

Before Ajay Kumar Mittal & Anupinder Singh Grewal, JJ.

**ARRIVE SAFE SOCIETY OF CHANDIGARH THROUGH ITS
PRESIDENT—Petitioner**

versus

STATE OF HARYANA AND OTHERS—Respondent

CWP No. 26234 of 2017

March 27, 2018

Constitution of India, 1950—Art. 47—Control of National Highways (Land and Traffic) Act, 2002—S.24 and 26—Liquor vends on National/State Highways—Held—Permission for occupying land falling outside municipal limits of towns, cities and villages but falling on highway required to be sought from Highway Administration— State can prohibit/restrict/monopolise the trade or business in liquor as a beverage and no liquor vend on Highways can be allowed to operate without permission of Highway Administration.

Held that, it is concluded that the State of Haryana in Clause 1.2.2 of the Excise Policy for the year 2018-19 has followed various orders passed by the Supreme Court as noticed hereinabove in formulating the said Excise policy. However, the State of Punjab in clause 2.12 of the Excise Policy for the year 2018-19 has dealt with the location of the liquor vends but the said clause does not specifically deal with liquor vends along the National/State Highways. Accordingly, it is directed that the competent authority in the State of Punjab while granting licence for sale of liquor shall ensure that the liquor vends are located strictly in consonance with the orders passed by the Supreme Court.

(Para19)

Further held that a perusal of the above provisions shows that inter alia as per Section 24 of the Act, no person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf. Section 25(1) provides that the Highway Administration or the officer authorised by such administration may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person

for temporary use. As per Section 26 of the Act, the Highway Administration is empowered to cancel any permit issued under sub section (2) of Section 24 of the Act after recording reasons in writing for doing so. Cumulative effect of the above provisions would be that the permission for use of any land falling on the highway is mandatorily required to be obtained from the Highway Administration. In other words, it would be essential that the permission for occupying lands which are falling outside municipal limits of the towns, cities and villages but falling on the highway would be required to be sought from the Highway Administration. Letter dated 4.8.2012 issued by the General Manager (Tech) of National Highways Authority of India to various Deputy Commissioners of the States of Punjab and Haryana shows that necessary instructions had been given for removal of liquor vends on the National/State Highways as these were operating without prior permission from the Highway Administration. The petitioner had also sought information through RTI regarding the details of the liquor vends on the Highways operating along the National highway without seeking access permission from Highway Administration. Letter dated 10.1.2018 was sent to the petitioner by the Project Director, National Highways Authority of India, PIU, Chandigarh giving the necessary details.

(Para 21)

Further held that a citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*, cannot be carried on by any citizen. The State can prohibit completely trade or business in portable liquor and can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are *res commercium*.

(Para 25)

Further held that it would be appropriate that in terms of Article 47 of the Constitution of India and for the safety of the public, no liquor vend outside the limits of the towns, cities and villages but falling in the municipal areas on the Highways should be allowed to operate without compliance with the provisions of the 2002 Act. Ordered accordingly. It shall be for the Highway Administration to examine individual cases and determine the proximity of the location of the

liquor vend to the towns, cities and villages on the Highways within the municipal areas keeping in view the safety and convenience of traffic in terms of the provisions of the 2002 Act. It shall, however, be open for the petitioner to bring individual case violating the norms for location of liquor vends on the Highways to the notice of the competent authority for taking appropriate action in accordance with law. The writ petition stands disposed of in the manner indicated hereinabove.

(Para28)

Ravi Kamal Gupta, Advocate
for the petitioner.

Lokesh Sinhal, A.A.G., Haryana.

Shireesh Gupta, Sr. DAG, Punjab with
Jagmohan S.Ghuman, DAG, Punjab.

Sonia Madan, Advocate for
R.S. Madan, Advocate
for Respondent No.7.

AJAY KUMAR MITTAL, J.

