

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11090 OF 2019

Durgalal Ruplal Jaiswal

Age: 67 years, Occu. Business,

CL-III Licence No.30

At Sector No.21, Plot No.181 & 182,

Gat No.129 & 139, Karmad,

Taluka & District : Aurangabad

... Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Home (State Excise) Department,
Mantralaya, Mumbai – 400 032
2. Commissioner of State Excise,
Maharashtra State, Old Custom House,
Mumbai – 400 023
3. The Collector of Aurangabad
(State Excise Department),
District: Aurangabad
4. The Collector of Kolhapur
(State Excise Department),
District : Kolhapur
5. Babu Vishnu Kurne
CL-III Licence holder
At Shirse, Taluka Radhanagari,
District : Kolhapur

... Respondents

....

Mr. A. M. Gholap, Advocate for the petitioner,

Mr. Y. G. Gujrathi, AGP for respondent Nos. 1 to 4

Mr. S. S. Thombre, Advocate for respondent No.5

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 04th MARCH, 2021

PRONOUNCED ON : 10th JUNE, 2021

J U D G M E N T :-

. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The challenge in this writ petition is to the order dated 30.08.2019, passed by the State of Maharashtra in Excise Department, sanctioning the transfer of country liquor shop (CL-III License No.58) from village Shirse, Taluka Radhanagari, District Kolhapur to village Karmad, Taluka and District Aurangabad. Respondent Nos. 2 to 4 are the officials of the respondent No.1. It is respondent No.5, whose country liquor shop has been permitted to be shifted vide the order impugned in this writ petition.

3. Heard.

Shri A. M. Gholap, learned counsel for the petitioner would submit that the petitioner runs a country liquor shop at Karmad, Taluka and District Aurangabad. The respondent No.5 also holds a license to run a country liquor shop. He would run such a

shop at village Shirse, District Kolhapur. He had to discontinue to run the said shop in view of the order of the Hon'ble Supreme Court of India dated 15.12.2016. Application moved by the respondent No.5 for shifting his country liquor shop has been granted in breach of Rule 25 of the Maharashtra Country Liquor Rules, 1973 (for short 'the Rules of 1973'). The Collector, Aurangabad (State Excise) did not obtain concurrence of his counterpart of District Kolhapur (respondent No.4). The petitioner raised an objection for shifting of the country liquor shop of respondent No.5, since his business is likely to be affected. The population of village Karmad is around 6,000. As per the Government Notification dated 03.09.1983, the sanctioned strength of CL-III license upto the population of 10,000, is one. There is also breach of the guidelines prescribed under notification dated 03.09.1983. In view of the said guidelines, it has been prescribed that the place from where the shop is to be shifted, should not be left unserved. The additional shop at the new place should be economically viable. There should not be any objection from the people from the place to which the transfer is asked for. The learned counsel would further submit that there is exemption from compliance of Sub-Rule 25(d) of the Rules of 1973 only in case the transfer of shop is within the same district. Since it is inter-

district shifting of the country liquor shop, the conditions provided under Clause I to III of the Rule 25(d) of the Rules of 1973 are very much applicable. Since the population of Karmad is less than 6,000, shifting of the shop to that place would be economically not viable. The learned counsel would further submit that identical question had come up for consideration in the case of ***Vyankanna Ragalu Nemaniwar vs Sheshrao Shankarrao Kerale and Ors. - Writ Petition No.1010 of 1986***. The Division Bench of this Court, vide judgment and order dated 09.12.1986, set aside the permission granted for shifting of country liquor shop. The learned counsel also relied on the judgment of this Court in ***Writ Petition No.6312 of 2015 (Nagpur Bench) (Padma Anjesh Golapalliwar vs The State of Maharashtra and others)*** and the decision of the Hon'ble Supreme Court in Special Leave to Appeal (C) No.12521 of 2016, to ultimately urge for allowing the writ petition in terms of prayer clause [A].

4. Shri Y. G. Gujrathi, learned Assistant Government Pleader (AGP) appearing for respondent Nos. 1 to 4, would submit that the permission has been granted for shifting of the country liquor shop in compliance with the relevant rules. The learned AGP adverted my attention to the averments in affidavit-in-reply filed by

the Superintendent of State Excise, Aurangabad. The learned AGP would submit that the circular dated 03.09.1983 has long been superseded by virtue of amendment to Rule 25 of the Rules of 1973, dated 20.04.2005. The learned AGP meant to say that no policy is in vogue as regards grant of license to run country liquor shop in a particular area or town on the basis of the population of that area/town. The learned AGP took me through the relevant rules, circulars and notifications to ultimately urge for dismissal of the writ petition.

