

(2018) 06 UK CK 0038

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No.156 of 2016

Manoj Singh Pawar

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Money Laundering Act, 2002 — Section 2(y), 3, 4, 5, 6, 8, 17, 18, 20

Constitution of India, 1950 — Article 47

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 15, 16, 17, 19, 20, 20(b)(ii)(c), 21, 22, 23, 24, 25A, 27A, 29, 50

Citation : (2018) 06 UK CK 0038

Hon'ble Judges : LOK PAL SINGH, J; RAJIV SHARMA, J

Bench : Division Bench

Advocate : Rahul Consul, M.C. Pandey, S.S. Chauhan

Final Decision : Disposed Off

Judgement

RAJIV SHARMA, J

LOK PAL SINGH, J

1. The present petition has been filed highlighting the opening of liquor vend right in the heart of Almora town in the close proximity of District

Hospital, opposite the Government Museum and Govt. Girls Inter College and bus stand.

2. The establishment of liquor vends is regulated and controlled under the Uttar Pradesh Number and Location of Excise Shops Rules, 1968. Sub-rule

4 of Rule 5 reads as under:-

4(a) No shop or sub-shop shall be licensed within a distance of 50(fifty) meteres in case of Municipal Corporations; within a distance of 75 (seventy-

five) meteres in case of Municipal Councils and Nagar Panchayat; and within a

distance of 100 (one hundred) metres 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/industrial 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.

(ii) "School" means a pre-primary school, primary school, middle school, high school, inter college owned or managed or recognised by any local

authority or the State or Central Government or any college affiliated to or established or managed by any University established by law.

(iii) "Hospital" means any hospital which is managed or owned by a local authority or the State or Central Government and includes any private

hospital having a provision of at least 50 beds and is registered with urban or rural local body.

(iv) "Residential Colony" means a colony developed and constructed on legally held land of which maps have been duly approved by the competent

authority recognised by law.

(b) The distance referred in clause (a) shall be measured from the mid-point of the entrance of the shop or sub-shop along the nearest path by which

pedestrian ordinarily reaches to the mid-point of the nearest gate of the place of public worship or a school or a hospital or a residential colony, if

there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the place of public worship or a school or a

hospital or a residential colony.â??

3. The State Government in its own wisdom has also issued instructions in the matter on 16.06.2008 whereby it is made mandatory while auctioning

the shops and granting the license that the liquor vends shall be at least 100 meters away from the educational institutions as well as institutions

defined under the Rules i.e. confluence, factories, residential areas, market etc.

4. According to the averments made in the petition, the distance of the concerned liquor vend which is the subject matter of the present petition is right

in the middle of the town which is less than 100 meters from Govt. Girls Inter College, Civil Hospital and Temples.

5. This should not have been permitted to be done by the State government. The availability of narcotics including liquor, wine should not be readily

available. These liquor vends should be far away from the educational institutions, busy hubs, commercial centers, hospitals, factories, temples etc.

6. Learned counsel for the State has vehemently argued that the distance of liquor vend is more than 100 meters.

7. Notice was issued to the respondent no.5-, the person to whom the liquor shop license has been issued, however, he has avoided the service of notice.

8. Though, the present case pertains to location of liquor vend in Almora town, however, we enlarged the scope of this writ petition in larger public

interest to ensure that no liquor vend is issued licence, opened, operated in contravention of the Uttar Pradesh Number and Location of Excise Shop

Rules, 1968 and the instructions issued by the State Government to curb the ever increasing consumption of liquor throughout the State.

9. According to Article 47 of the Constitution of India, the State Government should strive for prohibition of consumption of liquor.

10. In sequel to the directions issued by this Court, the Deputy Inspector General, Kumaon Range and the Senior Superintendent of Police, Nainital

are present in the Court. Since the matter is very sensitive, we had a long interaction with both the Officers. The Officers have suggested various

remedial measures to arrest the menace of drugs abuse throughout the State of Uttarakhand, more particularly, in districts of Udham Singh Nagar,

Almora, Nainital and the bordering areas i.e. Dharchula, Banbasa and Tanakpur. The main concern of the Court is that Charas, Heroin and artificial

drugs should not be available to the studentsâ?? community, in particular, and youth, in general, in the State. The drugs abuse has broken the social

fabric and has destroyed number of families. The Deputy Inspector General, Kumaon Range and the Senior Superintendent of Police, Nainital were

told to sensitize the entire police force to ensure that the drugs are not readily available to the studentsâ?? community and their transportation from

Indo-Nepal Border is not permitted.

11. The drugs which are also reaching in the State of Uttarakhand from the adjoining States are checked with iron hand.

12. It is intriguing to note that the students i.e. boys and girls are getting the prohibited drugs but the police is not in a position to catch hold of kingpins

and peddlers. The focus of the entire police force should be to catch hold of kingpins and to bring them to justice.

