

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 30.01.2019

PRONOUNCED ON 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.Nos.15661/2018 & 11767/2018
&
WMP.Nos.18596, 18597, 13737 & 20870/2018

K.Devamani

.. Petitioner in
both writ petitions

Vs

1. Union Territory of Puducherry
rep.by its Commissioner-cum-Secretary [Excise]
Department of Excise, Puducherry.
2. The Deputy Commissioner
Excise, Karaikal, Puducherry.
3. The District Collector
Karaikal, Puducherry.
4. M/s.Cee Cee & Cee Cee's
rep.by its Manager
C.Pradeep, Main Road
Mahe, Union Territory
Puducherry.

.. Respondents

Prayer in WP.No.15661/2018:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records of impugned order made in No.2515/DCE/C2/2018-19 dated 15.06.2018 passed by the 2nd respondent and quash the same, consequently forbear the respondents 1 to 4 from shifting liquor shops from Mahe Region to Karaikal Region, Puducherry.

Prayer in WP.No.11767/2018:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records of impugned order made in No.2515/DCE/C2/2017-18/251 Karaikal dated 27.03.2018 passed by the 2nd respondent and quash the same, consequently forbear the respondents 1 to 4 from change the business premises of liquor shops from Mahe Region to Karaikal and establishing or relocating or granting license to the liquor shops at Karaikal, Puducherry.

For Petitioner in
both writ petitions : Mr.G.Ethirajulu for
Mr.K.Balu

For RR 1 to 3 in
both writ petitions : Mr.A.Gandhiraj,GP
[Pudhucherry]

Assisted by Mrs.Mala, AGP

For R 4 in both
writ petitions : Mr.Ar.L.Sundaresan,
SC assisted
by Mr.Sai Krishnan

COMMON ORDER

M.SATHYANARAYANAN, J.

By consent, both the writ petitions are taken up for final disposal and are disposed of by the following common order. Mr.A.Gandhiraj, learned Government Pleader [Puducherry] appears on behalf of the respondents 1 to 3 and Mr.Ar.L.Sundaresn, learned Senior counsel assisted by Mr.Sai Krishnan, learned counsel appears on behalf of the 4th respondent in both the writ petitions.

2 The facts leading to these litigations, are as follows:-

[a] These writ petitions are filed as Public Interest Litigations by a resident of Thirunallar, Karaikkal District, Union Territory of Puducherry, and according to him, the common grievance of the residents / people of the said locality is to forbear the respondents 1 to 3, viz., Union Territory of Puducherry represented by its Commissioner-cum-Secretary, Excise, Pudhucherry, Deputy Commissioner [Excise], Karaikkal, and the District Collector of Karaikkal from establishing Liquor shops or changing the business premises of Liquor Shops from Mahe Region to Karaikkal District. The petitioner, would aver that in respect of Karaikal, licenses were issued for the

following category of Liquor Vending:-

Retail Liquor Shops with attached Bar	45
Wholesale Liquor Shops	12
Hotel attached with Bar	6
Arrack Shop	31
Toddy Shop	29

[b] It is further averred by the petitioner that in pursuant to the Judgment of the Hon'ble Supreme Court of India, reported in 2017 [2] SCC 281 [State of Tamil Nadu rep. By its Secretary, Home, Prohibition and Excise Department Vs K.Balu], the Liquor Shops which lie close to National-State Highways, were prohibited from operating their business and therefore, the licensees of the Liquor Shops of Mahe Region had started submitting their applications for shifting the Liquor Shops from that region to Karaikal and the distance between Mahe and Karaikal is approximately 650 Kilometres.

[c] According to the petitioner, the provisions of Pondicherry Excise Act, 1970 'local area should naturally means locality or area or panchayat or Commune or Ward in the Municipality and it cannot be extended to the entire Union Territory of Puducherry'. It is also stated by the petitioner that a Single Bench of this Court, in the order dated 07.03.2003 made in WP.No.39961/2002 [K.Murali Vs. Commissioner [Excise]-cum-Secretary to Government [Revenue], Government of Puducherry and 2 others], reported in 2003 WLR Pg.448 had categorically held that any shifting under Rules 163 and 209 can be only within a specified local area and the expression 'from one place to another' can only mean within a particular locality/area/Panchayat/Commune and it cannot be shifted to a totally different area and WA.Nos.1848/2003 and 655/2003, preferred against the said order, came to be allowed vide common judgment dated 06.09.2005 on the ground that the writ petition itself is premature. The grievance expressed by the petitioner is that since the 2nd respondent is attempting to grant permission to the 4th respondent to shift the liquor shop from Mahe Region to Karaikal Region and that it cannot be given and also submitted a representation dated 02.06.2017 and it was not considered and came to be disposed of and therefore, the petitioner is constrained to file WP.No.15953/2017 praying for issuance of a writ of mandamus, forbearing the respondents from according permission to change the location of the liquor shop from Mahe region to Karaikal region and the writ petition came to be dismissed along with WP.No.13081/2017 on 26.02.2018 holding that the application submitted by the 4th respondent for shifting shall also be considered in accordance with law along with the objection raised by the petitioner.