5. Shri S. S. Thombre, learned counsel appearing for respondent No.5, would submit that the petitioner has no right to run country liquor shop. Respondent No.5 had to discontinue running of his country liquor shop in view of the directions of the Apex Court in the case of *State of Tamil Nadu, Represented by its Secretary Home, Prohibition and Excise Department and Ors. vs. K. Balu and another* -(2017) 2 SCC 281. He, therefore, applied for permission to shift his country liquor shop from district Kolhapur to district Aurangabad. The petitioner has made all efforts to stall grant of such permission. He has, however, been unsuccessful. Respondent No.5 has opened his country liquor shop at Karmad, district

Aurangabad. The petitioner even instigated some of the persons to file writ petitions to stall shifting of country liquor shop of respondent No.5. It was found that the persons shown to be the petitioners in those petitions, had in fact, not filed those petitions. After having realised the said fact, the petitioner got those petitions withdrawn. Respondent No.5 has filed a detailed affidavit-in-reply, reiterating the stand taken by respondent No.5. According to the learned counsel, shifting of the country liquor shop did take place in compliance with the relevant rules. The petition is sans merit. He, therefore, urged for dismissal of the writ petition.

6. Both, the petitioner and respondent No.5, have been holding CL-III license for long. The Hon'ble Supreme Court in the case of ***State of Tamil Nadu*** (supra), *inter-alia* passed the following direction :-

“29.5. 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 m of the outer edge of the national or State highway or of a service lane along the highway.”

In view of the aforesaid, respondent No.5 was required to relocate/shift his country liquor shop. He discontinued his

business for some days. On 24.09.2018, he applied for transfer of his liquor shop to village Karmad in Aurangabad district.

Rule 25 of Rules of 1973, speaks of shifting of license shop -

“ 25. Prohibition to shift licensed shop to any other place.

(a) a licensed shop shall not be shifted by a retail licensee to any other within a taluka without prior approval of the Collector;

(b) a licensed shop shall not be shifted by retail licensee to any place from one taluka to another taluka of the district without prior approval of the Commissioner:

Provided that, the number of licensed shops for such shifting shall not exceed 15% of the total existing licensed shops in any district which would be inclusive of the licensed shops already shifted with prior approval of the Government or the Commissioner before the date of publication of these rules;

(c) a licensed shop shall not be shifted by retail licensee to any place from one district to another district without prior approval of the Government;

(d) the shifting of licences under clauses (a), (b) and (c), shall be subject to the fulfillment of the following conditions, namely:-

(i) that there is reduction in liquor sale continuously for last three years;

(ii) that there is no inconvenience of drinking of liquor to the people residing in that area;

(iii) that the Grampanchayat in whose area licenced shop is proposed to be shifted, has given no objection by passing a resolution of the Gramsabha; and if the shop is proposed to be shifted to any area other than Grampanchayat area, no objection of the Municipal Council concerned has been obtained;

(iv) that the proposed premises are free from distance restriction as provided under sub-rules (4) and (5) of Rule 24;

(v) that the construction of the premises in which shop is proposed to be shifted is an authorised construction and a certificate of the competent local authority is submitted;

Provided that, the proviso to clause (b) and sub-clauses (i) and (ii) of clause (d) shall not apply in respect of shifting of licensed shop which has been closed down or required to be closed down as per the provisions of the Bombay Prohibition (Closer of Licence on Resolution by the Village Panchayat or Gramsabha or Women/Social Organisation or representation by Voters in the Village or Ward of Municipal Council) Order, 2003.”

7. The Superintendent (State Excise), Aurangabad, gave a detailed report dated 26.03.2019, recommending the application of respondent No.5 for transfer of his country liquor shop. It has specifically been observed in the report that there has been a compliance of provisions of Rule 25(d) (iii), (iv) and (v) of the Rules of 1973.

Rule 25 of the Rules of 1973 does not postulate concurrence of the Collector (Excise) of the District from which the shop is proposed to be shifted. The ultimate power/authority regarding approval for inter-district transfer of country liquor shop vests with the Government. The petitioner raised objection to the application moved by the respondent No.5. One of the grounds of objection is a breach of notification dated 03.09.1983. It would,

therefore, be apposite to reproduce below the relevant matter of the circular:-

“2. Government has now reconsidered the matter and has decided that a few additional licenses for retail sale of Indian Made Foreign Liquor/Country Liquor should be granted. The number of additional shops for the retail sale of country liquor should be governed by two criteria. The first criterion will be with reference to the population of the village/town/city. The number of such shops in a village/town/city should be determined on the following basis:-

