

SUPREME COURT OF INDIA

Cee Cee & Cee Cee's

Vs.

K.Devamani

C.A.No.9494-9495 of 2019

(Uday U.Lalit and Indu Malhotra,JJ.,)

18.12.2019

JUDGMENT

Indu Malhotra,J.,

SLP (Civil) No.10744 - 10745 of 2019

1. Leave granted.

2. The Appellant is an F.L.- 1 License holder issued on 26.10.2016 by the Deputy Commissioner, Excise, Mahe under the Puducherry Excise Act, 1970 ("Excise Act"). Under the F.L. - 1 License, the Appellant is permitted to sell Indian Made Foreign Liquor ("IMFL") to other License holders, and not in retail.

2. On 28.02.2017, the Appellant filed an Application before the Deputy Commissioner (Excise), Mahe for shifting his licensed Liquor Shop from Mahe to Karaikal under Rules 163 and 209 of the Puducherry Excise Rules, 1970 ("Excise Rules").

3. The Deputy Commissioner (Excise), Mahe forwarded the Application to Respondent No. 3 - the Deputy Commissioner (Excise), Karaikal vide letter dated 07.03.2017, and requested Respondent No. 3 to conduct an inspection to assess the suitability of the site at Karaikal.

4. Respondent No. 1, a resident of Karaikal, submitted an objection dated 02.06.2017 before the Sub - Collector (Excise), Collectorate, Karaikal to oppose the shifting of the liquor shop to Karaikal. Respondent No. 1 inter alia submitted that pursuant to the Judgement dated 15.12.2016 passed in State of Tamil Nadu v. Balu , various liquor shops had been shifted from other regions to the residential areas in Karaikal. The Court had directed that no shop for the sale of liquor could be situated within a distance of 500 meters of the outer edge of the National or State Highways or of a service lane along the Highway. It was submitted that shifting of the shop was contrary to public interest of the residents of Karaikal. For about 35 houses in Nedunkadu circle, Karaikal, there were 35

liquor shops already operational. It was further submitted that the Madras High Court vide Order dated 07.03.2003 in K. Murali v. Commissioner (Excise)-cum-Secretary in W.P. (Civil) No. 39661/2002 had interpreted the expression 'from one place to another' in Rules 163 and 209 of the Excise Rules to mean that shifting was permissible only within a particular local area, panchayat or commune, and not from one region to another in the Union Territory. In view of the restrictive meaning of the word 'place', the Licensing Authority could not grant permission to shift the licensed shop of the Appellant from one region to another i.e. from Mahe to Karaikal, which is at a distance of 650 kilometers. The shifting of liquor shops from one region to another would be in contravention of Rules 163 and 209 of the Excise Rules.

5. Respondent No. 1 and one K. M. Baskar filed W.P. (Civil) Nos. 13081/2017 and 15953/2017 before the Madras High Court for the issuance of a writ of mandamus restraining Respondent No. 2 and 4 - Excise Authorities from shifting liquor shops from Mahe to Karaikal. The Madras High Court vide Order dated 26.02.2018 directed the Excise Authorities to consider the objections raised by Respondent No. 1 along with the Application for shifting filed by the Appellant in accordance with law.

6. Respondent No. 3 – Deputy Commissioner (Excise), Karaikal granted a personal hearing to Respondent No. 1 on 01.03.2018.

7. Respondent No. 3 – Deputy Commissioner (Excise), Karaikal vide Order dated 27.03.2018 rejected the objections raised by Respondent No. 1, on the ground that the Order dated 07.03.2003 passed by a single judge of the Madras High Court in K. Murali (supra) was set aside by a division bench vide Order dated 06.09.2005.

8. Respondent No. 1 filed a 2nd W. P. (C) No. 11767/2018 before the Madras High Court to quash the Order dated 27.03.2018, and restrain Respondents No. 2 to 4 - Excise Authorities from permitting the re-location of liquor shops from Mahe to Karaikal, and granting liquor licenses in Karaikal.

