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

+ **Date of Decision: 24.08.2023**

% **W.P.(C) 13824/2022 and C.M. No. 42303/2022**

MOHALLA SUDHAR SAMITI (REGD.) Petitioner

Through: Mr. V. S. Dubey, Advocate

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel (Civil), GNCTD
with Mr. Pradyumn Rao, Ms.
Prashansa Sharma, Mr. Arun
Panwar, Mr. Utkarsh Singh and Mr.
Kartik Sharma, Advocates for
GNCTD.

Mr. Harshit Chopra, Advocate for
Respondent No. 6 with Mr. Anil
Kumar, ASO.

Ms. Monika Arora, Mr. Yash Tyagi
and Mr. Subhrodeep Saha, Advocates
for MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India as a Public Interest Litigation (PIL) by the Petitioner Mohalla Sudhar Samiti which is a Resident Welfare Organization (RWA) registered under the Societies Registration Act, 1860 (hereinafter to be referred as 'Registration Act, 1860').

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2. The Petitioner is aggrieved by the action of Commissioner of Excise, Entertainment and Luxury Tax, Government of NCT of Delhi (Respondent Nos. 1 & 2) in granting a license to Respondent No. 5 for opening and operating a liquor shop in the locality at D-310, West Vinod Nagar, Delhi, 110092 (hereinafter referred to as “shop address”).

3. The Petitioner's contention is that the liquor shop is situated in the vicinity of a Hospital, Masjid and Mandir. It has been stated that the Madina Masjid and two madrasas are situated within 50 meters from the liquor shop. It is further stated that Smart Learning classes, Yam Guru Academy and Mahesh Hospital are also situated within 50 meters of the liquor shop.

4. The Petitioner has stated that Respondent No.1, Government of NCT of Delhi has issued a license to Respondent No. 5 which is in complete violation of Delhi Excise Rules, 2010 (hereinafter to be referred to as ‘Rules, 2010’), specifically Rule 51 of the Rules, 2010.

5. The Petitioner has further stated that in a residential locality, a liquor shop has been established in complete violation of the Rules, 2010 which is causing great hardship to the families residing in the area. It has been further stated that the liquor business is being run by “Mafia Type” people who want to make Delhi a liquor hub and not an educational hub.

6. It has been further stated that the Residents of the locality are peaceful citizens and they have submitted a large number of representations from time to time to the authorities. However, nothing has been done in the matter and therefore, the Petitioners, left with no other choice have knocked the doors of this Court praying for the following reliefs:

“(i) Issue an appropriate writs, order or directions directing the Respondent no. 1 to 3 to remove/cancel the license of



Respondent no. 5 Liquor Shop at Shop No. D-310 West Vinod Nagar Delhi-110092.

Issue writ or any other, orders or directions in favour of the petitioner and against the Respondents thereby to stop the liquor shop opened by Respondent no. 5 for safety and further of children and Women in the locality in the interest of justice; or

(ii) Pass any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.”

7. This Court has issued notice in the matter on 26.09.2022 and the Government of NCT of Delhi (GNCTD) has filed a detailed counter-affidavit in the matter. The counter-affidavit filed on behalf of the Respondent Nos. 1 & 2 reveals that the GNCTD formulated a policy for retail sale of Indian Liquor/Foreign Liquor and Beer in National Capital Territory of Delhi for the year 2022-23 and the same has been implemented with effect from 01.09.2022. It has been further stated that a L-6 license has been granted in favour of Respondent No. 6 herein, i.e., Delhi Consumer's Cooperative Wholesale Store Limited (DCCWS) keeping in view the Delhi Excise Act, 2009 (hereinafter to be referred to as 'the Act, 2009') read with Rules, 2010.

8. A proposal was received by Respondent No's. 1 & 2 for opening of L-6 licensed liquor vend on 17.08.2022, and, thereafter, the site at the shop address was inspected on 19.08.2022 by the Inspection team consisting of SDM of the area concerned, Tehsildar of the area concerned, Labour Inspector and an Inspector/Sub-Inspector of Department of Excise, Entertainment and Luxury Tax, GNCTD.