- | | |
|--|--|
| (i) For a village or group of villages with a population of about 10,000 | 1 shop |
| (ii) For towns with a population exceeding 10,000 but below two lakhs. | At the scale of 1 shop for every 10,000 population |
| (iii) For cities with a population of 2 lakh and above. | At the scale of 20 shops for the first 2 lakh and 1 shop for every 20,000 population in excess of 2 lakhs. |

8. The Superintendent (State Excise), Aurangabad, a responsible officer has filed his affidavit-in-reply, wherein it has been averred that Rule 25 of the Rules of 1973 has been amended in April 2005. Since then, shifting of country liquor shop is governed by the said rule. The affiant meant to say that the aforesaid circular dated 03.09.1983 stood superseded. Now, the permission for shifting of country liquor shop is granted if the application in that regard

complies with Rule 24 and 25 of the Rules of 1973. The policy as regards grant of license to run country liquor shop on the basis of population ratio is no longer in vogue. In para 17 of the affidavit-in-reply, it is averred thus:-

“17. I say and submit that, the State Government has issued a circular dated 12.06.2017 thereby prescribing the guidelines for shifting of the licences which are affected by the order of the Hon’ble Apex Court and there is no restriction in the said Government Circular that, such licences cannot be shifted outside the districts and therefore, rightly, so the application of the respondent no.5 was considered as per the notification dated 29.12.2016 and the permission to shift the licence is granted.”

9. In view of the aforesaid statement on affidavit, in my view, the petitioner would not be benefited by placing reliance on the judgment of this Court in the case of **Vyankanna** (supra), since the issue therein regarding shifting of the country liquor shop was decided on the basis of the circular dated 23.09.1986.

10. True, in the case of **Padma Golapalliwar** (supra), the learned Single Judge of this Court vide his judgment and order dated 29.02.2016, had set aside the order of the Minister, refusing to grant permission to shift the country liquor shop. The said matter was carried in S.L.P. No.12521 of 2016 (Civil Appeal No.9166 of 2017) before the Apex Court. The Apex Court vide order dated 17.07.2017, has observed as under:-

“From a reading of para 12 of the impugned judgment and order, it is clear that no policy has been framed by the State Government pursuant to order dated 22.06.2013 in PIL No.70/2013.

Consequently, the policy as existing on 03.09.1983 is still in force. That being the position, there is no doubt that the orders passed by the Minister in accordance with the Policy of 03.09.1983 is a valid order and the High Court was in error in setting it aside, particularly since there is no policy subsequent to Circular dated 03.09.1983.”

11. The Division Bench of this Court in PIL No.70 of 2013, has directed the State to formulate a policy as regards grant/shifting of country liquor shop/shops on the basis of the population ratio.

12. It has been specifically averred in affidavit-in-reply that unfortunately, the Hon’ble Supreme Court was not informed that the policy under the circular dated 03.09.1983 did no longer hold the field. In view of the statement in affidavit-in-reply, this Court has to observe that applications for shifting of country liquor shops are processed in terms of the Rules (24 and 25 of the Rules of 1973) and not as per the circular dated 03.09.1983.

13. The petitioner has relied on another circular dated 27.04.1984. Clause-2 thereof reads as follows:-

“2. Government is also pleased to lay down the following guidelines in supression of those laid down in Government Letter, Home Department No.CLR

1480/1101/PRO-3, dated the 2nd October 1980 for permitting shifting of C.L. III Shops.

- 1) Inter-taluka transfers are not allowed.*
- 2) A CL-III shop situated in a village is not permitted to be transferred to a place having a municipal council/corporation.*
- 3) Shifting of shops from one Municipal area to another Municipal area, even within the same Taluka, are not allowed.*
- 4) If the limits of a Municipal Corporation are extend to include rural areas on the outskirts, transfers shops from such areas to any place in the original city limits are not allowed.*
- 5) The place from where the shop is to be shifted should not be left unserved.*
- 6) Whether additional shop at the new place would be economic viable.*
- 7) Whether transfer would invite objection from the people the place where the transfer is asked for.”*

Moreover, according to the petitioner, shifting of the shop in terms of Clause (a) to (c) of Rule 25 of the Rules of 1973, is subject to fulfillment of the following conditions:-

“(i) Considering the sale of liquor of past five years, the sale of liquor of any two years of last four years shall be less than the sale of first year of this block of five years; or considering the sale of liquor of past five years, the sale of liquor of any three years shall be less than that of the annual average sale of the liquor for the same five years:

Provided that, the licensed shop holds valid licence during the said period;

(ii) That there is no inconvenience of drinking of liquor to the people residing in the area;

(iii) That the Grampanchayat in whose area licensed shop is proposed to be shifted, has given no objection by passing a resolution of the Gramsabha; and if the shop is proposed to be shifted to any area other than Grampanchayat area, no objection of the Municipal Council concerned has been obtained;

(iv)

(v)

Provided that, the proviso to clause (b) and sub-clauses (i) and (ii) of clause (d) shall not apply in respect of shifting of licensed shop which has been closed down be required to be closed down as per the provisions of the Bombay Prohibition (Closer or License on Resolution by the Village Panchayat or Gramsabha or Women/Social Organization or Representation by Voters in the Village or Ward of Municipal Council) Order, 2003.

