

Uttarakhand High Court

Suresh Chandra Goyal vs State Of Uttarakhand And Others on 22 September, 2022

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

THE CHIEF JUSTICE SHRI VIPIN SANGHI
AND
JUSTICE SHRI RAMESH CHANDRA KHULBE

Writ Petition (PIL) No.25 OF 2019

Suresh Chandra Goyal Petitioner

Vs.

State of Uttarakhand and others Respondents

Presence: -

Shri M.K. Goyal, learned counsel for the petitioner. Shri B.P.S. Mer, learned Brief Holder for the State- respondent nos.1 to 5.

Shri C.K. Sharma, learned counsel for respondent no.6.

Reserved on- 16.09.2022 Date of Pronouncement- 22.09.2022 JUDGMENT: (Per Shri Ramesh Chandra Khulbe, J.) In this petition, petitioner has prayed for the following relief(s): -

"i) To issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 District Magistrate, Senior Superintendent of Police, District Nainital, to completely and permanently restrain the illegal parking of any types of vehicle including the day to day parking of the vehicles by the customers of respondent no.6 i.e. Laziz Bar and Restaurant and also restrain the installation of push/strokes/ trolleys on the main public Mandi-by-pass road, near Transport Nagar, Rampur Road, Haldwani District - Nainital

2. To issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 and 4 to suspend/cancel the license issued to respondent no.6 Laziz Bar and Restaurant, to serve Beer and Wine, until and unless he makes permanent arrangement for the parking of vehicles of the customers, who visit to the Laziz Bar and Restaurant, situated at main public Mandi-by-pass road, near Transport Nagar, Rampur Road Haldwani District-Nainital.

3. To issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 and 4 not to renew the license of respondent no. 6."

2) Briefly put, facts of the case, as averred in the writ petition are that respondents-State has granted license to respondent no.6 to run Beer and Wine Bar in the name of Laziz Bar and Restaurant, adjacent to the residential area, situated at Mandi -By-Pass Road, near Transport Nagar, which is a Highway and connects the Main Rampur Road at Haldwani with Main Bareilly Road at Haldwani City. According to the petitioner, the bar cannot be permitted to operate within 100 meters of the entry gate of a residential colony. Moreover, the owner of the Laziz Bar i.e respondent no.6, has not made any arrangement for the parking of vehicles of the customers, which results into traffic jam on the main public road i.e the Mandi-By-Pass Road near Transport Nagar connecting the Main Rampur Road at Haldwani with Main Bareilly Road at Haldwani City, and has also become a cause for accidents. The written complaints made by the petitioner also went in vain. Being aggrieved, the present petition, in the nature of public interest litigation, has been filed by the petitioner.

3) In the counter affidavit filed on behalf of respondent no.6, all the averments made in the petition have been denied. It is stated that the liquor is sold only inside the bar. It is also stated that the said respondent meets the eligibility criteria of sitting area of the Bar, and that parking is in accordance with the norms, and that Special Security Guards have been deployed to ensure smooth parking only in the place meant for that purpose. It is also stated that there is no residential colony existing within 100 meters of the Bar.

4) The State has also filed its counter and supplementary counter affidavit. In the counter affidavit filed by the District Excise Officer, Nainital on behalf of the District Magistrate, Nainital, it is stated that the license to respondent no.6 to run the Bar and restaurant was given at the relevant time after following all the rules, after ensuring that all the directions contained in the prevailing government orders; and the formalities were scrutinized and complied with by the then Excise Officer.

5) The petitioner has also filed his rejoinder affidavit to the supplementary counter affidavit filed on behalf of respondent no.2 to 4 wherein it is stated that after suppressing the real controversy and with a view to avoid any action against respondent no.6, the said supplementary counter affidavit has been filed. It is stated that the respondent no.6 has been issued the license to run the liquor and beer bar at the entrance of a residential colony which is in contravention of the prevailing Excise Rules and Government Orders, after suppressing the real facts, and on the basis of false reports.

