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

\+ W.P. (C) 8424/2016 (12.12.2016)

RAD ELAN DISTRIBUTORS PVT. LTD. ..... Petitioner

Through: Mr. A.K. Prasad with Ms. Priyanka Goel and Mr. Rajat, Advocates.

versus

DEPUTY COMMISSIONER, EXCISE ..... Respondent

Through: Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Deboshree Mukherjee, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 14.12.2016

1. This matter is taken up today, as 12.12.2016, when it was originally listed, was declared a holiday on account of Id-E-Milad.

2. The petitioner's grievance in these proceedings under Article 226 of the Constitution of India is with respect to the orders made by the Deputy Commissioner (Excise), Delhi under the provisions of the Delhi Excise Act, 2009 and the rules framed thereunder. Several challenges have been made to the order that was ultimately made on 4.8.2016. This resulted in debarment and block-listing under Rule 70 of the Rules.

3. The petitioner who is a L-1F license vendor to foreign liquor, was issued with show cause notices on 21.04.2016, 24.05.2016, 13.06.2016 and 11.07.2016 in respect of materials gathered during ongoing investigation. It complains that sufficient time was not given to respond to these notices and that instead of completing the enquiry and

investigation and issuing one comprehensive notice, it was asked to respond and reply with meagre time to four notices which has resulted in injustice and ultimately grave prejudice.

4. We have heard counsel for the parties. The materials on record bear out the petitioner's submissions that the allegations through show cause notices were made during an ongoing investigation and notices were issued in instalments, as it were. This *ipso facto* in the Court's opinion constituted prejudice since the petitioner was not able to respond to the one when confronted with the fresh notice. Furthermore, even the time given to respond to some of the notices was unreasonable. To capitulate, the adjudicating authority has quite clearly mentioned the allegations and the proposed consequences in the show cause notice. The ultimate order made was for block-listing and debarring the petitioner, in terms of Rule 70. Rule 70 reads as follows: -

> *70. Excise Black List, manner of blacklisting.-*
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> *(1) Any licensee, tenderer, bidder, manufacturer or supplier, whose products are sold in Delhi, may be blacklisted by the Deputy Commissioner for violation of the provisions of the Act and the rules framed thereunder or for any other reason which may be considered detrimental to the interest of revenue or public health. No such order shall be passed without giving reasonable opportunity of hearing to the person concerned.*
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> *(2) Any person whose name is mentioned in the black list shall be debarred from applying for or holding any excise licence within Delhi for such period, not exceeding five years, as may be specifically indicated in the blacklisting order.*
>
> *(3) The name of the black listed persons shall be circulated by the Deputy Commissioner to the Excise Authorities of the neighbouring States."*

5. None of the show cause notice issued to the petitioner - all of which are part of the record have in fact referred to Rule 70 of the Rules nor have they elicited any response - in complete violation of Rule 70 (1) which itself mandates that "*No such order shall be passed without giving reasonable opportunity of hearing to the person concerned.*

6. Having regard to the above discussion, the impugned order of 4.8.2016 is hereby quashed. The respondents are directed to consolidate their allegations made which are part of the present proceedings, in one fresh show cause notice and grant reasonable opportunity to the petitioner to respond to it, i.e., not less than fifteen days. Thereafter, the respondents/adjudicating authority shall consider the submissions, made by or on behalf of the petitioner and render a reasoned order in accordance with law. Needless to add, the show cause notice shall specifically state which provisions or rules are alleged and under which action is proposed. The impugned order to the extent it debars the petitioner's attorney is also hereby quashed inasmuch as the attorney was apparently not even issued with any show cause notice nor given opportunity under Rule 70 (1) of the Rules. The period between 4.8.2016 till date, i.e., 14.12.2016 shall be excluded from reckoning the petitioner's application/request for fresh license under the new liquor policy of the Govt. of NCT of Delhi.

7. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 14, 2016*/vikas/*