HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9125/2025

Tulachhi wife of Dhanraj, aged about 30 years, resident of Gangala Barmer Rajasthan 344001

----Petitioner

Versus

1. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat, Jaipur.
2. Commissioner, Excise Department, Government of Rajasthan, 2, Gumaniwala, Panchwati, Udaipur, Rajasthan.
3. District Excise Officer, Barmer.

----Respondents

For Petitioner(s)	:	Mr. Shubham Modi, Advocate
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG
For Applicant(s)	:	Dr. Laxman Singh Bhati, Advocate

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE SANDEEP SHAH

Order

04/07/2025

Per, S. Chandrashekhar, J:

I.A. No.1/25:-

This application under Order I Rule 10 of Code of Civil Procedure has been filed by Bhakhar Singh seeking his impleadment in the present writ petition.

2. The applicant states that he is running a restaurant and obtained a license for Beer Bar in the name and style of Yaduraj Restaurant. The grievance of the applicant is that the writ petitioner is running a liquor shop unauthorizedly from her warehouse. According to the applicant, such unauthorized use of

the warehouse is causing difficulties for him to run his Beer Bar. In the application vide I.A. No.1/2025, the applicant states and makes the following allegations:-

> "3.*That it is relevant to submit hee that applicant is running a restaurant cum ber var for which he have been issued license by the excise department. That is petitioner is having a warehouse near the bar of the applicant which is used as a liquor shop unauthorized and in illegal manner. The petitioner is using his warehouse as a liquor shop and counter sell the liquor after the time prescribes by the excise department and even using the warehouse as a liquor shop illegally.*
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> 4. *That is further it is pertain to mention here that as warehouse of the petitioner is situated nearby bar of the applicant and because of this applicant is facing a great trouble to run his bar as petitioner is using his warehouse as a liqour shop and selling the liquor after the prescribe time by the excise department.*
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> *5. That is further applicant submitted a complaint regarding the warehouse which have been used by the petitioner for unauthorized and illegal counter sell of the liquor also. Petitioner is using his warehouse as a liquor shop in unauthorized and illegal manner and selling liquor on the counsel and after the time period prescribed by the Rajasthan excise department illegal. Due to all these circumstances applicant is facing great hardship and trouble and willsuffer irreparable loss and facing a great trouble to run his bar as the ware house of the petitioner is situated at nearby and petitioner using it as a wine shop unauthorized and in illegal manner. The photos regarding counter sell of the liquor from the ware house unauthorized and in illegal manner after time prescribed time period are also submitted herewith and marked as Annexure-2.*"

3. Having regard to the settled position in law for entertaining an application under Order I Rule 10 of the Code of Civil Procedure, we are not inclined to entertain this application for impleadment filed by Bhakhar Singh.

4. In "*Udit Narain Singh Malpahariya v. Additional Member Board of Revenue, Bihar and Anr.*" (1962) SCC OnLine SC 130, the Hon'ble Supreme Court held as under:-

> "**7.** *To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.*"

5. In view thereof, we hold that the applicant, namely, Bhakhar Singh is neither a necessary party nor a proper party who needs to be impleaded as a party respondent in the present proceeding and, accordingly, I.A. No.1/2025 is dismissed.

I.A. No.2/25:-

This application under Order I Rule 10 of Code of Civil Procedure has been filed by Bhawani Singh seeking his impleadment in the present writ petition.

2. The applicant states that he is running a wine shop at shop no.5, Nagar Parishad, Barmer. The grievance of the applicant is that the writ petitioner is running a liquor shop unauthorisedly from her warehouse. According to the applicant, such unauthorized use of the warehouse is causing difficulties for him to run his shop. In the application vide I.A. No.2/2025, the applicant states and makes the following allegation:-

> "*3. That is it is relevant to submit here that applicant is the complainant and aggrieved party in this case as he made complaint against the present petitioner regarding his warehouse which is situated n 180 meter distance from the wine shop of the applicant which is against Rajasthan excise and temperance policy 2025-2029. The copy of the Rajasthan excise and temperance policy.2025-2029 is also submitted herewith and marked as Annexure-2.*
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> *4. That it is further it is pertain to mention here that as warehouse of the petitioner is situated nearby wine shop of the*

applicant i.e. at 180 meter distance and because of this applicant is facing a great trouble to complete his target which have been given by excise department and if he failed to go so he will have to deposit 1.5 time penalty by not completing the target which have given by Excise Department.

5. That is further applicant submitted a complaint regarding the warehouse which have used by the petitioner for unauthorized and illegal counter sell for the liquor also. Petitioner is using his warehouse as a liquor shop in unauthorized and illegal manner and selling liquor on the counter and after the time period prescribed by the Rajasthan excise department illegal. Due to all these circumstances applicant is facing great hardship and trouble and will suffer irreparable loss and facing a great trouble to complete his target which have been given by the excise department as the warehouse of the petitioner is situated at only 180 m and petitioner using it as a wine shop unauthorized and in an illegal manner. The photos regarding counter sell of the liquor from the warehouse unauthorized and in illegal manner after time prescribed time period are also submitted herewith and marked as Annexure-3.

