

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AD-HOC NO. WP-LD-VC-27 OF 2020
WRIT PETITION (L) NO. OF 2019

Ojus Marketing Management Pvt. Ltd. and Anr. ... Petitioners

Versus

Commissioner, State Excise Maharashtra and Ors. ... Respondents

Mr. Hiren Kamod a/w. Mr. Prem Khullar instructed by Mr. Abhishek Adke, Advocates for the Petitioners.

Ms. Jyoti Chavan and Mr. Abhay Patki, Additional GPs for Respondent Nos.1 to 3.

Mr. Anil Sakhare, Senior Advocate for Respondent No.4.

CORAM : S.J.KATHAWALLA, &
S.P. TAVADE, JJ.

DATE : 5TH JUNE, 2020

P.C. :

1. Rule. The Rule is made returnable forthwith.
2. By consent, the above Writ Petition is taken up for final hearing.
3. By the present Writ Petition, the Petitioners seek directions against the Respondents, to grant permission to the Petitioners for sale of liquor from their shop as a standalone retail shop under the relevant notifications / guidelines / orders currently operating in the State.
4. On the last date i.e. 2nd June 2020, the Respondents were directed to file their reply on or before the next date i.e. today. The Respondent No.3 has filed its

Reply.

5. According to the Petitioners :

i. The Petitioner No.1 is a holder of a valid FL II License bearing FL II No.146, issued under the Maharashtra Prohibition Act, 1949. Copy of Petitioners' FL II License is at Exhibit-A to the Petition. Petitioner No.1 carries on its business of retail sale of spirit, wine, beer and other alcoholic beverages in the name and style of "World of Wines".

ii. In view of the outbreak of the pandemic, the Government of Maharashtra issued a Notification dated 23rd March, 2020, vide which a complete lockdown was imposed in the State of Maharashtra, thereby shutting down operations of all shops with immediate effect. The lockdown has been extended from time to time and is partially in effect, till date. In partial relaxation of the restrictions under the Notification dated 23rd March, 2020, Respondent No.1 issued Guidelines dated 3rd May, 2020, bearing reference no. FLR/1020/COVID 19, under which holders of FL II License having standalone shops in the Mumbai Metropolitan Region ('MMR') were allowed to commence operations. However, the said Guidelines specifically excluded liquor shops / stores inside the malls within the Mumbai Metropolitan Region from its application.

The relevant extracts from the said Guidelines are reproduced hereunder :

"Pursuant to (2) May, 4 2020 Extended till May 17, 2020 and detailed guidelines regarding lockdown have been prescribed.

Reference order no. As per paragraph 7(ii)(b) (1), all industries in rural areas as well as industries in urban areas and industrial townships are allowed to operate if they have controlled access. As per paragraph 7(i)(d) of the Central Government order, all shops except malls in rural areas and standalone shops, colony shops and shops in residential complexes except malls and market complexes in urban areas are allowed to be started.

(C) Retail Liquor Stores : (Sample FL-2, FL/BR-2, FL/W-2 and CL-3 Sealed Liquor Permits)

(1) Only the above types of license can be started on the basis of the following criteria and only from the type of license. Sealed liquor will be allowed to be sold. All shops will be open except malls in rural areas. In urban areas, malls, market complexes and liquor shops will not be allowed in the municipal and municipal limits. Similarly, all types of standalone retail liquor shops, colony shops and residential complexes can be started in urban areas except for containment zones. However, in all the metropolitan areas of Mumbai Metropolitan Region (MMR) as well as in the Malegaon, Pune and Pimpri-Chinchwad Municipal Area, standalone retail liquor shops, colony shops and shops in residential complexes are located. A maximum of 5 shops can be opened in other shops.”

iii. On 4th May, 2020, the Petitioners made a representation before Respondent Nos. 1 & 2 thereby seeking their permission to commence business of sale of liquor from their said shop, located at Nariman Point, Mumbai. Copy of the Petitioner's Letter dated 4th May 2020 is at Exhibit I to the Petition. However, while

the Petitioners never received a formal reply from the said Respondents, they orally refused the Petitioners the permission to conduct their business from their said shop.

