

ITEM NO.105

COURT NO.8

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 3790/2011

THE STATE OF UTTAR PRADESH & ORS.

Appellant(s)

VERSUS

BISHOP JOHNSON SCHOOL AND COLLEGE & ORS.

Respondent(s)

WITH

C.A. No. 3789/2011 (III-A)

Date : 28-01-2026 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) : Mr. Hardeep Singh Anand, AOR

Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Samar Vijay Singh, AOR
Ms. Sabarni Som, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Gaj Singh, Adv.
Mr. Nishant Singh, Adv.
Mr. Keshav Mittal, Adv.

For Respondent(s) : Ms. Bharti Tyagi, AOR

Mr. Vikash Kumar, Adv.

Mr. Samar Vijay Singh, AOR

Mr. Hardeep Singh Anand, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Respondent-institution in both the appeals is unrepresented. Appellant-Sonkar in the connected appeal is also unrepresented.
2. Mr. Dinesh Dwivedi, learned senior counsel for the appellant-State of Uttar Pradesh in the lead appeal, submits that the respondent-institution and the appellant-Sonkar may no longer be interested in defending/pressing the appeal

because in terms of the judgment and order dated 02.02.2010¹ impugned in the appeals, the liquor shop of the appellant-Sonkar has been shifted beyond the prohibited distance and, therefore, no grievance of theirs survives for being redressed. However, Mr. Dwivedi submits that the impugned order has struck down a rule framed by the executive on the ground of unconstitutionality and that he would attempt to persuade us hold in favour of constitutionality of the rule.

3. In course of hearing of the appeals, we have found that the High Court of Allahabad while disposing of Civil Misc. Writ Petition No. 39914 of 2009 *vide* the impugned order striking down Rule 5(4) of the Uttar Pradesh Number and Location of Excise Shops Rules, 1968², as amended by the Uttar Pradesh Number and Location of Excise Shops (Fourth Amendment) Rules, 2008, held as under:

"In amending Rule 5(4), it cannot be said that State has breached the judgment of the Apex Court or has committed contempt of the Apex Court. The question as to whether the amended Rules are valid or not, is another question which shall be separately considered hereunder."

4. The judgment referred to in the aforesaid excerpt is the decision of this Court in ***State of Uttar Pradesh and Ors. Vs. Manoj Kumar Dwivedi and Ors.***³.

5. The question emerging for an answer in ***Manoj Kumar Dwivedi*** (supra) required proper interpretation of Rule 5 (4) of the 1968 Rules. Sub rule (4) read as follows:

"(4) No new shop or sub-shop shall be licensed in close proximity to a place of public resort, school, hospital, place of worship or factory, or to

¹ impugned order

² 1968 Rules

³ (2008) 4 SCC 111

the entrance to a bazar or a residential colony. All objections to the licensing of a shop or sub- shop made by persons affected, shall receive full consideration."

6. The order of the High Court, impugned before this Court in **Manoj Kumar Dwivedi** (supra), had taken note of the said provision and had directed that all the licensed shops, which were operating in close proximity to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony, shall be closed with immediate effect. As a result of the orders passed by the High Court, more than 50 liquor shops were closed in Gomti Nagar area of Lucknow. However, upon hearing the parties finally, the High Court fixed the distance of 100 m. or 300 ft. (approximately) within which no liquor shop was to be opened close to a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony.

7. Upon hearing the Special Leave Petition(s) which was/were carried from such order, this Court made certain pertinent observations in **Manoj Kumar Dwivedi** (supra). The relevant passage reads as follows:

"11. We fully agree with the view taken by the High Court and we are also of the view that 100 meters or 300 ft. (approx.) should be the right criteria where the Excise Commissioner shall not give any license to a shop under the Excise Act. We hope and trust that the Excise Commissioner of the State shall take into consideration sub-rule (4) of Rule 5 of the U.P. Excise Rules and see that no shops or sub-shops are opened within radius of 100 meters or 300 ft. (approx.) of a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony. The interpretation of the word 'close proximity' was vague therefore it was misused by the authorities. But, now the matter has been placed beyond any vagueness. Therefore, with the interpretation of the expression 'close proximity' by the High Court, the matter has been put in the right perspective and the doubt has

been cleared. Therefore, taking into consideration all the facts and circumstances of the case, we affirm the view taken by the High Court insofar as fixing the distance of 100 meters or 300 ft. (approx.) from a place of public resort, school, hospital, place of worship or factory, or to the entrance to a bazar or a residential colony where no shop or sub-shop shall be opened under the U.P. Excise Act and Rules framed thereunder."

8. At the same time, we have noted that this Court did not approve the approach of the High Court in closing the shops without issuing notice to the affected parties.

9. What undoubtedly and unambiguously emerges from the above passage in ***Manoj Kumar Dwivedi*** (supra) is that this Court found 100 m. or 300 ft. (approximately) to be the right criteria.

10. However, the State by introducing an amendment to Rule 5(4) of the 1968 Rules (which was impugned before the High Court) reduced the minimum distance from 100 m. to 50 m. insofar as Municipal Corporation area is concerned and to 75 m. in areas under Municipal Councils and Nagar Panchayats.

11. We are *prima facie* of the view that the State of Uttar Pradesh has overreached the judgment of this Court and the High Court was in error in returning a contrary finding.

12. We are conscious that such contra-finding is not subjected to challenge. This is because the respondent-institution's interest has been protected. However, we cannot stand by and allow any illegality to be continued. A binding judgment of this Court is sought to be made ineffective by a rule making authority without removing the basis thereof.

13. Since the matter has serious public interest at its core, we *suo motu* issue notice to the State of Uttar Pradesh to show cause why Rule 5(4) of the 1968

Rules (as amended) should not be struck down on the ground of legislative overreach, by filing a reply affidavit within seven days from date.

14. Mr. Samar Vijay Singh, advocate-on-record assisting Mr. Dwivedi, accepts notice. Hence, formal service of notice is dispensed with.

15. List on 05.02.2026 for considering the State's explanation.

(LOKESH ARORA)
SENIOR PERSONAL ASSISTANT

(MANOJ KUMAR)
COURT MASTER (NSH)