IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2019
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.13483 of 2017
and WMP No.14556 of 2017

R.Sarveswaran ... Petitioner

vs.

1. Union Territory of Puducherry,
Rep. by its Commissioner,
Department of Excise,
Puducherry.

2. The Deputy Collector,
Excise,
Puducherry.

3. The Inspector of Police,
Villianur Police Station,
Villianur,
Puducherry. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the respondents from establishing or re-locating or granting license to the Liquor Shop at Madhakadipattu Village, Puducherry or its adjoin area of the said Village.

For Petitioner : Mr.K.Balu

For Respondents: Mr.Gandhirajan,
Government Pleader (Pondy)

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be a resident of Madhakadipatty Village, Puducherry, petitioner has filed the instant writ petition praying for a direction to forbear the respondents from establishing or re-locating or granting license to a Liquor Shop at Madhakadipattu Village, Puducherry or its adjoining area of the said Village.

Short facts leading to the filing of the writ petition, are as follows:

(i) Petitioner is a resident of Madhakadipattu Village, Puducherry. More than 3000 people are living in Madhakadipattu, Puducherry and the said area is a residential area. Temples of Sri Anjaneyar Temple, Sri Varadharajar Perumal Koil, are situated in the said area. Besides, there are Anjaneyar and Varadharajaperumal temples in the said area. The distance between the temple and the proposed Liquor shop is 50 Feet; the distance between the residential area and the proposed Liquor shop is 20 Feet. School and College are also situated, very near to the proposed Liquor shop. Liquor users smash beer bottles in public road and their activities are endangering to the general public. According to the petitioner, action of the respondents is totally illegal and against their own rules.

(ii) Petitioner has further stated that the Hon'ble Supreme Court has issued directions with regard to closure of Tasmac shops on National and State Highways, vide Judgment dated 15.12.2016 and directed all the States/Union Territories' to follow the guidelines for establishment or running liquor shops on National and State Highways. Subsequently, several modification applications were filed in Civil Appeal Nos.12164-12166 of 2016 dated 15.12.2016 and the earlier order was clarified by the Hon'ble Supreme Court, by an order, dated 31.03.2017 in Civil Appeal No. 12164-12166 of 2016. In view of the said judgment, the respondents are trying to re-locate the shop in the adjoining area and residential area viz., at Madhakadipattu Village, Puducherry, but the same was objected to, by the public, as well as the residents of concerned area. Despite the objection of the people, the respondents are trying to re-locate the shop in the residential area viz., Madhakadipattu Village, Puducherry, which is totally against the interest of public. It is pertinent to note that a Hon'ble Division Bench of this Hon'ble Court, vide judgment dated 16.11.2016 in W.P.No. 26003 of 2015, held that,

> The District Collector ought to have respected the sentiments and the feelings of the people of the Village and the difficulties experienced by them. When the people have gathered in front of the shops and expressed their displeasure over the running of the shops in that place, we cannot allow the shop to run in the said place.

(iii) Against the said order a Special Leave Petition was filed before the Hon'ble Supreme Court and the decision was confirmed by dismissing the appeal filed by the State of Tamil Nadu. Hence, the objections of the residents should be considered by the authorities.

(iv) Petitioner has further submitted that re-locating and establishment of Liquor shops and bars, are contemplated under the Rules of Puducherry Excise Rules 1970, but none of the rules have been followed by the respondents in the recent scenario. Rule 113 (2) of the said Rules prescribes the distance for granting license and also impose conditions for the same. The conditions made in Clause 7 of the said Rule, is as follows:

> "7. The licensed premises shall be 300 meters away from public place, education institution or religious establishment as far as possible."

(v) Therefore, a distance of 300 meters away from public place, education institution or religious establishment should be maintained for location of a liquor ship. Hence, the action of the respondent by granting FL-II License is against the said rule.

