

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3446/2021

Mohan V The State of Maharashtra and others

Writ Petition No.2594/2020

Vinod V The State of Maharashtra and others

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.G. Jagtap, Adv, Mr. S.S. Godbole, Adv. Mr. Sayajee, Adv for
 petitioners.

Mr. D.V. Chauhan, Adv for rep. no.5.

Mrs M. Barabde, AGP for State.

CORAM : AVINASH G GHAROTE, J.

DATE : 02-02-2023

The Collector (Excise), by the order dated 31-05-2014 granted an FL-III license to the petitioner, for operating it from Plot No.1 to 3, Chopan Road, G.No.183/9, Mardi, Tal. Maregaon, District Yavatmal. This was challenged by respondent no.5 in appeal before the respondent no.2, who ultimately by the order dated 03-05-2016, set aside the order dated 31-05-2014. A revision against that by the petitioner before the respondent no.1 was dismissed by the impugned order dated 17-09-2020.

2. Mr Jagtap, learned Counsel for the petitioners, by inviting my attention to the provisions of Rule 45 (1-C) of the Bombay Foreign Liquor Rules, 1953, (for short, 'the BFL Rules, 1953') as it then stood,

submits that for a Gaothan area, the distance which was required to be maintained for granting an FL-III licence was measured from the center of National Highway. Considering which, according to him, the place at which the license was granted could not have been objected to. He also invites my attention to the circular dated 01-02-2005 (pg 81) and the schedule annexed thereto and specifically the portion at serial no.10 to contend that in an urban area or the industrial area the distance was only 50 mtrs from the center of the National/State Highway and that was the method of calculating the distance. The circular issued by the Public Works Department (PWD) (pg 109) dated 05-08-2019, is also pressed into service, to substantiate the above position. It is therefore submitted that considering what has been stated above, the impugned orders are required to be quashed and set aside and the order of the Collector (Excise) needs to be restored.

3. Mr Chauhan, learned Counsel for respondent no.5, contends that the PWD circular dated 05-08-2019, is not attracted as it has no relevance or bearing, for the purpose of Rule 45 (1-C) of the BFL Rules, 1953. He submits that the language of Rule 45 (1-C) of the BFL Rules, 1953 is clear and specific and therefore does not brook any other interpretation for the same. By inviting my attention to the pursis stamp No.7/22 dated 20-08-22 filed by the State and

specifically the map at page 4 thereof, it is pointed out that the distance of the establishment of the petitioner was 70.60 mtrs from the center of the State Highway and therefore did not satisfy the requirement of law.

4. A perusal of the impugned order, indicates that what has been considered therein is the issuance of a certificate, by the Sarpanch certifying the Gaothan area, in place of the Talathi. In my considered opinion, whether the land is situated in a Gaothan area or otherwise has no significance or relevance, for the purpose of applicability of Rule 45 (1-C) of the BFL Rules, 1953, as the provision does not speak of the same, and no other provision has been brought to my notice to indicate so.

5. Rule 45 (1-C) of the BFL Rules, 1953, as it then existed is reproduced herein below for ready reference :-

"45. Grant of licence and its duration.-(1) On receipt of an application, the Collector shall place the application alongwith enquiry report before the Committee for consideration of the same by the Committee.

(1-A) *****

(1-B) *****

(1-C) No licence under sub-rule (1B) shall be granted in respect of any hotel or restaurant which is situated within a distance of seventy five meters from any educational or religious institution or from any bus stand, station or depot of the Maharashtra State Road Transport Corporation or from the boundary of any National or State highway [or Statue of National Personality] :

Provided that nothing contained in this sub-rule shall apply in respect of an existing hotel or restaurant for which a licence in Form FL-III is held by the Manager or Proprietor thereof immediately before coming into force of the Bombay Foreign Liquor (Amendment) Rules, 1990 [and the Maharashtra Foreign Liquor (Amendment) Rules, 2015] :

[***]

Explanation:- For the purposes of this sub-rule -

(i) "educational institution" means any pre-primary, primary, or secondary school managed or recognized by any local authority or the State Government or the Central Government and any college affiliated to any University established by law, but does not include any private coaching institution;

(ii) "religious institution" means an institution for the promotion of any religion and includes a temple, math, mosque, church, synagogue, agiary or other place of public religious worship which is managed or owned by a public trust registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950) and included such other religious institutions

as the State Government may by order specify in this behalf;