(1) The petitioner-Arrive Safe Society of Chandigarh through its President by way of instant petition filed under Article 226 of the Constitution of India prays for a writ in the nature of mandamus for a direction to the respondents for immediate removal of places where liquor is being served/sold/supplied within 500 meters of National and State Highways in contravention to the judgments passed by the Supreme Court, dated 15.12.2016, 31.3.2017 and 11.7.2017, Annexures P.5 to P.7 respectively. Further direction has been sought to the respondents for immediate removal of all kinds of advertisements, hoardings, signs, signage, decorative lights which are still being displayed. Prayer has also been made for a writ in the nature of prohibition so that no further licences are issued by the respondents for sale/service of liquor within 500 meters of National and State Highways.

(2) A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Arrive Safe Society is an Indian NGO working on developing road safety programmes to increase knowledge, awareness and skills amongst all types of road users. Besides educating the youth about liquor abuse, it also works closely with the traffic police department to improve the law enforcement regarding drunken driving. The petitioner-Harman Singh

Sidhu is facing the trauma of leading the life on a wheel chair for the last 20 years because the offending vehicle which paralysed him was being driven by a drunken driver. He does not want anyone else to be in the same partial vegetative state because of negligent act of somebody else who is driving under the influence of liquor. The President of the petitioner is a software engineer and works with various government organisations in India and abroad and thus earns his living. According to the petitioner, because of his constant efforts put in with no private interest, first this court and subsequently the Supreme Court issued specific directions regarding sale of liquor along National and State Highways. Thereafter, petitions were filed before the Supreme Court for modification of the directions. The judgment dated 15.12.2016 was modified to the extent that in the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 meters shall stand reduced to 220 metres. Further, it was directed that in the case of those licences for the sale of liquor which had been renewed prior to 15th December 2016 and the excise year of the concerned State was to end on a date falling on or after 1st April 2017, the existing licence shall continue until the term of the licence expired but in any event not later than 30th September 2017. Various interim applications were moved before the Supreme Court for clarification. It was observed by the Supreme Court that since the object of the directions was to prevent drunken driving, no relaxation can be made which would defeat the object sought to be achieved. The issue of applicability of judgments being confined only to liquor vends and to all places where liquor is being sold/served/supplied, then be it hotel/restaurants/ café/bar/clubs etc., was confirmed by the Supreme Court vide another order dated 11.7.2017 wherein 35 applications filed by different hotel owners/clubs were dismissed. Thereafter, the UT Administration Chandigarh came up with an idea of denotifying the already notified State Highways and rename them as major District roads. The said notification was challenged in this court which was dismissed. The order was challenged before the Supreme Court. Vide order dated 11.7.2017, Annexure P.7, the Supreme Court recorded that the purpose of the directions contained in the order dated 15.12.2016 was to deal with the sale of liquor along and in proximity of highways properly understood, which provided connectivity between cities, towns and villages. The order did not prohibit licensed establishments within municipal areas. This clarification shall govern other municipal areas as well. Hence the instant petition by the petitioner with the prayer mentioned above.

(3) A short reply has been filed on behalf of respondent Nos. 1 and 2 wherein it has been inter alia stated that there are no advertisements/hoardings/signs/signages displayed at any of the liquor vend/bar and if there was any, the same has been removed as on date. It has been further stated that licenses within 500 meters of National and State Highways have been issued only within the municipal limits as per the Haryana State Excise Policy 2017-18 and clarifications issued vide orders dated 11.7.2017 by the Supreme Court. No liquor vend/bar has been running along the National Highway/State Highway or Service lane thereto in violation of the orders of the Supreme Court.

(4) Written statement on behalf of respondent No. 4 and 5 has been filed wherein it has been inter alia stated that the liquor vends which are operating within the State of Punjab are duly complying with the orders passed by the Supreme Court.

