

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 19740 of 2024

Purna Chandra Mondal

Versus

The State of West Bengal and Others

Mr. Krishnendu Sarkar

Mrs. Manisha Bose

Ms. Meghla Das

.....For the petitioner.

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

Mr. Debraj Saha

.....For the State.

Hearing Concluded On : 13.02.2026

Judgment on : 18.03.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ application praying for setting aside the order dated 10th July, 2024 and a direction upon the

respondent authorities to process the application of the petitioner for shifting of the liquor shop of the petitioner at the site offered by him as an existing site.

2. The petitioner is running the business under the name and style of Chandni Pachwai and Supplementary Country Spirit Shop for the last 50 years. On 15th December, 2016, the Hon'ble Supreme Court has passed the following order in the case of ***State of Tamil Nadu represented by Its Secretary Home, Prohibition and Excise Department & Ors. Vs. K. Balu and Another*** reported in **(2017) 2 SCC 281**:

“29. We, accordingly, hereby direct and order as follows:

***29.1.** All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along National and State highways;*

***29.2.** The prohibition contained in Para 29.1 above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;*

***29.3.** 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 1-4-2017;*

***29.4.** All signage and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on National and State highways;*

***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.

29.6. *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 Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.*

29.7. *These directions issue under Article 142 of the Constitution.”*

3. Subsequent to the order dated 15th December, 2016, several applications have been filed for extension of time for compliance in some cases or modification or recalling of the judgment passed by the Hon’ble Supreme Court on 15th December, 2016. The Hon’ble Supreme Court in its judgment dated 31st March, 2017, passed the following order:

“25. *After considering the submissions which have been urged before this Court, we are of the view that there are three areas where the rigours of the directions which have been issued by this Court may require to be suitably modulated without affecting the basic principle underlying the judgment. The first is in relation to limits of local bodies with a population of less than 20,000 people. In such areas, it has been urged before this Court that a State highway is the main thoroughfare area along which the township has developed in small clusters of 20,000 or less. Hence, the requirement of maintaining a distance of 500 m from the outer edge of the highway or service lane may result in a situation where the entire local area may fall within the prohibited distance. We find some substance in the*

submission. We must emphatically clarify that even in such areas falling under local bodies with a population of less than 20,000, no licence for the sale of liquor should be issued along either a National or State highway or a service lane along the highway. Similarly, the sale of liquor should be from a point which is neither visible from a National or State highway or which is directly accessible from a National or State highway. However, in such a situation, the prohibited distance should in our view be restricted to 220 m from the outer edge of the National or State highway or of a service lane along the highway. We accordingly direct that the following paragraph shall be inserted, after direction (v) contained in para 29.5 of the operative directions of this Court in the judgment dated 15-12-2016, namely:

“In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 m shall stand reduced to 220 m.”

4. Again several Miscellaneous and Interlocutory applications have been filed before the Hon’ble Supreme Court in connection with the order dated 15th December, 2016 and order dated 31st March, 2017. The Hon’ble Supreme Court disposed of all the applications by an order dated 23rd February, 2018 which reads as follows:

“9. Having regard to these directions, we are of the view that the State Governments would not be precluded from determining whether the principle which has been laid down by this Court in the order dated 11-7-2017 in Arrive Safe Society should also apply to areas covered by local self-governing bodies and statutory development authorities. We are inclined to allow the State Governments to make this determination since it is a question of fact as to whether an area covered by a local self-governing body is proximate to a municipal agglomeration or is sufficiently developed as to warrant the application of the same principle. In deciding as to whether the principle which has been set down in the order

dated 11-7-2017 should be extended to a local self-governing body (or statutory development authority) the State Governments would take recourse to all relevant circumstances including the nature and extent of development in the area and the object underlying the direction prohibiting the sale of liquor on national and the State highways. The use of the expression “municipal areas” in the order dated 11-7-2017 does not prevent the State Governments from making that determination and from taking appropriate decisions consistent with the object of the orders passed by this Court. We leave it open to individual licensees to submit their representations to the competent authorities in the State Governments if they are so advised upon which appropriate decisions may be taken by the State Governments. We have issued this general direction to obviate both litigation before the High Courts and repeated recourse to applications to this Court.”