9. Respondent No. 2 - Deputy Commissioner (Excise), Puducherry vide Order No. 2239/DCE/S2/FL-1/2017 - 2018/251 dated 07.06.2018 granted permission to the Appellant to shift the liquor shop from Mahe to Karaikal, subject to the fulfillment of the conditions contained in Rule 209 of the Excise Rules.

10. The Deputy Commissioner (Excise), Mahe vide Order dated 13.06.2018 conveyed the permission granted by Respondent No. 2 - Deputy Commissioner (Excise), Puducherry to the Appellant. The approval was made subject to the following two additional conditions:

- (i) there will be one entrance and exit only; and
- (ii) the boundary of the proposed site should be protected properly.

11. Respondent No. 3 - the Deputy Commissioner, Excise, Karaikal vide Order dated 15.06.2018 granted permission to the Appellant to commence his business of wholesale

vending of IMFL at Karaikal.

12. Respondent No. 1 filed a 3rd W. P. (Civil) 15661/2018 before the Madras High Court to quash the Order dated 15.06.2018, and restrain Respondent Nos. 2 to 4 – Excise Authorities from shifting liquor shops from Mahe to Karaikal, on the grounds similar to those raised in the 2nd W.P. (Civil) No. 11767/2018. The High Court vide Order dated 05.07.2018 granted interim stay of the Order dated 15.06.2018 passed by Respondent No. 3.

13. The Excise Authorities supported the case of the Appellant - License holder in W.P (Civil) Nos. 11767/2018 and 15661/2018.

14. A division bench of the Madras High Court vide Impugned Judgement and Order dated 14.02.2019 allowed W.P. (Civil) Nos. 11767/2018 and 15661/2018, and quashed the Orders dated 27.03.2018 and 15.06.2018 passed by Respondent No. 3. The permission granted by Respondent No. 2 to 4 to shift the Licensed Shop of the Appellant from Mahe to Karaikal was set aside. The division bench held that the disposal of the representation by Respondent No. 3- Deputy Commissioner (Excise) Karaikal was not in accordance with the Order dated 26.02.2018 passed in W.P. (Civil) Nos. 13081/2017 and 15953/2017.

The word / phrase / term “place” in the Excise Act and Excise Rules had a restrictive meaning. The area defined by Section 2 (22) of the Excise Act was restricted to the “area” in which the liquor shop was located. The order which permitted shifting of the wholesale liquor shop of the Appellant from Mahe to Karaikal had to be confined to the region of Mahe, and not to Karaikal, which is an entirely different region in the Union Territory of Puducherry.

15. Aggrieved by the Order dated 14.02.2018, the Appellant - Licensed holder has filed the present Special Leave Petition. We have heard Mr. Mahesh Jethmalani, Senior Counsel for the Appellant, Mr. R. Venkataramani, Senior Counsel for the Union Territory and office bearers, and Mr.S.Thananjayan, Counsel for Respondent No. 1.

16. The issue which arises for our consideration is whether the permission granted by Respondent Nos. 2 to 4 - Excise Authorities to transfer the licensed shop from one region to another in the Union Territory of Puducherry was permissible under the Excise Act and Rules.

17. Relevant statutory provisions The Puducherry Excise Act, 1970 provides a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor, and intoxicating drugs in the Union Territory of Puducherry.

17.1. Section 1(2) extends the applicability of the Excise Act to the whole of the Union Territory of Puducherry.

17.2. The word ‘place’ is defined in Section 2 (22) as follows:

“2. - Definitions

(22) “place” includes a house, building, shop, booth, tent, vessel, raft:, and vehicle.” The word ‘place’ does not indicate the territorial limits within which the Licensing Authority could grant shifting of a licensed shop. Section 2(22) describes the type of structure or establishment of the licensed shop, which could either be a house, building, shop, booth, tent, vessel, raft, or vehicle in which the licensed premises is situated.

17.3. Section 14 of the Excise Act provides that no liquor or intoxicating drug will be sold without a license issued by the Licensing Authority i.e. the Deputy Commissioner or Excise Commissioner.