6. That looking to the above mentioned facts applicant is to be required to be heard because applicant is the complainant who gave complaint regarding illegal and unauthorized use of the warehouse as a liquor shop by the petitioner and also mentioned the distance of divine shop and warehouse which is only 180 m and which is against the Rajasthan excise and temperance policy 2025-2029. Thus, applicant is required to be added as being treated is necessary party for proper adjudication of said writ petition."

3. Having regard to the decision in "*Udit Narain Singh Malpahariya v. Additional Member Board of Revenue, Bihar and Anr.*" (1962) SCC OnLine SC 130, we are not inclined to entertain this application for impleadment filed by Bhawani Singh as he is neither a necessary party nor a proper party who needs to be impleaded as a party respondent in the present proceeding and, accordingly, I.A. No.2/2025 is dismissed.

D.B. Civil Writ Petition No. 9125 of 2025:-

To lay a challenge to the provision under clause 2.12.3 of the Rajasthan Excise and Temperance Policy 2025-2029, the present writ petition has been filed by a person who obtained a license on 12th April 2022 to operate a liquor shop.

2. The petitioner states that she is engaged in liquor retail business and was granted privilege of operating the liquor shop located in urban area at Barmer. The license granted to the petitioner for operating the liquor shop was renewed in the subsequent years for 2023-24 and 2024-25. On her application for a warehouse for the storage and distribution of the liquor, the permission was granted under clause 2.7.3 of the Rajasthan Excise and Legal Temperance Policy, 2024-25 (in short, Excise Policy 2024-25) for setting up a godown at Krishna Complex, Barmer. This permission to set up the godown was granted on 07th August 2024 on the recommendation of the Excise Inspector.

3. The provision under clause 2.7.3 of the Excise Policy, 2024-2025 provided as under:-

> *"मदिरा भंडारण के लिये राशि रुपये 2 लाख वार्षिक फीस जमा कराने पर प्रत्येक दुकान हेतु एक गोदाम की अनुमति दी जा सकेगी। राशि रुपये 5.00 लाख की वार्षिक फीस पर एक अतिरिक्त गोदाम भी स्वीकृत कराया जा सकेगा। इसमें शहरी क्षेत्र में अपने विक्रय काउंटर (दुकान) के 100 मीटर परिधि में तथा ग्रामीण क्षेत्र में सुविधानुसार दुकान के निर्धारित क्षेत्र में गोदाम अनुमत किया जा सकेगा, परंतु दुकान के लिये स्वीकृत गोदाम की अवस्थिति पड़ोस के अन्य समूहों के लिये स्वीकृत गोदाम/दुकान से न्यूनतम 1 किलोमीटर की दूरी से कम दूरी पर स्वीकृत नहीं किया जायेगा। शहरी क्षेत्र की दुकान का गोदाम उनकी पड़ोस की गोदाम/दुकान से न्यूनतम 50 मीटर की दूरी से कम दूरी पर स्वीकृत नहीं किया जा सकेगा।"*
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> English Translation
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> *"For liquor storage, one warehouse will be permitted for each shop upon depositing an annual fee of ₹2 lakhs. An additional warehouse can also be approved upon depositing an annual fee of ₹5 lakhs. In urban areas, the warehouse will be permitted within a 100-meter radius of the sales counter (shop), and in rural areas, it will be permitted within the designated area of the shop for convenience. However, a warehouse approved for a shop will not be approved if its location is less than 1 kilometer from a warehouse/shop approved for another neighboring group. For*

> *shops in urban areas, a warehouse will not be approved if its location is less than 50 meters from a neighboring warehouse/shop*."

4. A similar provision has been prescribed under the new Excise Policy of 2025-2029 under clause 2.12.3 except a modification in the distance requirement compared to as prescribed previously.

