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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
WP No. 9857 of 2022**

(SANTOSH KANOJIYA AND OTHERS Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated : 02-05-2022

Shri Kishore Shrivastava, learned Senior Counsel with Shri Sarabvir Singh Oberoi, learned counsel for petitioners.

Shri Anil Khare, learned Senior Counsel with Shri Rahul Diwakar, learned counsel for caveator.

Shri Jagat Singh, learned counsel for respondent No.3.

Petitioners have filed this petition under Article 226 of the Constitution of India making a prayer for revocation of permission granted to respondent No.5 for relocation of liquor shop and for closure of same from Indira Market to Dasilva Compound for year 2022-2023.

Learned Senior Counsel appearing for petitioners submitted that permission is granted in complete violation of the Excise policy 2022-23 and provision of M.P. Excise Act, 1915. It is submitted that relocation of liquor shop can only be done by High Level Committee comprising of Collector and all the MLAs of the district. No permission has been obtained from High Level Committee for relocation of liquor shop from Indira Market to Dr. Dasilva Road as per Clause 2.2 of the policy. Objections of local people were not invited and decision has been taken by Executives without following Excise policy and Excise Act. It is submitted that respondent No.5 was granted shop in Sanjay Gandhi Ward which is located in market area. Respondent No.5 has illegally shifted his shop. Respondent No.5 has also opened a bar/restaurant along with liquor shop in violation of law. It is submitted that as per Section 17 of M.P. Excise Act, 1915, no intoxicant can be sold except under the authority and subject to the terms and conditions of licence granted in that behalf. Respondent No.5 has only been granted a work order, but not having any licence; therefore, in view of bar under Section 17 order of relocation and permission to sale the liquor is bad in law. It is further submitted that permission to open liquor shop cannot be granted near educational institution, hostel, residential colony, Railway Station, National Highway and State Highway. It is submitted that Railway Station is located nearby liquor shop.

Further learned Senior Counsel appearing for petitioners relied on Rule (II) (2) of notification issued under Section 62 (2) (i) of M.P. Excise Act, 1915, according to which, whenever shop is proposed to be opened on a new site at which liquor may be consumed on the premises, then Advisory Committee shall publish the fact in locality and specify cut off date for inviting objections and Advisory Committee after considering objections shall prepare a report and submit it to the Collector and Collector may sanction the proposal. Further reliance is placed on general licence condition (v) which says that subject to Rule of general application, Collector may order transfer of shop from the locality to another place or its closure. On strength of aforesaid, learned Senior Counsel appearing for petitioner made a prayer restraining respondent No.5 from operating liquor shop and restaurant-cum-bar at Dr. Dasilva Road.

Respondent No.5 had filed a caveat application and it is submitted by learned Senior Counsel appearing for caveator that respondent No.5 had obtained a licence which is annexed as Annexure-C/1 dated 14.03.2022 and there is no change of area in shifting the shop and permission is not required if shop is run within periphery of 750 meters of Railway Bridge No.1. Respondent No.5 was permitted to run his shop in Sanjay Gandhi Ward, Omti. In view of Excise policy 2022-2023, respondent No.5 is not required to take any permission and is holding a licence and therefore no violation of Excise policy or Act is done by respondent No.5. Learned Senior Counsel appearing for respondent No.5 prayed for some time to file reply.

Learned Senior Counsel appearing for petitioners opposed the prayer and submitted that copy of petition was given in advance to respondent No.5 and he had sufficient opportunity to file his reply. In view of same, case may be heard for grant of interim relief to petitioners. Reliance is also placed in M.P. Country Spirit Rule, 1995. Rule 11 lays down licensee shall be bound by General and Special Order which may be issued by Excise Commissioner from time to time. Respondent No.5 is not having any licence. Counsel appearing for petitioners submitted that if law provides a thing to be done in a certain way, then said thing is to be done in that way only in no other way. He also relied on order passed in

W.P. No.8791/2022 dated 19.04.2022.

Learned Senior Counsel appearing for respondent No.5 submitted that distance is to be measured as crow flies and not the distance from metal road. He relied on judgment passed in W.P. No.4977/2017 dated 06.11.2017.

Heard the counsel for the parties.

Relevant provisions of law for considering the question whether permission to transfer shop was in accordance with law are quoted as under:

"Section 17 of Madhya Pradesh Excise Act, 1915-

17. Licence required for sale of intoxicant. (1) No intoxicant shall be sold except under the authority and subject to the terms and conditions of licence granted in that behalf:

Provided that

(a) a person having the right to the tari drawn from any tree may sell such tari without a licence to a person licensed to manufacture or sell tari under this Act.

(b) a person under Section 13 to cultivate the hemp plant may sell without a licence those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may prescribe; and

(c) nothing in this section shall apply to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives interest upon his quitting a station or after his decease.

(2) On such conditions as the Excise Commissioner may determine, a licence for sale under the Excise Law for the time being in force in other States or Union territories may be deemed to be licence granted in that behalf under this Act.

Rule (II)(2) of notification issued under Section 62 (2) (i) of M.P. Excise Act, 1915 -

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(2) Whenever it is proposed to open a shop on a new site at which liquor may be consumed on the premises the Advisory Committee shall publish the fact in the locality; and a written notice specifying the date on or before which objections may be presented shall be affixed at or near the site in question. In a municipal area a copy of the notice shall also be sent to the ward member who should visit the spot and enquire locally

into the suitability of the site. After considering any objections which may be raised, the Advisory Committee shall submit its report to the Collector. The Collector may sanction the proposal, if it is approved by the Advisory Committee. If the Collector and the Advisory Committee differ in opinion regarding the proposal, the matter shall be reported to the Excise Commissioner, for orders.

Rule 11 of Madhya Pradesh Country Spirit Rules, 1995-

11. The licensee shall be bound by General or Special Orders which may be issued by the Excise Commissioner from time to time."

Respondent No.5 has filed Annexure-C/1 and same is averred to be licence of respondent No.5. On going through said document dated 14.03.2022, it is found that respondent No.5 was directed to enter into an agreement on Stamp of Rs.500/- and after completing all the conditions of agreement licence will be issued in favour of respondent No.5. Document filed by respondent No.5 is not a licence.

Respondent No.5 had passed over a document over the Board to Court i.e. licence No.20/2022-23 for composite wine shop for country made and foreign liquor, but said licence is granted for opening shop in Indira Market, Sanjay Gandhi Ward, Jabalpur but same is not licence and permission granted to do business at Dasilva Compound/a newly relocated area. As per general licence condition III, the premises on which sales under any Excise, licence may conducted shall be specified in the licence. Licence relied upon by respondent No.5 is not in respect of relocated area.

Along with caveat and also during argument, counsel appearing for respondent No.5 was unable to show that he has obtained any permission from High Level Committee, on basis of which Collector has passed an order for transfer of shop. On the contrary, it was argued by respondent's counsel that distance between reallocated shop is less than 750 meters and shop is situated within Sanjay Gandhi Ward, therefore, no permission is required. It is further submitted that distance is less than 750 meters and prayer is made to decline prayer for grant of interim relief.

After consideration the submissions of both the parties, it is found that there is no report from High Level Committee. Objections were not invited from local

people and Collector after considering the report has not passed orders granting permission to respondent No.5 to shift the shop. There is no risk to conduct business at reallocated place.

List the matter **in the week commencing 20.06.2022.**

Four weeks' time is granted to respondent No.5 to file the reply.

Till next date of hearing, respondent No.5 is restrained to carry business from Dasilva Compound.

C.C. as per rules.

(VISHAL DHAGAT)
JUDGE

sp/-

