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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.08.2016

+ W.P.(C) 7316/2016

MADAN LAL

..... Petitioner

versus

LT. GOVERNOR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Arvind Sah
For the Respondents : Ms Shreya Mehta for R-1 & R-2.
For the Respondents : Mr Prashanto Chandra Sen and Mr Shivanshu Singh for R-3

CORAM:

HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

SANJEEV SACHDEVA, J.

W.P.(C) 7316/2016 & CM No.30099/2016(stay)

1. The petitioner seeks quashing of order dated 08.08.2016 whereby the Assistant Commissioner (Excise) has directed that sale of the vend, i.e. liquor shop, be stopped immediately.
2. The petitioner is the owner of shop No.2, Khasra No.5/19/1, Main 100 ft. Road, Nathu Pura, Burari, Delhi-84.
3. It is contended that the petitioner has a licence agreement with Delhi Tourism And Transportation Development Corporation Limited (DTTDC), respondent No.3, wherein the respondent No.3 was to obtain

approval/sanction of the competent authority for opening of and running the retail liquor shop in the aforesaid property.

4. It is contended that as per the licence agreement, the respondent No.3 has to pay to the petitioner a sum of Rs.35,000/- per month or 12.5% of the gross profit on the sale of liquor, whichever is higher.

5. It is contended that the impugned order dated 08.08.2016 has been passed without any reason by the Assistant Commissioner(Excise), who even otherwise is not empowered under the Delhi Excise Act, 2009 (hereinafter referred to as “the Act”) to pass such an order. It is further contended that the impugned letter incorrectly records that there is likelihood of law and order problem at the vend.

6. Learned counsel appearing for respondent No.3 – DTTDC submits that the shop has been incorrectly closed by respondent No.2 by the impugned order.

7. Learned counsel appearing for respondent Nos.1 & 2 submits that the petitioner has no *locus standi* to file the present petition as the licence for opening the vend has been given to the respondent No.3 and not to the petitioner. He submits that there is likelihood of law and order problem at the vend and that is why the order for closing the vend has been passed. He further submits that the order had been passed with the approval of the Deputy Commissioner (Excise), who is empowered under Section 7 of the Act to pass such an order. He has also produced the relevant original file of the department. Reference is made particularly to Note sheet dated 25.07.2016 and 04.08.2016 as also to the letter dated 27.07.2016, which is

written to one Shri Kapil Kumar, who is one of the complainants against the opening of the vend as also to letter dated 27.07.2016 written to SHO, Police Station Burari.

8. With regard to the objections raised by the respondent Nos.1 & 2 as to the maintainability of the petition, some of the clauses of the licence agreement may be referred to as under:-

“Whereas the first party is the exclusive legal owner in possession of property bearing Shop No.2, Khasara No.5/19/1, Main 100 Ft. Road Nathu Pura, Burari, Delhi – 110084.

And Whereas the first party approached the 2nd party to obtain approval / sanction of the competent authority for opening of and running a retail liquor shop in the aforesaid property / a part of the said property comprising of a shop measuring /having an area of 400 Sqft. (more appropriately shown in the site plan attached herewith and hereinafter referred to as the “SAID PREMISES”).

AND WHEREAS the second party is one of the authorized undertaking/bodies who have been given permission by the Competent Authority to run retail liquor shops in the National Capital of Delhi.

AND WHEREAS the First Party has approached the second party for opening of and running a retail liquor shop in the said premises and the second party has at request of the first party agreed to open and run a retail liquor shop in the said premises on the terms and conditions contained in the agreement and which have been mutually accepted by the parties.

3. *That in consideration of the first party giving and handling over possession of the said premises to the second party for the aforesaid purpose, the second party shall pay to the first party every month a sum equivalent to Rs.35,000/- (Rs. Thirty Five Thousand only) per month of 12.5% of the Gross Profit on the sale of liquor from the said premises whichever is higher. The first party will not be entitled for payment of rent for such period, the shop remain closed (no sales operations) during/protest or agitation.*

4. *That the monthly consideration amount payable by the second party to the first party shall be calculated by the second party on the basis of its own records and account books and the amount so determined shall be conclusive and binding on the first party.”*

9. Perusal of the above clauses shows that the first party, i.e. the petitioner, has approached the second party – respondent No.3 for obtaining approval/sanction of the competent authority for opening of and running the retail liquor shop in the said premises and the respondent No.3, at the request of the petitioner, agreed to open and run the retail shop on the terms and conditions contained in the Agreement. The consideration payable by respondent No.3 to the petitioner is not a fixed sum of Rs.35,000/- per month but is 12.5% of the gross profit on the sale of liquor or Rs. 35,000/-, whichever is higher. The licence agreement also records that the monthly consideration amount payable would be calculated on the basis of the record and account books and the amount is to be paid by 15th day of each succeeding month. The terms of the licence agreement show that the petitioner has some interest in the revenue of the liquor shop.

10. In these facts, it cannot be said that the petitioner is a complete

stranger to the shop. The petitioner has a pecuniary interest in the running of the liquor vend and, in my view, would be entitled to maintain a petition which affects the rights of the petitioner. If the shop remains closed, the Petitioner in terms of the licence agreement would not be entitled to any rent. More so in view of the peculiar facts of the case as would be evident from hereinafter.