9. A report was submitted on 19.08.2022 by the inspecting team and the inspecting team arrived at a conclusion that the premises at the shop address,



is suitable for opening of a L-6 licensed liquor store. The report also reflected that there is a hospital in the locality which is Apex City Hospital which is a 42 bedded hospital, and another hospital i.e., Mahesh Hospital which is only 20 bedded hospital, and they are located within a range of 100 meters from the proposed liquor shop.

10. It is pertinent to note that the application for obtaining a license under the Act, 2009 and the Rules, 2010, was made to the authorities by the DCCWS, and it is only upon the report of the inspecting team that the application of DCCWS dated 17.08.2022 was approved by Respondent Nos. 1 & 2 and thereafter an offer letter was issued to Respondent No. 6 on 19.08.2022. The DCCWS deposited its license fee and finally the L-6 license was issued to DCCWS on 29.08.2022.

11. The Respondent Nos. 1 & 2 have further stated that several complaints were received by them regarding violation of Rule 51(1) from the Resident Welfare Associations, Apex City Hospital, Madina Masjid, etc and due to the aforesaid complaints, the site at the shop address was re-inspected on 13.09.2022 and a re-inspection report was filed in the matter on the same date. The re-inspection report dated 13.09.2022 reveals that the number of beds in Apex City hospital has been increased from 42 to 50 beds and Mahesh hospital was still having 20 beds.

12. The report also reveals that the Madina Masjid is about 120 meters away from the liquor shop from the back side and from the front side it is about 140 meters. The location of the Shiv Mandir is also about 130 meters from the liquor shop. It is further revealed that the registration certificate of the Apex Hospital was issued on 31.08.2022 which reflected the number of beds to be 50.



13. The Respondent Nos. 1 & 2 have stated that at the time the offer letter was issued to Respondent No. 6 on 19.08.2022 and at the time L-6 license dated 29.08.2022 was issued, the Apex Hospital was having only a 42 bedded facility and it is only later on, that the authorized capacity of Apex Hospital was increased to 50 beds, i.e., after grant of L-6 license which was granted on 29.08.2022.

14. On the basis of the aforesaid facts, Respondent Nos. 1 & 2 have stated that there is no violation of the statutory provisions as contained under the Act, 2009 and the Rules, 2010 framed thereunder. The Respondents have prayed for dismissal of the writ petition.

15. A counter-affidavit has been filed by the Respondent No.6 Cooperative Society running the liquor shop i.e., DCCWS and it has been stated therein that the DCCWS is a society registered under the Delhi Cooperative Societies Act, 1972 having more than 90% stake of the Government of NCT of Delhi in it. It was set up for supplying consumer goods to primary consumer cooperative stores functioning in various parts of the city.

16. It has been stated that DCCWS is involved in various functions and the functions and activities of the organization have been divided into various sections which are (a) Wholesale/ Retail Section; (b) Stationary Section; (c) IMFL Section; (d) Administration Section; (e) Vigilance Section; and (f) Accounts Section.

17. The counter-affidavit on behalf of the Respondent No.6 further states that a major source of revenue for DCCWS is sale of liquor though its liquor vends, and in the past, DCCWS was supplying liquor through various vends,



however, on 16.11.2021, the license for sale of IMFL liquor granted to DCCWS were revoked by the Excise Department of GNCTD.

18. It has been further stated that a new liquor policy was framed by GNCTD for retail sale of Indian Liquor, Foreign Liquor, Beer in the National Capital Territory of Delhi for the year 2022-2023 and the same came into force with effect from 01.09.2022.

19. The DCCWS submitted a proposal for opening of a L-6 vend to the Respondent No. 2 on 17.08.2022 and an inspection was carried out on 19.08.2022. It has been stated that the inspection report reveals that the Apex City Hospital, at the time of inspection was a 42 bedded hospital, and another hospital i.e., Mahesh Hospital was a 20 bedded hospital within 100 meters of the shop address. A copy of the Registration Certificate of the Apex City Hospital was also annexed with the inspection report categorically stating that it was a 42-bedded hospital. On 29.08.2022, an L-6 License was issued to Respondent No. 6 and since then the liquor shop is operational.