(vi) Petitioner has further submitted that under the prohibition rules, a condition is imposed on the licensee that sale of liquor should be away from 300 meters. Despite that, the respondents are trying to grant Liquor shop license viz., at Madhakadipattu Village, Puducherry. Besides, it is also situated near public area, the distance between the temple, educational institutions and the proposed Liquor shop, is within 300 meters.

(vii) Petitioner has also submitted that the Union Territory of Puducherry is granting license to liquor shops and number of road accidents occur due to druken driving. On behalf of the villagers several representations were sent to the respondents requesting not to grant Liquor License at Madhakadipattu Village, Puducherry. On 03.05.2017 another representation was made, objecting to the location and the same is pending without progress. However, on 06.05.2017, with the help of police, respondents 2 to 3 are trying to grant license viz., at Madhakadipattu Village, Puduchery. Hence, the entire action of the respondents is totally illegal against the rights of the villagers as per the directions of the Hon’ble Court.

(viii) It is his further submission that already this Hon’ble Court held that the objection of the public and residents should be considered and a fruitful decision would be taken, but the same has not been considered by the respondents herein. Peaceful protest is going on for the 15 days and 24/7 basis.

(ix) According to the petitioner, the action of the respondents re-locating Tasmac Shops are concerned is totally against the interest of the public and also defeats the object of this Hon'ble Court and Apex Court of India. For the abovesaid reasons, the petitioner has filed the instant writ petition for the relief stated supra.

3. On notice, the Deputy Commissioner (Excise), Puducherry, 2nd respondent has filed counter affidavit dated 30.06.2017 and the same is as follows:

(i) Excise Department is the second largest revenue contributor to the Government exchequer of Puducherry. During the year 2016-2017, the revenue collected by means of Excise Duty, licence fee etc., was Rs.671.27 crore. Union Territory of Puducherry which comprises of four regions namely Puducherry, Karaikal, Mahe and Yanam which are all located away from each other, has a population of 12.4 lakh people, as per 2011 census. The total area of the U.T. of Puducherry is 492 sq.km. Puducherry region, has an area of 293 sq.km., Karaikal region has an area of 160 sq.km., Mahe region has an area of 9 sq.km. and Yanam region has an area of 30 sq.km. There are 464 liquor shops located in all the regions, as per the following table:

Region	Wholesale shops (FL. 1)	Retail shops (FL.2)	• Tourism category hotels/ restaurants	Total
Puducherry	41	185	86	312
Karaikal	13	46	8	67
Mahe	28	33	1	62
Yanam	7	15	1	23
Total	89	279	96	464

(ii) Deputy Commissioner (Excise), Puducherry, has further submitted that the Hon'ble Supreme Court in the orders dated 15.12.2016 and 31.03.2017 in C.A.No.12169 of 2016 and S.L.P. (Civil) No.35454 of 2016 filed by the Union Territory of Puducherry, has directed to remove all the liquor shops that are located along the National Highways and State Highways and within a distance of 500 metre from the National Highways and State Highways and further directed that no shop for sale of liquor shall be (i) visible from a National or State Highway; (ii) directly accessible from a National or State Highway; (iii) situated within a distance of 500 metre of the outer edge of the National or State Highway or of a service lane along the highway; and (iv) situated within a distance of 220 metres of the outer edge of the national or state highway or of a service lane along the highways in the case of areas comprised in local bodies with a population of 20,000 people or less.

(iii) In compliance with the orders of the Hon’ble Supreme Court, a total number of 163 liquor licences in Union Territory of Puducherry, found to be located along the National highways and within a distance of 500 metre or 220 metre, as the case may be, from the National highway have been closed and their licences were not renewed for the year 2017-2018 until they shift their licensed premises to a location fulfilling the directions of the Hon’ble Supreme Court.