5. On completion of the prescribed period for the license, the petitioner made an application for renewal of the license for operating the liquor shop for the year 2025-2029 and deposited the requisite amount of Rs.2,00,000/- vide GRN No.0102971572 on 27th March 2025. The petitioner states that she deposited the requisite annual warehouse fee also for the period 2025-26 and has been conducting business operations in strict adherence to the terms and conditions under the license and the Excise Policy. By producing documents vide Annexure-7 and Annexure-8, the petitioner apprises this Court that the application for renewal of the license for the liquor shop has been granted. She further states that the application for renewal of the warehouse has been "auto-approved" on the basis of the fact that the warehouse was validly allotted in previous year and was in lawful use and under her occupation. The relevant provision under clause 2.12.3 which according to the petitioner violates her constitutional rights reads as under:-

> "2.12.3 *मदिरा भण्डारण के लिये राशि रुपये 2.00 लाख वार्षिक फीस जमा कराने पर दुकान हेतु एक गोदाम की अनुमति दी जा सकेगी। राशि रूपये 5.00 लाख की वार्षिक फीस पर 1 अतिरिक्त गोदाम भी स्वीकृत कराया जा सकेगा। इसमें शहरी क्षेत्र में अपने विक्रय काउंटर (दुकान) के 100 मीटर परिधि में तथा ग्रामीण क्षेत्र में सुविधानुसार दुकान के निर्धारित क्षेत्र में गोदाम अनुमत किया जा सकेगा, परन्तु दुकान के लिये स्वीकृत गोदाम की अवस्थिति पड़ोस की अन्य दुकान या समूह के क्षेत्र से न्यूनतम 3 किलोमीटर की दूरी से कम दूरी पर स्वीकृत नहीं की जाएगी। शहरी क्षेत्र के दुकान का गोदाम उनके पड़ोस की*

दुकान या समूह के क्षेत्र से न्यूनतम 500 मीटर की दूरी से कम दूरी पर स्वीकृत नहीं जा सकेगा।"

English Translation:-

"2.12.3 *For liquor storage, an annual fee of ₹2.00 lakh must be deposited. Additionally, a warehouse can be approved for ₹5.00 lakh annually per shop. Apart from this, one additional warehouse can also be approved upon payment of an annual fee, provided it is within a 100-meter radius in urban areas or within the premises of the shop in rural areas.*
In urban areas, the warehouse must be established only at the designated location assigned for the shop as per convenience. However, the approved warehouse for the shop must not be located within a minimum distance of 3 kilometers from another shop or the area of another group. In urban areas, a warehouse for the shop cannot be approved at a distance of less than 500 meters from neighboring shop/cluster of shop."

6. Mr. Shubham Modi, the learned counsel for the petitioner has strenuously argued that it is quite impossible that the petitioner would maintain the distance of 500 meters for her godown from the other shops as prescribed under the later portion of clause 2.12.3 of the Excise Policy of 2025-29. The learned counsel for the petitioner has prepared a chart to demonstrate how it is not only difficult rather impossible to comply with the condition as prescribed under clause 2.12.3, which is taken on record. The learned counsel for the petitioner further submits that the drastic change in distance requirement compels the license holders to relocate their warehouses at exorbitant costs and, in turn, would make it impossible to sustain the business in urban areas. With reference to the show-cause notice dated 24th April 2025, the learned counsel for the petitioner submits that the sudden and abrupt policy shift takes away the legitimate expectation of the

petitioner who conducted business operations as per the old policy.

7. In the short reply filed by the respondents as directed vide order dated 21st May 2025, the respondents have stated as under:-

> "2.*That it is submitted that in order to prevent the illegal business of liquor and monopoly on liquor business in the area of the unlifted shops due to unhealthy competition amongst the liquor shops, there remains a possibility of loss of revenue to the State exchequer, the State Government has made specific provisions regarding the location of shops and warehouse in point no.2.12 of the Rajasthan Excise and Liquor Control Policy year 2025-2029. It is further submitted that the petitioner has been given a proposal/offer by the department for renewal of the liquor vend shop, thereafter petitioner by agreeing to the provisions made in point no.2.12 of the Excise Policy, the department has accepted and a legal contract has been executed between the petitioner and department, hence it was not mandatory for the petitioner to get the liquor shop license renewed, event the petitioner had the freedom to get it renewed or not. Since the liquor license has been issued and the contract has been executed between the petitioner and department, hence objection in this regard is no longer maintainable. It is further submitted that in the excise policy, the clause for 500 meter criteria between the location of warehouse and the neighboring liquor shops/group has been inserted to secure the revenue of the State, to prevent unhealthy competition amongst the licensees, and to prevent the nature of monopoly in liquor business. It is further submitted that the locations related provision of the Excise and Liquor Control Policy 2025-2029 is applicable to all the licensee of the State. The said provision is not for any specific licensee or one specific district but for all the licensees of the State equally applicable, therefore, there is no violation of Article 14 and 19(1)(2) of the Constitution. The State Government on dated 26.01.2025 has announced the Excise Policy to the implemented from the financial year 2025-26 (w.e.f 1st April 2025).*"