5. After the order passed by the Hon’ble Supreme Court, the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain other Intoxicants) Rules, 2003, was amended by incorporating Sub-Rule 3 of Rule 8 of the said Act on 6th March, 2018 under the heading Distance restriction from National and State Highway.
6. In terms of the order passed by the Hon’ble Supreme Court, the petitioner has requested for shifting his business to a new site. As the new site suggested by the petitioner was restriction free site, the petitioner was allowed to shift his business from the earlier site to new site. After four to five years from shifting the shop, the petitioner could not be able to operate the same due to public disturbances for which the petitioner was constrained to close down the said shop.

- 7.** After the order of modification by the Hon'ble Supreme Court, the petitioner had made an application for shifting of his shop to the existing site where the petitioner was earlier used to run his business as due to the modification of the initial order of the Hon'ble Supreme Court, the existing site became restriction free to run liquor shop. The respondents have rejected the request of the petitioner for shifting his business at the existing site on the ground that within the vicinity there is a temple and is not suitable for shifting in terms of Rule 8 of the Rules of 2003. While rejecting the request of the prayer of the petitioner, the respondents have also directed the petitioner to inform whether the petitioner is able to shift his shop to any other suitable and restriction free site.
- 8.** Being aggrieved with the decision of the Deputy Excise Collector, the petitioner has preferred an appeal before the appellate authority i.e. the Excise Commissioner and the appellate authority has disposed of the appeal preferred by the petitioner by upholding the order passed by the Deputy Excise Collector.
- 9.** Being aggrieved with the order of the appellate authority, the petitioner has preferred statutory appeal before the respondent no.2 and the respondent no. 2 also rejected the appeal preferred by the petitioner and upheld the order passed by the Deputy Excise Collector and the Excise Commissioner.

- 10.** The petitioner was running the business in the existing site for the last 50 years but only due to the order passed by the Hon'ble Supreme Court, the petitioner had to shift his shop and now the Hon'ble Supreme Court by its order dated 31st March, 2017, clarified the order dated 15th December, 2016 and reduced the distance from 500 mtrs to 220 metres from the outer edge of the National Highway or State Highway but the respondents failed to consider the request of the petitioner that after the clarification of the order passed by the Hon'ble Supreme Court, the petitioner is entitled to shift his shop from new site to existing site where the petitioner was originally running his business of liquor shop.
- 11.** Learned Advocate representing the petitioner submits that the Anganwadi School and the place of worship which is only used temporarily for performing Kali Puja once in a year cannot be considered as restricted site. He submits that the Anganwadi School and the temple came into existence long after the business of liquor shop established by the petitioner. He submits that the place of worship and the Anganwadi School can no way have any application in the present case and the respondents cannot take into consideration the two constituents as making the existing site as restricted site.
- 12.** Learned Advocate submits that the operation of the existing site had to be discontinued due to the order passed by the Hon'ble Supreme Court and subsequently the Hon'ble Supreme Court reduced the distance from the National Highway and the State Highway and as per the

clarificatory order passed by the Hon'ble Supreme Court, the petitioner is entitled to operate his shop in the existing site.

- 13.** Learned Advocate for the petitioner submits that as per Sub-Rule 7 of Rule 14 of the Rules, 2003 where a license of any existing licensee at an existing site has been cancelled, withdrawn or surrendered, the Collector shall, as soon as possible, select in the same manner as prescribed for the grant of license at a new site. He submits that in the case of the petitioner as per the order of the Hon'ble Supreme Court, the petitioner had to shift the site and the same was allowed by the respondents but after the clarification by the Hon'ble Supreme Court, the petitioner is entitled to get shift his shop in the existing site but the respondents failed to consider the same.
- 14.** Learned Advocate representing the respondents submits that Sub-Rule 7 of Rule 14 of the Rules of 2003 provides only cancelled, withdrawn or surrendered but the case of the petitioner is not covered any of the said categories and thus, the said provision is not applicable to the petitioner.
- 15.** He submits that the petitioner has shifted his site as per the order passed by the Hon'ble Supreme Court and he cannot ask for any benefit in terms of Sub-Rule 7 of Rule 14 of Rules of 2003.
- 16.** He submits that on receipt of the application for shifting the shop at the existing site, the authorities have conducted enquiry and found that near the existing site there is one traditional place of worship of Goddess