(iv) Due to the closure and non-renewal of these licences, U.T. of Puducherry would incur an estimated loss of about Rs.165 Crore during the year 2017-2018. Since directions of the Hon'ble Supreme Court were issued during December 2016, revenue collection during the last quarter of the financial year 2016-2017 had drastically come down which resulted in a revenue of Rs.671 Crore against a target of Rs.700 Crore, which is lower than the revenue of previous year 2015-2016.

(v) Deputy Commissioner (Excise), Puducherry, has further contended that in Puducherry region alone, three stretches of two National Highways namely NH-45A and NH-66 pass through East-West and North-South directions. It is a well-known fact that Puducherry region has a unique geographical feature that many areas are located discontiguosly and the National Highways stretches bisect most of these areas leaving very few locations that are suitable for the location of liquor shops in terms of provisions contained under Rule 113(2) of the Pondicherry Excise Rules, 1970 and the directions issued by the Hon’ble Supreme Court in the orders dated 15.12.2016 and 31.03.2017.

(vi) Deputy Commissioner (Excise), Puducherry, has further contended that rigid distance restrictions have been imposed under Rule 113(2) of the Pondicherry Excise Rules, 1970, as to the location of liquor shops away from the educational and religious institutions, stipulating that,

> “No shop shall be established in Municipal areas within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions:... "

The above provision was duly amended to the said rule in fulfilment of the directions of the Hon’ble High Court of Madras dated 25.08.2014 in W.P.No.14739 of 2001.

(vii) Madagadipet is a village within the Mannadipet revenue village. National Highway NH-45A, which is connecting Villupuram and Puducherry passes through Madagadipet village. As per 2011 census, the population of Madagadipet village is 5113. Most of the habitations and commercial establishments in Madagadipet village are concentrated in the areas along the National Highway NH-45A and along Madagadipet-Madukarai Road and all other areas in the village remain as vacant or as agricultural lands mostly devoid of any habitation.

(vii) In consonance with the provisions contained under Rule 113(2) of the Pondicherry Excise Rules, shops have been permitted to be relocated. The rule provides for distance restriction in respect of location of liquor shops and as per this provision, in Municipal areas, liquor shops should be located beyond a distance of 50 (fifty) metres and in other areas 100 (hundred) metres away from any place of worship or educational institutions. However, the petitioner has incorrectly quoted the provision under Rule 113(2) which has been duly amended in the year 2014 itself vide Notification No. 13279/DC(E)/S1/2012 dated 11.11.2014 published in the Extra-ordinary Gazette No.31 dated 11.11.2014.

(viii) Deputy Commissioner (Excise), Puducherry, has contended that the petitioner has sought for a complete ban for location of liquor shops in the entire village of Madagadipet, which amounts to imposing of prohibition in the said village. Such a restriction could not be implemented in a particular area or a village, since that would entail similar prayers from other areas or villages as well. Location of liquor shops are governed by the Puducherry Excise Act and Rules, 1970 and they are fully complied with, when granting permission for location of liquor shops. Since, the location of liquor shops are permitted by law and that the department has acted within the rules as well as the directions of the Hon'ble Supreme Court, in true spirit, averments of the petitioner are incorrect. Further, the petitioner, passively tries to seek prohibition all along the entire stretch of Madhakadipattu Village, Puducherry, by way of filing a Writ Petition before this Court, which is against the liquor policy of the State Government, as empowered under Item 51 of the State List in the Seventh Schedule of the Constitution of India.

(ix) No liquor licences are being issued to private individuals, since 1989, except for Government undertakings, cooperative institutions and tourism category hotels and restaurants. Due to the closure of 163 nos. of shops along the National highways, 83 licences/shops in Puducherry region alone were closed. Of these 83 licences, excepting 19 numbers of Tourism hotels and restaurants, the remaining 64 would seek shifting to a place which is in compliance with the directions of the Hon'ble Supreme Court and the provisions under the amended Rule 113(2) of the Pondicherry Excise Rules, 1970. So far, pursuant to the directions of the Hon'ble Supreme Court, in the whole of U.T. of Puducherry, 55 shops of 163 have been shifted to new locations in strict compliance to the Puducherry Excise Act and Rules, 1970 and the directions of the Hon'ble Supreme Court. Representations received against shifting of any of the liquor shops to Madagadipet village of Mannadipet Revenue village are to be disposed, by considering all these factors.

