2025:AHC:190334-DB

Reserved on 02.09.2025
Delivered on 30.10.2025

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

PUBLIC INTEREST LITIGATION (PIL) No. - 813 of 2025

Samir Kumar Banerji and 10 others ……Petitioners(s)

Versus

State of U.P. and 8 others ……Respondents(s)

Counsel for Petitioners(s)	:	Ashish Jaiswal, Sanjeev Singh, Satish Kumar Sahu
Counsel for Respondent(s)	:	Rajiv Singh, S.C., Manoj Kumar Singh, Siddhartha Srivastava, Vinod Kumar Pandey

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Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per: Kshitij Shailendra, J)

1. This petition, purportedly in public interest, has been filed by the residents of Karela Bagh Colony and Blocks B and C of Guru Teg Bahadur Nagar, Prayagraj praying for a direction commanding the respondents to close/shift liquor shops of the private respondents from the present location/site which are within the distance of the prohibited radius of 100 metres as per U.P. Number and Location of Excise Shops Rules, 1968 (‘the Rules, 1968’) as noticed by the Hon’ble Supreme Court in the case of **Manoj Kumar Dwivedi** which had approved the

Division Bench decision of this Court taking view that any liquor shop should not be situated within 100 metres of the entrance of a residential colony (hereinafter Karela Bagh Colony).

2. As per the pleadings contained in the petition, the private respondents have established their foreign liquor, beer and country liquor shops in residential area at a distance of nearly 50 to 60 metres from the entry roads of the residential colony and an ancient Shiv temple. The residential colony is said to have been established by Labour Department and rent receipts issued by the said Department from time to time have been annexed.

3. Placing reliance on the Rules, 1968, the case of the petitioners is that Rule 5(4) thereof prohibits running/opening of liquor shops within 50 metres radius of a residential colony and a Division Bench of this Court has already decided Civil Misc. Writ petition No. 39914 of 2009 **Bishop Johnson School and College and another Vs. Excise Commissioner, State of U.P. and others: 2010 (3) AWC 2626** taking note of the judgment in the case of **State of U.P. and others Vs. Manoj Kumar Dwivedi and others: 2008 (2) AWC 1302 (SC)** holding minimum prohibited distance for location of running liquor shops as approximately 100 metres from schools, hospitals, places of worship or factories or the entrance to a market or a residential colony

4. The petitioners have indicated distances of the disputed liquor shops that have been established in the excise year 2025-26 as 60 metres, 100 metres, less than 30 metres and less than 50 metres from a park, entrance gate of the colony, Shiv Temple etc. Reference to another order passed in **Writ Petition (PIL) No. 41593 of 2011, Akhil Bhartiya Sarva Jan Hitay Sarva Jan Sukhay Parishad Vs. State of U.P. and**

others, decided on 22.12.2017, has also been made and it is also the case of the petitioners that the shops in question have encroached upon the passage between residential houses and the owners of the premises of the shops have let out the same drawing nearly 6-8 times more rent in comparison to any other ordinary shop which would have operated in the same premises of equal area. The petition is accompanied by sketch map of the locality and also certain photographs of liquor shops and few applications moved by the petitioners before the District Magistrate, District Excise Officer and the Chief Minister of the State.

5. At initial hearing of the matter, learned Standing Counsel was granted time to obtain instructions in the matter. Instructions were furnished, *inter alia* indicating that in terms of Rules, 2008, shops can be opened at a distance of 50 metres from the residential colony and that the shops in question are located at a distance of 95 metres, 101 metres and 125 metres therefrom. The said statement made on behalf of the State-respondents was disputed by the petitioners and by an order dated 06.05.2025, this Court granted time to learned counsel for the petitioners to obtain instructions if the petitioners were prepared to deposit a sum of Rs. 50,000/- towards security for cost, in case the submissions made on their behalf were found to be factually incorrect. The petitioners have already deposited a sum of Rs. 50,000/- before the Registrar General of this Court vide Demand Draft No. 365745 dated 19.05.2025, proof of deposit being annexed as Annexure No. 1 to the Misc. Application dated 25.05.2025 filed on their behalf.