Kali at a distance of 150 ft. and one Anganwadi school recognized by the State Government at a distance of 693 ft. and thus as per Rule 8 of the Rules of 2003, no license for retail sale of liquor and any intoxicant can be issued.

17. He further submits that the authorities though have rejected the request of the petitioner for shifting of shop at the existing site but have given an option to the petitioner for shifting the site to any suitable restriction free site and the petitioner can approach the authorities for any suitable site which would be restriction free.
18. The issue in the present application whether the petitioner is entitled to shift his shop at the existing site and whether the order passed by the authorities are sustainable under law.
19. "Existing Site" is defined under Rule 3(1)(iii) of the Rules of 2003 which reads as follows:

"3.(1) In these rules, unless there is anything repugnant in the subject or context,-

(iii) "existing site" means,-

- (a) a site for which a lincense has been granted under section 30 or is required to be granted under section 31 on the expiry of a license granted under section 30, as the case may be, for retail sale of liquor or any other intoxicant specified in sub-rule (1) of rule 2;*
- (b) a site for the retail vend of tari, for which a license has been granted under section 14, and where such license has been settled for two consecutive licensing periods during 2013-14 and 2014-15 in favour of a single license holder. A site for the retail vend of tari for*

which a license has been granted, or is required to be granted, under section 14, in accordance with the provisions of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003, as subsequently amended, shall be considered to be an existing site;]

(c) a site for which a license has been granted under section 30 for retail vend of pachwai to a person selected by way of auction for such retail vending at the same site for a period of two consecutive years i.e., 2017-18 and 2018-19],

Explanation – An "existing site" shall continue to remain an existing site even if retail sale of liquor or any other intoxicants specified in rule 2 under a license is stopped or closed from the existing site for whatever reasons for any period, or even if the license is cancelled or suspended or withdrawn or surrendered, or even when the license lapses on the death of person(s) to whom with or without other, it was granted;

- 20.** There is no dispute that the petitioner was running his business under the name and style of Chandni Pachwai and Supplementary Country Spirit Shop last more than 50 years at Mouza-Chelama, J.L. No. 144, Khatian No. 149/1, Plot No. 737, P.S. Bankura, GP- Andharthole. After the order passed by the Hon'ble Supreme Court dated 15th December, 2016, prohibiting functioning of liquor shop within a distance of 500 mtrs from the National and the State Highway, the petitioner had made request for shifting to a new site at J.L. No. 134, Khatian No. 326, Plot No. 1809, P.S. Bankura, GP- Andharthole. The authorities find that the new site is restriction free in terms of Rule 8 of Rules of 2003, allowed the petitioner to conduct his business at the new site.

21. On 31st March, 2017, the Hon'ble Supreme Court has clarified/ modified the order passed on 15th December, 2016, by reducing the distance from the outer edge of National or State Highways from 500 mtrs to 220 mtrs and accordingly, the West Bengal Government amended the Rules of 2003 by incorporating Sub-Rule 3 of Rule 8 which reads as follows:

“(3) Distance restriction from National or State Highway. *The State Government shall notify the distance from the outer edge of the National or State Highway or of a service lane along the highway within which no license for retail sale of liquor shall be granted.*

(No license for retail sale of liquor shall be granted at a site it.-

- (i) such site is situated within 220 metres from the outer edge of any National or State Highway or of a service lane along such highway:*
- (ii) such site is situated within 500 metres but above 220 metres from the outer edge of any National or State Highway or of a service land along such Highway except in areas comprised in local bodies with a population of 20,000 people or less:*

