

STATE OF U.P. AND ORS.

v.

MANOJ KUMAR DWIVEDI AND ORS.
(Special Leave Petition (C) No. 7756 of 2006)

FEBRUARY 25, 2008

(A.K. MATHUR AND AFTAB ALAM, JJ.)

Uttar Pradesh Number and Location of Excise Shop Rules, 1968:

Rule 5(4) – Location and sites for liquor shop – Not to be in ‘close proximity’ of certain places mentioned in the rule – High Court opining that 100 meters or 300 ft. (approx.) would be a just measure where liquor shop should not be opened in close proximity of the places mentioned in the rule – Held: High Court was right in holding that 100 meters or 300 ft. (approx.) should be the criteria where Excise Commissioner would not give any licence to a shop under the Excise Act – However, approach of High Court in closing the shops without any notice to affected parties was not correct – The shops would continue to operate till 31.3.2008 and thereafter all shops falling within a radius of 100 meters or 300 ft. (approx.) to a place mentioned in the rule shall be closed-Principle of natural justice-Notice.

Words and Phrases

Expression ‘close proximity’ as occurring in r. 5(4) of U.P. Number and Location of Excise Shop Rules, 1968 – Connotation of.

CIVIL APPELLATE JURISDICTION : Petition for Special Leave to Appeal (Civil) No. 7756 of 2006

From the Judgment and Order dated 6.4.2006 of the High Court of Judicature at Allahabad. Lucknow Bench, Lucknow in C.M.W.P. No. 1678/2006 (PIL) and W.P. No. 2093 (M/B) of 2006

A (PIL).

WITH

SLP (C) Nos. 8016/2006, 8022/2006 and 7684/2006.

B Dr. R.G. Padia, Ajay Kumar Misra, Dinesh Kr. Goswami, Anil Kumar Jha, Anurag Sharma, Joseph Poopkall, Prashant Kumar, Arvind Verma, Malvika Trivedi, T. Mahipal, Kamlendra Mishra, Shekhar Kumar, Santosh Kumar Tripathi, S. Janani, Deepak Goel, Indra Sawhney, B.K. Prasad, Mrs. Anil Katiyar, D.S. Mahra, K.K. Tyagi and P. Narasimhan for the appearing parties.

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The following order of the Court was delivered:

D 1. All these special leave petitions involve a common question as to the interpretation of sub-rule (4) of Rule 5 of the U.P. Number and Location of Excise Shop Rules, 1968 (hereinafter for short the "U.P. Excise Rules"). Since these petitions involve a common question, they were heard together and are being disposed of by this order. However, for convenient disposal of these petitions, the facts of SL P (C) No. 7756/2006 are taken into consideration.

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SLP(C) No. 7756 / 2006

F 2. This petition is directed against the judgment and order dated 6.4.2006 passed by the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench whereby the Division Bench has taken the view that the word "close proximity" used in sub-rule (4) of Rule 5 of the U.P. Excise Rules shall be meant to be 100 meters or 300 ft. (approx.). The brief facts leading to the decision of the Division Bench of the High Court are that a public interest petition was filed before the Lucknow Bench of the High Court making a grievance that liquor shops were opened in purely residential areas in breach of the provisions of U.P. Excise Rules.

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H 3. The said Excise Rules have been made in exercise of the powers under clauses (c) and (f) of sub-section (2) of Section

40 of the Uttar Pradesh Excise Act, 1910 (U.P. Act No. 4 of 1910) read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904). The said Sub- Rule (4) of Rule 5 of the Excise Rules reads as under :-

5. The following principles shall be observed in determining the location and the sites for shops/sub- shops:-

(4) No new shop or sub- shop shall be licensed in close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. All objections to the licensing of a shop or sub- shop made by persons affected, shall receive full consideration."

4. The Division Bench of the High Court taking note of the abovesaid provision directed that all the licensed shops which were operating in close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony shall be closed with immediate effect. As a result of the orders passed by the High Court, as many as 53 liquor shops were closed in Gomti Nagar area of Lucknow. After hearing the parties and taking a just and fair solution to the problem, the Division Bench fixed the distance of 100 meters or 300 ft. (approx.) within which there shall be no liquor shop close to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony.

5. Aggrieved against the said judgment and order of the High Court, this petition has been filed by the State of Uttar Pradesh.