iv. Thereafter, in view of the overcrowding near liquor shops in the city of Mumbai and impossibility of maintaining social distancing, vide its Order dated 5th May 2020, Municipal Corporation of Greater Mumbai ordered immediate closure of the non-essential shops, including the standalone liquor shops. Subsequently, vide Order dated 22nd May 2020, Respondent No.4 prohibited over the counter sales, but allowed the liquor shops to re-commence operations by selling liquor to the customers by effecting delivery of the permitted liquor, to the home address of the customer. Copies of the Orders dated 5th May 2020 and 22nd May 2020 are at Exhibits J and K to the Petition, respectively. On 22nd May 2020, Respondent No.3 issued Guidelines *inter alia* specifically allowing standalone liquor shops to commence operations by selling liquor to the customers by effecting delivery of the permitted liquor to the home address of the customer. However, the said guidelines disallowed liquor shops in the malls to sell liquor by effecting delivery at the residence of the customers. The relevant extracts from the said Guidelines are reproduced hereunder :

“The Government of Maharashtra vide its Order No. FLR-0520-COVID/C.R.1/EXC-2 dated 11.05.2020 has allowed the liquor shops to effect sale to permit-holders through delivery of liquor at the permit-holder’s residential address, subject to the conditions specified in the said order.

Hence, I, Shri Iqbal Singh Chahal, hereby issue orders that excluding

the containment zone, the liquor shops selling liquor in sealed bottles can be permitted to operate by selling liquor to the customers by effecting delivery of the permitted liquor to the home address of the customer if such an order is placed, subject to conditions to the following conditions (which shall be read in addition to the conditions and restrictions under the law which the liquor shops are having their permits and licenses) :

- 1. Under no circumstances over the counter sales of liquor can be permitted from such shops.*
- 2. The E-commerce platforms may be utilised by the liquor shops permitted to do home delivery.*
- 3. The guidelines issued by State Government and the State Excise Department shall be followed scrupulously.*
- 4. The jurisdictional State Excise Officers and Ward Officers will ensure compliance of these orders in its totality.”*

v. On 22nd May, 2020, the Petitioners made an oral representation before Respondent Nos.1 and 2 once again seeking their permission to commence home delivery of alcohol from their said shop located at Barrister Rajni Patel Marg, Nariman Point, Mumbai on the basis of the fact that their shop is akin to a stand-alone shop. Respondent Nos.1 & 2 however, orally refused to allow the Petitioner to do so. The Petitioner therefore addressed a Letter dated 23rd May, 2020 to the Respondent Nos. 1 & 2 *inter alia* seeking a written clarification from them in this regard. Copy of the Letter dated 23rd May 2020 is at Exhibit M to the Petition. The Respondents did not reply to the Petitioner's Letter dated 23rd May 2020.

vi. The Petitioners have therefore filed the above Writ Petition seeking a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents to grant permission to the Petitioners for sale of liquor from the said shop as a stand-alone retail shop in accordance with the guidelines / notifications/circulars, issued / to be issued by the Respondents from time to time.

6. Mr. Kamod, Ld. Advocate for the Petitioners submitted that the Petitioner's said shop, though forming part of the building CR-2 mall, is in fact, akin to an independent and standalone premise in as much as the ingress and egress to the said shop is directly from the main road *viz.* Barrister Rajni Patel Marg, at Nariman Point. Mr. Kamod drew our attention to the lay out plan of CR2 mall, photographs to the entrance to the Petitioner's shop and photograph to the entrance to CR2 mall at Exhibits E to H to the Petition. He submitted that in order to enter the Petitioner's shop, one does not have to actually enter the CR2 Mall, as the entry and exit of the said shop is completely independent and separate and has nothing to do with the entry to the CR2 Mall. He submitted that the Respondents have applied the Guidelines dated 22nd May, 2020 to the Petitioners' Shop in a mechanical manner, without understanding the true import and intent of the same.