Provided that the distance mentioned above shall be measured along the road which can be used by motor vehicles:

Provided further that the above restrictions shall not apply to sites located within municipal areas:

Provided also that the above restrictions shall not apply to sites located within any of the Development Authorities as mentioned below:

(a) Kolkata Metropolitan Development Authority (KMDA)

(b) New Town Development Authority (NKDA)

- (c) *Haldia Development Authority (HDA)*
- (d) *Siliguri-Jalpaiguri Development Authority (SJDA)*
- (e) *Sriniketan-Santiniketan Development Authority (SSDA)*
- (f) *Asansol-Durgapur Development Authority (ADDA)*
- (g) *Digha Sankarpur Development Authority (DSDA)*
- (h) *Jaigaon Development Authority (JDA)*
- (i) *Bardhaman Development Authority (BDA)*
- (j) *Midnapore Kharagpur Development Authority (MKDA)*
- (k) *Gangasagar Bakhali Development Authority (GBDA)*
- (l) *Furfura Sharif Development Authority (FSDA)*
- (m) *Tarapith Rampurhat Development Authority (TRDA)*
- (n) *Bakreswar Development Authority (BKDA)*
- (o) *Patharchapuri Development Authority (PDA)*
- (p) *Mukutmonipur Development Authority (MDA)*
- (q) *Tarakeswar Development Authority (TDA)*
- (r) *Changrabandha Development Authority (CDA)*
- (s) *Any other Development Authority as may be declared by the State Government.]*

Provided further that the above restrictions shall not apply to sites located within the radius of 5 KM from any Block Headquarters or 3 KM from any GP Office.)

Note 1. The provisions of rule 8 shall not apply to the licenses mentioned in categories (b), (g), bars attached to restaurants, located in a [shopping

mall/shopping centre], of category (i) hotels of category 3-Star and above of (j), (l), (m), and (n) of rule 4.

[Explanation to Note 1.- For the purpose of this rule shopping mall/ shopping centre would mean a composite commercial shopping complex having a covered floor area of 25,000 square feet or above.]

Note 2- In case of grant of a license of category (dd) at a new site, the provisions of Notification No. 1613-Ex./1T-1/70 dated 28.9.1970, as subsequently amended regarding specified areas under section 14 shall be applicable in addition to the provisions of this rule.

Note 3. The provisions of rule 8 shall not apply to the licenses mentioned in categories (f), (g), (h), (i), (j), (k) and (l) of rule 4 where the proposed site falls within the jurisdiction of any Municipal Corporation or the Kolkata Metropolitan Development Authority (KMDA) and is located within the distance mentioned in Explanation (i) of sub-rule (1) of this rule from an existing licensed premises, provided that the distance of new site from any educational institution recognized by the State Government or Central Government, or any college or institution affiliated to any university established by law, traditional place of public worship and hospital for public use is not less than the distance of the existing licensed premises from such place.”

- 22.** Subsequent to the clarificatory order passed by the Hon’ble Supreme Court on 31st March, 2017, the petitioner had made an application for shifting his liquor shop at the existing site as the distance is reduced from 500 mtrs to 220 mtrs from the outer edge of the National and State Highways. The request of the petitioner is rejected as the existing site is not restriction free site in terms of Rule 8 of the Rules of 2003. Rule 8 of the Rules of 2003, reads as follows:

“8. Restrictions on grant of license at certain new sites – (1) No license for the retail sale of liquor or any other intoxicant at a new site shall be granted where the new site is situated in the vicinity of an educational institution recognized by the State Government or the Central Government, or any college or institution affiliated to any University established by law, traditional place of public worship and hospital for public use.