6. Notice was issued in all the petition and the operation of the impugned judgment and order was stayed by this Court vide order dated 28. 4. 2006 . Today the petition has come up for final disposal before us.

7. We have heard learned counsel for the parties and perused the record.

A 8. Sub- Rule (4) of Rule 5 of the U.P. Excise Rules deals with the location of Excise shop and sub- shop and shop has been defined in Rule 2(a) of the said Rules as under :-

 “(a) “Shop” means a retail shop for vend of country liquor, foreign liquor and bhang.”

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 Rule 5 of the U.P. Excise Rules deals with the location of a shop and the principle which has to be observed while issuing license to a shop. From a plain reading of sub- rule (4) it is clear that no shop or sub- shop for vending of country liquor, foreign liquor and bhang shall be opened in the close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. In case of any violation of the said Rule, if objections are received from affected persons, the same shall receive full consideration. Therefore if any shop is opened in the close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony then the residents of that area has a right to protest and the decision has to be taken by the Excise Commissioner. Unfortunately, the tendency of the State is to ignore the Rules in order to augment the revenue of the State and the State indiscrimin ately opens shops making the life of the residents of the area miserable. In fact the present public interest petition before the High Court was a result of the failure of the State Machinery to take necessary steps in the matter. If the Excise Commissioner has taken proper care while issuing licences to the liquor vendors and considered the objections of the residents of the area, perhaps there would not have been any necessity of filing the public interest litigation before the High Court.

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G 9. Be that as it may, it appears that proper care was not taken while opening shops in the close proximity of a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony and that is how Sub- Rule (4) of Rule 5 came up for interpretation before the High Court. The High Court has after taking into consideration

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the overall view of the matter opined that 10 0 meters or 30 0 ft. (approx.) would be a just measure where the shop should not be opened in the close proximity of a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. We fully agree with the view taken by the High Court and we are also of the view that 10 0 meters or 30 0 ft. (approx.) should be the right criteria were the Excise Commissioner shall not give any licence to a shop under the Excise Act. We hope and trust that the Excise Commissioner of the State shall take into consideration sub- rule (4) of Rule 5 of the U.P. Excise Rules and see that no shops or sub- shops are opened within radius of 10 0 meters or 30 0 ft. (approx.) of a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. The interpretation of the word "close proximity" was vague therefore it was misused by the authorities. But, now the matter has been placed beyond any vagueness. Therefore, with the interpretation of the expression "close proximity" by the High Court, the matter has been put in the right perspective and the doubt has been cleared. Therefore, taking into consideration all the facts and circumstances of the case, we affirm the view taken by the High Court insofar as fixing the distance of 10 0 meters or 30 0 ft. (approx.) from a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony where no shop or sub- shop shall be opened under the U.P. Excise Act and Rules framed thereunder.

10. However, we do not approve of the approach of the High Court in closing the shops without issuing notice to the affected parties. This should not have been done. Since the operation of the impugned judgment and order was stayed by this Court, these shops have continued to operate. We direct that the interim order dated 28. 0 4 . 2 0 0 6 passed by this Court under which these shops are operating, shall continue to operate till 31. 3. 2 0 0 8 and after that no shops or sub- shops under the U.P. Excise Act shall be opened or continue to open within a radius of 10 0 meters or 30 0 ft. (approx.) of a place of

- A public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. All the shop owners or sub-shop owners shall close their shops on or before 31. 3. 2008 if they are within a radius of 100 meters or 300 ft. (approx.) to a place of public resort, school, hospital, place of
- B worship or factory, or to the entrance to a bazar or a residential colony. As there is sufficient time, the shop owners or sub-shop owners shall make necessary arrangement to shift their shops. If these shops are not closed after 31. 3. 2008 the Excise Commissioner of the State shall see to it that the said shops
- C are closed and no fresh licence or renewal shall be made of a licence if they are operating in prohibited area.

11. With the abovesaid observations, this special leave petition is disposed of.

- D SLP (C) No. 8016 / 2006, SL P(C) No. 8022 / 2006 and SLP (C) No. 7684 / 2006

For the reasons mentioned in SLP (C) No. 1678 / 2006, these petitions also stand disposed of in the same terms.

- E R.P. Special Leave petition disposed of.