(iii) The distance referred to in Clause (a) of this sub-rule shall be measured from the mid-point of the entrance of the hotel or restaurant along with the nearest path by which the pedestrian ordinarily reaches, -

(a) the mid-point of nearest gate of the institution if there is a compound wall and if there is no compound wall, the mid-point of the nearest entrance of the institution, or

(b) the mid-point of the nearest gate of the bus stand, station or depot of the Maharashtra State Road Transport Corporation if there is a compound wall and if there is no compound wall, the nearest point of the boundary of such bus stand, station or depot, or

(c) the boundary of the National or State highway [or]]

[(d) The mid-point of the nearest gate of the statue, if there is a compound wall, and if there is no compound wall, the nearest point of foundation of such a statue.]

[(iv) "Statue of National Personality" means any statue of the National Personality recognized by Government specified in the Schedule appended to these rules.]"

6. The language of Rule 45 (1-C) of the BFL Rules, 1953, as it then stood, appears to be clear and specific and does not brook of any other interpretation inasmuch as it categorically states that no license would be granted in respect of any hotel or restaurant which is situated within a distance of 75 mtrs from the boundary of any National or State Highway. The method of calculating the distance is also specified. In this view of the position, the circular dated 01-02-2005, or anything mentioned in its schedule cannot have the effect of overriding the provisions of Rule 45 (1-C) of the BFL Rules, 1953.

7. When the language of Rule 45 (1-C) of the BFL Rules, 1953 specifically mandates, that the distance of 75 mtrs indicated therein has to be measured, from the boundary of the National/State Highway the circular issued by the PWD dated 08-05-19 (pg 109), also cannot be pressed into service to contend that the distance has to be measured from the center of the highway.

8. It is a trite position of law, that if a statute or Rule mandates or directs a thing to be done in a particular manner, the same should be done in consonance to the requirement of the statute or not at all. In the instant case, the language of Rule 45 (1-C) of the BFL Rules, 1953, as it then existed, is clear and specific and therefore any calculation of distance for the

purpose of grant of license will have to be from the boundary of the National/State High and not from the center of the National/State Highway as that is the specific requirement postulated by Rule 45 (1-C) of the BFL Rules, 1953. The documents filed along with pursis st.No.7/22 dated 20-08-22, specifically the map at page 4, indicates that the distance of the establishment of the petitioner, from the center of the State Highway by a pedestrian path is 70.60 mtrs and considering the mandate of Rule 45 (1-C) of the BFL Rules, 1953, would be even less, if the same is calculated from the boundary of the State Highway. That being the position, the establishment of the petitioner, clearly does not comply with the requirement of Rule 45 (1-C) of the BFL Rules, 1953, as the establishment is situated within the distance restrictions as indicated therein and the rule peremptorily says no license shall be granted in case of establishment which is situated within the aforesaid distance. Mr Chavan, learned Counsel for respondent no.5, has rightly placed reliance upon **Vikrama Shama Shetty V State of Maharashtra and others, (2006) 6 SCC 70** (para 7), wherein the Hon'ble Apex Court while considering Rule 45 (1-C) of the BFL Rules, 1953, has held the distance requirement as indicated therein to be mandatory.

9. In view of the above discussion, it is apparent that since the establishment of the petitioner, is

within the distance of seventy two meters as enumerated in Rule 45 (1-C) of the BFL Rules, 1953, as it then stood, the cancellation of the licence cannot be faulted with, as that is the mandatory requirement of the said rule. Though the authorities below, have not considered this position, however, since that is a mandate which flows from Rule 45 (1-C) of the BFL Rules, 1953, which is mandatory, the rejection would be justifiable on this ground. The petition therefore fails and therefore dismissed.

10. In WP No.2594/2020, the pedestrian distance is 55.10 mtrs from the center of the road as per the measurement report placed on record at page 154 of that petition and the same reasoning would equally apply, considering which, the said petition is also dismissed.

11. Needless to say that all the interim orders passed in these petitions stand vacated.

12. At this juncture, Mr. Jagtap, learned Counsel for the petitioner makes a request for stay of the present judgment in order to enable the petitioner to approach the Hon'ble Apex Court. Though the request is opposed by Mr. Chauhan, learned Counsel for respondent no.5, however, considering that the stay is operating since 2016, the operation of the judgment, passed in both the

petitions, is stayed for a period of four weeks from today.

JUDGE