20. The Respondent No.6 has also stated that the site was re-inspected later on and a new registration certificate dated 31.08.2022 of the Apex City Hospital was brought to the notice of inspecting team wherein the total bed capacity of the Apex City Court increased to 50 beds from 42 beds. It is stated that the new registration certificate has been issued after the license was issued on 29.08.2022.

21. Prior to the issuance of the L-6 license, when the inspection took place on 19.08.2022, the registration certificate of the Apex Hospital showed the capacity of 42 beds. It was only on 31.08.2022 that the registration certificate of the apex hospital reflected the capacity had increased to 50



beds. Therefore, the respondent has stated that merely because the capacity of the Apex Hospital increased at a later stage, the question of cancelling the L-6 license, which was issued in the terms and conditions of Act, 2009 and Rules, 2010, does not arise. A prayer has been made for the dismissal of the writ petition.

22. This court has heard the learned Counsel for the Parties at length and perused the record. The matter is being disposed of with the consent of the parties at admission stage itself.

23. The Petitioner Resident Welfare Association before this Court is aggrieved by grant of license of DCCWS which was issued on 29.08.2022. It is an undisputed fact that DCCWS is a cooperative society in which the Government of NCT of Delhi has 90% stake.

24. A proposal was submitted by the DCCWS for grant of L-6 license as per the Act, 2009 and the Rules, 2010 on 17.08.2022, and an inspecting team was constituted comprising of SDM, Tehsildar, Labour Inspector, Inspector/ Sub-Inspector of Excise Duty and the inspecting team inspected the site on 19.08.2022, and a report was submitted on the same day i.e., on 19.08.2022. The report submitted by inspecting team is reproduced as under:

“INSPECTION REPORT FOR GOVERNMENT RETAIL VENDS

1.	<i>Order No. and date vide which inspection has been ordered</i>	<i>Order No. F.No. L-6/EX/IMFL/2022-23/944-49 dated 02.08.2022 issued by Commissioner, Excise Deptt.</i>
2.	<i>Date of inspection</i>	<i>19.08.2022</i>
3.	<i>Address of the proposed L-6 Vend inspected</i>	<i>Property No. D-310, Khasra No. 794, Block-D, West Vinod Nagar, Delhi-110092</i>



4.	<i>Floor at which the proposed L-6 Vend is located</i>	<i>Ground Floor</i>
5.	<i>Whether the landlord of the premises is in legal and physical possession of the proposed L-6 Vend, documentary proof to be attached</i>	<i>Yes (copy enclosed)</i>
6.	<i>Detail of lease/rent agreement regarding the proposed L-6 Vend with documentary proof</i>	<i>No information</i>
7.	<i>Whether the proposed L-6 Vend is in approved Commercial Complex (enclosed documentary proof)</i>	<i>Yes (no documentary proof provided)</i>
8.	<i>Whether the proposed L-6 Vend is pucca structure</i>	<i>Yes</i>
9.	<i>Measurement of total carpet area</i>	<i>700 Sq. Feet (approx.)</i>



	<i>of the proposed L-6 Vend in Sq. Feet</i>	
10.	<i>Whether the premises have electrical fitting and conform to Rule 51(1) of Delhi Excise Rules, 2010</i>	<i>Yes</i>
11.	<i>Whether the site map of the proposed shop/premises enclosed</i>	<i>Yes (copy enclosed)</i>
12.	<i>Whether the proposed L-6 Vend conform to Rule 51(1) of Delhi Excise Rules, 2010. If not, then reasons be specified</i>	<i>Yes However, adjacent to premises of the proposed vend, Apex City Hospital (42 bedded) is running and another hospital namely Mahesh Hospital (20 bedded) is running within 100 mtr.</i>
13.	<i>Other information</i>	
	<i>(a) Nearst residential colonies in and around the proposed L-6 Vend with distance</i>	<i>I.P. Extn. Patparganj, Mandawali</i>
	<i>(b) No. of Liquor Vend in and around the proposed L-6 Vend with distance (give</i>	<i>No.</i>