[d] The petitioner was merely issued with a notice by the

Commissioner of Excise to attend the hearing on 01.03.2018 and thereafter, passed the order on 27.03.2018, holding that since WA.No.1848/2003 came to be allowed holding that the writ petition was premature, the objection submitted by the petitioner came to be disposed of accordingly. The grievance expressed by the petitioner is that despite pointing out the Rule position and raising tenable objections, the 2nd respondent did not consider the same and given a disposal to his objections by merely taking into consideration the judgment made in WA.No.1848/2003 and without citing any reason whatsoever and subsequently, the 2nd respondent, vide proceedings dated 15.06.2018, granted permission to the 4th respondent to shift his liquor business in FL-I business from Mahe region to RS.No.2/6, Ponpethy Revenue Village, Nedungdu, Karaikal and therefore, filed WP.No.15661/2018 to challenge the legality of the said order.

[e] In WP.No.11767/2018, the petitioner made a challenge to the order of the 2nd respondent, viz., the Deputy Commissioner [Excise], Government of Puducherry dated 27.03.2018, raising the very same ground. Both writ petitions had been entertained and notices were ordered and obtained interim orders in the said writ petition.

[f] The private respondent-4th respondent, viz., M/s.Cee Cee & Cee Cees, had filed WMP.No.20870/2018, to vacate order of interim stay dated 05.07.2018 granted in the said writ petition. The official respondents 1 to 3 had filed the common counter affidavit and after narrating the earlier round of litigations, took a stand that in pursuant to the common order dated 26.02.2018 in WP.No.13081/2017 filed by one K.M.Baskar and WP.No.15953/2017 filed by the petitioner herein, the 2nd respondent had granted approval for shifting the 4th respondent license from Mahe region to Karaikal vide proceedings dated 13.06.2018 and based on the same, the Deputy Commissioner of Excise, Karaikal, had issued consequently proceedings in favour of the 4th respondent. It is also the stand of the respondents 1 to 3 that all statutory formalities/requirements have been followed for shifting the said liquor shop and sine they did not violate any law or rules, the writ petition deserves to be dismissed.

[g] The private respondent, in the affidavit filed in support of the vacate stay petition, would submit that in pursuant to the above cited orders of the Hon'ble Apex Court, the officials came to their shop on 06.07.2018 and directed the closure and sealing of the premises and then only, he became aware of the orders passed in WP.No.15661/2018 and he had collected the papers pertaining to the said writ petition. It is also the stand of the 4th respondent that the order permitting

them to shift the liquor shop from Mahe to Karaikal is valid and in accordance with law and the orders passed can also put to challenge under section 60 of the Pondicherry Excise Act, 1970 [in short 'the Act, 1970'] and as such, the writ petition is not maintainable. It is also pointed out by the 4th respondent that they hold only FL-1 license and they are not indulging in retail liquor vending and therefore, whatever objections/inconvenience pointed out by the writ petitioner, won't be there and on account of the subsistence of the interim orders, they are suffering very much and therefore, prayed for vacating interim order and also dismissal of the writ petition.

[h] The petitioner also filed a common rejoinder to the counter affidavit of the respondents reiterating his earlier stand and also placed reliance on Rules 163 and 209 of the Pondicherry Excise Rules, 1970 [in short 'the Rules 1970'] and would submit that each locality or Panchayat or Commune can have only specified number of shops and no shifting can be permitted to a totally different area, i.e., from Mahe to Karaikal and in the absence of any specific definition to the word 'place', shifting cannot be ordered from one area to another area and by according such a permission, the number of liquor shops in Karaikal is bound to increase and it is not in public interest and therefore, prayed for allowing of the writ petitions.

