

S.MANIKUMAR, C.J. & SHAJI P. CHALY, J.

W.P.(C)Nos.13307 & 13498 of 2021

Dated this the 7th day of July, 2021

ORDER

S.MANIKUMAR, C.J.

Petitioner/Adv.K.Vijayan has filed the instant public interest litigation with the following reliefs:

“I. Issue a writ of mandamus, or any other appropriate order or directions compelling and commanding the respondents 1 to 3 to issue necessary orders to start sale of liquor in the Bar Hotels within the State having license to do so immediately.

II. Issue a writ of mandamus, or any other appropriate order or directions compelling and commanding the respondents 1 to 3 evolve effective, efficacious speedy measures for the sale of liquor in such a way so as to avoid the gathering of people for purchasing the same from the Bevco outlets.

III. To issue in the nature of mandamus or any other appropriate order or direction compelling and commanding the respondents 1 and 5 to take effective steps against the violation of Covid-19 Protocol and the provisions in Ext.P2 Regulation and P3 Ordinance.”

2. Though Mr.C.Rajendran, learned counsel for the petitioner, by relying upon the number of bars, beer and wine parlors, bar hotels and the policy of the Government submitted that because of the Government's policy directing the bar hotels to sell liquor at the retail price as offered by IMFL shops run by Bevco and since the same would affect the interest of the bar hotels and thus sale of liquor was not conducted in bar hotels, consequently, resulting in crowding of people in the IMFL shops run by Bevco and in the abovesaid circumstances

sought for issuance of prayer No.1, posed with the question as to whether the writ petition is filed to prevent crowding or to start sale of liquor in bar hotels within the State, learned counsel for the petitioner submitted that he is not pressing prayer No.1 sought for in the writ petition. However, submitted that Covid 19 protocol and regulations issued from time to time by the Government have not been followed in letter and spirit. Referring to the number of Covid cases from 18.6.21 to 29.6.21, extracted in the statement of facts, he prayed that appropriate directions may be issued to prevent crowding in liquor shops.

3. Taking note of letter dated 2.7.2021 of a Hon'ble Judge of this court, a suo motu public interest litigation, W.P.(C)No.13498/21 has been registered in the matter of crowding and queues in front of liquor shops during the Covid-19 pandemic situation. Decision in My Hindustann Paints v. State of Kerala (2017 (3) KHC 717) has also been referred in the abovesaid letter. Photographs appended to the letter shows large gathering/big queue in front of liquor shops. Photographs depict that social distancing is not maintained. These shops are located on roadsides and near to residential buildings.

4. In the above context, directions issued by this court in W.P.(C)No.12881/17 dated 5th July, 2017, which are relevant, are extracted hereunder:

“10. The photographs would show that even between 10 a.m. to 12 noon on a given day the queues are so long that it circles the by-road once and causes complete obstruction to every institution and residents of the said road. This Court had, in reaction to these averments and to the obvious nuisance, directed, on 18.04.2017, that the sixth respondent-Sub Inspector of Police, Trissur shall ensure that the business establishments of the petitioners are not obstructed by the queue formed

in the shop owned by the KSBC. On 30.06.2017, when this matter was taken up, the learned counsel for the petitioners submitted that in spite of the orders of this Court on 18.04.2017, no steps have been taken by the police and that the queues continue to be a constant feature. I had, therefore, on that day issued an order directing the sixth respondent to inform this Court as to the specific steps taken by him to ensure that such nuisance is abated. I must say that no such statement or affidavit has been placed on record, but the learned Government Pleader submits that on account of the changed liquor policy of the State of Kerala, it is expected that the queues that are formed in front of the shops will now much lesser, probably because there are several shops now opened along with the Bars. However, this submission is not sufficient because, it was and is the intent of this Court to ensure that queues that are formed in front of the liquor shop counters do not obstruct or cause nuisance to any of the neighbours.

11. Sri.Santhosh Mathew, learned counsel for the petitioners, brings to my notice Exhibit P2 judgment, wherein another learned Judge of this Court had directed the Assistant Excise Commissioner to convene a meeting of the petitioners therein as also the official respondents to consider the complaint of the petitioners therein and to arrive to a reasonable and practicable solution. He says that the facts involved in this present case deserve orders that are more effective and that remedial action at the hands of the competent authorities has now become imminent and is required to be taken without any further delay.

12. Sri.T.Naveen, learned Standing Counsel for the fifth respondent, says that the position with respect to the alleged nuisance is completely different as of now in comparison to the situation that may have been obtained when the writ petition was instituted by the petitioners. He says that steps have been taken by the Excise Authorities to ensure that such nuisance is controlled, if not abated completely and that for such purpose, additional counters have been opened to ensure that the queues do not become very long or long winding.