6. During the course of proceedings, pursuant to an order dated 11.07.2025 passed on an application moved on behalf of the petitioners, respondent no. 9 Satish Chandra Jaiswal was permitted to be replaced by

another person, namely, Praveen Chauhan. Later on, various affidavits were exchanged in between the parties. A short counter affidavit has been filed on behalf of the District Excise Officer, Prayagraj (respondent no. 4) taking a stand that under United Provinces Excise Act, 1910, the Rules of 1968 have been framed and in so far as the case of **Manoj Kumar Dwivedi (supra)** is concerned, the State Government has amended the Rules bringing substitution in Rule 5(4) by way of **U.P. Number and Location of Excise Shops (4th Amendment) Rules, 2008**. As per the amended rules, the restriction for establishing of a liquor shop has been indicated as 50 metres in case of Municipal Corporation and 75 metres in case of Municipal Councils and Nagar Panchayat and 100 metres in other areas from any place of public worship or schools or residential colony.

7. It is further stated in the counter affidavit that the judgment of this Court in the case of **Bishop Johnson School and College (supra)** has been stayed by the Hon'ble Supreme Court in **SLP (Civil) No. 7551 of 2010** by order dated 22.03.2010 and the said SLP is still pending. As regards the factual aspects of the matter, a site plan of the locality has been annexed indicating different distances in between various roads and lanes and the stand taken is that under the Excise Policy for the year 2025-26, a terminology of the 'composite liquor shops' has been introduced and in so far as the concerned residential colony is concerned, the same has not been notified by the Nagar Nigam or Prayagraj Development Authority or any other competent legal entity of the State as a residential colony. It is further stated that the restrictions contained in the amended rules do not apply in an area designated as 'commercial' or 'industrial'.

8. Counter affidavit has also been filed by licensees of liquor shops, i.e. respondent nos. 7 and 8 stating therein that shops were allotted to them in consonance with the provisions of Rules, 1968 and the houses of petitioner nos. 1 and 3 are situated adjacent to the shops of respondent no. 8. Interim stay order passed by Hon'ble Supreme Court in the matter of **Bishop Johnson School and College (supra)** and few photographs of liquor shops have been annexed.

9. By filing rejoinder affidavit, contention raised by the respondents has been denied and the petitioners have maintained their stand that running of liquor shops of all the private respondents violates the distance restrictions imposed under the statutory rules and by annexing site plans/spot maps of the area, it is sought to be contended that distance between the residential houses in the colony and the established liquor shops fall within the prohibited limits imposed under the Rules.

10. Learned counsel for the parties have advanced arguments in consonance with the stand taken in the petition as well as various affidavits filed on their behalf and, therefore, reiteration of the submissions made is not required.

11. We have heard learned counsel for the parties and have perused the material available on record.

12. There is no dispute about the fact that the establishment of liquor shops is governed by Rules, 1968 which have been amended in the year 2008. Rule 5(4)(a) of the amended Rules prescribes the distance limits of such shops, as already noted above. For better understanding, relevant portion of the said rule is reproduced as under:-

> "5. Following principles shall be observed in determining the location and the sites for shops/sub-shops:-

(1) …….

(2) ……

(3) ……

(4)(a) No shop or sub-shop shall be licensed within a distance of 50 (fifty) metres in case of Municipal Corporation; within a distance of 75 (seventy-five) metres in case of Municipal Council and Nagar Panchayat; and within a distance of 100 (one hundred) metres in other areas from any place of public worship or School or hospitals or residential colony:

Provided that if any place of public worship, school, hospital, residential colony comes into existence subsequent to the establishment of shop or sub-shop, the provisions of this rule shall not apply;

Provided further that the distance restriction shall not apply in areas designated as "commercial" or "industrial" by the development authority/industrial development authority or other competent authority.