6) It is the submission of learned counsel for the petitioner that the respondent no.6 is running the restaurant and Bar in contravention of the policy guidelines issued by the government. Due to improper parking of vehicles, it results in traffic jam on the main highway. It is also submitted that the said restaurant is running within 100 meters' radius of the residential area which is just at the entrance of residential colony, and that has caused great fear and agony to people, especially, to the women and girls residing in the vicinity.

7) Per contra, learned counsel for the respondent no.6-Restaurant owner, vehemently argued that at the time of issuing the licence, there was no residential area, rather it was a main highway leading to the mandi By- pass. It is further argued that the respondent no.6 has also purchased a big plot, adjacent to the restaurant, so as to ensure proper parking and sitting arrangement, and he is running the wine shop and restaurant as per the norms. It is also argued that the petitioner himself

illegally constructed a banquet hall near the present shop, which creates problem, not only for the local residents, but also for the public at large. The present petition is actually a private interest litigation filed in the garb of public interest.

8) The learned counsel, appearing on behalf of respondent nos.1 to 5, has argued that the Licensing Authority granted the licence to respondent no. 6 in the year 2011 as per the rules and the government orders then prevailing.

9) We have heard learned counsels for the parties and perused the entire documents available on record.

10) At the outset, it needs to be mentioned that Rule 5 of the U.P. Number and Location of Excise Shop Rules, 1968 is key to the determination of the controversy in question. For the sake of convenience, the said Rule reads as under:-

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

(1) The locations and the sites of all shops shall be decided by the Collector [(2) No Change in the site of any shop or sub- shop shall, except for very cogent reasons to be recorded in writing, shall be permitted during the currency of a settlement. The location of all shops and sub-shops shall be clearly defined at settlement in order to prevent any shifting of sites:

Provided that no change in the location of any shop shall be permitted without prior approval of Excise Commissioner or Divisional Commissioner after giving an opportunity of hearing to the license holders of the proposed location: Provided further that change in the site of any shop shall be done by licensing authority only after due consideration.] (3) The sites of all shops shall be selected with regard to police control especially in a case of cities, towns and large villages and traffic regulation needs.

(4) No new 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 bazaar or a residential colony. All objections to the licensing of a shop made by persons affected, shall receive full consideration.

(5) No shop shall be located outside the inhabited site of a village, town or city. (6) In the case of existing shops, periodical enquiry shall be made as to whether their position is in conformity with policy under these rules. If their location is found to be objectionable, such steps as are possible shall be taken to select a more suitable site and to arrange for its removal."

(emphasis supplied)

11) To clarify rule 5(4) of the U.P. Number and Location of Excise Shop Rules, 1968, the State Government issued an order on 16.06.2008 (Annexure-

8). The said G.O. reads as under:-

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12) The State Government again on 31.03.2019 issued a Government Order to clarify the word "near"

(«). The said G.O. dated 31.03.2019 reads as under:-

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13) The license of Laziz Bar and Restaurant issued in favour of respondent no.6 dated 04.07.2011 is on record, which is enclosed as Annexure-10 to the supplementary affidavit filed by the writ-petitioner, in which the demarcation is mentioned as under:-

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14) From the perusal of the license, it is clear that

at the time of issuing the license on 04.07.2011, there was a residential colony in the western side of the shop but it is not clear whether the said residential colony was within 100 meters from the Laziz Bar & Restaurant or not.

15) To clarify the present scenario, the Excise Inspector Area-2, Haldwani made inspection of the area on 09.06.2021 and submitted his report to District Excise Officer on 15.06.2021, which is Annexure-1 of the supplementary affidavit filed by the petitioner. It is necessary to refer to the said report, which is as under:-

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16) After receiving the said report, the District

Excise Officer, Nainital submitted his recommendations to the District Magistrate on 23.06.2021, which is Annexure-

2 to the supplementary affidavit filed by the petitioner.

