

(1986) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1229 of 1986

Tilak Raj Yadav and others

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 25-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Excise Act, 1915 — Section 28, 62

Citation : (1987) ILR (MP) 542 : (1987) JLJ 193 : (1987) MPLJ 290

Hon'ble Judges : Sachchidanand Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : R.L. Gupta, for the Appellant; M.V. Tamasker, A.A.G., For respondents Nos. 1 to 3, R.N. Singh, For respondents Nos. 4 to 7, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

This is a petition under Articles 226 and 227 of the Constitution by four petitioners claiming to be social workers and students challenging the licences granted by the Excise Commissioner and the Collector to the respondents 4 to 7 to run liquor bars in busy market area in close proximity of temples, schools and cultural institutions in contravention of statutory rules framed in this regard.

It is not disputed that respondents 4 and 5 Mayur Bar and Shere Punjab Bar are running liquor bars adjacent to Malviya Chowk, Jabalpur. Respondents 6 and 7 Yogi Darbar Bar and Sahni Bar are also running liquor bars near Naudra Bridge, Jabalpur. They have been granted licence in Form FL-3 to run bar in their respective hotels. The petitioners have annexed map Annexure-A showing the location of these bars and other institutions. The State has also filed enlarged maps Annexure R. 3 and 4 showing location of these liquor bars, so also the respondents 4 to 7, vide Annexures R. 1 and R-2. It is not disputed that to the close proximity of the bars of respondents 4 and 5 there are Anjuman Islamiya

High School, Khalsa High School for boys and girls, Georgetown School, Sharda Sangit Mahavidyalaya, Shiv Temple, Sanskrit Pathshala, Gurudwara, Masjid, Jain Mandir and D. N. Jain College. At some distance away, there is Kali Temple and City Bengali Club where a school is being run on the Karamchand Chowk. Respondents 6 and 7 have their liquor bars in the close proximity of Gurunanak High School, Gujarati Girls, High School, Hanuman Temple and at some distance there is Hitkarini Girls, College. Nearabout these two bars are also cultural institutions viz. Gujarati Mandal, South Indian Association and Maharashtra Vyayam Shala. Malviya Chowk, Karamchand Chowk, Naudra Bridge and Nagar Nigam Chowk form a quadrangle. Within its precincts is the Marhatal Civic Centre which is fast coming up as the main shopping centre of the city. There are 7 cinema talkies near the Civic Centre. There are shops all round this quadrangle. For running liquor bars, F.L. 3 licences have been granted to the respondent No. 4 on 18-2-1985, and to respondent No. 5 on 7-2-1985, to respondent No. 6 on 18-1-1985 and to respondent No. 7 on 26-9-1984. Though the respondents have disputed the distances given by the petitioners in their petition, but from their own showing it is not disputed that in close proximity of these liquor bars there are temples, Masjid, Gurudwara and schools. High Schools and the national highway are also within a distance of 500 meters from these liquor bars.

The licences have been issued by the Excise Commissioner and the Collector u/s 28 of the M. P. Excise Act, 1915. Section 62 empowered the State Government to make rules for the purpose of carrying out provisions of this Act. In exercise of powers u/s 62(e)(f) and (h) the State Govt, has framed rules of general application regarding location of shops in Section A. Rule I is as under : -

Location of shops. - (1) No retail shop shall be licenced for the consumption of liquor on the premises, -

(a) in or at the entrance to a market place;

(b) in the neighbourhood of a mill, factory or other place where a large body of labour is employed, without first giving the mill owner or such employer of labour an opportunity of stating their objections to the proposals;

(c) near a place of worship, a primary or a middle school, a bathing ghat, a hospital, a labour colony, a petrol pump, a railway stationyard of a bus stand, without sanction of the State Government except when such shop is situated at a distance of, -

(d) 100 meters or more from such place where such place situated within the limits of a town having population exceeding two lacs and fifty thousand, according to the last census;

(ii) 150 meters or more from such place where such place is situated in any other area;

(d) near a national Highway, a State Highway or an educational institution other than a primary or a Middle School, without the sanction of the State Government

except when such shop is situated at a distance of 500 meters or more from such Highway or Institution.

(2) The position of a shop shall be so for public that no person entering it shall escape observation; but it shall not be so as to compel attention of persons passing by or to expose them to the risk of annoyance from the drinkers.

(3) Shops for the sale of foreign liquor to be consumed on the premises shall be opened only in places where there is approved demand by the class of drinkers accustomed to foreign liquor.

(4) Before a shop is opened within the limits of a reserved forest, the Divisional Forest Officer shall be consulted.

(5) So far as practicable, an established liquor shop licensed for the consumption of liquor on the premises shall not be allowed to remain on a site which would not, under clause (a), (b) or (c) of sub-rule (1) be permissible for the location of a new shop.

In Section B rules are regarding constitution and functions of Excise Advisory Committee. Rule II (1) and (2) are as under : -

(1) The Collector shall consult the Advisory Committee of the municipal or cantonment areas concerned on all important excise matters directly affecting the consuming public and not concerned with the organisation, discipline or procedure of the Excise Department or the selection of licences, and in particular before making any change in -

(a) the number of excise shops for the sale of country liquor, intoxicating drugs and foreign liquor under licence forms FL 1, 2 and 3, and their distribution in the several wards of the area; or

(b) the sites of shops licensed for the sale of liquor which may be consumed on the premises.

(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.

It is not in dispute that neither the Excise Commissioner nor the Collector consulted the Advisory Committee before opening these liquor bars where liquor is to be consumed by the customers. There was no public notice given inviting

objections about the opening of the liquor bars in the busy localities of the city. No reason has been given for not complying with this provision. It is undisputed that there are High Schools, both of boys and girls, within 500 meters of these four bars. It was not within the competence of the Excise Commissioner or the Collector to have granted licences without first obtaining sanction of the State Government. The learned Addl. Advocate General contended that the papers have been sent to the State Government for its sanction and orders are expected very shortly. But then the sanction should have been obtained first before granting the licences. The authorities could not have put the cart before horse and thereby frustrating the laudable objects of these rules which are in the interest of the society at large. These rules may be directory so far as the State Government are concerned because it is open to them to depart from these rules, that too for some valid reasons, but it is not open to the Excise Commissioner or the Collector to ignore these rules which are mandatory so far as they are concerned. We fail to understand why these liquor bar licences were issued in post-haste without complying with the requirements of the rules. Respondent No. 8 is the Minister of State in Government of M. P. and the petitioners have given his address through respondent No. 4 showing that either it is owned by him or by his relations. The Minister has not filed any counter-affidavit. The State merely stated that licence is not in the name of the Minister. The Advisory Committee was not consulted nor notices were issued inviting objections from the public before issuing licences. The contention of the learned counsel for respondents 4 to 7 is that these liquor bars are actually located right inside the buildings of these hotels and they are not openly visible to the pedestrians on the roads. That may be so, but then the sight of the pedestrians cannot escape notice of the customers coming Out after consuming liquor from these bars. This naturally causes adverse effect on the school-going children, specially those in High School who are in their formative ages. That is the reason why the rules have been framed that there should be no liquor bar within a distance of 500 meters from High Schools. It is true that respondents 4 to 7 have invested money for running these liquor bars but that cannot be the only consideration for deciding the matter. We have to take into consideration the larger interest of the society at large. We are fortified in our view by the recent decision" of this Court in *Sardar Daljeet Singh Sandhu vs. State of M. P. and others* (M.P. No. 703 [86, decided on 24-3-1986), which held as follows : -

The facts beyond controversy as they appear from the maps filed by the two sides are that this is not a disputed fact. It is common ground that this Beer Bar to which objection has been taken was opened on 20-2-1986 and the period of the licence expires on 31st March 1986. In our opinion that location of the Beer Bar is such that it calls for our interference since it is not in larger public interest to permit continuance of the Beer Bar as its present location is in close proximity of two schools one of which is a girls, school. It would be therefore, appropriate for us to direct closure of this Beer Bar forthwith. Learned Dy. Advocate General contended that the licensee would suffer loss on account of the closure of the

Beer Bar since the Licence is upto the period of 31st March 1986.

In our opinion, the interest of the licensee would be sufficiently safeguarded by directing a remission in the licence fee being given to him for the period during which this shop will not function as a result of the order made by us. We may also observe that the authorities concerned shall take into account all these relevant facts while deciding the location of such shops in future.

In that case the liquor bar owner had filed SLP (C) No. 3406/86 against the decision of this Court in the Supreme Court which was dismissed on 8-9-1986.

Therefore, the petition is allowed. It is directed that the Liquor Bars of the respondents 4 to 7 shall be closed forthwith and they shall not be permitted to function at their present locations for the remaining period of licences. Respondents 4 to 7 shall be granted remission in their licence fee for the remaining period of their licences which become inoperative as a result of this order. In the circumstances of the case, the parties shall bear their own costs.