8. The anxiety of the petitioner emanates from the complaint dated 11th February 2025 lodged by Bhawani Singh who has been granted license for liquor shop no.5. On the complaint of Bhawani Singh that warehouse of the petitioner breaches the distance criteria under the Excise Policy of 2025-29, an inquiry was conducted and the Excise Inspector, Barmer gave the investigation

report dated 23rd April 2025. Based on the recommendation in the investigation report dated 23rd April 2025 for canceling the permission granted to the petitioner for the warehouse because it is situated within 500 meters of shop no.5, the District Excise Officer has issued a show-cause notice on 24th April 2025 requiring the petitioner to submit her reply within seven days. In the aforesaid background, the petitioner lays a challenge to the requirement of maintaining a distance of 500 meters under clause 2.12.3 of the Excise Policy, 2025-29 on the ground that such condition infringes the fundamental rights guaranteed to her under Article 14 and Article 19 (1) (g) of the Constitution of India. The petitioner submits that imposing the condition for maintaining distance between from the shop to the godown of another vendor from 50 meters to a staggering 500 meters is irrational and arbitrary whereas the excise policy should have been founded on justifiable classification and should not arbitrarily disrupt the established business practices. According to the petitioner, the sudden and sweeping increase in distance requirement seriously impacts the business operation in urban areas where the space crunch would make compliance of mandatory 500 meters restriction not only challenging but practically unfeasible. In essence, the grievance of the petitioner is with respect to the prescription that a godown for the excise shop cannot be sanctioned within 500 meters of the adjoining / neighboring shop or cluster of shops.

9. The trade in liquor has been the subject matter in a series of litigations. Right from the decision in "*State of Bombay v. F.N. Balsara" (*1951) SCC 860 wherein the Hon'ble Supreme Court

upheld the prohibition on portable liquor, the decision in "*Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.*" (1995) 1 SCC 574 specifically held that no citizen has the fundamental right to trade in liquor. According to the petitioner, the condition prescribed under clause 2.12.3 of the Excise Policy 2025-2029 is impossible to fulfill and thereby her right to carry on trade and business as guaranteed under the Article 19 (1) (g) of the Constitution of India has been taken away. However, this is relevant to indicate that mere hardship is not a ground to lay a challenge to a provision in law which has been enacted by the competent legislature or a rule framed under executive power. A provision under a validly enacted rule can be challenged on the ground of (a) competence or (b) violation of a constitutional provision. This is a settled proposition in law that hardship may be caused to certain persons or a group of persons by operation of law but that shall not be a ground to hold a validly enacted law/rule violative of the equality clause under Article 14 of the Constitution of India. The plea urged on behalf of the petitioner that by prescribing the condition as provided under clause 2.12.3 her right to carry on business as guaranteed under Article 19 (1) (g) of the Constitution of India has been breached cannot be accepted as the said condition would be uniformly applied to all fresh applications. Therefore, we are not inclined to accept the submission that the condition of maintaining a distance of 500 meters as prescribed under clause 2.12.3 is impermissible.

10. For the sake of fullness, we would indicate that the petitioner's anxiety seems unnecessary and not founded on any valid ground. The tenor in the writ pleadings indicates that the

petitioner rushed to this Court apprehending that the permission for warehouse may be canceled and renewal for the warehouse may not be granted (grounds D & G). The petitioner obtained permission for the warehouse in the year 2024 and, as pleaded by the applicants in I.A. Nos.1/25 and 2/25, the same is located at a distance more than 50 meters away from their shops. The respondents have pleaded that the liquor license granted to the petitioner has already been issued and a contract has been executed between the petitioner and the Department. Not only there is no ground to challenge clause 2.12.3 of Excise Policy 2025-29, on a mere apprehension that renewal for the warehouse may not be granted by applying the new policy the petitioner cannot maintain the present writ petition. This is the case pleaded by the petitioner that her godown is pre-existing from the year 2024 and, if that is so, the condition under clause 2.12.3 that an application for establishing a godown shall not be granted within 500 meters of adjoining / neighboring shop shall not come in way of the petitioner. The expressions "cannot be approved" and "neighboring shop/cluster of shops" clearly indicate that such condition shall be applied to the fresh application seeking permission to set up a new godown. This provision under the Excise Policy, 2025-2029 shall be applicable for the fresh application for setting up a godown and not to the holder of a pre-existing godown. It is too well settled that a new policy would operate prospectively and the persons carrying on business in a legal manner under the old policy cannot be subjected to rigors of the new policy as provided under clause 2.12.3.

11. As to validity of the show-cause notice dated 24th April 2025, we are inclined to observe that the District Excise Officer, Barmer is not bound by the recommendation of the Excise Inspector as indicated in the inspection report dated 23rd April 2025 and the apprehension of the petitioner is pre-mature. However, she is at liberty to approach this Court in the in the event an adverse decision is rendered by the District Excise Officer, Barmer pursuant to the show-cause notice dated 24th April 2025.

12. D.B. Civil Writ Petition No.9125 of 2025 is disposed of with the above observations.

(SANDEEP SHAH),J **(SHREE CHANDRASHEKHAR),J**

11-Anshul/-

A.F.R