

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 22nd April, 2015

+

LPA No.132/2015

GAURAV RISHI & ANR.

..... Appellants

Through: Mr. A.S. Chandhiok, & Mr. Hariharan, Sr. Advs. with Mr. Aseem Chaturvedi, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Pradeep Sharma, CGP and Mr. Kunal Punj, Adv. for R-1/UOI.

Ms. Zubeda Begum, Standing Counsel (GNCTD) & Ms. Sana Ansari, Adv. for R-2,4, 5 to 8 (Delhi Police & Licensing Authority)

Mr. Vijay Joshi, Adv. for R-3/SDMC.

Mr. K.V. Vishvanathan, Sr. Adv. with Mr. Arun Kathpalia, Mr. Vaibhav Gaggar, Ms. Jasleen Oberoi, Mr. Aaditya Vijay Kumar, Mr. s.M. Bhaskar, Ms. Surbhi Mehta, Mr. Abhimanyu Chopra & Ms. Adiba, Advs. for R-9.

Insp. Anant Kumar, P.S. S.J. Enclave.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 27th October, 2014 of the learned Single Judge of this Court of disposal of W.P.(C) No.2187/2014

preferred by the two appellants for prohibiting the respondents No.1 to 8 (being the Union of India (UOI), Government of National Capital Territory of Delhi (GNCTD), Municipal Corporation of Delhi (MCD) and Commissioner of Police and other police officials) from renewing the No Objection Certificates (NOCs) / Licences granted to the respondent No.9 Hyatt Regency Hotel, Bhikaji Cama Place, New Delhi from year after year till the conclusion of the investigations into the complaint dated 19th February, 2014 of the appellant No.1 of violation by the said Hotel of the licence conditions, by directing the concerned authorities to decide the said complaint of the appellants after giving an opportunity of hearing to the appellants and by further permitting the appellants to inspect the Hotel in non obtrusive manner for a period of one hour to find out the violations of licence conditions by the said Hotel.

2. Notice of the appeal was issued. We have heard the senior advocates for the appellants, counsel for the GNCTD/Delhi Police and the counsel for the respondent No.9 Hotel.

3. The appellants filed the writ petition from which this appeal arises, *inter alia* pleading:

- (i) that the appellant No.1, on 16th October, 2013, suffered a critical injury from a fall, in the said Hotel, solely attributable to non

compliance by the Hotel of the conditions on which various governmental agencies had granted NOCs / Licence for operating the Hotel; the appellant No.2 is the sister of the appellant No.1 and due to the incapacity of the appellant No.1, is acting on behalf of the appellant No.1;

- (ii) that FIR No.390/2013 of Police Station R.K. Puram dated 19th October, 2013 was lodged with respect to the said incident;
- (iii) that the appellants filed a complaint dated 19th February, 2014 with the police authorities which had granted the licence for operating the said Hotel, to investigate into the violation of the licence conditions by the Hotel, putting the life of the guests and visitors to the Hotel in jeopardy;
- (iv) that on such complaint, an inquiry had been ordered;
- (v) that however notwithstanding the pendency of the said inquiry, the governmental authorities were going ahead with renewing the licence and without which the Hotel cannot operate.

4. The senior counsel for the appellants:

- (a) drew our attention to the order dated 1st April, 2014 in the writ petition from which this appeal arises, issuing notice thereof and

directing the police authorities to file a status report with regard to the investigation in connection with FIR No.390/2013;

- (b) has invited attention to the status report dated 9th May, 2014 filed in compliance with the aforesaid direction *inter alia* reporting “It was also observed that certain conditions required for the safety and security of visitors / guests i.e. they should not be allowed to loiter around and the exit gate should have been properly guarded, were found not complied with.”
- (c) informed that a charge sheet has been filed;
- (d) invited attention to the order dated 4th September, 2014 in the writ petition from which this appeal arises, noting that further status reports dated 9th May, 2014 and 13th May, 2014 filed by the Police indicated that certain violations were found (though the same was controverted by the Hotel);
- (e) stated that inspite thereof, the licence had been renewed in June, 2014;
- (f) contended that the action of the police, of renewing the licence while this Court was seized of the controversy and had called for status report, is an affront to the dignity of this Court;