	<i>details)</i>	
	<i>(c) Whether the proposed L-6 Vend is in use at present and if so, the nature of the present business</i>	<i>Presently, General Store (Bakery & Confectionary) is running at the premises</i>
<i>14.</i>	<i>Observation of the inspecting team (whether the proposed L-6 Vend is suitable as per the terms and conditions and Delhi Excise Rules, 2010). In case the premises is not found suitable, the reasons be specified.</i>	<i>Premises suitable for opening of L-6 Vend. However, adjacent to premises of the proposed vend, Apex City Hospital (42 bedded) is running and another hospital namely Mahesh Hospital (20 bedded) is running within 100 mtr.</i>
<i>15.</i>	<i>List of documents obtained from the applicant</i>	<i>1. Copy of GPA</i> <i>2. Site Map</i> <i>3. Property Tax Receipt</i> <i>4. Copy of Conversion Charge</i> <i>5. Copy of Aadhar Card & PAN Card</i> <i>6. Copy of Regn. Certificate of Apex City Hospital (42 bedded)</i> <i>7. Copy of Regn. Certificate of Mahesh Hospital (20 bedded).</i>
<i>16.</i>	<i>Other information (if any)</i>	<i>N. A.</i>

Signature of Inspection Team



1. *Sh. Kaushal Kishore Jha, Excise Inspector (Member Secretary)*
2. *Sh. R.K. Mittal, Tehsildar, Preet Vihar (Member)*
3. *Sh. Ashish Aggarwal, Inspecting Officer, Labour Deptt. (Member)*
4. *Sh. Rajendar Kumar, SDM, Preet Vihar (Chairperson)''*

25. The report of the inspecting team reveals that the premises is suitable for opening L-6 vend, however, there is a 42-bed hospital i.e., Apex City Hospital within 100 meters from the proposed shop and there is another hospital i.e., Mahesh Hospital which is a 20-bed hospital which is also within 100 meters from the shop address.

26. A Registration Certificate of the Apex Hospital dated 10.06.2022 issued by Director General, Health Services, Government of NCT of Delhi was also annexed along with the inspection report dated 19.08.2022. The registration certificate dated 10.06.2022 is reproduced as under:

DIRECTORATE GENERAL OF HEALTH SERVICES
GOVERNMENT OF NCT OF DELHI
F-17, KARKARDOOMA, SHAHDARA, DELHI-110032

Reg. No./DHS/NH/861 _____ Dated 10/06/2022

Registration Certificate
 (Under Section 5 of Delhi Nursing Homes Registration Act, 1953)
 For the Period 2022-2023

It is certified that **APEX CITY HOSPITAL**
 D-44A, West Vindal Nagar, T.P. Rd., Post Bag No. 1000, New Delhi-110032
 is being run by **Dr. M.K. Saxena** (Signature) in accordance with
 the Delhi Nursing Homes Registration Act, 1953 and is authorized to carry out the permitted nursing home activities as
 the above and premises.

This registration certificate is valid up to 31st March, 2023.

Director General Health Services
 Govt. of NCT of Delhi

27. The registration certificate dated 10.06.2022 makes it very clear that the Apex Hospital was a 42-bed hospital at the time the inspection was



carried out. The Respondent Commissioner based upon the inspection report issued an offer letter to Respondent No. 6 on 19.08.2022 and finally a license was issued to Respondent No. 6 on 29.08.2022.