3 Mr.G.Ethirajulu, learned counsel appearing for the petitioner had drawn the attention of this Court to the Pondicherry Excise Act 1970 and the Pondicherry Excise Rules, 1970 and made the following submissions:-

- Section 2[22] of the Act, 1970, defines 'place' and in the light of the limited scope of the definition, it cannot be said that the place includes the area also.
- Chapter VI of the Rules, 1970 speaks about the Sale of Indian or Foreign Liquors and Rule 113 deals with licenses and sub-rule [1] deals with F.L.-1 License and in the case on hand, the 4th respondent possesses FL-1 License. Rule 114 speaks about the Application for License and sub-rule [iii] of Rule 114 says the location of the premises where the applicant intends to conduct the business under a license. Rule 122 says about the license to be fixed in an area and Rule 141 speaks about the General conditions of license/permit and it comes under Chapter VIII, which deals with Denatured spirit and denatured spirituous preparations. Chapter IX of the Rules, 1970, deals with the lease of the right of retail vend of liquors and Rule 163 speaks about the shifting of the shop from one place to another. Chapter XII speaks about the specials conditions of license for sale of Arrack . Chapter XIII deals with Excise License [General Conditions] and Rule 209 speaks about shifting of shops and as per the Rule, licensee shall not shift the licensed place

from one place to another without prior approval of the Licensing Authority and as per the proviso, the Licensing Authority may permit, subject to fulfillment of conditions of license, shifting of licensed premises on payment of one-fourth of the license fee for such shifting.

- It is also pointed out by the learned counsel for the petitioner that the area has not been defined and section 2 [22] of the Act, 1970, defines 'place' and in the light of the restricted meaning given to that provision, the definition of 'place' cannot be expanded to one region to another region and in the case on hand, from Mahe region to Karaikal region.

4 The learned counsel for the petitioner, on factual aspects would submit that the materials placed before this Court in the form of typed set of documents would clearly indicate that the Excise officials, took a conscience decision to accord permission for shifting of the liquor shop from Mahe region to Karaikal region and submitted the following facts:-

- ➔ The petitioner, on becoming aware of the request made by the 4th respondent, submitted a detailed representation dated 02.06.2017 to the Sub-Collector [Excise], Collectorate, Karaikal, bringing to his knowledge about the order passed by the Hon'ble Supreme Court ; order passed in WP.No.3966/2002 [cited supra] with a request to take into consideration the order passed in Wp.No.3966/2002 and reject the request made by the 4th respondent and it was also received and acknowledged.
- ➔ One K.M.Baskar, filed WP.No.13081/2017, praying for issuance of a writ of mandamus, forbearing the respondents which included 4th respondent herein from establishing or relocating or granting license to liquor shop at Kulakudi Village, Nedungadu Commune, Karaikal, Puducherry or in the adjoining area of the said village and the petitioner herein filed WP.No.15953/2017 praying for issuance of a writ of mandamus forbearing the respondents from change of business premises of liquor shop from Mahe region to Karaikal region / shifting / relocating or granting license to locate liquor shop at Karaikal, Puducherry.
- ➔ The Hon'ble First Bench of this Court, vide common order dated 26.02.2018, had disposed of both writ petitions and taking note of the plea made by the 4th respondent that his application for shifting is pending before the concerned authority for quite some time, had directed the concerned respondent to consider the said application and give a disposal in accordance with law, along with the objections raised by the writ petitioner, viz., Tvl.K.M.Baskar and

Devamani [petitioner herein]. The Deputy Commissioner [Excise], in compliance of the said order, issued a Notice dated 23.02.2018 to the petitioner to attend the personal hearing on 01.03.2018 and accordingly, the petitioner appeared and gave a statement and it was recorded in writing. In the statement, the petitioner had stated that there area already 35 liquor shops and that in Kulakudi village, only 35 houses are there and already Toddy and Arrack shops are located in the said village and out of 35 families, 20 families lost their breadwinners and youngsters also got addicted to liquor and if permission is accorded, very many liquor shops are likely to be located and this Court has also passed an order that liquor shop cannot be shifted from one place to another and taking into consideration the further interest, prayed that permission for shifting of the liquor shop from Mahe to Karaikal, cannot be granted.

- The Deputy Commissioner [Excise] vide order dated 27.03.2018 has taken note of the objections of the petitioner and also noted the order passed in WP.No.3966/2002 and further taken into consideration, the judgment made in WA.No.1848/2003, preferred against the said order and held that since the writ petition has been dismissed as premature, the representation of the petitioner is also disposed of.

5 It is the vehement and forceful submission of the learned counsel for the petitioner that the said disposal is not in conformity with the common order dated 26.02.2018 passed in WP.Nos.13081 and 15953/2017 and also invited the attention of this Court to the representation dated 02.06.2017 as well as the statement recorded during the course of enquiry by the Deputy Commissioner [Excise], Karaikal and would submit that the petitioner herein also raised other tenable objections and however, for the reasons best known to the said official, he had taken note of the judgment made in the writ appeal only and by a cryptic order, had disposed of the petitioner's representation and the same is unsustainable in law and it also clearly exhibits the attitude of the said official to grant permission for shifting of the business in favour of the 4th respondent.