17.4. Section 70 of the Excise Act empowers the Government to frame rules for carrying out the functions of the Act. The Government has enacted the Puducherry Excise Rules, 1970 in exercise of the powers under Section 70.

Rule 1(2) extends the applicability of the Excise Rules to the whole of the Union Territory of Pondicherry.

i) Rule 22A (a) of the Excise Rules defines ‘region’ as any of the 4 regions of the Union Territory viz, Pondicherry, Karaikal, Mahe and Yanam.

“CHAPTER-IIA

Control of inter-State Transport of Liquor

22. A. Definitions — In this Chapter, unless there is anything repugnant in the subject or context—

(a) “Region” means any of the regions known a.s Pondicherry, Karaikal, Mahe and Yanam in the Union territory of Pondicherry

ii) Rule 113 of the Excise Rules provides for the grant of an F.L.- 1 license for wholesale vending of liquor.

“ CHAPTER - VI

Sale of Indian or Foreign liquors 113. Licences. — Licences for the sale of Indian liquor or foreign liquor or both shall be of the following descriptions, and shall be granted by the Excise Commissioner or Deputy Commissioner, as the case may be, in accordance with the provisions of sub-section (2) of section 14 of the Act, namely:—

(1) F.L. 1 Licence:— The holder of this licence shall be permitted to sell foreign liquor or Indian liquor, or both, in quantities of not less than 9 litres in sealed or capsuled bottles 2[***] at any one time and in any single transaction to any other licensee under this chapter and also in sealed or capsuled bottles in quantities not exceeding 3 [4.5 litres of all liquors other than beer and 9 litres of beer] at any one

time and in any single transaction to an unlicensed person. But he shall not allow the consumption of the liquor at the licensed premises: Provided that such licensees may issue another licensed dealer samples of liquors, in quantities not exceeding 0.180 litres.”

iii) The procedure for transfer of a licensed liquor shop is provided under Rule 209 of the Excise Rules.

“CHAPTER—XIII
Excise Licences (General Conditions)

209. Shifting of shops: — The licensee shall not shift the licensed premises from one place to another without the prior approval of the Licensing Authority. Provided that the licensing authority may permit, subject to the fulfilment of conditions of licence, shifting of licensed premises on payment of one-fourth of the license fee for such shifting”

iv) The term ‘shop’ is defined by Rule 189 of the Excise Rules, as follows:

“CHAPTER—XIII
Excise Licences (General Conditions)

189. Definition — In this chapter, “shop” means the licensed premises where liquor is sold.. ”

(emphasis supplied)

18. Discussion & Analysis

18.1. Rule 113 under Chapter VI of the Rules pertains to the sale of Indian or foreign liquors. It provides that the Excise Commissioner or Deputy Commissioner may issue an F.L. - 1 License for the sale of Indian liquor or foreign liquor, or both, in accordance with the provisions of Section 14 (2) of the Excise Act.

18.2. Chapter XIII of the Excise Rules contains the General Conditions of Excise Licenses. Rule 188 states that Chapter XIII will apply to all Licenses issued under the Excise Act for sale of liquors, and every license is deemed to include the conditions prescribed herein. Rule 189 of the Excise Rules describes “shop” as the licensed premises from where liquor is sold. Rule 191 (2) provides that the applicant of a license shall select a site, and intimate the licensing authority, who may, after making such enquiry as he thinks fit, approve the site selected. Rule 191 (4) provides that the Licensee shall sell the liquor only from the approved shop.

19. The Appellant is the holder of an F.L. - 1 License issued by the Licensing Authority viz. the Deputy Commissioner, Excise, Mahe for carrying out vending of IMFL.

An F.L.-1 Licensee is permitted to sell liquor only to other Licensees, and not in retail.

19.1. The Petitioner was carrying out his wholesale business from MMC, No. 1/40,41 Main Road, Mahe.

19.2. The Appellant filed an Application dated 28.02.2017 for shifting his liquor shop from Mahe to Karaikal under Rules 163 and 209 of the Excise Rules before the Deputy Commissioner, (Excise), Mahe.