13. I have considered the pleadings on record and the submissions made by the learned counsel quite in detail. It is indisputable that the Excise Authorities are burdened with the statutory obligation to ensure that no nuisance is caused on account of their outlets. In fact, the duty of the Commissioner of Excise to ensure peace and morality in the area where the licensed shops are operating, including by transfer of such offending shops to another site, is strictly and inviolably prescribed under Rule 11 of the Foreign Liquor Rules, which I deem profitable to extract, for ease of reference, as under:

“It shall be competent to the Commissioner of Excise to order transfer of shops from one site or locality to another site or locality during the currency of the contract or with the previous sanction of Government. To order any shop to be closed in the interest of public peace or morality or on grounds of expediency and in such an event of transfer, alteration or closure, the contractor shall have no claim for compensation.”

It becomes thus manifest that the Commissioner of Excise has been invested with the competence to order transfer of shops from one site to another even during the currency of the licence and to order any shop to be closed in the interest of public peace or morality or on such other relevant grounds of expediency. It is, therefore, ineluctable that the respondents are duty bound, under the provisions of the Statute and in terms of the licence to ensure that public interest, peace or morality is not contravened or infringed on account of the operation of these outlets. This is a cardinal and paramount obligation vested with the Officers of the excise and they cannot resile from it in any manner whatsoever.

14. In such circumstances and taking note of the horrendous nuisance that is projected by the petitioners through the various documents in this writ petition, it becomes incumbent that the Authorities of the Excise and the Police Department are directed to ensure that the long winding queues formed in front of the counters do not in any manner cause nuisance of any nature to the petitioners or to any other persons of the locality.

15. I, therefore, direct respondents 2, 3 and 5 to take every measure, as is required, to ensure that no nuisance is caused to the petitioners or to anyone else in the area on account of the operation of the outlet, including formation of such queues and make such necessary and requisite arrangements to ensure that persons coming to such counter are able to buy their stock of liquor without causing any such nuisance. Among the respondents in this case, the second respondent Commissioner of Excise will have to ensure that these directions are complied with in its letter and spirit and to further ensure that this judgment is implemented without fail, even resorting to the provisions of the Abkari Act and its Rules and Regulations for shifting of such counters, if such control and abatement of nuisance is not possible. The sixth respondent is directed to ensure that law and order is maintained and the queue that is formed, if any, in front of these counters do not cause any hazard or nuisance to any of the petitioners or to their

business establishments or to their customers or any of the other neighbours who are residing or doing business in the said area.

16. The KSBC, of course, would be the best authority to take remedial measures to ensure that such long queues are avoided because they are aware of the logistics involved, the demand that is exhibited and of the numbers of the customers who would flock to such counters. Obviously, the KSBC would have to take such infrastructural and logistical arrangements in front of their counters to avoid to such nuisance to the neighbours, including by having shops and waiting areas for such customers so that they will not have to spill over and stand in queues into the public streets and lanes.

The writ petition is thus ordered.”

5. Mr.N.Manoj Kumar, learned State Attorney, submitted that appropriate directions/instruction have already been issued by the Government, regarding the opening of these shops and maintenance of Covid protocol, including social distancing. He further submitted that, as regards sale in bar hotels, Government have constituted committees and issued orders i.e., G.O.(Rt)No.429/2021/TAXES dated 2.7.2021.

6. G.O.(Rt)No.429/2021/TAXES dated 2.7.2021 reads as under:

"GOVERNMENT OF KERALA
Abstract

Taxes Department- Kerala State Beverages Corporation- Revision of wholesale, profit margin of liquor --Committee constituted -Orders issued.

TAXES(A) DEPARTMENT
G.O.(Rt)No.429/2021/TAXES Dated,Thiruvananthapuram, 02/07/2021.

- Read 1. G.O.(Rt)No.395/2021/TAXES dated 16/06/2021
2. Representation dated 23/06/2021 from Federation of Kerala Hotels Association.
3. Representation dated 18/06/2021 from the Chairman, Kerala State Co-Operative Consumers Federation Ltd.

ORDER

As per paper read as 1st above Government have revised the wholesale profit margin on sale of liquor to Bar Hotels and licensees and to the Consumerfed in order to improve the financial position of the Beverages Corporation. As per paper 2nd and 3rd above, representations were received requesting to revise the order. To examine the request in the representations and submit a report thereafter, Government are pleased to constitute a committee comprising the following members:

1. Secretary, Taxes (Excise).
2. Commissioner of Excise.
3. Officer on Special Duty, Finance Resources.

(By order of the Governor)
SAURABH JAIN LAS
Secretary"

7. Learned State Attorney has further submitted that the Kerala State Beverages (M&M) Corporation Limited has also issued Circular dated 16.6.2021 to all the Regional Managers, DAT's/Warehouse Managers/shop in charge to ensure strict compliance of the directions contained in that circular and to strictly observe Covid protocol, without any lapse.

8. It is also submitted that the crowd or queue is not in all the Bevco shops. He further submitted that appropriate action would be taken by the Government to reduce overcrowding and queuing without any lapse in Covid 19 protocol.

9. Learned Standing Counsel appearing for the Kerala State Bevco endorsed the said submission. He further added that liquor shops were closed for few days and were opened on 17.6.2021. This was the reason for the surge.

