OF
DELHI & ANR

..... Respondents

Through: Mr Pankaj Sinha, Advocate for R-1 &
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.12.2017**

1. The petitioner has filed the present petition, *inter alia*, seeking that directions be issued to the respondents to close the liquor shops operating at Plot No. 5, 6 Behind Gazipur Village, Delhi (near EDM Mall, Kaushambi).
2. According to the petitioner, the operation of the said liquor vends are illegal as the said vends are in the vicinity of a residential locality.
3. Mr Kumar, the learned counsel appearing for the petitioner contended that the operation of the said liquor vends is contrary to the decision of the Supreme Court in *State of Uttar Pradesh & Ors. v. Manoj Kumar Dwivedi & Ors : 2008 (4) SCC 111*. He also relied on the decision of the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India & Ors. : 1996 (5) SCC 647* in support of his contention that even though sale of liquor may generate revenue, the same could not be permitted as it had an adverse affect on the citizens residing in the residential colony of Kaushambi.

4. The issue of licences for sale of liquor in Delhi is governed by the Delhi Excise Act, 2009 and the Delhi Excise Rules, 2010. Rule 51 (1) of the Delhi Excise Rules, 2010 is relevant and is set out below:-

“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. 34 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. ”

5. There is no allegation that the liquor vends in question (located at plot No. 5 & 6 behind Gazipur Village, Delhi) are within hundred metres of any (a) educational institution; and/or (b) religious place; and/or (c) hospitals with 50 beds and above. The liquor vends in the vicinity of a residential

colony are not proscribed. However, they have to be located in a building(s) where commercial use is permitted.

6. The reliance placed by the petitioner on the decision of the Supreme Court in the ***State of Uttar Pradesh & Others v. Manoj Kumar Dwivedi and Others*** (supra) is misplaced. The said case pertains to operating of liquor shops in Uttar Pradesh. Rule 5(4) of the Uttar Pradesh Number and Location of Excise Shops Rules, 1968 which was in force in the State of Uttar Pradesh, expressly provides that “*no new shop or sub-shop shall be licensed in close proximity to a place of public resort, school, hospital, place of worship or favour, or to the entrance to a bazaar or a residential colony.*” Thus, under the said Rules, a liquor vend could not be located near the entrance of a residential colony. The Delhi Excise Rules, 2010 do not contain any such restriction. The Supreme Court had rendered the above decision in the context of the laws as applicable in the State of Uttar Pradesh, and thus the said decision is not applicable in the facts of the present case.

7. The decision in the case of ***Vellore Citizens Welfare Forum v. Union of India & Ors.*** (supra) is also of little assistance to the petitioner as that was a case relating to the pollution caused by tanneries by discharging untreated effluent in rivers. It is in that context that the Supreme Court had held that “*even though leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and that poses health hazard.*”

8. In view of the above, the relief sought for by the petitioner cannot be granted. Undisputedly, the licences to operate the liquor vends in question have been issued in conformity with the Delhi Excise Rules, 2010 and thus no interference of this Court is warranted.

9. The petition is, accordingly, dismissed. The parties are left to bear their own costs.

DECEMBER 18, 2017

pkv

VIBHU BAKHRU, J