

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

WRIT PETITION NO. 49982 OF 2019 (GM, RES)

BETWEEN:

A.V.AMARNATHAN,
ADVOCATE, (PARTY IN PERSON)
SON OF T.K.KARUNAKARAN,
AGED 65 YEARS,
#1756, 1ST 'B'MAIN,
KIRAN NARAAN MANSION,
'D' BLOCK, II STAGE, RAJAJINAGAR,
BENGALURU – 560 010.
SENIOR CITIZEN BENEFIT NOT CLAIMED

... PETITIONER

(BY SRI. A.V.AMARNATHAN, PETITIONER – PARTY IN PERSON)

AND:

1. STATE OF KARNATAKA,
VIDHANA SOUDHA,
VIDHANA VEEDHI, BENGALURU – 560 001.
(REP. BY ITS CHIEF SECRETARY)
2. THE EXCISE COMMISSIONER,
THE STATE EXCISE DEPARTMENT,
2ND FLOOR, T.T.M.C. BUILDING,
'A' BLOCK, BMTG,
SHANTHINAGAR, BENGALURU – 560 027.
3. THE DEPUTY COMMISSIONER(EXCISE)
URBAN DISTRICT EAST,
No.247, 13TH CROSS, INDIRANAGAR,
BENGALURU – 560 038.

4. THE COMMISSIONER,
BRUHATH BENGALURU MAHANAGARA PALIKE,
B.B.M.P. OFFICE, N.R.SQUARE,
BENGALURU – 560 002.

5. TONIQUE BAR AND RESTORENT,
RATHNAM'S COMPLEX,
KASTURBA ROAD, SHANTHALA NAGAR,
ASHOK NAGAR,
BENGALURU – 560 001.
(REPRESENTED BY ITS PROPRIETOR)

... RESPONDENTS

(BY SRI. VIJAYKUMAR .A. PAITL, AGA FOR R-1 TO R-3,
SMT. M.C. NAGASHREE, ADVOCATE FOR -4,
SRI. GAUTAM. S. BHARADWAJ, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT
THE R-3 TO CANCEL THE LICENSE GRANTED TO R-5
IMMEDIATELY AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING
THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE**
MADE THE FOLLOWING:

ORDER

Heard the petitioner appearing in person.

2. The prayer in this writ petition under Article 226 of the
Constitution of India is for canceling the licence granted to the
fifth respondent under the provisions of the Karnataka Excise
(Sale of Indian and Foreign Liquors) Rules, 1968 (for short, 'the
said Rules of 1968').

3. As can be seen from the order dated 9th July, 2020, the
first objection raised by the petitioner was that the statue of the

Father of the Nation, Bal Bhavan in Cubbon Park, a Church and the Office of the Deputy Commissioner of Police were situated within a distance of 100 meters from the premises of fifth respondent. Consequently, the second contention was that there is a breach of Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967 (for short, 'the said Rules of 1967').

4. Paragraph 4 of the order dated 9th July, 2020 records that the objections based on the statue of the *Father of the Nation* and *Bal Bhavan* will have to be excluded. As regards other objections, a direction was issued under the said order to the jurisdictional Tahsildar to carry out the exercise of measuring the distance with the help of a Government Surveyor.

5. Accordingly, a memo of compliance has been filed by the learned Additional Government Advocate on 27th July, 2020 enclosing therewith a mahazar as well as a survey sketch. The survey sketch shows that the distance between the main entrance of the premises of the 5th respondent and the office of the Deputy Commissioner of Police through the foot path is 126.50 meters. Secondly, it is stated that the distance between

the main entrance of the fifth respondent and the entrance gate of St. Martha's Church is 144.00 meters.

6. The petitioner appearing in person submitted that proper notice of the survey was not served to him. He pointed out the objection recorded by him on the mahazar which states that he received a phone call at 11 am calling upon him to remain present at 12 pm and the notice was served to him at 12.30 pm. He states that he remained present under protest. He accepted that the distances were measured in his presence.

7. The petitioner has not placed any material on record to show that the distances mentioned in the survey sketch are incorrect. Therefore, the distance mentioned therein will have to be accepted as correct.

8. The submission of the petitioner appearing in person is that though this Court has already rejected the objection of the petitioner regarding the close proximity of the shop of the 5th respondent with the statue of the *Father of the Nation*, the definition of 'Religious Institution' under Sub-rule (3) of Rule of 3 of the said Rules of 1967 will have to be considered. He urged that as the prayers are offered near the statue of the

Father of the Nation, it will have to be held as 'religious institution'.

9. By no stretch of imagination, we can hold that the statue of the *Father of the Nation* is a 'religious institution'. The emphasis in Sub-rule (3) of Rule 3 of said Rules of 1967 is on a place of public religious worship. It is impossible to accept that the statue of the *Father of the Nation* can be a 'religious institution'. Secondly, if we look at the thoughts and the views propagated by the *Father of the Nation* during his life time, it is impossible to accept that his statue is a place of public religious worship. The *Father of the Nation* has a unique place. He was above all religions. He was truly a democrat who never liked human beings being worshipped.

10. The petitioner appearing in person also relied upon Sub-rule (2-A) of Rule 5 of the said Rules of 1967. A perusal of Sub-rule (2-A) of Rule 5 of the said Rules of 1967 shows that it overrides Sub-rules (1) and (2) and confers power on the Deputy Commissioner of Excise to reject an application for licence to run a liquor shop in a premises with a view to secure convenience, morality, tranquility, decency or safety of public or for any other reason. The petitioner has not pleaded in the

petition that in view of Sub-rule (2-A) of Rule 5 of the said Rules of 1967, the application for licence of the fifth respondent ought to have been rejected.

12. Learned counsel for the fifth respondent also argued on the locus of the petitioner.

13. As we find that there is no merit in any of the objections raised by the petitioner, it is not necessary to go into the question of locus of the petitioner. Accordingly, we find that there is no merit in the petition and the same is rejected.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

PKS