6 Learned counsel for the petitioner, on a legal plea, would submit that the definition given in section 2[22] of the Act, 1970, cannot be enalrged to different region and at best, plea of shifting made by the 4th respondent might have been considered within the place, viz., Mahe.

7 It is also the submission of the learned counsel for the petitioner that assuming that the order permitting the shifting of the liquor shop is permissible, still the concerned

official is under statutory obligation in terms of Rule 122, to determine maximum number of license to be granted in an area and it appears that the said exercise has not been done and on that ground also, the impugned order warrants interference and prayed for allowing of both writ petitions.

8 Per contra, Mr.A.Gandhiraj, learned Government Pleader [Puducherry] appearing for the Union Territory of Puducherry would submit that the word 'place' as defined under section 2 [22] of the Act, 1970, is only an inclusive definition and it applies to shifting from one region to another region/one place to another place also and as such, the petitioner is not having any tenable legal ground to make a challenge to the impugned order. It is the further submission of the learned Government Pleader [Puducherry] that the petitioner had placed heavy reliance on the common order dated 07.03.2003 made in WP.No.39661/2002 [cited supra] and no doubt, in the said order, it has been expressly held in paragraph No.17 that the expression 'from one place to another' can only mean the locality or area or panchayat or Commune and will not enable shifting from a total different area and the said order has been put to challenge by one Kalyani in WA.No.1848/2003 as well as the Commissioner [Excise]-cum-Secretary to the Government, Revenue as well as the Deputy Commissioner [Excise], Puducherry and vide common judgment dated 06.09.2005, the writ appeals came to be allowed and thereby, dismissing WP.No.39661/2002 and in the judgment, the Division Bench held that the writ petition is premature and as such, the reliance placed upon the said order passed in the writ petition is of no use/help.

9 It is the further submission of the learned Government Pleader [Puducherry] that in compliance of the order dated 26.02.2018 made in WP.Nos.13081 and 15953/2017, the petitioner was granted an opportunity of personal hearing and his oral statement was also recorded and taking into consideration of the same, the 2nd respondent has rightly rejected the said representation and it cannot be found fault with. Learned Government Pleader [Puducherry], as to the alleged non-compliance of Rule 122, would submit that the said aspect had gone into and also produced the files and would submit that the concerned official has taken note of maximum number of licenses to be granted in an area and accordingly, passed the order. It is also pointed out by the learned Special Pleader [Puducherry] that the Deputy Commissioner [Excise] had passed two consequential orders, dated 07.06.2018 and 13.06.2018 respectively and the said orders have not been put to challenge by the petitioner and prays for dismissal of the writ petitions.

10 Mr.Ar.L.Sundaresan, learned Senior counsel assisted by Mr.Sai Krishnan, learned counsel appearing for the 4th respondent

would submit that the present writ petitions, styled as Public Interest Litigations, is only at the instance of some rival traders and the petitioner is not espousing the genuine cause in public interest and apart from adopting the arguments of the learned Government Pleader [Puducherry], it is the submission of the learned counsel for the 4th respondent that after the order of shifting the business premises on 07.06.2018, business was carried on till 07.06.2018 and on account of the interim orders passed in WP.No.15661/2018, the 4th respondent has closed his shop. The learned counsel would submit that u/s.60 of the Act, 1970, the petitioner is having an effective alternate remedy and without exhausting the same, has filed the present writ petitions and it deserve dismissal on the ground of maintainability also.

11 This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

12 The Hon'ble Supreme Court of India, in the decision reported in 2017 [2] SCC 281 [The State of Tamil Nadu rep.by the Secretary, Home, Prohibition and Excise Department and others Vs. K.Balu and another] [cited supra] had addressed the issue relating to the presence of liquor vending on National and State Highways across the Country and the alarming statistics as to the occurrence of roads accidents on account of drunk and driving and in paragraph No.24, has issued the following directions:-

'24 We accordingly, hereby direct and order as follows:-

- i. All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along National and State Highways.
- ii. The prohibition contained in [i] above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority.
- iii. The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017.
- iv. All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on National and State Highways.

- v. No shop for the sale of liquor shall be [i] visible from a National or State Highway, [ii] directly accessible from a National or State Highway and [iii] situated within a distance of 500 metres of the outer edge of the National or State Highway or of a service lane along the Highway.
- vi. All States and Union Territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the State revenue and Home Departments. Responsibility shall be assigned inter alia to District Collectorate and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.
- vii. These directions issue under Article 142 of the Constitution.

