

**HIGH COURT OF TRIPURA
AGARTALA**

W.P (C) No.34/2020

Sri Manik Majumder

..... Petitioner(s)

- Vs. -

The State of Tripura and others

..... Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Advocate.
Mr. Samarjit Bhattacharjee, Advocate.
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. D. Bhattacharjee, GA.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment : 21.01.2020.

Whether fit for reporting : Yes.

(Akil Kureshi, CJ).

Petitioner has challenged orders dated 15.12.2018 and 25.03.2019 passed by the Commissioner of Excise, Government of Tripura. The petitioner has also challenged Tripura Excise (12th Amendment) Rules, 2017 as being arbitrary and unreasonable. In particular, the petitioner challenges Rule 26 of the Tripura Excise Rules as amended by the said 12th Amendment Rules, 2017.

Brief facts are as under:

Petitioner is a retailer of potable foreign liquor for which license was issued to him by the competent authority in the year 1991, which was renewed from time to time. The latest renewal has validity up to 31st March, 2020. The petitioner had been vending foreign liquor in Srinagar market of Sabroom since inception, his shop is in the vicinity of the State Highway.

The Supreme Court in case of ***State of Tamil Nadu and others vs. K. Balu and another***, reported in ***AIR 2017 SC 262***, considered the question of sale of liquor alongside the National and State Highways in the context of road safety. Series of directions were issued in Paragraph-24 of the said judgment, which reads as under:

"24. We accordingly hereby direct and order as follows:

(i) All states and union territories shall forthwith cease and desist from granting licences for the sale of liquor along national and state highways;

(ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 metres of the outer edge of the national or state highway or of a service lane along the highway.

(vi) All States and Union territories are mandated to strictly enforce the above directions. The Chief

Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned inter alia to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution.”

By a further order dated 31st March, 2017, the Supreme Court relaxed certain directives contained its original judgment relevant portion of which reads as under:

“22. After considering the submissions which have been urged before this Court, we are of the view that there are three areas where the rigors of the directions which have been issued by this Court may require to be suitably modulated without affecting the basic principle underlying the judgment. The first is in relation to limits of local bodies with a population of less than 20,000 people. In such areas, it has been urged before this Court that a state highway is the main thoroughfare area along which the township has developed in small clusters of 20,000 or less. Hence, the requirement of maintaining a distance of 500 metres from the outer edge of the highway or service lane may result in a situation where the entire local area may fall within the prohibited distance. We find some substance in the submission. We must emphatically clarify that even in such areas falling under local bodies with a population of less than 20,000, no licence for the sale of liquor should be issued along either a national or state highway or a service lane along the highway. Similarly, the sale of

liquor should be from a point which is neither visible from a national or state highway or which is directly accessible from a national or state highway. However, in such a situation, the prohibited distance should in our view be restricted to 220 metres from the outer edge of the national or state highway or of a service lane along the highway. We accordingly direct that the following paragraph shall be inserted, after direction (v) in paragraph 24 of the operative directions of this Court in the judgment dated 15 December 2016 namely :

“In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres”.

Yet another clarification came to be made by an order dated 11th July, 2017 by the Supreme Court, relevant portion of which reads as under:

“6. The judgment of this Court dated 15 December 2016 addresses dangers to life and safety caused by drunken driving on national and state highways and specifically deals with the problem from the perspective of the availability of alcohol. Roads within a metropolitan city essentially provide connectivity within the city. Chandigarh is an illustration. The roads categorized as V1, V2 and V3 are essentially roads within the city. They were categorized as highways by an administrative decision of 21 October 2005 primarily with a view to ensure their maintenance and development by availing of funds available from the Central Road Fund. The alteration in the nomenclature of certain roads, which has been carried out by the subsequent notification dated 16 March 2017, has left unaffected National Highway no 21 which passes through the city and Madhya Marg which connects the

States of Haryana and Punjab. The judgment of this Court dated 15 December 2016 prohibits the grant of licences for the sale of liquor along and in proximity of the National and State Highways including those falling within the limits of municipal corporations, cities, towns or local authorities. Directions (i) and (ii) extracted earlier did not prevent the Administration from re-classifying inter-sectoral roads within the city from state highways to major district roads. The exercise carried out by Chandigarh Administration does not breach the directions issued by this Court. It is neither in violation of the terms of the order nor of the purpose and intendment behind those directions.

7. The purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, towns and villages. The order does not prohibit licensed establishments within municipal areas. This clarification shall govern other municipal areas as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs, before the Court."

