

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) NO.118 of 2014

Sri Kajal Chandra Das,
S/o Late Sudhir Chandra Das,
Resident of Village - Dalubari,
Ambassa, P.O. & PS - Ambassa,
District - Dhalai, Tripura.

..... *Petitioner.*

- Vs -

1. **The State of Tripura,**
represented by the Secretary,
Revenue Department, Government of Tripura,
having his office at Civil Secretariat Complex,
P.O. Kunjaban, West Tripura, Pin - 799006.
2. **Commissioner of Excise, Government of Tripura,**
having his office at Kar Bhawan, P.O - Agartala,
P.S West Agartala, District - West Tripura.
3. **The Collector Excise,**
Dhalai District, Ambassa, Tripura,
having his office at Ambassa, Dhalai, Tripura.
4. **Sri Sujit Chakraborty,**
S/o Sri Jitendra Chakraborty,
resident of Village - Bowalia Basti,
P.O & P.S - Ambassa, Ambassa, District - Dhalai Tripura

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE JUSTICE MR. S C DAS

For the petitioner	: Mr. Somik Deb, Advocate, Mr. S Bhattacharjee, Advocate.
For the respondents	: Mr. S Chakraborty, Addl. Govt. Advt., Mr. B N Majumder, Advocate.
Date of hearing	: 09.04.2013.
Date of judgment	: 30.04.2014
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has prayed that a writ be issued whereby the tender submitted by respondent no.4 be declared to be informal and the tender of the present petitioner which is the second highest bid, be accepted and the licence for retail vend of *Ambassa foreign liquor shop No.1* for the excise year 2014-2015 be issued in favour of the petitioner.

2. Briefly stated the facts of the case are that the State of Tripura published a notice inviting tenders which was published in various newspapers including the Tripura Gazette on 24th January, 2014. Tenders were invited for grant of licence of various foreign liquor shops including the foreign liquor shop no.1 at Ambassa. The Minimum Reserve Fee (MRF) for the financial year 2014-2015 for this shop was fixed at Rs.8,95,997/-. Tenders were submitted and respondent no.4 submitted the highest tender. However, the premises which he offered for setting up the liquor shop were not found to be suitable and, therefore, he was asked to submit an alternative location vide letter dated 25.02.2014. The respondent No.4 submitted that he was already running a shop at this very location and, therefore, the same location may be approved.

3. We have been informed at the Bar that the respondent no.4 has also filed a statutory appeal against the order dated 25.02.2014. The case of the petitioner is that since the location offered by the respondents is not in accordance with the notification, the Rules and the notice inviting tenders, the tender of respondent no.4 should be declared to be informal.

In this behalf we may first make reference to the Tripura Excise Rules, 1990 especially Rules 25, 26 and 27 which read as follows :

“LOCATION OF SHOPS AND PROCEDURE FOR GRANT OF LICENCE

25. (1) No new shop shall be licensed for the consumption of liquor on the vendors’ premises,—

- (a) in a market-place, or***
- (b) at the entrance to a market-place, or***
- (c) in close proximity to a bathing ghat, school, hospital, place of worship, factory or other places of public resort, or***
- (d) in the congested portion of a village.***

(2) So far as practicable, an established liquor shop licensed for the consumption of liquor on the premises should not be allowed to remain on a site which would not, under clause (1) of this rule, be permissible for the location of a new shop.

(3) In areas inhabited by aboriginal tribes or tea garden coolies, country spirit shops shall not be licensed to be placed immediately on the side of a main road or in any other prominent position that may place temptation in the way of such persons.

26. In granting licenses for new shops, and, as far as practicable, in granting licenses for established liquor shops, the Collector shall have regard to the following principles :-

- (a) a liquor shop should not be inaccessible to consumers, but it should not be in such a situation as to obtrude itself on the attention of the public or to render persons passing by subject to annoyance from persons drinking.***
- (b) in towns, the position of a liquor shop should be so far public that persons entering it should not escape observation, and it should be such as to render supervision easy, but it should not be so prominent as to***

compel attention e.g. by occupying a whole side of a public square;
(c) a liquor shop should never occupy a position to which the neat neighbours object on grounds which, upon inquiry, appear to be sufficient and free from malice or ulterior motives.