17) On the basis of the said report, the District Magistrate, Nainital wrote a letter to Excise Commissioner on 25.06.2021, which is Annexure-3 to the supplementary affidavit filed by the petitioner. The relevant paragraphs of the letter written by the District Magistrate to Excise Commissioner is as follows:-

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18) From the perusal of the above documents the following facts do emerge:-

- A) The District Magistrate, Nainital issued a license for running Laziz Bar and Restaurant in favour of respondent no.6 on 04.07.2011.
- B) The said licence was renewed from time to time, and lastly it was renewed in the year 2022 which is valid till 31st March 2023.
- C) As per Rule 5(4) the U.P. Number and Location of Excise Shop Rules, 1968, no new shop shall be licenced in close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazaar or a residential colony.
- D) Rule 5(6) the U.P. Number and Location of Excise Shop Rules, 1968 casts a duty on the authorized officer to make periodical inquiry as to whether the position of existing shop is in conformity with the policy under these rules.
- E) Rule 5(6) also stipulates, if the authorized officer finds that the location of shop is against the policy under these rules, the authorized officer shall take steps to allocate a more suitable site and also will arrange for its removal.

F) At the time of issuing the licence on 04.07.2011, no residential colony was found within 100 meters from the said restaurant.

G) As per the inspection report submitted by the Excise Inspector on 15.06.2021, there is a 12 feet road adjacent to the Bar and there is a residential colony also on both sides of the road.

H) As per the report of the Excise Inspector dated 15.06.2021, the residential colony falls within 100 meters of the said Bar.

I) As per G.O. No. 311/XXIII/2008/18/2008 dated 16.06.2008, there is a prohibition for granting license of bar within radius of 100 meters of a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazaar or a residential colony.

J) The Inspection report submitted by the Excise Inspector dated 15.06.2021 was also approved by the District Magistrate, Nainital vide its letter dated 25.06.2021.

19) From the above facts, we have come to this conclusion that the location of the Laziz Bar and Restaurant definitely comes within 100 meters' radius of the residential area.

20) The submission of learned counsel for respondent no.6 that merely because the residential houses have come up later, cannot be a reason to dislocate the respondent no.6, has no merit. Rule 5 (6) makes it clear that a periodical inquiry, into the aspect of the liquor shop being in the proximity of, inter alia, a residential colony, shall be conducted, and if an objection is raised and found justified, the liquor shop shall be relocated.

21) The submission that because there is no master plan of Haldwani in place, there is haphazard development and houses/residential colonies came up suddenly also has no merit. The lack of a master plan also enables persons to set up liquor shops at locations, where they may not have been entitled to set it up in the first place. In any event, the legislative policy clearly is to give precedence to and prioritize residential colonies, schools, places of public resort, hospital, places of worship or factory and bazaars. Respondent No. 6 cannot be heard to say that its licence should be continued, irrespective of the development of the aforesaid nature, when there is nothing to show that such development is against the law.

22) The licensing authority had renewed the licence against the rules as well as the Government Orders. Since the license is valid till 31st March 2023, so, we grant time to respondent no.6 to shift the Bar and Restaurant by 31.03.2023. Accordingly, we direct the Licensing Authority not to renew the licence of respondent no.6, after 31st March 2023, for running the bar and restaurant at the existing place.

23) Respondent no.6 may shift the bar and restaurant to any other suitable place, as per the rules and Government Orders, under permission from the licensing authority.

24) Although, it is necessary to generate revenue for the development of the State but, at the same time, the State is duty bound to consider the rights of the public at large. We hope and trust that, in future, the Licensing Authority of the State will renew or issue fresh licence(s) strictly as per the prevalent rules, regulations and G.Os.

25) Accordingly, the present writ-petition (PIL) is disposed of.

26) No orders as to costs.

VIPIN SANGHI, C.J.

RAMESH CHANDRA KHULBE, J.

Sukhbant