13 Subsequently, IA Nos. 4 to 42/2016 in Civil Appeal Nos.12164 to 12166/2016 had been filed, praying for extension of time for compliance in certain cases and modification/recalling the above cited judgment. It was argued on behalf of the applicants that the judgment rendered by the Hon'ble Apex Court has transgressed the limitations on the Constitutional powers guaranteed under Article 142 and the Hon'ble Supreme Court of India, while disposing of the applications on 31.03.2017, in paragraph No.15, has observed as follows:-''.....The State Excise Rules contain enabling provisions. They provide for discretion for the grant of liquor licenses. No individual has vested right to obtain a license. There is no fundamental right to carry on business in liquor since as a matter of constitutional doctrine, Article 19[1][g] does not extend to trade in liquor which is consistently regarded as res extra commercium.....The State has a discretion on whether a license should be granted under its enabling powers. No individual can assert a right to the grant of license : trading in liquor is a privilege conferred by the State.''' In paragraph No.20, it is observed that, ''the pernicious nature of sale of liquor along with the National and State Highways cannot be ignored. Drunken driving is a potent source of facilities and injuries in road accidents.''

14 The Hon'ble Apex Court, in the order dated 31.03.2017, passed in the Interlocutory Applications, modified the earlier order. Subsequently, miscellaneous applications have been filed and it was argued by the respective learned counsel appearing for the applicants therein that the expression ''municipal areas'' in paragraph No.7 of the order dated 11.07.2017 was not indeed, to exclude areas within the jurisdiction of local self governing Bodies and therefore, they prayed for appropriate direction to obviate uncertainties in the applications. The Hon'ble Apex Court, having taken into account of the statement, expressed the view that the State Governments would not be precluded from determining whether the principle which has been laid down in the order dated 11.07.2017 in Arrive Safe Society of Chandigarh Vs. Union Territory of Chandigarh [SLP [C] No.10243/2017] should also apply to areas covered by Local Self Governing Bodies and Statutory Development Authorities and the State Governments are to make the said determination since it is question of fact as to whether an area covered by the Local Self Governing Body is proximate to a municipal agglomeration or is sufficiently developed as to warrant the application of the same principle.

15 This Court, for the purpose of adjudicating the issue whether the definition ''place'', defined u/s.2[22] of the Act, 1970 and shifting of shops from one place to another in terms of Rule 209 of the Rules, 1970, are having restrictive meaning or not?

16 It is relevant to extract the following provisions:-

[i] Section 2 of the Pondicherry Excise Act, 1970:-

Sub-section 22:- ''place'' includes a house, building, shop, booth, tent, vessel, raft and vehicle.

[ii] Rule 114 of the Pondicherry Excise Rules, 1970:-

Application for license:-[iii] Location of the premises where the applicant intends to conduct the business under a license.

[iii] Rule 122:-Number of Licenses to be fixed:-

[1] The maximum number of licences to be granted in an area shall be determined from time to time by the Excise Commissioner with the previous approval of the Government.

[2] While fixing the number of licenses for the year, regard shall be had to the General Policy of the Government from time to time the existing number of shops and other relevant factors.

[iv] Chapter IX-Lease of the right of retail vend of liquors:-

Rule 163:-Shifting of the shop:- The Licensing Authority may either on the application of the licensee or otherwise and for reasons to be recorded in writing, direct the shifting of a shop from one place to another and a licensee shall not be entitled

to any compensation on account of such shifting.

[v] Chapter XII-Special Conditions of licence for sale of Arrack:-

Rule 209:-Shifting of shops:- The licensee shall not shift the licensed premises from one place to another without the prior approval of the Licensing Authority, provided that the licensing authority may permit, subject to the fulfillment of conditions of license, shifting of licensed premises on payment of one-fourth of the license fee for such shifting.

17 The facts of the case would disclose in WP.No.3966/2002, a Single Bench of this Court vide order dated 07.03.2003 [cited supra] had considered Rules 163 and 209 and in paragraphs No.16 and 17 had held that the Licensing Authority cannot order shifting under Rule 163 or Rule 209, which has resulted in increasing number of shops in the transferred area and the expression ''from one place to another'' can only mean within the particular local area/panchayat/commune and will not enable shifting to a totally different area and the said order was put to challenge by one Kalyani as well as by the Commissioner [Excise]-cum-Secretary to Government, Revenue, Government of Pondicherry and the Deputy Commissioner, Excise, Puducherry in WA.Nos.1848 and 655/2003 respectively and vide common judgment dated 06.09.2005, this Court had allowed the writ appeals and thereby set aside the above cited order passed in WP.No.39661/2002 and granted liberty to the 3rd respondent in WA.No.1848/2003 [petitioner in WP.No.39661/2002] to make a challenge in the event of any order being passed for shifting of the liquor shop in an appropriate proceedings before appropriate Forum. The 4th respondent herein, in terms of the order of the Apex Court, submitted an application dated 28.02.2017 to the Deputy Commissioner [Excise], Karaikal, praying for appropriate permission to shift liquor business to Karaikal and on becoming aware of the same, the petitioner has submitted a detailed representation dated 02.06.2017 to the Sub Collector [Excise], Collectorate, Karaikal, as well as to the Deputy Collector [Excise], Karaikal, Puducherry District.