- (g) invited attention to the counter affidavit filed by the police authorities before the learned Single Judge *inter alia* stating that the process for cancellation / revocation of licence will be initiated only after receipt of report mentioning violation of conditions of licence;
- (h) invited attention to the Regulations for Keeping Places of Public Entertainment in the Union Territory of Delhi, 1980 framed under the Delhi Police Act, 1978 and Regulation 20 whereof requires an application for renewal of licence to be made at least 30 days before the day on which the licence is to expire and further providing that an application for renewal of licence not made accordingly shall be liable to be rejected;
- (i) has invited attention to the letter dated 2nd June, 2014 of the said Hotel to the Deputy Commissioner of Police (Licensing) referring to the “Application submitted on April 22nd, 2014 for renewal of Lodging House Licence of Hyatt Regency, New Delhi”;
- (j) contended that as per Regulation 19 (supra), the licence was till 31st March, 2014 and an application for renewal thereof ought to have been made at least 30 days prior thereto and the application

for renewal having been made on 22nd April, 2014, the licence ought not to have been renewed and has been wrongly renewed;

- (k) invited attention to the show cause notice dated 12th September, 2014 issued by the Joint Commissioner of Police (Licensing) to the Hotel and in turn referring to report dated 4th June, 2014 of “categorical violations of terms and conditions of the Lodging Licence by Hotel Hyatt Regency”;
- (l) contended that in the light of the said report, the renewal dated 19th June, 2014 pursuant to the application for renewal dated 22nd April, 2014 is clearly illegal;
- (m) has drawn attention to the said renewal dated 19th June, 2014 renewing the licence of the Hotel till 31st March, 2015 with the endorsement “subject to directions of Delhi High Court, if any in Writ Petition (Civil) No.2187/2014” and has contended that thus the renewal of the licence till 31st March, 2015 is subject to the orders in the writ petition from which this appeal arises and this Court is empowered to annul the said renewal.

5. The counsel for the respondent No.9 Hotel has contended:
- (i) that the impugned order is in the nature of a consent order and no appeal lies thereagainst;
 - (ii) that in fact upon renewal of the licence, the writ petition itself had become infructuous;
 - (iii) drawn attention to Regulation 38 of the Regulations aforesaid providing that the licence shall not be cancelled until the holder thereof has been given a reasonable opportunity to show cause;
 - (iv) referred to *M/s Raj Restaurant Vs. Municipal Corporation of Delhi* (1982) 3 SCC 338 holding that an order of refusal to give licence or cancellation or revocation of licence is vested with civil as well as pecuniary consequences and before passing any such order, the principles of natural justice are required to be followed and the violations on the basis whereof the licence is purported to be cancelled are required to be spelt out.
6. The counsel for the GNCTD / Delhi Police has explained that an application for renewal of a licence can be made only after obtaining NOC from various authorities including municipal authorities and if for reasons

beyond the control of the applicant, there is delay in issuing the NOC, the delay in applying for renewal is condoned.

7. The senior counsel for the appellant in rejoinder has further drawn attention to the reply dated 2nd January, 2015 of the police authorities to a query under the Right to Information Act, 2005 stating that there was no registration as a eating house of the “Regency Club in Hotel Hyatt Regency” on the 6th Floor, from which the appellant no.1 had fallen and has contended that the same also is an obvious violation. Attention is also invited to the response dated 9th May, 2014 to another RTI query, to the similar effect i.e. of non grant of Health Trade Licence with respect to the terrace area adjoining the 6th Floor. He has also controverted that the impugned order is on consent. It is contended that the time of one hour given for inspection is too short. It is pointed out that in the past also there have been four accidents in the Hotel and it is argued that notwithstanding the same, the licence of the Hotel is renewed year to year and it is in public interest that this Court should intervene in writ jurisdiction. Reliance is placed on *State of Orissa Vs. Mamata Mohanty* (2011) 3 SCC 436 laying down that an order bad in its inception does not get sanctified at a later stage. It is contended that the application dated 22nd April, 2014 for renewal of licence was not accompanied with any application for condonation of delay;

that the licence had expired on 31st March, 2014 and thus the purported renewal dated 19th June, 2014 pursuant to application dated 22nd April, 2014 is in fact a grant of a new licence and the terms and conditions whereof were not satisfied. Attention was invited to the affidavit dated 19th September, 2014 of the Joint Commissioner of Police (Licensing) filed before the learned Single Judge *inter alia* stating that though deficiencies / violation of conditions of licence had been returned but action thereon not taken owing to investigation in the FIR aforesaid being underway. It is contended that the action against the Hotel for deficiencies / violation of the licence conditions cannot be deferred till the decision in the criminal prosecution pursuant to the FIR aforesaid.

8. We had during the hearing enquired from the senior counsel for the petitioner whether not the order of licensing authority of the police of granting / refusing and renewing / non-renewing a licence is appealable before the Lieutenant Governor of Delhi.

9. The counsel for the GNCTD / Delhi Police drew our attention to Regulation 39 of the Regulation aforesaid which is as under:

“39. Any person aggrieved by an order of the Commissioner or any other officer authorized by him in this behalf refusing to grant or renew licence or cancelling or suspending a licence under the

provisions of these Regulations may within 30 days from the date of receipt by him of such order appeal to the Administrator, Delhi”

10. It is thus found that the Regulation aforesaid provides for an appeal only against an order refusing to grant or renew or suspending or cancelling a licence. *Prima facie* it appears that an appeal under the aforesaid Regulation would not lie against an order of grant or renewal of licence.

11. As far as the contention of the counsel for the respondent No.9 Hotel, of the impugned order being on consent, is concerned, though undoubtedly we find that the learned Single Judge has not given detailed reasoning therein, as is normally to be found in other orders / judgments of the same learned Single Judge coming up before us, and which is normally the case when there is no opposition to the manner of disposal, but since the order does not record so, we proceed to decide this appeal on merits.

12. We have enquired from the senior counsel for the appellants as to how, this Court in exercise of jurisdiction under Article 226 of the Constitution of India, can decide the disputed questions of fact, whether there is a violation of the licence conditions or not and as to how, the order of the learned Single Judge, directing the police authorities to decide the same, can be found fault with.

13. The only answer forthcoming is that the police authorities have affronted the dignity of this Court by renewing the licence during the pendency of the writ petition from which this appeal arises.

14. However the fact of the matter remains that though the appellants in the writ petition claimed interim relief restraining the police authorities from renewing the licence but no such relief had been granted. We fail to see as to how, when the learned Single Judge had not deemed appropriate to issue any interim directions as sought by the appellants of restraining the appellants from renewing the licence, the action of the police of renewing the licence can be said to be illegal or affront to the Court. It cannot be lost sight of that grant of interim relief restraining the renewal of the licence would have had the effect of bringing the entire functioning and operations of the Hotel to a halt and which order the learned Single Judge in his wisdom did not deem fit to grant.

15. As far as the other contentions urged by the senior counsel for the appellants are concerned, we are of the opinion that it is in the fitness of things that the appellants raise all the said questions before the police, in the opportunity already granted vide the impugned order and that findings thereon be returned by the police authorities whose function it is to satisfy

themselves that the licence conditions are satisfied, rather than this Court in the first instance dabbling in the same. As far as the grievance urged of the time of one hour given for inspection is concerned, we do not feel the need to interfere in Letters Patent jurisdiction with the discretion exercised by the learned Single Judge in this regard. Suffice it is to state that the said restriction is for the appellants only who, it cannot be forgotten, are adversarial to the Hotel and it is not for the licensing authorities who are entitled to fully satisfy themselves of the compliances by the Hotel of the licence conditions and who under Regulation 37 of the Regulations (supra) are in any case are entitled to at any time cancel the licence on the grounds mentioned thereunder.

16. We may also notice that Regulation 20 of the Regulations supra providing for renewal of licence, does not provide for any procedure to be followed for renewal; Regulation 20(3) only provides that an application for renewal not made at least 30 days before the day on which licence is to expire shall be liable to be rejected and Regulation 20(4) provides that renewal may be refused if the Commissioner of Police or any other Officer authorized by him is satisfied after enquiry that the licensee is not a suitable person for continuing to hold the licence. It is only Regulations 37 and 38

which permit cancellation / suspension of licence but only after reasonable opportunity to show cause except in cases of temporary suspension for contravention. It thus appears that unless the contraventions of licence conditions are pointed out to the said Hotel and time to reply thereto given and in case of the Hotel denying contravention, finding thereon returned, no action can be taken and all of which is best left to be done by the licensing authority.

We therefore do not find any merit in the appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

APRIL 22, 2015

‘gsr’..