(x) Applications for location or relocation of liquor shops are being considered by the licensing authorities with due care and caution so that the location of the licences are in strict compliance with the provisions contained under Rule 113(2) and also adhering to the directions of the Hon'ble Supreme Court, as stated supra.

(xi) There are ample provisions for appeal and revision, available under the Puducherry Excise Act, 1970. If any one is aggrieved by the orders of 2nd respondent i.e. Deputy Commissioner (Excise), who is also the licensing authority, as provided under sub-section 2 of Section 60 of the Puducherry Excise Act, 1970, he may make appeal before the Excise Commissioner, 1st respondent herein. The said section reads as follows:

> "Section 60(2): Any person aggrieved by an order passed by the Deputy Commissioner under this Act, may within 90 days from the date of communication of such order, appeal to the Excise Commissioner.

(xii) Section 60(3) the Puducherry Excise Act, 1970 provides for, an appeal to the Government against the orders passed by the Excise Commissioner, 1st respondent herein. Moreover, revision provision is also available under Section 61 of the said Act, whereby,

> "61. The Government may call for and examine the records of any proceedings before any officer including those relating to the grant or refusal of a licence, or permit, for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of such proceedings and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit:"

(xiii) Contending that the petitioner has approached this Court without exhausting the appeal and revision, available under the Puducherry Excise Act, 1970, the Deputy Commissioner (Excise), Puducherry, has submitted that the prayer of petitioner is not maintainable, before this Court. He has also stated that if the request of the petitioner is considered, it would result in a huge loss of revenue to the Government exchequer and would attract similar litigations and petitions from all corners of the Union Territory which would indirectly hamper the revenue prospects of the Government. For the abovesaid reasons, the Deputy Commissioner (Excise), Puducherry, has prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

4. Entry 51 in the State List in the Seventh Schedule to the Constitution of India, reads thus,

> "51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-
>
> (a) alcoholic liquors for human consumption;
>
> (b) opium, Indian hemp and other narcotic drugs and narcotics;
>
> but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

5. Contention of the respondent that the State is empowered to take a policy decision on liquor, cannot be disputed. Trading in liquor is res-extra commercium. Explaining the doctrine of res extra commercium in Khody Distilleries Ltd. v. State of Karnataka reported in 1995 (1) SCC 574, the Hon'ble Supreme Court observed thus,

> "(a) There cannot be a business in crime; (b) What is res extra commercium would be trade or business in liquor when it is completely prohibited; (c) The State can create a monopoly to do the business itself or through an agency in terms of article 19(6) or otherwise; (d) Restrictions and limitations on the trade or business in potable liquor can be both under article 19(6) or otherwise; (e) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make a discrimination between the citizens who are qualified to carry on the trade or business."

6. In P.N. Krishna Lal v. Govt. of Kerala reported in 1995 Supp (2) SCC 187, at Paragraph 28, held as follows:

> "28. No civilised society, therefore, would countenance that a citizen has a fundamental right to

trade or business in activities which are criminal in propensity, immoral, obnoxious and injurious to health, safety and welfare of the general public. It is, therefore, a question of public expedience and public morality that the State is fully competent to regulate the business in liquor or intoxicating drug to mitigate its evil or to suppress it in its entirety. There is no inherent right in a citizen to conduct business or trade in adulterated intoxicated liquor by retail or wholesale. It is, therefore, obvious that dealing in liquor inherently pernicious or dangerous goods which endangers the community or subversive of morale, is within the legislative competence under the Act. The State has thereby the power to prohibit trade or business which is injurious to the health and welfare of the public and the elimination and exclusion from the business is inherent in the nature of liquor business. The power of the legislature to evolve the policy and its competence to raise presumptive evidence should be considered from this scenario."