By a further order dated 23rd February, 2018 following further observations were made:

"7. In the order passed by this Court on 11 July 2017, it was observed that the purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in the proximity of highways properly understood, which provide connectivity between cities, towns and villages. Having regard to this object it was noted that the order does not prohibit licensed establishments within municipal areas. Indeed, in order to ensure that the order is

uniformly understood across the country, this Court clarified that it will govern other municipal areas as well. In the subsequent order of this Court dated 13 December 2017, liberty has been granted to the licence holders to submit a representation to the state government that the same principle should apply to the licensed establishments of the petitioners, as they apply to municipal areas/MIDC developed areas (in relation to the 5 Special Leave Petition (C) No 19845/2017 State of Maharashtra).

8 Having regard to these directions, we are of the view that the state governments would not be precluded from determining whether the principle which has been laid down by this Court in the order dated 11 July 2017 in *Arrive Safe Society* (supra) should also apply to areas covered by local self-governing bodies and statutory development authorities. We are inclined to allow the state governments to make this determination since it is a question of fact as to whether an area covered by a local self-governing body is proximate to a municipal agglomeration or is sufficiently developed as to warrant the application of the same principle. In deciding as to whether the principle which has been set down in the order dated 11 July 2017 should be extended to a local self-governing body (or statutory development authority) the state governments would take recourse to all relevant circumstances including the nature and extent of development in the area and the object underlying the direction prohibiting the sale of liquor on national and the state highways. The use of the expression 'municipal areas' in the order dated 11 July 2017 does not prevent the state governments from making that determination and from taking appropriate decisions consistent with the object of the orders passed by this Court. We leave it open to individual licensees to

submit their representations to the competent authorities in the state governments if they are so advised upon which appropriate decisions may be taken by the state governments. We have issued this general direction to obviate both litigation before the High Courts and repeated recourse to applications to this Court."

Case of the petitioner is that his liquor shop which was situated in an area governed by local authority and which was within 220 metres of the State Highway, should not have been objected by the State Government in view of the relaxations issued by the Supreme Court in the said judgment in case of **K. Balu (supra)**. The petitioner had applied initially to the State authorities and thereafter to this Court. This Court in an order dated 12.03.2019 passed in W.P. (C) No.190 of 2019 directed the Commissioner of Excise to consider the issue afresh. It was thereupon that the Commissioner of Excise passed his fresh impugned order dated 25.03.2019, which reads as under:

"Sir,

In reference to the subject cited above, this is to inform you that as per direction of the Hon'ble High Court of Tripura in WP(C) No.190/2019, this is to inform you that your representation dated 14-06-2018 in respect of shifting of your retail vend shop in the pre-existing location at Srinagar market under Sabrom Sub-Division of South Tripura District has once again perused and examined in accordance with the Tripura Excise Act, 1987 and the Tripura Excise Rules, 1990.

Rule 26 of the Tripura Excise Rules, 1990 (amended upto 2018) says that "*no shops for the sale of liquor shall be (i) visible from National or State highways; (ii) directly accessible from a National or*

State highway and (iii) situated within a distance of 220 meters in case of areas comprised in local bodies with a population not exceeding twenty thousand people and 500 meters in case of all other areas, from the outer edge of the National or State highway or a service lane along the highway.

Provided further that above restrictions shall not apply in case of liquor shops within Municipal areas"

The Excise Commissionerate reiterates its earlier stand in the light of the aforesaid provision of the Tripura Excise Rules, 1990, it not possible to consider your request made on the representation dated 14-06-2018 regarding shifting/opening of your FL vend shop in the pre-existing location prior to 01-04-2017 at Srinagar market area under Sabroom Sub-Division of South Tripura District.

Under the above circumstances, your representation dated 14-06-2018 is accordingly disposed off.

This is for your information."

We may also notice that in a previous communication dated 15.12.2018, the Commissioner of Excise had cited following reason for not accepting the request of the petitioner:

"In reference to the subject cited above, your representation (Annexure-6) for shifting /opening liquor shop at Srinagar market premises and prayer (Annexure-7) for re-consideration for shifting/opening of foreign liquor shops have been carefully perused and examined by the undersigned in consultation with the Law Department. In this regard Law Department opined as follows:-

"The areas covered by Gram Panchayats/Village Councils etc. need not be excluded from the application of the prohibition in regard to sale of liquor along

NH/SHs. The matter of Nagar Panchayat areas have already been covered by the Tripura Excise (Twelfth) Amendment Rules, 2017. Hence, no action for our State.”

The Excise Organization is in agreement with the above cited opinion of the Law Department.

Therefore, representation vides Annexure-6 and 7 as annexed with the aforesaid WP(C) are disposed off accordingly.”

Before recording and dealing with the contentions of a counsel for the petitioner, we may notice that to bring the legal position in consonance with the directives of the Supreme Court in the case of **K. Balu (supra)**, Rule 26 of the Tripura Excise Rules, 1990 was amended so as to provide that no shops for sale of liquor shall be visible from the National or State Highways, directly accessible from National or State Highway and situated within a distance of 220 metres in case of areas comprised in local bodies with a population not exceeding twenty thousand people and 500 metres in case of all other areas, from the outer edge of the National or State Highway or a service lane along the Highway. A proviso was added to the said Rule by Tripura Excise (Fourteenth Amendment) Rules, 2018 providing further that above restrictions shall not apply in case of liquor shops within Municipal areas.