10. Circular dated 16.6.2021 to all Regional Managers, DAT's/Warehouse Managers/shop in charge reads as follows:

"KERALA STATE BEVERAGES
(MANUFACTURING AND MARKETING) CORPORATION LTD.
(A GOVERNMENT OF KERALA UNDERTAKING)

Bevco Tower, Vikas Bhavan P.O., Palayam, Thiruvananthapuram – 695033
Phone.2724970, 2724913 Gram:'Beverages', Fax:2727604. E-mail-ksbcdp@gmail.com

No.8175/AET/2021/KSBC

16.06.2021

CIRCULAR

Sub: KSBC — Opening and Operation of FL.09 Warehouse and FL1 Shops after lifting of the lock down in force due to Covid-19 Pandemic — Instructions issued — Reg.

Ref : G.O.Rt.No.467/2021/DMD dated 15/06/2021 issued by Disaster Management Department Government of Kerala.

The Government, as per order refers to above (copy attached), as ordered already sanction to function the Outlets of KSBC and Bars for issue of liquor on takeaway mode.

Hence all concerned are hereby instructed to take all necessary actions to comply with the instruction issued by Government for resumption of business operations.

1. As instructed earlier, use of masks, hand sanitizers etc by all the staff working at the KSBC FL9 warehouses and FL1 retail shops shall be ensured. The expenditure for purchase of the above shall be incurred from the respective warehouse ensuring that the expenditure incurred is reasonable. Further, frequent washing of hands using soap/hand wash shall also be ensured.
2. The Social distancing norms prescribed by Government shall be strictly adhered by both the KSBC warehouse/FL1 shop staff, customers etc.
3. Both the inside and outside areas of the warehouse and shop premises shall be properly cleaned before opening the shop. The liquor stocks at the warehouse and shop shall be properly arranged, Computers, Billing Machine, Printers, Electrical fittings etc shall be properly cleaned and checked prior to commencing sales.
4. Only Outlet functioning with in A and B category areas of the Local Self Government institution where test positivity rate is less than 20% shall function with in the time permitted ie; from 9am to 7pm. No shops falling under C & D category shall be opened. The closure and opening of the outlets should be governed by categorization of local bodies and issued by competent authorities from time to time.
5. The Officers and Staff of KSBC should be present for duty in the manner directed by Government from time to time. Staff should not hesitate in themselves actively ensuring orderliness in queues and duilding customers in following Covid safety behavious. However while doing so

behaviour with customers should be polite.

6. It should be ensured that customers visiting the shop follow the Covid safety protocols like wearing of mask etc. Circles may be marked upto 25 meters with one meter distance to ensure proper physical distancing. Orderly maintenance and movement of customers in queues is to be ensured. Two security staffs be deputed for the purpose. If required night security may be discontinued and utilized for queue management during day time. Police has already been requested to assist in ensuring orderliness among queuing customers. Politeness with professional approach should be followed in guiding customers. There should not be any misbehavior by any staff,
7. Necessary arrangement shall be made to ensure proper replenishment of liquor stocks at the FL1 shops to meet the sale demand of the respective shop.
8. District Audit Team Members shall conduct necessary inspections, to ensure that the above instructions are fully complied with by all concerned.

The above instruction shall be strictly complied with.

In case of any clarification/difficulties the RMs/Managers can contact Manager (Operations)/Administration or the undersigned.

For CHAIRMAN & MANAGING DIRECTOR

Sd/-

MANAGER (ADMN)"

11. Eventhough, periodical orders are issued by the Central and State Governments regarding Covid protocol guidelines, they do not seem to be observed in letter and spirit at some places, particularly liquor shops. It is clearly mentioned in the above orders that any lapse in following the restrictions would be viewed seriously. But we find that no action is taken against the defaulters so far.

12. Today we are informed that for violation of the judgment in W.P. (C)No.12881/2017, a contempt petition has been filed and the writ court has directed the Excise Commissioner, Thiruvananthapuram to appear in person. That contempt petition is stated to be posted tomorrow. Hence, we are not inclined to entertain any submission as regards the contempt case.

13. Be that as it may, it is apparently evident from the photographs produced along with these writ petitions, there is violation of Covid protocol. As stated supra, learned State Attorney submitted that suitable action would be taken to avoid crowding and queue, at the liquor shops. He further submitted that strict compliance of Covid protocol would be ensured in all the liquor shops run by the Bevco.

14. Learned State Attorney shall file a detailed report as regards the failure to observe Covid protocol in the shops shown in the photographs in W.P.(C)Nos.13307/21 and W.P.(C)No.13498/21. Excise Commissioner is also directed to file a detailed statement regarding the failure to follow Covid Protocol guidelines in these shops.

15. Before parting with the interim order, it is to be added that as on today, State of Kerala stands No.1 in Covid 19 cases. Government, on the one hand, is trying to reduce the number of Covid cases, by taking appropriate measures, vaccination, etc. Simultaneously, crowding at public places should not be allowed, more particularly, in liquor shops. Health is more important than revenue.

Post on 13.7.2021.

sd/- S.MANIKUMAR
CHIEF JUSTICE

sd/- SHAJI P. CHALY
JUDGE