18 One K.M.Baskar as well as the petitioner herein filed WP.Nos.13081/2017 and 15953/2017 respectively, praying for issuance of a writ of mandamus, forbearing and according any such permission for shifting of the liquor shop from Mahe Region to Karaikal Region and locate it at Kulakudi Village, Nedungadu Commune, Karaikal and the 4th respondent herein, was arrayed as the 4th respondent in both the writ petitions and submission was made on their behalf that the application for shifting is pending consideration before the Deputy Collector/Commissioner [Excise]. The Hon'ble First Bench of this Court has taken note of the said submission and directed the said official to

consider and dispose of the application submitted by the 4th respondent in accordance with law and while doing so, directed the objections raised by the petitioner have to be taken note of..

19 The Deputy Commissioner [Excise], in compliance of the order has afforded to the petitioner, an opportunity of personal hearing and upon his appearance, has also recorded his statement. The contents of which, have been extracted in the earlier paragraphs while narrating the facts of these cases. The Deputy Commissioner [Excise], vide impugned order dated 27.03.2018, has observed that by taking note of the fact that WA.No.1848/2003 and 655/2003 has been allowed and consequently, WP.No.39661/2002 was dismissed as premature. It is to be noted at this juncture that the said official did not go into the merits or otherwise of the contents of the representation submitted by the petitioner as well as his statement recorded during the course of enquiry. It is also brought to the knowledge of this Court by the learned Senior counsel appearing for the 4th respondent that consequent upon the said rejection, the 3rd respondent has passed an order dated 07.06.2018 approving the shifting subject to conditions laid down under Rule 209 of the Rules, 1970 and also issued a further proceedings on 13.06.2018 imposing two conditions, viz., that there shall be only one and the same entrance and exit and the boundary of the building should be properly put up. In the considered opinion of the Court, the disposal given by the 3rd respondent, viz., the Deputy Commissioner [Excise], Puducherry, in terms of the order dated 27.03.2018, is not at all satisfactory and the said order is also not in consonance with the directions issued in the common order dated 26.02.2018 made in WP.Nos.13081 and 15953/2017.

20 The definition 'place' found in section 2[22] of the Act, 1970, is an inclusive definition and the Hon'ble Supreme Court of India in the decision reported in 2011 [2] SCC 52 : AIR 2011 SC 428 [Delhi Development Authority Vs Bholanath Sharma] has observed that the definition may be in the form of 'means and inputs' and it is having a very wide meaning and the prima facie use of it, excludes limitation. It is also settled position of law that the words of Statute as prima facie be given their ordinary meaning and the language or phraseology employed by the legislature is precise and plain.

21 This Court, keeping in mind, the said principles, is called upon to adjudicate whether the impugned order and the other consequential orders of the 3rd respondent, permitting the licensee, viz., the 4th respondent, to shift his liquor shop under FL-1 License from Mahe Region to Karaikal Region.

22 In AIR 1937 NAGPUR 102 [Emperor Vs. Basantilal Juthalal Marwadi], the word 'place' as defined under Public Gambling Act, 1867, as amended by the C.P. Act 3 of 1927, came up for consideration and it was held that the word 'place' in section 3 of the Public Gambling Act, cannot be so construed as to embrace the whole of a thoroughfare and after considering 1899 Appeal Cases 143 [Powell Vs. Kempton Park Racecourse Co.], it was observed that 'a place must be a defined area so marked out that it can be found and recognised.'

23 In AIR 1957 ALLAHABAD 340 [DB] [Smt. Razia Vs. The State] u/s. 298 of the UP Municipalities Act, By-Law has been framed prohibiting prostitutes from residing or keeping brothels within the limits of Municipality and the Division Bench, while interpreting the By-laws 3 and 4, observed that 'there is no justification for restricting of the word 'area' in Clause [e], Item H, List X, sub-section [2] of section 298 of the Municipalities Act, to a locality smaller in area than the entire limits of the Municipality and the entire limits can come within the expression 'area'.' The only requirement is that the Municipality should specify the area where the public prostitutes were not to reside. It is not provided that the area so specified should be smaller than the limits of the Municipality or that the Municipality must provide an area within the Municipality for the residence of such prostitutes and for the keeping of brothels.' [emphasis supplied].

