

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 335 of 2024

Petitioner :- Master Atharva Minor

Respondent :- State of UP and 4 others

Counsel for Petitioner :- Ashutosh Sharma, Nitesh Kumar Jauhari

Counsel for Respondent :- Ramanand Pandey, Seema Agarwal, SC and Sanjay Kr. Srivastava

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This petition in the nature of public interest has been filed by the petitioner, who is minor, through his natural guardian/father, seeking removal of a country liquor shop, situated next to his school.
2. It is *inter alia* indicated in the petition that the petitioner is a student of L.K.G., studying in Seth M.R. Jaipuria School, Azad Nagar, District Kanpur, which is imparting education from Kindergarten till class 9 and approximately 475 students are studying in the school. That a country liquor shop licensed to respondent no. 5 is running adjacent to the school of the petitioner and the distance of the liquor shop from the school is less than 30 meters. The shop remains open throughout the day and is infamous as meeting place of anti-social elements. It is submitted that father of the petitioner made a complaint on the IGRS portal of the Government based on which a report was prepared on 20.7.2023 admitting the location of the liquor shop at 20-30 meters away from the school but denied to take any action on the ground that the liquor shop is older than the school of the petitioner. Another report dated 04.10.2023 was prepared indicating that the shop was running for more than 30 years and the school was established in the year 2019 and, therefore, no action can be taken against the respondent.

3. Submissions have been made that the interpretation of the rules is baseless inasmuch as if any school comes into existence subsequent to the establishment of the liquor shop, the shop may not be closed during the said financial year but after expiry of licence in question, fresh licence/renewal cannot be granted and, therefore, the rejection of the petitioner's representation on the said ground is factually incorrect. A prayer has been made to direct the respondents to remove the country liquor shop and not to grant any fresh/renewal of licence for the year 2024-25.

4. During course of submissions, learned counsel for the petitioner confined his prayer to the relief that the licence for the liquor shop at the present location may not be issued/renewed for the year 2025-26.

5. A response to the writ petition has been given by the State relying on the provisions of Rule 5 (4) (a) of the Uttar Pradesh Number and Location of Excise Shops Rules, 1968 (for short 'Rules of 1968'). It is submitted that the proviso to the said rule, which provides for a distance of 50 metres of a liquor shop from any place of public worship or school or hospital or residential colony, clearly provides that if any place of public worship, school, hospital, residential colony comes into existence subsequent to the establishment of shop or sub-shop, the provisions of this rule shall not apply and, therefore, as admittedly the shop in question is running for over 30 years and the school was established in the year 2019, it cannot be said that there is any violation of any of the provisions of the Rules of 1968 rather the shop is being operated in consonance with the provisions of the Rules of 1968 and, therefore, the petition deserves dismissal.

6. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

7. The factual position is not in dispute that the liquor shop in question exists for a time longer than the establishment of the school in the year 2019 and is being licensed/licence is renewed year to year

and that the distance between the school and the shop in question is 20-30 meters only. The relevant rule 5 (4) (a) of the Rules of 1968 *inter alia* reads as under :

“(4) (a) No shop or sub-shop shall be licensed within a distance of 50 (fifty) meters in the case of Municipal Corporations; within a distance of 75 (seventy-five) meters in the case of Municipal Councils and Nagar Panchayat; and within a distance of 100 (one hundred) meters in other areas from any place of public worship or school or hospitals or residential colony :

Provided that if any place of public worship, school, hospital, residential colony comes into existence subsequent to the establishment of shop or sub-shop, the provisions of this rule shall not apply :

Provided further that the distance restriction shall not apply in areas designated as “commercial” or “industrial” by the development authority or other competent authority.

Explanation – for the purpose of this rule:-

(i) “Place of Public Worship” means a temple, math, mosque, gurudwara, church, which is, as the case may be, established or managed or owned by a Public Trust registered under The Charitable and Religious Trust Act, 1920 or under The Charitable Endowments Act, 1890 or by a society registered under Societies Registration Act, 1860 or Wakf Board or a gurudwara registered with competent authority and such other places of public worship as the State Government may, by notification specify in this behalf from time to time”

8. A perusal of the said rule reveals that no shop shall be licensed within a distance of 50 meters from any place of public worship or school or hospital or residential colony, however, the proviso stipulates that the said provision shall not apply if any place of public worship, school, hospital, residential colony comes into existence subsequent to the establishment of shop or sub-shop.

9. It would be appropriate to quote provisions of Rule 8 (d) (i) of the Uttar Pradesh Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules, 2002 (for short ‘Rules of 2002’), which provides for eligibility conditions for applicants:

“8-Eligibility conditions for applicants-

Eligible applicants for license of a retail country liquor shop must fulfill the following conditions namely-

- | | | | |
|-----|-----|-----|-----|
| (a) | ... | ... | ... |
| (b) | ... | ... | ... |

- (c)
(cc)
(d) submit an affidavit duly verified by notary public as proof of the following namely-
(i) that he possesses or has an arrangement for taking on rent a suitable premise in that locality for opening the shop in accordance with the provisions of Uttar Pradesh Number and Location of Excise Shop, Rules, 1968 as amended from time to time.
(ii)”

10. Admittedly, the licence of a shop is issued for the financial year i.e. from 1st of April to 31st of March and the present licence is for the year 2024-25 i.e. the same would expire on 31st of March, 2025.

11. A perusal of the provisions of Rule 5 (4) (a) of the Rules of 1968 and Rule 8 (d) of the Rules of 2002 would reveal that every applicant who applies for licence of a retail country liquor shop, is required to furnish an affidavit that he possesses or has an arrangement for taking on rent a suitable premise in that locality for running the shop in accordance with the provisions of Rules of 1968 as amended from time to time. The very fact that while applying for the grant of licence and/or the renewal thereof, an affidavit is filed regarding compliance of provisions of Rules of 1968, the same necessarily means compliance of provisions of Section 5 (4) (a) of the Rules of 1968 providing for the minimum distance of the proposed liquor shop from the place of worship or school or hospital or residential colony. The proviso to Rule 5 (4) (a) of the Rules of 1968 would have application only for the financial year in which licence has already been granted and the place of worship or school or hospital or residential colony comes into existence inasmuch as for seeking licence in the next financial year, the applicant has to comply with the provisions of Rule 5 (4) (a) of the Rules of 1968.

12. The mere fact that the shop has been used as a liquor shop in a financial year prior to the school came into existence, is not sufficient for invoking the proviso for the purpose of granting licence year after

year inasmuch as the licence is issued to the licensee on his fulfilling the eligibility under Rule 8 of the Rules of 2002 and not to the shop in question. Any other interpretation to the said proviso, as projected by counsel for the respondents, would render the provisions of Rule 5 (4) (a) nugatory.

13. In view of the above factual and legal position, the plea raised by the respondents seeking to contend that the shop having been licensed once, irrespective of provisions of Rule 5 (4) (a) of the Rules of 1968, with the aid of proviso to Rule 5 (4) (a), can be licensed year after year, cannot be sustained.

14. Consequently, the writ petition filed by the petitioner is partly allowed. The respondents are restrained from granting/renewing the licence qua the shop in question after expiry of the present licence on 31st of March, 2025, i.e. for the financial year 2025-26 onwards.

Order Date :- 02.05.2024

RK

(Vikas Budhwar, J) (Arun Bhansali, CJ)