7. Ms. Chavan, Ld. Additional GP for State and Advocate for Respondent Nos.1 to 3, submitted that in view of the outbreak of COVID 19, the Government of Maharashtra, ordered *inter alia* the closure of all liquor shops. She submitted that subsequently, by his Order dated 22nd May 2020, under the powers granted to him by

the Government of Maharashtra under the Epidemic Diseases Act 1987 and the Disaster Management Act, 2005, Respondent No.4, allowed stand-alone liquor shops situated outside the Containment Zone to sell liquor to permit holders via home delivery at their respective addresses. She submitted that the Guidelines clarify that the aforesaid relaxation granted by the Respondent No.4 did not apply to shops situated in malls, market complexes and markets. She submitted that while the Petitioners' shop has a separate entrance which is not through the Mall and is situated on the main road, the sale deed and lay out plans in respect of the Petitioners' shop indicate that the Petitioners' Shop is inside the CR2 Mall. She submitted that therefore, the Petitioners would not be entitled to the relaxations granted under the said Guidelines, in respect of their said Shop.

8. Mr. Sakhare, Ld. Senior Advocate for Respondent No.4 Corporation submitted that in public interest, the Respondent No.4 had permitted only stand-alone liquor shops to resume their business by home delivering the liquor to the addresses of permit- holders. He submitted that a bare perusal of the Guidelines issued by the Respondent No.4 makes it clear that there is no question of permitting commercial activity in respect of non-essential services inside malls. He submitted that in view of the same, the relaxations granted by Respondent No.4 would not apply to the Petitioners.

9. We have heard the submissions in detail and perused the record. In our opinion, in the facts of the present case, it is critical to evaluate the intent of the

guidelines / notifications / orders issued by the State and / or Respondents. From a perusal of the same, it is evident that their intent is to curb the spread of the novel COVID-19 Virus, by ensuring that people maintain the norms pertaining to social distancing and in the process secure the interest of the public. The economic impact / strain that has been caused and continues to be caused by the lockdown is common knowledge. To provide some relief to the public, the State has permitted businesses to operate whilst adhering to the norms of social distancing and other protective measures.

10. Photographs of the entrance to the Petitioners' Shop 'World of Wines' and the CR2 Mall are reproduced hereunder:





11. Evidently, the entrance to the Petitioners' Shop is separate and independent of the entrance to the CR-2 Mall. A perusal of the layout to the Petitioners' Shop in the above photographs show that the Petitioners' Shop does not rely on the opening or the entry/exit to the CR2 Mall for its operation. This is not a case where the shop is actually situated inside the Mall, meaning thereby that one does not have to actually enter the CR-2 Mall or go through their checkpost in order to enter the Petitioners' Shop. The ingress and egress to the said Shop is directly from the main road *viz.* Barrister Rajni Patel Marg. We agree with the submissions of Mr. Kamod that the Petitioners' Shop in all aspects is akin to a stand-alone shop.

Admittedly, the Petitioners' Shop does not fall in the Containment Zone. We are not impressed by the hyper-technical interpretation provided by the Respondents to show that the Petitioners' Shop is inside the mall. The intent of the Guidelines issued by the State in not allowing the operation of businesses situated inside malls is to ensure that too many people do not gather in one place, where it would be difficult to follow the norms of social distancing.

12. We do not see how permitting the Petitioners to operate their business from their said Shop, which has a separate and independent entrance and exit and does not in any way rely on the entrance or exit gate of the CR2 Mall, thereby making it akin to a stand-alone shop, not fall within the relaxation given by the said Notifications/Guidelines. Again, since all the liquor shops are strictly prohibited from selling liquor over the counter, and are only permitted to effect home delivery, the Respondents ought to have granted permission to the Petitioners, also considering the peculiar facts and circumstance of the present case. In matters such as the present case, the approach of the Respondents need to be practical, rather than technical.

13. The Writ Petition is therefore allowed and disposed off in terms of prayer clause (a) which reads as under:

*"(a) That this Court be pleased to issue a writ of
Mandamus or any other appropriate writ, order or
direction directing the Respondents to grant permission to
the Petitioners for sale of liquor from the said Shop as a*

standalone retail shop in accordance with the guidelines/ notifications / circulars issued/to be issued by the Respondents from time to time;”

14. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(S.P. TAVADE, J.)

(S.J.KATHAWALLA, J.)