24 In AIR 1964 SC 962 [Constitution Bench] [C.S. Rowjee represented by Power of Attorney holder Sri C. Apparao Rowjee and others Vs. The State of Andhra Pradesh and others], the Hon'ble Supreme Court of India had dealt with the issue as to the allegations of mala fides or improper notice on the part of persons in authority and also the scope of section 68[C] of the Motor Vehicles Act, 1939, and the State Transport Corporation had proposed nationalisation of the Motor transport of various Districts in certain areas and it was argued that the scheme framed by the Corporation, could not be assailed as not in conformity with the requirements of section 68[C] of the Act so long as the choice of the area in which and the routes in it to be run by the Corporation was made by them alone. In paragraph No. 31 of the said judgment, it was observed that, 'the area in the section as meaning such 'area' in the entire State as the Corporation should consider proper and not as the learned Additional Advocate General would read as 'area' within a circumscribed part of the State determined by an outside authority.'

25 In the decision reported in 1988 [Supp] SCC 342 [Collector of Customs, Calcutta Vs. M/s. Sun Industries], the Hon'ble Supreme Court, while deciding the appeal filed u/s. 130-E

[b] of the Customs Act, 1962, has considered the meaning of 'place' and also considered the definition of the word 'place', according to the Webster Comprehensive Dictionary International Edition page 694 and in paragraph No.8, observed that, 'the expression 'place' will depend for its connotation on the context in which it is use.....The word 'place' is generally found in conjunction with other words which give it a colour, and is usually controlled by its context.'

26 Chapter XII of the Pondicherry Excise Rules, 1970, speaks about the Special Conditions of License for sale of Arrack and in the case on hand, the petitioner is having FL-1 License. Chapter VI deals with the Sale of Indian or Foreign Liquors and Rule 113[1] deals with FL-1 license. Chapter XIII deals with the General Conditions of Excise Licenses and as per Rule 188, the rules in this Chapter shall apply to all licenses issued under the Pondicherry Excise Act, 1970, for sale of liquors and every such license deem to include conditions prescribed by this Chapter as General conditions. Rule 191 speaks about selection of sites and it is relevant to extract the same:-

'191-Selection of Sites:-

[1][i] In the case of arrack and toddy, the Government shall appoint a committee in each region from time to time, consisting of the representatives of the Revenue Department, Police Department and the concerned Municipality [hereinafter called the Selection Committee], who shall give their views on the boundaries within which each of the shops shall be located.

[ii] In fixing the boundary, the Government shall take the view of the Selection committee and all other relevant factors into consideration.

[iii] The same procedure shall be followed in the case of change of sites also.

[2] In the case of other shops, the applicant shall select a site and intimate the licensing authority who may after making such enquiry as he thinks fit, approve the site so selected.

[3] After such approval the description of the shop shall be entered in the licence to be issued.

[4] The licensee shall sell liquor only in the approved shop and shall not sell any other article in the said premises.

Rule 209 speaks about shifting of shops [extracted supra] and

in terms of Rule 191, 'in case of arrack and toddy, the Government shall appoint a Committee in each Region from time to time consisting of representatives..... who shall give their views on the boundaries within which each of the shops shall be located' and as per sub-rule [2], 'in the case of other shops, the applicant shall select a site and intimate the licensing authority who may, after making such enquiry as he thinks fit, approve the site so selected.'

27 The interpretation now given by the official respondents is that the definition of the word 'place' under section 2[22] of the Act, 1970, is an inclusive definition, which definition includes region also. Chapter IX deals with the lease of the right of retail vend of liquors and though the said Chapter has no application to FL-1 license, as per Rule 163, for shifting of the shop, the licensing authority may either on the application of the licensee or otherwise and for the reasons to be recorded in writing, direct shifting of a shop from one place to another and the licensee shall not be entitled to any compensation on account of such shifting.

28 In 1988 [Supp] SCC 342 [M/s.Sun Industries] [cited supra], the Hon'ble Supreme Court has observed that, 'the expression 'place' will depend for its connotation on the context in which it is used. The word is generally found in conjunction with other words which give it a colour, and is usually controlled by its context.'