7. In CIT v. Rangila Ram reported in (2001) 9 SCC 333, at paragraph 6, held as follows:

"6. The basic principle, as it seems to us, is that the liquor business is res extra commercium. No one may deal in liquor without express permission. It is only the licensee who is granted such permission. If he enters into a partnership to deal in liquor, all the other partners would, as partners, also be dealing in liquor and holding the same. This would be contrary to the basic principle and illegal."

8. In State of Punjab v. Devans Modern Breweries Ltd., reported in (2004) 11 SCC 26, at paragraph 36, held as follows:

"36. Privilege, thus, can be claimed by a State in a "no-right" situation, namely, when a citizen is not permitted to carry on trade. But once the State takes a decision to part with its privilege, it cannot make any discrimination whatsoever. Dealing in liquor by the persons in whose favour licences have been granted in terms of the statutory enactments derive a right therefor which cannot be said to be "res extra commercium"."

9. In Coop. Co. Ltd. v. Commr. of Trade Tax, U.P., reported in (2007) 4 SCC 480, the Hon'ble Supreme Court, at Paragraph 8, held as follows:

"Business in country liquor is res extra commercium. It is governed by the provisions of the U.P. Excise Act. Each stage of manufacture, bottling, distribution and sale of country liquor is governed not only by the provisions of the U.P. Excise Act and the rules framed thereunder, but also the terms and conditions of licence."

10. In Mohan Meakin Ltd. v. State of H.P., reported in (2009) 3 SCC 157, the Hon'ble Supreme Court, held as follows:

"25. The doctrine of res extra commercium as applied by this Court in respect of potable alcohol in its various judgments including Khoday Distilleries Ltd. v. State of Karnataka [(1995) 1 SCC 574] and State of Punjab v. Devans Modern Breweries Ltd. [(2004) 11 SCC 26] would have no application to industrial alcohol which is produced in an industry controlled and regulated in terms of Entry 52 of List I of the Seventh Schedule of the Constitution of India.

26. If manufacture and transport of industrial alcohol and/or malt spirit of overproof strength is not res extra commercium in view of the binding decisions of this Court in Synthetics and Chemicals Ltd. [(1990) 1 SCC 109] , it is axiomatic that the provisions of Article 301 of the Constitution of India shall apply in relation to inter-State trade. The State's power to exercise control of inter-State transport which is within the exclusive legislative competence of Parliament having regard to Entry 42 of List I of the Seventh Schedule of the Constitution of India would, thus, be limited. Its power to impose compensatory tax and/or fee would also be limited as envisaged by Article 304(b) of the Constitution of India."

11. In V.K. Ashokan v. CCE reported in (2009) 14 SCC 85, the Hon'ble Supreme Court, at Paragraph 46, held as follows:

"46. Furthermore, the nature of power to be exercised by the Commissioner of Excise, namely, cancellation of licence on the one hand and confirmation of a sale and/or confirmation of an order passed by the Assistant Commissioner of Excise, on the other, stand on different footings. We are not oblivious of the fact that the appellants have no right to carry on any business in liquor. It is considered to be "res extra commercium". (See State of Punjab v. Devans Modern Breweries Ltd. [(2004) 11 SCC 26])"

12. In State of Kerala v. Kandath Distilleries reported in

(2013) 6 SCC 573, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

> "24. Article 47 is one of the directive principles of State policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. The State has, therefore, the exclusive right or privilege in respect of potable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are res extra commercium, cannot be carried on by any citizen and the State can prohibit completely trade or business in potable liquor and the State can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. The State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are res commercium. Reference may be made to the judgments of this Court in Vithal Dattatraya Kulkarni v. Shamrao Tukaram Power [(1979) 3 SCC 212] , P.N. Kaushal v. Union of India [(1978) 3 SCC 558], Krishan Kumar Narula v. State of J&K [AIR 1967 SC 1368] , Nashirwar v. State of M.P. [(1975) 1 SCC 29] , State of A.P. v. McDowell & Co. [(1996) 3 SCC 709] and Khoday Distilleries Ltd. v. State of Karnataka [(1995) 1 SCC 574] .