28. Based upon the representations submitted by the Resident Welfare Association, the site was re-inspected on 13.09.2022, and the re-inspection report dated 13.09.2022 is reproduced as under:

“RE-INSPECTION REPORT FOR GOVERNMENT RETAIL VENDS

1.	<i>Order No. and date vide which inspection has been ordered</i>	<i>Order No. F. No. L-6/EX/IMFL/2022-23/1944-49 dated 02.08.2022 issued by Commissioner, Excise Deppt.</i>
2.	<i>Date of Re-Inspection</i>	<i>13.09.2022</i>
3.	<i>Address of the proposed L-6 Vend inspected</i>	<i>Property No. D-310, Khasra No. 794, Block-D, West Vinod Nagar, Delhi-110092</i>
4.	<i>Floor at which the proposed L-6 Vend is located</i>	<i>Ground Floor</i>
5.	<i>Whether the landlord of the premises is in legal and physical possession of the proposed L-6 Vend, documentary proof to be attached</i>	<i>Yes (copy enclosed)</i>
6.	<i>Detail of lease/ rent agreement regarding the proposed L-6 Vend with documentary proof</i>	<i>No information</i>
7.	<i>Whether the proposed L-6 Vend is in approved Commercial Complex (Enclosed</i>	<i>Yes (no documentary proof provided)</i>



	<i>documentary proof)</i>	
8.	<i>Whether the proposal L-6 Vend is pucca structure</i>	<i>Yes</i>
9.	<i>Measurement of total carpet area of the proposed L-6 Vend in Sq. Feet</i>	<i>700 Sq. Feet (approx.)</i>
10.	<i>Whether the premises have electrical fitting and conform to Rule 51 (1) of Delhi Excise Rules, 2010</i>	<i>Yes</i>
11.	<i>Whether the site map of the proposed shop/premises enclosed</i>	<i>Yes (copy enclosed)</i>
12.	<i>Whether the proposed L-6 Vend conform to Rule 51(1) of the Delhi Excise Rules, 2010. If not, then reasons be specified</i>	<i>Presently, vend is running by DCCWS. However, adjacent to vend, Apex City Hospital (50 bedded) is running; another hospital namely Mahesh Hospital (20 bedded) is running within 100 mtr; Madina Masjid (Backside) is situated within 120 mtr. (approx.) and (front side) within 140 mtr. (approx.) and Shiv Mandir is situated within 130 mtr. (approx.)</i>
13.	<i>Other Information</i>	
	<i>Nearest residential colonies in and around the proposed L-6 Vend with distance</i>	<i>I. P. Extn, Patparganj, Mandawali</i>



	<i>No. of Liquor Vend in and around the proposed L-6 Vend with distance (give details)</i>	<i>No</i>
	<i>Whether the proposed L-6 Vend is in use at present and if so, the nature of the present business</i>	<i>Presently vend is running by DCCWS</i>
<i>14.</i>	<i>Observation of the inspecting team (whether the proposed L-6 Vend is suitable as per the terms and conditions and Delhi Excise Rules, 2010). In case the premises is not found suitable, the reasons be specified.</i>	<i>Presently, vend is running by DCCWS. However, adjacent to vend. Apex City Hospital (50 bedded) is running; another hospital namely Mahesh Hospital (20 bedded) is running within 100 mtr; Madina Masjid (backside) is situated within 120 mtr. (approx.) and (front side) within 140 mtr. (approx.) and Shiv Mandir is situated within 130 mtr. (approx.)</i>
<i>15.</i>	<i>List of documents obtained from the applicant</i>	<i>1. Copy of Regn. Certificate of Apex City Hospital (50 bedded) 2. Copy of Regn. Certificate of Mahesh Hospital (20 bedded)</i>
<i>16.</i>	<i>Other information (if any)</i>	<i>N. A.</i>

Report: The site/ premises was re-inspected on 13.09.2022 with team and the information as mentioned above is re-confirmed.

02 hospitals namely Apex City Hospital (50 bedded) and Mahesh Hospital (20 bedded) are situated within 100 mtr. of the premises.

Signature of Inspecting Team



1. Sh. Kaushal Kishore Jha, Excise Inspector
2. Sh. R. K. Mittal, Tehsildar, Preet Vihar
3. Sh. Ashish Aggarwal, Inspecting Officer, Labour Deptt.
4. Sh. Rajendar Kumar, SDM, Preet Vihar.”