29 In the Principle of Statutory Interpretation 14th Edition, in Chapter II Synopsis II, while dealing with the natural and grammatical meaning, the learned author observed that, 'natural ordinary meaning of the words should not be departed from, unless it can be shown that the logical context in which words are used requires a different meaning' and also quoted the observations of the Hon'ble Mr. Justice Gajendra Khatkari in Hyden's case that, 'words used in the material provisions of the Statute must be interpreted in their plain grammatical meaning and it is only such words are capable of true constructions the question of giving effect to the policy or object of the Act legitimately or otherwise.'

30 The Dictionary meaning of the word 'place' is 'a particular point, area, city, town, building etc., especially one use for a particular purpose or where a particular thing happens'.

31 This Court, keeping in mind, the contextual position and meaning and also in the light of the above cited Rules, is of the considered view that the word/phrases/term 'place' in the Pondicherry Excise Act, 1970 and the Rules framed thereunder

is having a restrictive meaning. Sub-rule 2 of Rule 191 of Chapter XIII also says that in case of other shops, i.e., apart from Arrack and Toddy shops, the applicant shall select the site and intimate the licensing authority, who may, after making such enquiry as he thinks fit, approve the site so selected. The word 'site' is referable to the site in a particular place only and in the case on hand, the liquor shop, in which the 4th respondent has been granted FL-1 License at Mahe Region, wants to shift the same to Karaikal Region which is around 650 Kms away.

32 It is to be pointed out at this juncture that the impugned order, which is the subject matter of challenge in WP.No.11767/2018 is also not in consonance with the common order dated 26.02.2018 made in WP.Nos.13081 and 15953/2017 for the reason that the objections raised by the petitioner herein despite the opportunity of personal hearing and recording of the statement, have not been objectively considered and adopting a hyper-technical approach, the said objection has been rejected by the Deputy Commissioner [Excise], Puducherry. No doubt, after the rejection of the objections, two consequential orders, in favour of the 4th respondent came to be passed, the last of such order dated 13.06.2018, has been communicated to the 4th respondent alone and insofar as the earlier communication dated 07.06.2018, it was between the Deputy Commissioner [Excise], Puducherry and the Deputy Commissioner [Excise], Mahe, with a copy marked to the Deputy Commissioner [Excise], Karaikal and as such, it is not necessary on the part of the petitioner to make a challenge to the said orders. The learned counsel for the 4th respondent has also placed reliance upon the order dated 23.02.2018 made in WP.No.4067/2018 [R.Senthilkumar Vs. Union Territory of Puducherry represented by the Commissioner, Department of Excise, Puducherry and another], wherein, a writ of mandamus forbearing the respondents from re-establishing or re-locating or grant a license to liquor shop at Madukkarai village, Puducherry or its adjoining area. However, the points urged herein, have not been made in the said writ petition and the said writ petition came to be disposed on the facts of the said case and as such, it is distinguishable.

33 Insofar as the submission made by the learned counsel for the petitioner as to the non-compliance of Rule 122 of the Rules 1970, in pursuant to the order dated 15.11.2018 passed in these writ petitions, the learned Government Pleader [Puducherry] has produced the files and on going through the same, this Court found that the said Rule has been complied with in letter and spirit. Therefore, the point urged in that regard is to be rejected.

34 In the considered opinion of the Court, the area defined under section 2[22] of the Pondicherry Excise Act, 1970, and other Rules of the Pondicherry Excise Rules, 1970, are having restrictive meaning and it is restricted to the area in which, the liquor shop is located, pursuant to the license granted and the order granting shifting of the said shop, can be confined only to that area and not to a totally different region.

35 In the result, both the writ petitions are allowed and the impugned orders dated 15.06.2018 and 27.03.2018 passed by the Deputy Commissioner [Excise], Karaikal and Puducherry, are hereby quashed and consequently, the permission accorded to the 4th respondent to shift his liquor shop from Mahe Region to Karaikal Region, is also set aside. However, in the circumstances of the case, there shall be no order as to cost. Consequently, connected miscellaneous petitions are also closed.

36 If the 4th respondent is so advised and if it is available to them under law, they are at liberty to work out their remedy against the official respondents in accordance with law before the competent Forum.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Commissioner-cum-Secretary [Excise]
Department of Excise, Union Territory of Puducherry,
Puducherry.
2. The Deputy Commissioner Excise, Karaikal, Puducherry.
3. The District Collector, Karaikal, Puducherry.

+1cc to Mr.R.Saravanan, Advocate, S.R.No.13666
+2cc to Mr.K.Balu, Advocate, S.R.No.14242, 14243
+2cc to the Government Pleader (Pondy), S.R.No.13685, 13684

WP.Nos.15661/2018 & 11767/2018

AD(Co)
CS/20/02/2019