Explanation.- For the purpose of this rule:-

(i) "**Place of Public Worship" means a temple, math, mosque, gurudwara, church, which is, as the case may be, established or managed or owned by a Public Trust registered under the Charitable and Religious Trust Act, 1920 or under the Charitable Endowments Act, 1890 or by a society registered under the Societies Registration Act, 1860 or Wakf Board; or a gurudwara registered with competent authority and such other places of public worship as the State Government may by notification specify in this behalf from time to time.**

(ii) "School" means a pre-primary school, primary school, middle school, high school, inter college owned or managed or recognized by any local authority or the State or Central Government or any college affiliated to or established or managed by any University established by law.

(iii) "Hospital" means any hospital which is managed or owned by a local authority or the State or Central Government and includes any private hospital having a provision of at least 50 beds and is registered with urban or rural body,

(iv) "**Residential Colony" means a colony developed and constructed on legally held land of which maps have been duly approved by the competent authority recognized by law."**

13. A bare perusal of Rule 5(4) would indicate that apart from indicating the distance restrictions, the words 'place of worship', 'school', 'hospital' and 'residential colony' have also been defined. In the instant case, the main thrust of the petitioners is on the distance restrictions with reference to residential colony, i.e. Lal Colony/Karela Bagh Colony. As per the pleadings contained in the petition, the said colony was established by Labour Department and placing reliance on

few receipts indicating payment of rent to the Labour Department qua the quarters, submission has been made that the colony being a residential colony, the State-respondents were not justified in granting licence in favour of the private respondents in violation of the distance restrictions indicated in sub-rule (4)(a) of Rule 5.

14. About the aforesaid colony, stand taken by the State-respondents is that the same has not been notified by Nagar Nigam or Prayagraj Development Authority or any other competent legal entity of the State as a residential colony and they have relied upon a communication made by the Development Authority on 02.07.2025 addressed to the Excise Inspector, Sadar, Sector-1, Prayagraj that the area indicated by the petitioners is affected by the revised master plan of 2031 and certain distances from road and proposed market street have also been indicated in the communication.

15. In the aforesaid background of facts, a look at the definition of '**residential colony'** as contained in Explanation (iv) of Rule 5(4)(a), it is noticed that in order to apply distance restrictions indicated in sub-rule (4)(a), a residential colony must be a colony developed and constructed on a legally held land of which maps have been duly approved by the competent authority recognized by law. The Court cannot, in absence of any material on record, assume that any residential structures, in whatever form they exist in a particular area, would fall within the definition of 'residential colony' so as to apply distance restrictions in so far as establishment of liquor shops or granting licence qua them is concerned.

16. We find that except annexing few rent receipts and making a submission that since the colony was established by Labour Department,

it falls within the definition of ‘residential colony’, no other material has been placed before us by which it can be presumed that the colony had been developed and constructed on legally held land of which maps have been duly approved by the competent authority recognized by law so as to bring the structures strictly within the definition of ‘residential colony’ for the purposes of the case in hand. It may be true that the Labour Department had allegedly established the colony, [although there is no evidence even to that effect except that the rent receipts contain a heading ‘श्रम (गृह) विभाग, उत्तर प्रदेश, रसीद (किराया मकान तथा अन्य भुगतान)’], but there is no other material on record to indicate that the colony was established on a legally held land and in respect of constructions, maps had been duly approved by the competent authority recognized by law.

17. The said aspect assumes significance for the reason that the photographs which have been placed on record by both sides in the form of Annexures to the affidavits, do not at all indicate that any residential colony worth the name is in existence. Rather the photographs depict that the liquor shops have been established near or adjacent to one or the other residential house or commercial establishment. Some spot maps/site plans annexed to the affidavits indicate various commercial activities in the locality in the name of Jazz Studio, Pappu Traders, Furniture Shops, Singh General Store, Prayag General Store, Maa Eye Care Centre, CS Homeo Pharmacy etc and, therefore, we have serious doubts regarding the status of the locality as ‘residential colony’ otherwise commercial activities in the locality which too are governed by one or other statutory restrictions, could not have been permitted.

18. This Court, while examining a challenge laid by the petitioners with reference to Rules, 1968, amended upto date, has to draw a distinction between a **'residential house'** and **'residential colony'** and in absence of any cogent evidence on record to infer that the liquor shops have been established in violation of the restrictions imposed by Rules, the scattered residential houses also termed as 'quarters', where commercial establishments also exist, cannot be treated as 'residential colony' as defined in Explanation (iv) of sub-rule (4)(a) of Rule 5.