19.3. Rule 209 in Chapter XIII of the Excise Rules provides for Shifting of Shops of all license holders, whether wholesale or retail. Rule 209 permits shifting of the liquor shop from one “place” to another, subject to approval by the Licensing Authority on the terms and conditions contained therein.

The proviso to Rule 209 states that the Licensing Authority may permit shifting of the licensed premises, subject to the fulfillment of the conditions of license, and payment of 1/4th of the license fee for such shifting.

There is no restriction or prohibition either in the Excise Act or Rules on the Licensing Authority from granting permission to shift the licensed shop from one region to another, subject to the conditions being complied with. A fortiori, a licensee can shift a liquor shop from one region to another within the Union Territory of Puducherry, subject to the prior approval of the Competent Authority.

20. We are of the view that the expression ‘from one place to another’ is not restrictive, and does not curtail the power of the Licensing Authority to grant permission for shifting the licensed shop from one region to another in the Union Territory of Puducherry so long as the conditions stipulated by the Excise Act and Excise Rules, as also the conditions for grant of a license are complied with. The shifting should not result in the increase in number of liquor shops beyond the maximum number of licenses which may be fixed for a particular area under Rule 122 of the Excise Rules.

21. Given the peculiar demography of the Union Territory of Puducherry, which comprises of four unconnected regions, it would be contrary to the object and purpose of the Excise Act, if a restrictive meaning was to be given to Rule 209 of the Excise Rules. The Act must be read as a whole to ascertain the intent of the legislature. If the intention of the legislature was to restrict the shifting of a liquor shop to a region, locality, municipality, or commune, Rule 209 of the Excise Act would have expressly contained such a prohibition, which is absent.

22. The Excise Act and the Excise Rules use the expression ‘local area’ in contradistinction with the word ‘place’, whenever it is intended to confine the area in which the liquor shop is located. For instance, Section 9 of the Excise Act prohibits the transportation of intoxicants from one ‘local area’ to another. Similarly, Section 10 of the Excise Act restricts the movement of intoxicants beyond a certain quantity which is stipulated for a

‘local area’.

23. We find from the Counter Affidavit filed by the State that similar proposals for shifting 5 shops to Karaikal from other regions were granted by the Licensing Authority, as per details given hereinbelow :

24. The Counsel for the State submitted that Respondent Nos. 2 to 4 - Excise Authorities have assessed the pros and cons of the shifting, and sought the view of the police authorities prior to granting permission to the Appellant. The Report of the Excise Officer was obtained, which stated that the site of the Appellant at Karaikal is not located on the National or State Highway. There are no religious or educational institutions which are located within the 100 meters radius of the site at Karaikal. There would be no hindrance to the traffic in the area. The Superintendent of Police confirmed that there would be no law and order problem if the licensed shop of the Appellant is shifted.

25. In the present case, the Licensing Authority i.e. the Deputy Commissioner (Excise) vide Letter dated 07.06.2018 has granted permission to shift the F.L.1 Licensed premises of the Appellant from Mahe to Karaikal, subject to compliance with the conditions laid down in Rule 209 of the Excise Rules. The Deputy Commissioner (Excise), Mahe permitted shifting of the premises subject to two additional conditions viz.

(i) There shall be one and the same entrance and exit only;

(ii) The boundary of the building should be properly protected.

We have been informed by the Counsel for the Appellant and the State that all conditions under the Excise Act and Rules have complied with.

26. Consequently, Respondent No. 3- the Deputy Commissioner (Excise), Karaikal vide letter dated 15.06.2018 granted permission to the Appellant to run the F.L.-1 business from the location designated in Karaikal.

27. We find no prohibition in the Excise Act or Rules for shifting the F.L.1 Licensed premises from one place to another. The permission dated 07.06.2018 for shifting the licensed shop from Mahe to Karaikal granted by Respondent No. 3 is legal and valid.

28. We allow the Civil Appeals and set aside the Order dated 14.02.2019 passed by the division bench of the Madras High Court in W.P. (Civil) Nos. 11767/2018 and 15661/2018.

29. Ordered accordingly. Pending applications, if any, are accordingly disposed.

New Delhi
December 18, 2019.