13. During the course of interaction, the Deputy Inspector General has apprised the Court that a Special Operational Group (SOG) is constituted in

each district under his jurisdiction. The S.I. concerned heads the Team along with 5-6 police officials.

14. There are no special check posts to check the smuggling of drugs/narcotic substances from across the border as well as in the bordering districts

of Himachal Pradesh, Uttar Pradesh, Haryana.

15. A startling revelation has been made by the Deputy Inspector General that there is only one Drug Inspector available in the entire Kumaon Range.

There are no rehabilitation centers in the entire Kumaon Region for rehabilitation of the youth addicted to drugs. There are no sufficient number of

psychiatrists for counseling in the hospitals. There is no separate ward earmarked for rehabilitation of drugs addicts.

16. The Court has impressed upon the police officers, who are sensitive towards their duty and professional, that the kingpins should be booked under

the provisions of Money Laundering Act, 2002 to uproot this menace from the society. The Central Government has enacted the Prevention of Money

Laundering Act, 2002 (hereinafter referred to as â??the Actâ? for short) to prevent money laundering and to provide for confiscation of property

derived from, or involved in, money laundering and for matters connected therewith.

17. Money laundering has the meaning assigned to it in Section 3 of the Act. The

scheduled offences are defined in section 2 (y) of the Act as under:

- (i) the offences specified under part A of the Schedule; or
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
- (iii) the offences specified under Part C of the Schedule.

18. Section 3 provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in

any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as

untainted property shall be guilty of offence of money-laundering. Punishment has been provided under Section 4 of the Act. Section 5 provides for

attachment of the property involved in money-laundering. The Director or any other officer not below the rank of Deputy Director authorized by the

Director for the purpose of this Section, if has reason to believe to be recorded in writing on the basis of material in his possession that any person is in

possession of any proceeds of crime, and such proceeds of crime are likely be concealed, transferred or dealt with in any manner which may reason

in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may by order in writing, provisionally attach

such property for a period not exceeding 180 days from the date of order, in such manner as may be prescribed. The composition of adjudicating

authority is provided under Section 6 of the Act and adjudication is provided under Section 8 of the Act. Section 17 provides for search and seizure.

The search of persons is provided under Section 18. The retention of the property is provided under Section 20.

19. Paragraph 2 of Part A of the Schedule of the Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes offences for contravention in

relation to poppy straw, coca plant and coca leaves, prepared opium, opium poppy and opium, opium by cultivator, cannabis plant and cannabis,

manufactured drugs and preparation and psychotropic substances etc. Since the accused has been convicted under Section 20(b)(ii)(c) of the ND&PS

Act for contravention in relation to cannabis, the Director, Directorate of Enforcement is directed to register a case against the convict under section 3

and 4 of the Act. The Director, Directorate of Enforcement/ Additional/ Joint/ Deputy or its delegates are directed to register cases against all the

convicts, who are convicted under section(s) 15, 16, 17, 19, 20, 21, 22, 23, 24, 25-A, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances

Act, 1985 throughout the State of Uttarakhand within a period of three months from today to curb the illegal transportation of narcotic drugs and

psychotropic substances and also to prevent money laundering. The Principal Secretary (Home) to the Government of Uttarakhand is also directed to

issue directions to all the Investigating Officers throughout the State of Uttarakhand to register cases against the person(s) under section 27-A of the

Narcotic Drugs and Psychotropic Substances Act, 1985, who are involved in financing, directly or indirectly in any of the activities specified under the

Act or harbours any person engaged in any of the activities as per the Act, to reduce the menace of drugs abuse in the society, immediately.

20. Accordingly, the petition is disposed of and the following mandatory directions are issued: -

A. The Special Operational Groups shall be headed by an Officer not below the rank of Inspector along with at least 10 police personnel out of which

5 should be women. The S.S.P./S.P. of each district shall be personally responsible to monitor the operations carried out by the Special Operational

Group. The Circle Officer of the concerned Circle shall be the Supervising Officer.

B. The State Government is directed to appoint more Drugs Inspectors in each district in cluster of two districts in hill areas and two Drugs Inspectors

in each plain district i.e. Dehradun, Haridwar, Udham Singh Nagar and plain areas of Champawat and Nainital, within three months from today.

C. The Director General of Police, State of Uttarakhand is directed to set up special check posts on Indo-Nepal Border to check the free flow of

narcotics substances into the State of India from Nepal. The Special Check Post shall be headed by a person not below the rank of Sub Inspector.

Needless to add that the check post shall be equipped with the latest state of art equipment i.e. Scanners. The check posts shall be set up within three

months from today and the necessary equipments shall be supplied within this period only.

D. The State Government is directed to have Special Task Force (STF) at all the check posts adjoining the State of Uttarakhand i.e. Himachal

Pradesh, U.P., Haryana etc. to check the transportation of narcotics and more particularly artificial drugs in the State. The units and check posts shall

keep a close vigil on the buses, trains and other conveyances in the State of Uttarakhand.

E. The State Government is directed to undertake special drives to uproot the cannabis found even in the wild. All the revenue officers, forest officers

and elected representatives of Panchayat Raj Bodies are directed to inform the police about the illegal cultivation of cannabis, opium and poppy in their respective areas.

F. The State Government is also directed to launch special awareness drives to make the people aware of the ill-effects of drugs on the society. The

District Magistrate of the district shall be the Nodal Officer to make the citizens aware of the ill-effects of the drugs and controlling the same. The

State Government shall make sufficient provisions for awareness drives through electronic media, print media, internet, radio television etc.

G. The State Government is directed to provide latest kits to the Investigating Officers to investigate the matters under the Opium Act, NDPS Act and other allied Acts.

H. The State Government through the Director General of Police is directed to register cases against the kingpins under the Money Laundering Act,

2002 at the time of lodging the FIR under the NDPS Act and Opium Act and also, if necessary, by attaching their properties provisionally relating to

supply of poppy straw, coca plant and coca leaves, prepared opium, opium poppy and opium, opium by cultivator, cannabis plant and cannabis,

manufactured drugs and preparation and psychotropic substances including artificial drugs etc.

I. Since the drugs menace has attained alarming preparation, the State Government is directed to establish Rehabilitation Centers in each district of the

State within a period of six months from today. The rehabilitation centers shall provide all the basic necessities to the inmates including boarding,

lodging, counseling etc.

J. The State Government is directed to appoint one Psychiatrist for counseling in each Rehabilitation Center. The Counselor appointed in rehabilitation

center shall also visit all the schools falling in his jurisdiction advising the students about the ill-effects of drugs.

K. All the educational institutions i.e. government run, government aided, private schools, minority institutions, are directed to appoint the senior-most

teacher as the Nodal Officer to counsel the students on every Friday of the month about the ill-effects of drugs. In case, he finds any drugs abuse or symptoms, he shall be at liberty to summon the parents of students. The parents will be sensitized against the drugs abuse in parent-teacher meetings.

L. The State Government is directed to ensure one plain-clothed policeman from 8 AM to 6 PM around all the educational institutions to nab the drugs peddlers and kingpins. The local intelligence units are directed to keep a close watch on the shops including Dhabas, tuck shops, Khokas, tea stalls to ensure that the owners thereof are not permitted to indulge in the sale of drugs etc.

M. The Drugs Inspector while raiding the factories, industries, medical shops shall be accompanied by a person not below the rank of Circle Officer including the Gazetted Officer from the Food and Supplies Department.

N. The SSP/SP of the concerned district shall personally monitor all the cases registered under the Opium Act and the NDPS Act, 1985 to plug the loopholes during the course of enquiry and investigation to increase the conviction rate.

O. The Executive Magistrates and the Gazetted officers throughout the State shall be informed about their duties to be discharged under the NDPS

Act more particularly, Section 50 and the latest law laid down by the Honâ??ble Supreme Court of India and by this Court from time to time.

P. The Police Officers shall ensure that no minor is served any drugs, alcoholic beverages in any medical shops, bars, restaurants and through vend.

No vend shall supply/sell the liquor to any minor. In the eventuality of liquor being supplied/sold to a minor, the licence issued for bar/vend shall be

cancelled after putting them to notice. This direction shall be complied with by the police force as well as by the Excise Department. The concerned

Circle Officer shall visit every medical shop at least within 24 hours to check the supply of drugs to any minor.

Q. The SDM, Almora is directed to measure the distance as per the Rules and the norms prescribed by the State Government within 72 hours. In

case, the distance is found less than 100 meters, the State Government shall shift the liquor vend within 7 days from today at an appropriate place and

if, it is more than 100 meters, it shall be permitted to operate.

R. The Secretary, Excise to the State of Uttarakhand is directed to ensure that no

liquor vend is situate in violation of the Uttar Pradesh Number and Location of Excise Shop Rules, 1968 as well as the instructions issued by the State Government on 16.06.2008. The necessary exercise shall be undertaken within one week from today.

21. The Court places on records its appreciation for the valuable assistance rendered by the Deputy Inspector General, Kumaon Range and the Senior Superintendent of Police, Nainital who are present in the Court in order to make the State of Uttarakhand free from the drugs menace. The observation made by this Court shall be placed on the personal files of these two Officers. These two Officers be considered as the role models for the entire police force.

22. The Court places on record its appreciation for the petitioner who has highlighted this serious menace in the State.

23. All pending applications stands disposed of.