19. We may now examine the submissions made on behalf of the petitioners qua violation of distance restrictions in relation to Shiv Temple situated in the locality. To that effect, the only pleading is contained in paragraph no. 3 of the petition wherein it is stated that the liquor shops have been opened nearly 50-60 metres from the 'प्राचीन शिव मंदिर' situated at opposite side road. There is no photograph of the temple annexed either to the petition or to any other affidavit on record and qua the said temple, one application dated 25.03.2025 submitted by Shri Ram Leela Samiti of Guru Teg Bahadur Nagar (Kareli), Prayag addressed to the District Magistrate is there as Annexure No. 7 to the petition wherein it is stated that the shop which is functional for the last 20-25 years is situated at a distance of 10 metres from Shiv Temple which is existent since 1935.

20. As we have discussed the meaning and import of a 'residential colony' in relation to the controversy involved in the present case, in the same manner reference may be made to the Explanation (i) of sub-rule (4)(a) of Rule 5 which defines '**place of public worship'**, as already quoted hereinabove. There is nothing on record to indicate that the concerned Shiv Temple is a temple established or managed or owned by

a public trust registered under the Charitable Religious Trust Act,1920 or under the Charitable and Endowments Act, 1890 or by a society registered under Societies Registration Act, 1860 and, therefore, a bare statement contained in an application that the temple exists in the locality since 1935 and in absence of any specific material in consonance with the requirements of Explanation (i), we are not inclined to apply the distance restrictions qua the Shiv Temple also and decline to interfere with the matter on that count too.

21. As far as the judgment of this Court in the case of **Bishop Johnson School and College (supra)**, this Court, after interpreting Rule 5(4) of the Rules, 1968, had struck down the same by holding it as violative of Article 14 of the Constitution of India, however, the said order has been stayed by the Hon'ble Supreme Court on 22.03.2010 in **SLP (Civil) No. 7551 of 2010** which is pending and, therefore, we cannot make any observation in that regard in this case. We are deciding this case in the light of existing provisions of amended Rules and are of the view that the petitioners have utterly failed to establish beyond reasonable doubt that the distances indicated by them from one or the other residential structure(s) or the Shiv Temple, violate the statutory mandate.

22. Apart from the above, the material on record indicates that the shops are situated in the area for the last several decades and as per the excise policy of the State-respondents, the licences are granted/renewed on periodical basis. In this view of the matter, merely because under the latest Excise Policy of the year 2025-26, licences have been granted/renewed, the same would not be treated as violation of distance restrictions imposed under the Rules and challenge in that regard on the

pleas raised, is otherwise found to be highly belated. Further, material on record indicates that some personal interest of one or other petitioner and/or their personal grudge with one or the other private respondent may be involved in the matter, particularly when the allegations of charging higher rent have been made in paragraph no. 21 of the petition and in the counter affidavit filed on behalf of respondent nos. 7 and 8, indications have been made regarding close proximity of the premises of some petitioners and some private respondents and user of commercial activities like charging station and, in view of the existence of commercial nature of the establishments on the spot, we are satisfied that the petitioners have failed to bring their case within the four corners of above referred statutory provisions/involving public interest.

23. In view of the above discussion, we are not inclined to issue any direction in the matter however, while dismissing the petition, we may observe that since pursuant to the order passed by this Court, the petitioners have deposited a sum of Rs. 50,000/- before the Registrar General of this Court and have genuinely contested the matter as per their case, they should not be financially penalized and, therefore, the amount deposited by them is entitled to be refunded to them in accordance with law.

24. Accordingly, the writ petition is **dismissed**, however, the amount of Rs. 50,000/- deposited by the petitioners before this Court, vide Demand Draft No. 365745 dated 19.05.2025, shall be refunded to them immediately on moving an application by them before the Registrar General of this Court.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

October 30, 2025
AKShukla/-

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad