

THE STATE OF TAMIL NADU REP. BY SEC. AND ORS A

v.

K. BALU AND ANR.

(MA Nos 489-491/2018, 366-368/2018, 392-394/2018, 395-397/2018,  
388-390/2018, 1543-1545/2017, 1546-1548/2017 and 1549-1551/2017) B

IN

(Civil Appeal Nos. 12164-12166 of 2016)

FEBRUARY 23, 2018

**[DIPAK MISRA, CJI, AMITAVA ROY AND  
DR. D. Y. CHANDRACHUD, JJ.] C**

*Liquor – Sale of – In the order passed by Supreme Court on 11.7.2017, it was observed that the purpose of the directions contained in the order dated 15.12.2016 is to deal with the sale of liquor along and in the proximity of highways, which provide connectivity between cities, towns and villages – The order did not prohibit licensed establishments within municipal areas – This Court further clarified in the order that it will govern other municipal areas as well – In the subsequent order dated 13.12.2017, liberty was granted to the licence holders to submit a representation to the state government that the same principle should apply to the licensed establishments of the petitioners, as they applied to municipal areas – Having regard to these directions, the state governments would not be precluded from determining whether the principle which has been laid down by this Court in order dated 11.7.2017 should also apply to areas covered by local self-governing bodies and statutory development authorities – 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 11.7.2017 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 –* D  
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- A *The use of the expression 'municipal areas' in order dated 11.7.2017 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 – It is left 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 – MAs/IAs disposed of.*

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*State of Tamil Nadu v. K Balu [2016] 11 SCR 244 : (2017) 2 SCC 281; Arrive Safe Society of Chandigarh v. The Union Territory of Chandigarh SLP (C) No.10243 of 2017; APSRTC v. Abdul Kareem [2007] 1 SCR 888 : (2007) 2 SCC 466; Cine Exhibitions Private Limited v Collector, District Gwalior (2012) 6 SCC 698; Hotel Sonai Beer Bar and Permit Room v State of Maharashtra SLP (C)No 19845/2017 – referred to.*

**Case Law Reference**

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|---|--------------------------|--------------------|---------------|
|   | <b>[2016] 11 SCR 244</b> | <b>referred to</b> | <b>Para 1</b> |
|   | <b>[2007] 1 SCR 888</b>  | <b>referred to</b> | <b>Para 4</b> |
| E | <b>(2012) 6 SCC 698</b>  | <b>referred to</b> | <b>Para 4</b> |

CIVIL APPELLATE JURISDICTION : MA Nos. 489-491/2018, 366-368/2018, 392-394/2018, 395-397/2018, 388-390/2018, 1543-1545/2017, 1546-1548/2017 and 1549-1551/2017 in Civil Appeal Nos. 12164-12166 of 2016.

- F From the Judgment and Order dated 25.02.2013 and 28.03.2013 of the High Court of Judicature at Madras in Writ Petition No. 23773 of 2012, M. P. Nos. 9 and 10 of 2013 in Writ Petition No. 23773 of 2012.

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Abhishek Manu Singhvi, Sr. Adv, Roy Abraham, Ms. Seema Jain, Ms. Reena Roy, Himinder Lal, P.N. Goswami, Ms. Pranita Shekhar, Pawan K. Sharma, Shashi Ranjan, Dharmendra Kumar Sinha, Dr. Manish Singhvi, Satyendra Kumar, Shailja Nanda Mishra, Irshad Ahmad, Ashutosh Dubey, Krishnendu Sarkar, Ms. Rajshri, Abhishek Chauhan, V. S. Rawat, Sushil Pandey, Ms. Kuljit Kaur, Pragyan Pradip Sharma, Ms. Anandini Kumari, P. V. Yogeswaran, R. B. Phookan, Ms. Neha Tandon, Shailesh Madiyal, M. Yogesh Kanna, Yash Pal Dhingra, Ms. Nandini Sen

Mukherjee, Ajay Marwah, Irshad Ahmad, Advs. for the Appellants. A

S.S. Shamsbery, AAG, C. L. Pandey, Sr. Adv., Ms. Binu Tamta, S.S. Rawat, Hemant Arya, G.S. Makker, Amit Sharma, Sandeep Singh, Ankit Raj, Ms. Indira Bhakar, Ms. Ruchi Kohli, Manish Kaushik, Ms. Ananya Pandey, Dipesh Sharma, Yash Pal Dhingra, G. Prakash, Jishnu M. L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Vijay Shankar V. L., S. Thananjayan, Kaleeswaram Raj, Suvidutt M.S., Ajay Marwah, Advs. for the Respondents. B

The Order of the Court was delivered by

**DR. D. Y. CHANDRACHUD, J.** 1. This batch of MAs/IAs arises from the judgment dated 15 December 2016 rendered by this Court in **State of Tamil Nadu v K Balu**<sup>1</sup> and the subsequent orders dated 31 March 2017 and 11 July 2017. The last of the above orders was delivered in -----**Arrive Safe Society of Chandigarh v The Union Territory of Chandigarh** <sup>2</sup>. C D

2. Though the reliefs which have been sought in the individual MAs/IAs may differ, during the course of the hearing there is a broad consensus that for the purpose of the present proceedings, it would be sufficient if this Court were to interpret paragraph 7 of the order dated 11 July 2017. Paragraph 7 is extracted below: E

“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.” F

3. Learned counsel submitted that the expression ‘municipal areas’ in the above paragraph was not intended to exclude areas within the jurisdiction of local self-governing bodies. Many of them, it is urged, may be developed in a manner similar to municipalities. Others, may be geographically proximate to an urban agglomeration. Hence it was urged G

<sup>1</sup> Civil Appeal 12164-12166/2016

<sup>2</sup> Special Leave Petition (C) No.10243 of 2017 H

A that an appropriate direction may be issued to obviate uncertainties in application, occasioning the need for repeated recourse to this Court or, as the case may be, litigation in the High Courts.

4. The application has been opposed by one of the contesting intervenors who placed reliance on the decisions of this Court in **APSRTC v Abdul Kareem**<sup>3</sup> and **Cine Exhibitions Private Limited v Collector, District Gwalior**<sup>4</sup>. It has been urged that an application for modification or clarification of a judgment would fall within the realm of a review and hence the present applications would not be maintainable.

5. Dealing with the above objection, the learned counsel appearing on behalf of the applicants submit that they seek neither a review nor a modification of the orders passed by this Court. The attention of the Court was drawn to an order dated 13 December 2017 passed by this Court in Writ Petition (C) Nos 964/2017 and 1050/2017 in the following terms:

D “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 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. With the aforesaid directions and liberty, the writ petitions stand disposed of.”

The submission is that it will suffice if permission is granted to the state governments to determine whether the applicants and similarly placed individuals are governed by the principle which was laid down by this Court in relation to municipal areas.

6. In **Cine Exhibitions Private Limited** (supra) a bench of two learned Judges comprising of Justice KSP Radhakrishnan and Justice Dipak Misra, (as the learned Chief Justice then was) held thus:

<sup>3</sup> (2007) 2 SCC 466

H <sup>4</sup> (2012) 6 SCC 698

“Generally an application for correction of a typographical error or omission of a word, etc. in a judgment or order would lie, but a petition which is intended to review an order or judgment under Order 47 Rule 1 of the Code of Civil Procedure and in criminal proceedings except on the ground of an error apparent on the face of the record, could not be achieved by filing an application for clarification/modification/recall or rehearing, for which a properly constituted review is the remedy. (Id at page 703-704)”

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In the present proceedings neither is the Court called upon to review its judgment nor to modify its orders. In fact reliance has been placed on the orders passed by this Court on 11 July 2017 in **Arrive Safe Society**(supra) and subsequently in **Hotel Sonai Beer Bar and Permit Room v State of Maharashtra**<sup>5</sup> and the connected writ petitions referred to earlier.

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7. In the order passed by this Court on 11 July 2017, it was observed that the purpose of the directions contained in the order dated 15 December 2016 is to deal with the sale of liquor along and in the proximity of highways properly understood, which provide connectivity between cities, towns and villages. Having regard to this object it was noted that the order does not prohibit licensed establishments within municipal areas. Indeed, in order to ensure that the order is uniformly understood across the country, this Court clarified that it will govern other municipal areas as well. In the subsequent order of this Court dated 13 December 2017, liberty has been granted to the licence holders to submit a representation to the state government that the same principle should apply to the licensed establishments of the petitioners, as they apply to municipal areas/MIDC developed areas (in relation to the State of Maharashtra).

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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

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<sup>5</sup> Special Leave Petition (C) No 19845/2017

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- A 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.
- B 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.
- C We have issued this general direction to obviate both litigation before the High Courts and repeated recourse to applications to this Court.
9. With the above observations, the MAs/IAs shall stand disposed
- D of.