29. The report reveals that there is Mahesh Hospital, which is a 20-bed hospital, and Apex City Hospital, which is a 50-bed hospital, both located within 100 meters from the shop in question. The report further reveals that the Madina Masjid is situated at a distance of approximately 120 meters from the backside of the shop in question and within 140 meters from the front side of the shop in question. The report also states that there is also a Shiv Mandir situated within 130 meters respectively along with an inspection report. Along with the inspection report, a certificate issued on 31.08.2022 of the Apex City Hospital was also enclosed, and the same is reproduced as under:

GOVERNMENT OF NCT OF DELHI
F-17, KARKARDOOMA, SHAHDARA, DELHI-110032

Reg. No./DHS/NH/861..... Dated : 31/08/2022

Registration Certificate
(Under Section 5 of Delhi Nursing Homes Registration Act, 1953)
For the Period 2020-2023.

It is certified that APEX CITY HOSPITAL (A UNIT OF SIDDHARTHA HEALTHCARE PVT. LTD.)
D-440, West Vinod Nagar, T.P. Extn. Patparganj, Delhi-110092 with 50 beds
is being run by Dr. M. K. Saxena (Fifty) has been registered under
Delhi Nursing Homes Registration Act, 1953 and is authorized to carry out the permitted nursing home activities at
the above said premises. However ICU Services are not permitted.
This registration certificate is valid upto 31st March, 2023.

TRUE COPY
Director General Health Services
Govt. of NCT of Delhi

30. The Registration certificate dated 31.08.2022 now reveals that the bed strength of the hospital was enhanced from 42 to 50 beds.



31. The statutory provisions relating to allocation of a license to establish and run a shop for sale of liquor in Delhi is extracted in Rule 51 of the Rules, 2010. The aforesaid rule reads as under:

“51. Condition dealing with licensed premises

(1) No retail vend of Indian Liquor, Foreign Liquor or Country Liquor shall be located within one hundred meters from the following, namely: —

(a) major educational institutions;

(b) religious places;

(c) hospitals with fifty beds and above:

PROVIDED that the condition mentioned in clause (c) above shall not apply for retail vend of liquor for consumption "on" the premises:

PROVIDED FURTHER that the condition of hundred meters shall apply for the licences granted after the commencement of these rules:

PROVIDED ALSO that if any major educational institution, religious place or hospital with fifty beds or above comes into existence subsequent to the establishment of the retail vend of Indian Liquor, Foreign Liquor or Country Liquor, the aforesaid distance restrictions shall not apply.”

32. The statutory provision of law makes it very clear that no retail vend of Indian Liquor, Foreign Liquor or Country Liquor shall be located 100 meters from a major educational institution, religious place, or 50 beds and above hospitals. The 3rd proviso to Rule 51 makes it very clear that in case a hospital with 50 beds and above hospital comes into existence subsequent to the establishment of the retail vend of Indian Liquor, Foreign Liquor or Country Liquor, the aforesaid distance restrictions shall not apply.

33. In the present case, the undisputed facts make it very clear that the hospital in the locality i.e., Apex City Hospital, at the time the liquor shop was established and license was granted, was a 42 bedded hospital and Mahesh Hospital was 20 bedded hospital. Therefore, the 50 bedded hospital



has come into existence subsequent to the establishment of the retail vend. Further, the educational institutions and religious places are not within 100 meters of the shop. Hence, the restriction as per Rule 51(1) of the Act, 2009 will not be applicable in respect of the L-6 license already granted to Respondent No. 6 on 29.08.2022 under the Act, 2009 and the Rules, 2010 framed thereunder.

34. In the present case, the first inspection of the shop in question was carried out on 19.08.2022 and at the relevant point, the Apex Hospital was a 42 bedded hospital and Mahesh Hospital was a 20 bedded hospital. Based upon the inspection report dated 19.08.2022, an offer letter was issued to Respondent No. 6 on 19.08.2022 and after depositing the license fee, an L-6 license was granted in favour of DCCWS on 29.08.2022. Therefore, the grounds raised by the Petitioner in the present PIL do not make out a case for this Court to grant relief to the Petitioner as prayed for. Therefore, the question of quashing the license dated 29.08.2022 i.e., L-6 license issued under the Act, 2009 read with Rule, 2010 does not arise.

35. In view of the above, the present PIL stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 24, 2023

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