27. Licenses for the retail sale of liquor at any place within three Km. of the boarder shall not be granted unless the Excise Commissioner so directs."

As far as Rule 25 is concerned that relates to shops licensed for consumption of liquor on the vendors' premises i.e. shops where liquor can be purchased and can also be consumed. We have been informed at the Bar that till date no licence in terms of Rule 25 has been granted in the State of Tripura.

4. We are, therefore, concerned only with Rule 26 which relates to grant of licence for liquor shops which would naturally means liquor shops in which consumption of liquor is not allowed on the premises. If we go through the three principles laid down in Rule 26, we find that the principles are extremely vague and can be interpreted in any manner.

Sub-rule (a) of Rule 26 says that the liquor shop should not be inaccessible to consumers but at the same time it should not draw unnecessary attention of the public or cause annoyance to the persons passing by. The intention behind the sub-rule may be good but the principle is so vague and subjective that the Collector can decide the issue in any manner.

As far as sub-rule (b) is concerned, it says that the position of the liquor shop should be “*so far public*” that persons entering it cannot escape observation and it should be in such a location to render easy supervision. At the same time the shop should not be so prominent as to “compel attention”.

This sub-rule does not provide any proper guidelines to the Collector. It gives a lot of leeway to the Collector. However, the intention appears to be that the shop should be as far from public area as possible but at the same time one should be able to recognize who are the persons entering the shop. It also appears that intention of the Legislature was that the shop should not be so prominently placed as to draw unnecessary attention or become source of attraction.

With regard to sub-rule (c) it is stated that the liquor shop should never occupy a position to which the “*neat neighbours object*”. It appears that the words should be “near neighbours” and not neat neighbour. Be that as it may, this also is a valid ground but again no specific guidelines have been laid down.

5. Rule 27 clearly lays down that no liquor shop shall be permitted to function at a place within 3 kilometers of the border unless the Excise Commissioner directs otherwise. Obviously the Excise Commissioner should normally not grant licence for a liquor shop at a distance of less than 3 Kilometers from the border unless there are very compelling circumstances so to do.

6. Article 47 of the Constitution of India forms part of the Directive Principles of State Policy. It provides that the State shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health. At the same time generation of revenue from the auction of liquor vend is a major part of the revenue of the State. While framing any policy the State must keep in mind the Directive Principles of the Constitution. Coming to the policy in hand, we find that the policy is so ambiguous and nebulous that it can be interpreted in any manner. There is too much discretion left with the excise officials. Lord Acton said, *“Power corrupts and absolute power corrupts absolutely”*. The same principle can apply to unfettered and unguided discretion. To put it otherwise, ‘discretion corrupts and absolute discretion corrupts absolutely’. There is, therefore, a need to ensure that the guidelines are made more clear-cut and well-defined so that both the tenderer and the authority awarding the contract have some settled guidelines to follow while deciding whether a liquor vend should be opened at a particular place or not.

7. This year the tender process is complete and we would not like to interfere in the tenders which have already been awarded because that may cause unnecessary burden to the State. However, for the future, the State must take steps to ensure that a proper clear-cut excise policy is formulated in which specific

guidelines are laid down. It is not for this Court to lay down the policy but the State before laying down the policy must take into consideration the excise policies of other States.

8. In this regard, by way of example, we would like to make reference to the then excise policy of the State of Uttar Pradesh which was considered by the Apex Court in ***State of Uttar Pradesh and Others Vs Manoj Kumar Dwivedi and Others (2008) 4 SCC 111***. Relevant portion of para 5 of the excise rules of the State of U.P. reads as follows :

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

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."