(5) A written statement has also been filed by Project director, Chandigarh on behalf of respondent No.7. It has been inter alia stated therein that issuance of licenses for sale/service of liquor falls within the domain of Excise and Taxation department of States of Punjab, Haryana and Chandigarh. Respondent No.7 has no role whatsoever in issuance of licenses for liquor vends. It had never authorised or permitted the opening of liquor vends within the limits prescribed by the Supreme Court. Rather respondent No.7 had time and again requested the concerned authorities to take appropriate action for removal of liquor vends installed adjacent to National Highways in compliance with the judgment of the Supreme Court.

(6) Similarly, in the reply by way of affidavit of Collector cum-Additional Excise and Taxation Commissioner (Excise) Haryana on behalf of respondent Nos. 1 and 2, it has been inter alia stated that no violation regarding advertisements/hoardings/signage being displayed was found at any of the liquor vend/bar and if there was any, the same has been removed.

(7) Learned counsel for the petitioner submitted that directions given by the Supreme Court in its judgments should be complied with in letter and spirit. Only those establishments should be allowed to serve/sale/supply liquor which are in accordance with the directions issued by the Supreme Court. During the course of arguments, great emphasis was laid to the provisions of Control of National Highways (Land and Traffic) Act, 2002 (in short, "the 2002 Act"), to urge that no liquor vend should be allowed to operate in violation of the

provisions of the said enactment. In other words, the location of the liquor vends should be in consonance with the legal requirement enunciated thereunder. Exact location of the vend should be mentioned at the time of auction which should be compulsorily adhered to by the applicants. According to the learned counsel, liquor vends falling outside the limits of the cities, towns and villages but within municipal areas on the highways should also be prohibited.

(8) Learned counsel for the State of Punjab submitted that the directions of the Supreme Court are being complied with in letter and spirit. The liquor vends on the National or State Highways have been allowed only within the municipal area. The words “cities, towns and villages” are used in the order of the Apex Court dated 11.7.2017 in general parlance. However, if the territorial limit of a city, town or village is to be defined, the same can be defined only in relevant laws which are applicable in revenue estate in the case of village and Municipal Corporation in the case of town or city.

(9) Learned counsel appearing for the State of Haryana submitted that the order passed by the Supreme Court does not prohibit licensed establishments within municipal areas. No liquor vend has been allowed on the National Highway within the restricted distance outside the municipal areas. The liquor vends on the National or State Highways have been allowed only within the municipal area. The municipal areas are notified by the Government either under Haryana Municipal Act, 1973 or under Haryana Municipal Corporation Act, 1994. Municipal area means the territorial area of municipality as may be notified by the State Government and includes any territorial area which forms part of a municipality at the commencement of the Haryana Municipal (Amendment) Act, 1994.

(10) The twin issues that arise for consideration in this petition with regard to the location of the liquor vends on the National/State highways are:-

- (i) Whether the directions given by the Supreme Court regarding liquor vends on the National/State Highways are being adhered to in letter and spirit?
- (ii) Whether a licensee is required to follow the provisions of 2002 Act for locating the liquor vend(s) on the Highways outside the local limits of the city, town or village?

(11) Delving into issue (i) noticed hereinabove, it would be essential to notice various orders passed by the Supreme Court. In the

order dated 15.12.2016 in *The State of Tamil Nadu and others vs. K.Balu and another*, Civil Appeal Nos. 12164-12166 of 2016, Annexure P.5, it was directed that no shop for the sale of liquor shall be visible from a national or state highway situated within a distance of 500 meters of the outer edge of the national or state highway or of a service lane along the highway. Further, the existing licences which had already been renewed prior to the date of the order shall continue until the term of the licence expired but not later than April 1, 2017. The directions given by the Supreme Court read thus:-

“22. For all these reasons, we have come to the conclusion that no licences for liquor shops should be allowed both on the national and state highways. Moreover, in order to ensure that this provision is not defeated by the adoption of subterfuge, it would be necessary to direct that no exception can be carved out for the grant of liquor licences in respect of those stretches of the national or state highways which pass through the limits of any municipality corporation, city, town or local authority. Necessary safeguards must be introduced to ensure that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500 metres from the outer edge of the highway, or from a service lane along the highway.

23. However, we have also duly borne in mind the practical difficulty which has been expressed on behalf of the licence holders (including those in the town of Mahe) and the states that there are licences which have been duly renewed and whose term is still to expire. The states apprehend that premature termination may lead to claims for refund of licence fee for the unexpired term, with large financial implications. Hence we would direct that current licences may continue for the existing term but not later than 1st April, 2017.

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 licenses which have already been renewed prior to the date of this order shall continue until the term of the licence expires but not 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 are issued under Article 142 of the Constitution.”

(12) In the order dated 11.7.2017 passed by the Supreme Court in *Arrive Safe Society of Chandigarh vs. The Union Territory of Chandigarh and another*, Special Leave Petition (Civil) No.10243 of 2017, it was clarified that the directions do not prohibit licensed establishments within municipal areas. Further, the highways which provide connectivity between cities, town and villages shall stand excluded. The following directions were issued by the Supreme Court:-

“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”.

(13) In the order dated 31.3.2017 passed in Interim applications filed in *K. Balu's* case (supra), some modification was made in the directions to the effect that in the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 meters shall stand reduced to 220 meters. The time limit was extended from 31.3.2017 to 30.9.2017. The Supreme Court recorded as under:-

“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.”

(14) Further, in the order dated 13.12.2017 passed by the Apex Court in SLP filed against judgment of the Bombay High Court in ***Hotel Sonai Beer Bar and Permit Room and another vs. State of Maharashtra and others***, being Petition for Special Leave to Appeal (C) No.19845 of 2017, it was recorded as under:-

“It is submitted by Mr. F.I. Choudhury that the shops in question are within the municipal area. This Court has recently in I.A. Nos. 1060-1062/2017 in Civil Appeal Nos. 12164-12166/2016, clarified the position as SLP(C) 19845/2017 stated thus:-

“The above observations make it clear that the purport of the judgment dated 15 December 2016 is to prohibit the sale of liquor along and in proximity of highways which provide connectivity between cities, towns and villages. In other words, this will not operate to prohibit licenced establishments within municipal areas. The clarification to the effect that it “shall govern other municipal areas as well” is clearly intended to set the matter at rest in relation to other parts of the country so as to obviate the need for repeated applications before this Court.

The expression “other municipal areas” will apply to all municipal areas, wherever situated.” The aforesaid clarification shall apply in full force to the present petitioners if their shops are situated within the municipal area.

In view of the aforesaid, the special leave petition is disposed of. Pending interlocutory applications, if any, also stand disposed of. W.P.(C) Nos. 964/2017 and 1050/2017 Heard Mr. Prashant S. Kenjale, learned counsel for the petitioners and Mr. Nishant Ramakantrao Katneshwarkar, learned counsel appearing for the State of Maharashtra.

Having heard learned counsel for the parties, we think it appropriate to direct that each of the petitioners shall submit a representation within three weeks hence, stating that they are entitled to be governed by the principle as applicable to the municipal areas/MIDC developed areas. The individual facts shall be mentioned in each representation. The same shall be considered by the competent authority and decided,

keeping in view the judgments of this Court, preferably within four weeks from the date of receipt SLP(C) 19845/2017 of the representation. Needless to say, the representation shall be decided by ascribing reasons and recording a finding. If the petitioners are aggrieved, they can approach this Court.”

(15) In the miscellaneous applications filed before the Supreme Court in *K. Balu's* case (supra), Civil Appeal Nos.12164-12166 of 2016, on 23.2.2018, it was recorded that the State Governments would not be precluded from determining whether the principle laid down in the order dated 11.7.2017 would also apply to the areas covered by local self governing bodies and statutory development authorities. The State Governments were empowered to make their determination regarding areas covered by local self governing bodies and statutory development authorities 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 doing so, the State Governments were authorised to 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. However, liberty had been granted to individual licencees to submit their representations to the competent authority in the State Government who had been empowered to take appropriate decision. The relevant observations read thus:-

“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.”

(16) A perusal of the orders passed by the Supreme Court as quoted above shows that certain modifications were made later on in the original directions issued by the Supreme Court on 15.12.2016. Ultimately, in the last directions dated 23.2.2018, individual licensees have been given liberty to file a representation to the competent authority relating to any dispute in respect of determination of the municipal areas and the competent authority has been authorised to consider those representations after recording reasons in accordance with law.

(17) In the excise policy of Haryana for the year 2018-19, in Clause 1.2.2, restriction of location on scheduled roads etc. has been provided. No licence for sale of liquor shall be granted to a shop that is visible from a National or State highway; directly accessible from a national or state highway and situated within a distance of 500 meters of the outer edge of the national or state highway or of a service lane along the highway. Proviso has been added that the above restrictions shall not apply to the liquor vends located within the limits of municipal areas. Further, it has been made mandatory for all the retail licensees to issue an invoice on sale and in case of violation, penalty of Rs.500/- per incident shall be imposed on the licensee after enquiry by the DETC concerned. It reads thus:-

“1.2.2 Restriction of location of scheduled roads etc.

No license for sale of liquor shall be granted to a shop that is:

- (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 meters of the outer edge of the National or State Highway or of a service lane along the highway.

Provided that above restrictions shall not apply to the liquor vends located within the limits of municipal areas.

The liquor vends which are not located on National/State Highways or the service lanes running along such Highways, shall comply with the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963) or any other law applicable.

Note: It shall be the responsibility of the DETC (Excise) of the district concerned to ensure the strict compliance of the above- stipulated restrictions.”

(18) Similarly, the State of Punjab has also formulated Excise Policy for the year 2018-19 wherein following clause relating to ‘Location of Vends’ has been incorporated:-

“2.12 Location of Vends: During the year 2017-18, in urban areas where no zones were made, the licensee had an option to open vend at any place in the city. Where zones were made, the number of vends were fixed. Zones were only allotted through lottery. The allotted vends of the zone can be opened at any place in the zone. Similarly, the rural vends in the villages can be opened in the revenue limit of the villages. For rural vends, the applications were for a specific area. No unauthorised branches or any unauthorised liquor vend can be opened in the State. If any licensee opens unauthorised vend, there is a provision that the Department by taking strict action, can close the licensed vend of the licensee for a minimum period of one month. The Excise Inspector of the area concerned is fully responsible for implementing this provision. For opening of liquor vend in the urban and rural areas, the vend should be at a distance from religious or recognised educational institution as prescribed under the rules. Similarly, the vend

also cannot be opened at a place which has been restrained by the competent authority for any other reason. This distance is to be taken from the main gate of the religious place or recognised educational institution. If any recognised educational institution or religious institution is opened during the currency of the year, the provision will be applicable from the next financial year. This provision is proposed to be continued during 2018-19.

During the year 2017-18, if the liquor vend was opened at the location where the vend was running in previous year, the permission for the same was not refused. For opening a new vend, approval of the Department is required to be taken by the licensee. The L-2 and L-14A vends of a licensing unit are required to be opened under one roof. This provision is proposed to be continued during 2018-19. It is also worthwhile to mention here that the licensee will be bound to comply with the orders to be passed by the Hon'ble High Court in CWP No.4681 of 2014 – Market Welfare Society, Mohali vs. State of Punjab. Apart from this, the licensee will ensure compliance of the provisions of the Punjab Excise Act, 1914.”

A perusal of the above clause shows that no unauthorised liquor vend can be opened in the State. The Excise Inspector of the area concerned is fully responsible for implementing the restrictions contained in the relevant provision. Similarly, the vend also cannot be opened at a place which has been restrained by the competent authority for any other reason.

(19) In view of the above, it is concluded that the State of Haryana in Clause 1.2.2 of the Excise Policy for the year 2018-19 has followed various orders passed by the Supreme Court as noticed hereinabove in formulating the said Excise policy. However, the State of Punjab in clause 2.12 of the Excise Policy for the year 2018-19 has dealt with the location of the liquor vends but the said clause does not specifically deal with liquor vends along the National/State Highways. Accordingly, it is directed that the competent authority in the State of Punjab while granting licence for sale of liquor shall ensure that the liquor vends are located strictly in consonance with the orders passed by the Supreme Court.

(20) Taking up the second issue, it may be noticed that the Parliament enacted the 2002 Act namely “the Control of National Highways (Land and Traffic) Act, 2002” to provide for control of land within the National Highways, right of way and traffic moving on the National Highways and also for removal of unauthorised occupation thereon. The statutory provisions relevant for the decision of the present controversy contained in the 2002 Act, read as under:-

“24. Prevention of occupation of highway land.—(1) No person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf.

(2) The Highway Administration or the officer authorised under sub-section (1) may, on an application made by a person in this behalf and having regard to the safety and convenience of traffic, grant permission to such person—

(i) to place a movable structure on the Highway in front of any building owned by him or to make a movable structure on support of such building and over the Highway, or

(ii) to put up a temporary lawning or tent or other similar construction or a temporary stall or scaffolding on the Highway, or

(iii) to deposit or cause to be deposited, building materials, goods, for sale or other articles on any Highway, or

(iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings,

and such permission shall be granted subject to the conditions and on payment of the rent and other charges by issuing permit in the form as may be prescribed:

Provided that no such permission shall be valid beyond a period of one month at a time from the date on which the permission has been granted unless it is renewed by the Highway Administration or such officer on an application made by such person for the renewal of the permission.

(3) The permission granted under sub-section (2) shall specify therein—

(i) the time up to which the permission is granted;

(ii) the purpose of such permission;

(iii) the portion of the Highway in respect of which the permission has been granted, and shall be accompanied with a plan or sketch of such portion of Highway.

(4) The person, to whom the permit has been issued under sub-section (2), shall produce the permit for inspection whenever called upon to do so by any officer of the Highway Administration and shall, on the expiry of the permission granted under such permit, restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration.

(5) The Highway Administration or the officer issuing the permit under sub-section (2) shall maintain a complete record of all such permits issued, and shall also ensure in every case at the expiration of the period up to which the permission under a permit is granted under that sub-section that the possession of the portion of the Highway in respect of which such permission was granted has been delivered to the Highway Administration.

25. Grant of lease or licence of highway land for temporary use.—

The Highway Administration or the officer authorized by such Administration in this behalf may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person for temporary use: Provided that no such lease shall be valid for more than five years at a time from the date on which such lease has been granted unless renewed by the Highway Administration or such officer.

25. Removal of unauthorised occupation.—(1) Where the Highway Administration or the officer authorised by

such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27.

26. When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment

purporting to be signed by such person or his agent or other person on his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be *prima facie* proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing any notice under this section to remove the unauthorised occupation on the highway land, if such unauthorised occupation is in the nature of—

(a) Exposing any goods or article—

(i) in open air; or

(ii) through temporary stall, kiosk, booth or any other shop of temporary nature,

(b) construction or erection, whether temporary or permanent, or

(c) trespass or other unauthorized occupation which can be removed easily without use of any machine or other device, and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal.

(8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of—

(a) The safety of traffic on the Highway; or

(b) the safety or any structure forming part of the Highway, and no notice can be served on the person responsible for such unauthorized occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorized by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause (a) or clause (b) or have such unauthorized occupation removed in the manner specified in sub-section (7).

(9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Issuing commissions for the examination of witnesses; and

(d) Any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of the Criminal Procedure, 1973 (2 of 1974).”

(21) A perusal of the above provisions shows that inter alia as per Section 24 of the Act, no person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf. Section 25(1) provides that the Highway Administration or the officer authorised by such administration may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person for temporary use. As per Section 26 of the Act, the Highway Administration is empowered to cancel any permit issued under sub section (2) of Section 24 of the Act after recording reasons in writing for doing so. Cumulative effect of the above provisions would be that the permission for use of any land falling on the highway is mandatorily required to be obtained from the Highway Administration. In other words, it would be essential that the permission for occupying lands which are falling outside municipal limits of the towns, cities and villages but falling on the highway would be required to be sought from the Highway Administration. Letter dated 4.8.2012 issued by the General Manager (Tech) of National Highways Authority of India to various Deputy Commissioners of the States of Punjab and Haryana shows that necessary instructions had been given for removal of liquor vends on the National/State Highways as these were operating without prior permission from the Highway Administration. The petitioner had also sought information through RTI regarding the details of the liquor vends on the Highways operating along the National highway without seeking access permission from Highway Administration. Letter dated 10.1.2018 was sent to the petitioner by the Project Director, National Highways Authority of India, PIU, Chandigarh giving the necessary details.

(22) Article 47 of the Constitution of India lays down that it is the duty of the State to raise the level of nutrition and the standard of living

of its people and the improvement of public health. Article 47 reads as under:-

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

(23) Plain language of Article 47 of the Constitution of India shows that the State has to make endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Consumption of liquor is definitely injurious to health. It has destroyed many families.

(24) Article 47 is one of the Directive Principles of State Policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to the human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. State has, therefore, the exclusive right or privilege in respect of portable liquor. Imposing prohibition is to achieve the directive principle enumerated in Article 47.

(25) A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*, cannot be carried on by any citizen. The State can prohibit completely trade or business in portable liquor and can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are *res commercium*. Reference may be made to the judgments in *Vithal Dattatraya Kulkarni and Others* versus *Shamrao Tukaram Power SMT and Others*¹, *P. N. Kaushal & Others* versus *Union of India &*

¹ (1979) 3 SCC 212

*Others*², *Krishna Kumar Narula et c.* versus *State of Jammu & Kashmir & Others*³, *Nashirwar and Others* versus *State of Madhya Pradesh & Others*⁴, *State of A. P. & Others* versus *McDowell & Co and Others*⁵ and *Khoday Distilleries Ltd. & Others* versus *State of Karnataka & Others*⁶. Legislature, in its wisdom, has given considerable amount of freedom to the decision makers, the Commissioner and the State Government since they are conferred with the power to deal with an article which is inherently injurious to human health.

(26) In *Cooverjee B. Bharucha* versus *Excise Commissioner, Ajmer*⁷, it was observed by the Supreme Court that the legislature of the State is fully competent to regulate the business of vending intoxicating liquor, to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen. As it is a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to eradicate its evils.

(27) In *Khoday Distilleries Limited* versus *State of Karnataka and others*⁸, it was observed by the Supreme Court that Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commerce being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited. Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale,

² (1978) 3 SCC 558

³ AIR 1967 SC 1368

⁴ (1975) 1 SCC 29

⁵ (1996) 3 SCC 709

⁶ (1995) 1 SCC 574

⁷ AIR 1954 SC 220

⁸ (1995) 1 SCC 574

possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(28) In view of the above, it would be appropriate that in terms of Article 47 of the Constitution of India and for the safety of the public, no liquor vend outside the limits of the towns, cities and villages but falling in the municipal areas on the Highways should be allowed to operate without compliance with the provisions of the 2002 Act. Ordered accordingly. It shall be for the Highway Administration to examine individual cases and determine the proximity of the location of the liquor vend to the towns, cities and villages on the Highways within the municipal areas keeping in view the safety and convenience of traffic in terms of the provisions of the 2002 Act. It shall, however, be open for the petitioner to bring individual case violating the norms for location of liquor vends on the Highways to the notice of the competent authority for taking appropriate action in accordance with law. The writ petition stands disposed of in the manner indicated hereinabove.

Sumati Jund