13. Government of Pondicherry, has framed Pondicherry Excise Rules, 1970. Amended rule 113(2) of the said Rules, is extracted hereunder:

> "(2) F.L. 2 Licence:— The holder of this licence shall be permitted to sell foreign liquor or Indian Liquor, or both, in sealed and capsuled bottles in quantities not exceeding 4.5 litres of all liquors other than beer and 9 litres of beer] at any one time or in any single transaction with or without permission to sell such liquor in open bottles, glasses or pegs for consumption within the licensed premises of the bar room combined with supply of meals and eatables:
>
> Provided that if the licensee wants to have such sale in open bottles, glasses or pegs for consumption

within the licensed premises of the bar room with supply of meals or eatables, the following further conditions will have to be satisfied, namely:—

(i) the licensed premises shall be 300 meters away from public places, educational institutions or religious establishments as far as possible;

(ii) the licensee shall have a hygienically kept kitchen to prepare meals or eatables for supply with liquor;

(iii) there shall be a room provided with sufficient ventilation and seating arrangements where liquor or meals or eatables are to be supplied with liquor; and

(iv) there shall be facilities like lavatory, urinal, wash basin and any other facility as may be specified by the Government from time to time on grounds of public interest:

Provided further that if the licensee is licensed to run Pub Beer Centre, the following additional conditions shal have to be satisfied, namely:--

(i) The Licensee should have a tie-up with a brewery to effect regular timely supply of draught cans and shall have technical agreement with the brewery for know-how, maintenance, etc., and to take back unsold draught beer.

(ii) Instal special equipments such as --

(a) Carbon-di-oxide clinder;

(b) Chiller;

(c) Dispenser, etc.

(iii) The licensee applying for Pub Beer licence in their existing bar shall earmark an exclusive area of not less than 300 sq. ft. with amenities like air-conditioning and toilet facilities and for supply of draught beer in that area only; however, this clause will not be applicable for licences issued under Tourism Category.”

14. Pursuant to the directions of the Hon'ble Supreme Court, several shops have been closed and directed to be shifted to some other places. FL.2 retail liquor shop, viz., M/s. Traveller Wines, which was located along the National highway in Madagadipet area, was closed, pursuant to the directions of the Hon'ble Supreme Court. On 24.04.2017, orders were issued to shift the licensed premises to Plot No.58, R.S.No. 18/4 of Madagadipet Revenue Village, Mannadipet Commune, Puducherry to an isolated location devoid of any habitation or any public places like educational institutions, places of worship etc. Similarly, another FL.2 liquor shop namely M/s. Sampath Wines which was located along the National highway NH-45A closed, pursuant to the directions of the Hon'ble Supreme Court,

permission has been granted on 29.05.2017 to shift the licensed premises to R.S.No.173/11 of Madagadipet Revenue Village, Nallur Road, Madagadipetpalayam, Puducherry, which is also an isolated location, devoid of habitation and educational or religious institutions.

15. Contention of the petitioner that no shops shall be located along with the entire stretch of Madhakadipattu Village, Puducherry, cannot be accepted, as the same would be against the very principle of res extra commercium.

16. In the light of the above discussion and decisions, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Union Territory of Puducherry,
Department of Excise,
Puducherry.

2. The Deputy Collector,
Excise,
Puducherry.

3. The Inspector of Police,
Villianur Police Station,
Villianur,
Puducherry.

+1cc to Government Pleader(Puducherry) sr.48376

WP.No.13483 of 2017
and WMP No.14556 of 2017

sj(co)
nr 30/10/2019