Explanation : [(i) For the purpose of this rule, the word “vicinity” means a distance of 1000 feet measuring,-

(A) where the new site is situated in the part of any building, from the mid-point of the entrance of such building to the mid-point of the entrance of the educational institution, college/ institution or traditional place of worship or hospital etc. as referred to in this sub-rule; or

(B) where any educational institution, college/ institution, traditional place of worship or any hospital as referred to in this sub-rule is situated in any part of a building, from the mid-point of the entrance of such building to the mid-point of the entrance of the new site; or

(C) in any other cases, from to the mid-point of the entrance of an educational institution or any college/ institution or traditional places of public worship or hospital as referred to in this subrule to the mid-point of the entrance of the new site,

along the path which an ordinary prudent person normally takes to reach such new site from such educational institution or college or traditional place of worship or hospital and includes, in case of sub-item (A), the vertical distance to be reckoned from the mid- point of the entrance of such building to the floor where such new site is situated, or in case of sub-item (B), the vertical distance to be reckoned from the mid- point of the entrance of such building to the floor where such educational institution, college/institution or traditional places of public worship or any hospital, is situated.]

[Provided that if a road has to be crossed along the path which an ordinary prudent person normally takes to reach such new site and of the said road is marked by a “Zebra Crossing” for pedestrians to cross, the said distance shall be measured taking into account the act that an ordinary prudent persons, while walking, would have crossed the said road at the point marked by the Zebra Crossing” for pedestrians to cross.]

(ii) For the purpose of this rule, traditional place of public worship means a place of public worship that is in existence for a period of not less than twenty years, or as per section 5 of the West Bengal Religious Building and Places Act, 1985 (West Ben. Act XXXII of 1985) has taken prior permission of the Collector of the district if the place is outside the jurisdiction of Kolkata, or the Police Commissioner if the place is within the jurisdiction of Kolkata.”

- 23.** At the time of consideration of the request of the petitioner for shifting of shop at the existing site, the respondents have noticed that there is one worship place of Goddess Kali at a distance of 150 ft. from the existing site and one educational institute recognized by the State Government within a distance of 693 ft. Rule 8 provides that no license shall be granted for retail sale of liquor or any other intoxicant at a new site where the new site is situated in the vicinity of an educational institution recognized by the State Government or the Central Government, or any college or institution affiliated to any University established by law, traditional place of public worship and hospital for public use. The word vicinity means a distance of 1000 ft. measuring.
- 24.** Rule 8 speaks about new site. “New Site” defines under Clause (viii) of Rule 3(1) of the Rules of 2003 which reads as follows:

“Rule 3(1)(viii) “New Site” means a site other than an existing site.”

25. There is no dispute that the petitioner had license at the existing site before the order passed by the Hon’ble Supreme Court dated 15th December, 2016. In the impugned order, it is also mentioned that the goddess Kali Temple is 50 years old. This shows that when the petitioner was running his business of sale of liquor shop at the relevant time, the temple was in existence. The Rule came into force in the year 2003.

26. It is settled law where a license is to be granted, the authority concern must do so in the light of the existing rules. An amendment in the existing rules or change in policy, license for running liquor shop shall be granted only under rules in force when the application is being considered.

27. In the present case, admittedly the existing site is the place where initially license for retail sale of liquor was granted to the petitioner and the petitioner was continued his business till the order passed by the Hon’ble Supreme Court on 15th December, 2016. At present near the existing site educational institution is situated at a distance of 693 ft. and the temple is situated at a distance of 150 ft. Rule 8(1) of Rules of 2003, prohibits for grant of license for sale of liquor within the vicinity of educational institution, place of worship and hospital for public use. For the purpose of vicinity the distance is 1000 feet. Both the educational institution and temple are situated within the vicinity.

- 28.** Though the site where the petitioner was running his business prior to shifting his business as per order of the Hon'ble Supreme Court is an existing site. When initially license was granted to the petitioner for running liquor shop at the relevant point of time, Rules of 2003 was not in existence.

Now the authorities have act in accordance with the existing Rule. As per existing Rule, no license for retail sale of liquor or any other intoxicant can be granted in the vicinity of an educational institution, college/ institution, traditional place of worship or any hospital. Near the existing site there is an educational institution and place of worship is in existence within 1000 feet.

- 29.** Considering the above, this Court did not find any reasons to interfere with the impugned orders.

- 30. WPA No. 19740 of 2024 is dismissed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)