The grievance of the petitioner is that despite necessary relaxations granted by the Supreme Court in the earlier directions issued in case of **K. Balu (supra)**, the State Government has not properly considered the question of permitting sale of liquor alongside the National or the State Highway within the areas of local authorities. Learned counsel for the petitioner submitted that

the Supreme Court in clear terms permitted the State Governments to examine the said issue. The State Government of Tripura has not undertaken any such exercise. He further submitted that removing such restrictions only for the Municipal areas when retaining the restrictions within the remaining areas of local authorities is discriminatory, violative of Article 14 of the Constitution of India as also arbitrary.

In our opinion, the petitioner has not made out a case for interference. We have noticed the decision of Supreme Court in case of **K. Balu (supra)** as it was initially rendered and later relaxations granted in subsequent orders. In the initial judgment, the Supreme Court had totally clamped down on any sale of liquor alongside the National or the State Highways within a distance of 500 metres from the outer edge of such Highways. By an order dated 31st March, 2017, this distance was reduced to 220 metres in case of areas comprised in local bodies with a population of twenty thousand people or less. By a further order dated 11th July, 2017, it was clarified that the purpose of the order was to deal with the sale of liquor along and in proximity of Highways properly understood which provide connectivity between cities, towns and villages. It was clarified that the order did not prohibit licensed establishments within Municipal areas. It was also clarified that such clarification shall govern other Municipal areas as well. Essentially thus, by way of this clarification contained in the order dated 11th July, 2017, the inhibition of not permitting location of liquor shops within the specified distance of the State or the National Highway was lifted in relation to licensed establishments

within Municipal areas. The whole purpose therefore, was that if a designated National or a State Highway was passing through a Municipal area, the licensed liquor shops would not be prohibited within the specified distance of such Highways.

In the further order dated 23rd February, 2018, in addition to reiterating that the earlier order did not prohibit licensed establishments within Municipal areas liberty was granted to the license holders to submit representation to the State Governments that the same principle should apply to licensed establishments of the petitioners therein as they applied to Municipal areas. It was provided that the State Government would not be precluded from determining whether the principle laid down in the order dated 11th July, 2017 should also apply to areas covered by local self-governing bodies and statutory development authorities, the State Governments for allowing to make the determination since it was a question of fact as to whether an area covered by a local self-governing body is proximate to a Municipal agglomeration or is sufficiently developed so as to warrant the application of the same principle. While doing so, it was provided that all relevant circumstances including the nature and extent of development in the area and the object underlying the direction prohibiting the sale of liquor on National and the State Highways would be borne in mind.

Entire tone and tenor of the judgment of the Supreme Court in the case of **K. Balu (supra)** and subsequent clarifications issued in series of orders noted above, therefore, is that in order to attain higher degree of road safety and to avoid hazards

accidents, there should be no sale of liquor along the National and the State Highways and accordingly, no liquor shops would be situated within the prescribed distance of the edge of the boundaries of such roads. Subsequent clarifications and relaxations seek to achieve a limited purpose of lifting such rigour when the designated National or the State Highways pass through highly developed areas such as Municipal areas and urban agglomerations which are adjacent to such Municipal areas. The decision was, therefore, left to the State Governments to take into consideration relevant factors and the purpose of issuing initial directions.

The stand taken by the State Government in this respect therefore, must be viewed in light of these orders passed by the Supreme Court. To begin with the Supreme Court merely left it open to the State Government to consider whether such relaxations can be made in respect of areas covered by other local authorities. There was no direction or a mandate that the same must be done or even such exercise must be undertaken. Secondly, even while permitting such exercise to be undertaken by the State Governments, it was emphasized that the purpose of issuing initial directions and the purpose of giving limited relaxation in relation to Municipal areas must be borne in mind.

Under the circumstances, if the State Government is of opinion that no further relaxation should be made in case of areas other than the Municipal areas, we do not find that the same suffers from any illegality or arbitrariness. The amended portion of Rule 26 of the Tripura Excise Rules, 1990 only embodied the

directions and principles laid down by the Supreme Court in case of **K. Balu (supra)** as explained relaxed in later orders. While prohibiting location of a liquor shop within the restricted areas, a limited relaxation in case of Municipal areas as has been made by virtue of the subsequently inserted proviso. Neither the Rule nor the proviso breach equality clause enshrined in Article 14 of the Constitution. From the context of the discussion at hand, the Municipal areas form a distinct and separate class as compared to other areas of self governance such as village panchayat or a taluka panchayat area.

In the result, we find no merits in the petition, the same is accordingly dismissed.

(ARINDAM LODH), J

(AKIL KURESHI), CJ