Provided further that, the conditions as laid down in sub-clauses (I), (ii) and (iii) of clause (d) shall not apply in respect of the following situations; however, under such situation shifting shall be allowed within the area of same Gram Panchayat or same 'C' Class Municipal Council or same ward in 'A' and 'B' Class Municipal Council or same ward in Municipal Corporation as the case may be, -

(A) licensee whose premises are affected by the implementation of Development of Scheme such as road widening, and the like;

(B) in the case where the licensee is running his licensed shop at the place under the rental deed and the landlord or owner of the place do not agree to extend the rental deed; or

(C) in the case where the shifting is essential due to Hon'ble Court's Order."

According to the petitioner, the aforesaid conditions are not applicable only in case the shifting is intra district and is required due to the order of the Court.

14. It has specifically been averred in affidavit-in-reply that clause (d) of Rule 25 of the Rules of 1973, shall have no application to the present case, since after the Hon'ble Supreme Court's order in the case of ***State of Tamin Nadu*** (supra), the State of Maharashtra has issued the circular dated 07.06.2017, so as to ensure smooth transfer/shifting of country liquor shops which were required to be shifted/relocated in view of the direction of the Apex Court in the aforementioned case. Clause-6 of the said circular would make the same clear. Clause-6, therefore reproduced in verbatim below:-

“6. मा. न्यायालयाच्या आदेशान्वये सीएल-3 अनुज्ञप्तीचे स्थलांतर होत असल्यास महाराष्ट्र देशी मद्य नियम 1973 मधील नियम 25 मधील उप-नियम (डी) मधील दुसऱ्या परंतुकानुसार तर एफएल-2 अनुज्ञप्तीबाबत महाराष्ट्र विदेशी मद्य नियम 1953 मधील नियम 24 उप-नियम (4) मधील खंड (डी) च्या दुसऱ्या परंतुकानुसार त्याच जिल्ह्यात स्थलांतरण होत असल्यास स्थानिक स्वराज्य संस्थेच्या नाहरकत प्रमाणपत्राची आवश्यकता नसल्याची तरतूद आहे, ही बाब निदर्शनास आणण्यात येत आहे.”

15. As per the aforesaid clause, if the shifting is intra-district, then no objection of the local authority is not required. So far as objection as regards aerial distance is concerned, it would be

apposite to reproduce the relevant clause of the notification dated 01.10.2018, as follows:-

“Provided that, the licenced shop, other than those whose application for shifting has been pending with the Collector, the Commissioner or, the State Government, as the case may be on or before the commencement of the Maharashtra Cuntry Liquor (Amendment) Rules, 2018, shall be shifted to premises where no shops with a similar licence or a licence in Form FL-II as appended to the Bombay Foreign Liquor Rules, 1953, is situated with the aerial distance of 1,000 meters from the proposed premises.”

16. Reading of the aforesaid proviso indicates that the applications for shifting pending with the Collector, the Commissioner or the State Government, on or before commencement of the Maharashtra Country Liquor (Amendment) Rules, 2018, have been saved from the application of the aforesaid proviso. Rule 25(d) of the Rules of 1973, came to be amended vide notification dated 01.10.2018, whereas the application preferred by respondent No.5 was dated 24.09.2018. The same is therefore saved from the application of this provision.

17. Since the Superintendent (State Excise), Aurangabad, found respondent No.2's application to have been in compliance with all the relevant Rules (Rule 24 and 25 of the Rules of 1973) and circular issued in that behalf, he recommended for transfer of the

country liquor shop from district Kolhapur to district Aurangabad. The State of Maharashtra, in Excise Department, approved the proposal recommended by the Superintendent and thus shifting of the shop took place.

18. I do not find any substance in the objections raised by the petitioner, particularly in the light of the averments in the affidavit-in-reply and the reasons given herein above.

19. The writ petition therefore fails. The same is thus, dismissed. Rule discharged.

20. In view of dismissal of the writ petition, civil application No.7384 of 2020 does not survive. The same is therefore, disposed of.

[R. G. AVACHAT, J.]

SMS