In that case also, no fixed distance was given and the word '*proximity*' could be interpreted in any manner. After hearing the parties the High Court of Allahabad held that a just and fair solution to the problem would be to fix a distance of 100 meters as the distance within which a liquor shop could not be set up from a public resort, school, hospital, place of worship, factory, entrance to the bazaar or a residential colony etc.

9. The Apex Court dealing with this matter held as follows :

“11. We fully agree with the view taken by the High Court and we are also of the view that 100 meters or 300 ft. (approx.) should be the right criteria where 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 100 meters or 300 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 100 meters or 300ft. (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.”

It is thus apparent that the Apex Court has held that the High Court had placed the matter beyond any vagueness. While framing the fresh policy the State shall give due consideration to the judgment of the Apex Court in ***State of Uttar Pradesh and Others Vs Manoj Kumar Dwivedi and Others*** case.

10. We may also draw attention of the State to the provisions of ***The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003*** and ***The Prohibition of Sale of Cigarettes and Other Tobacco Products Around Educational Institution Rules, 2004***. The rules prohibit the sale of cigarettes or other tobacco products in an area

within a radius of 100 yards of the educational institution and this distance is to be measured from the outer limit of boundary wall or fence of the educational institution. We see no reason why the same yardstick, if not a stricter yardstick, is applied to alcohol which is as injurious to health as tobacco. We also feel that this distance of 100 yards should also apply from other important institutions like hospitals, courts, places of worships etc. We direct the State to frame guidelines in the light of the law laid down by the Apex Court and the observations made hereinabove, within three months from today and, thereafter, the guidelines shall be placed before this Court. We make it clear that we shall not permit any fresh award of liquor shops on the basis of Rule 26 which, in our opinion, is totally ambiguous, ambivalent and nebulous and gives no proper guidelines to the excise authority. Either the Rule be amended or detailed policy in this regard be framed failing which we shall not permit any new liquor shop to be established from the next excise year.

11. Coming to the case in hand, both the competing parties are liquor vendors. They do not have any public interest in mind but only their own interest. It has been urged by Sri Somik Deb relying upon the judgment of the Agartala Bench of the Gauhati High Court in ***Santanu Sinha Vs State of Tripura and Ors.*, (2008) 3 GLR 359** and the judgment of the Apex Court in ***Kanhaiya Lal Agarwal Vs. Union of India and ors.*, (2002)6 SCC**

315 that once the site suggested by respondent no.4 has been found to be unsuitable his tender should be declared to be informal. We are not at all in agreement with this submission. As pointed out by us above, how a site is to be declared suitable or not is not clear from the Rules and, therefore, we have been compelled to give various directions. When, we cannot decipher what is the intention of Rule 26 how can we expect a liquor vendor to understand the same? Therefore, it is for the Collector or the other authorities under the Excise Act to come to a conclusion whether the site for establishing a liquor vend is suitable or not.

12. In the present case, the site has not found to be suitable and according to the respondent no.4, he has challenged that finding by filing an appeal. We do not intend to interfere in the process of the appeal filed by the respondent no.4. However, if it is found that the said liquor vend is close to any hospital, educational institution, place of worship etc., the Collector would be justified in rejecting the same. We may also point out that since the site has been found to be unsuitable on the basis of objections raised by the certain members of the public no order can be passed setting aside the finding of the Collector without first hearing the persons on whose objection the site was found to be unsuitable.

13. As far as granting of licence for the liquor vend to the petitioner is concerned, we are clearly of the view that such licence cannot be granted to him. The State has also taken up a policy decision that when the highest bid is declared to be invalid it will not accept the second highest bid but shall re-invite fresh tenders. In our view, there is nothing wrong in this policy because the purpose apparently is to get the highest revenue for the State.

14. In view of the above discussion the petition is dismissed. However, the Registrar General is directed to send a copy of this judgment to the Commissioner of Taxes and Excise, Government of Tripura to ensure that either Rule 26 of the Act is amended or guidelines are issued to make compliance of Rule 26 objective, not subjective.

With these observations the writ petition is disposed of.

JUDGE

CHIEF JUSTICE

Sukhendu