11. With regard to the second contention that the vend has been closed on account of purported law and order situation, perusal of the file produced by the respondent Nos.1 & 2 does not disclose any issue of law and order recorded in the file.

12. The note-sheet dated 25.07.2016 relied upon by the Respondents 1 and 2 records as under:-

“May please see the PUCs placed opposite received from PGMS portal regarding representation against opening of liquor vend at Shop No.2, Kh.No.5/18/11 Main 100 Ft. Road, Nathur Pura Road, Burari, Delhi-84.

It has been stated a new liquor shop at Nathupura Burari has been opened which is near to Savera Nasha Mukti Kendra. Hanuman temple and Bright Star Convent School are also exist near the newly opened liquor shop.

Further stated that drunkards are gathering there full day and eve teasing is also happening at there.

It has been requested to close the liquor permit issued for Darshan Vihar with immediate effect.

In this context, it is submitted that L-6 license of M/s. DTTDC was shifted from 1, UA Jawahar Nagar, Roshnara Road to Shop No.2, Khasra No.5/19/1, Main 100 Ft. road, Nathu Pura, Burari, Delhi-84 on 29.06.16 after inspection by the inspecting

team and the team has reported that there was no educational institute or a hospital or hospital having 50 beds or more within 100 meters of the proposed vend accordingly license was granted as per provision of Rule 51(1) of Delhi Excise Rules, 2010.

From the above it is apparent that license was issued to the vend is as per norms laid down in the Delhi Excise Act, 2009 and Delhi Excise Rules, 2010.

The other issue cited pertains to law and order problem. In this regard, we may send a letter to area SHO with the request to step up vigil in the area around the liquor vends to prevent any untoward incident and open drinking.

In view of above, two draft letters are placed opposite for sign & approval please.”

(underlining supplied)

13. From the note sheet dated 25.07.2016 it is clear that the stand of the respondent No. 2 is that the L-6 License was shifted after inspection by the inspecting team which had reported that there was no educational institute or a hospital or hospital having 50 beds or more within 100 meters of the proposed vend. The license has been granted as per provision of Rule 51(1) of Delhi Excise Rules, 2010. With regard to the issue of drunkards gathering there and eve tesaing and open drinking, it was decided to send a letter to the SHO to step up vigil and prevent any untoward incident and open drinking.

14. Further the next note-sheet dated 04.08.2016 relied upon by the Respondents 1 & 2 records as under:-

“Sub:- Regarding resentment against opening of liquor shop at Shop No.2, Khasra No.5/19/1, Main 100 ft. road, Nathu Pura, Burari, Delhi-84.

It has been reported that there is a strong public resentment against opening of liquor shop at Shop No.2, Khasra No.5/19/1, Main 100 ft. road, Nathu Pura, Burari, Delhi-84.

In view of the above, we may direct the License Holder i.e. M/s. DTTDC to submit the status report and factual position around the liquor and in case there is likelihood of law & order problem the vend may be shifted to other suitable location and also stop the sale of the vend.

If agreed, a letter has been prepared and placed opposite for approval and sign please.”

(underlining supplied)

15. The Note dated sheet dated 04.08.2016 suggests that a decision was taken to direct the Respondent No. 3 to submit a status report and factual position around the liquor and if there was likelihood of law & order problem the vend may be shifted to other suitable location and also stop the sale of the vend. By the said note, it is clear that it has been decided to call for a status report and in case there is any likelihood of law and order problem, further action of shifting and stoppage is to be taken. As of that date no decision to close the vend has been taken.

16. After the note-sheet of 04.08.2016, there is a note of 22.08.2016. There is no decision on the file whereby the competent authority, i.e. the Deputy Commissioner, has taken a decision to stop the sale of the vend. The letter dated 08.08.2016 does not appear to have been issued after a decision taken by the Deputy Commissioner to direct stoppage of sale of liquor from the said shop. Thus the impugned letter/order dated 08.08.2016 cannot be sustained.

17. Further the letters dated 27.07.2016 referred to by the learned counsel

for the Respondents 1 & 2 do not support their case. Letter dated 27.07.2016, written by the Respondent No. 2 to Shri Kapil Kumar (complainant against the vend) reads as under:-

Sub: Complaint regarding opening of new liquor shop

Sir,

Kindly refer your representation dated 08.07.16 forwarded by Office of Hon'ble Chief Minister vide ID No.201666608 regarding subject cited above. In this regard I am directed to inform you that the liquor vend has been opened at Shop No.2, Kh.No.5/18/11 Main 100 Ft.Road, Nathur Pura Road, Burari, Delhi-84 is in conformity with the Delhi Excise Rules, 2010.

The other issue cited in your letter pertains to law & order problem. In this regard a letter to area SHO has been sent with the request to step up vigil in the area around the liquor vends to prevent any untoward incident and open drinking. If any instance of open drinking is happened in the vicinity of the vend, you also take up the matter with local police directly.

Further the liquor vends are opened to provide authorized liquor otherwise unscrupulous elements may take benefit. Further if authorized liquor vends are not provided, then the space would be filled by bootleggers which may cause hooch tragedies leading to loss of lives due to consumption of spurious liquor.

This issues with the approval of competent authority."

(underlining supplied)

18. Letter dated 27.07.2016 written to the SHO, Police Station Burari, which reads as under:-

"Sub: Regarding complaint against newly opened liquor vend at Nathupura

Sir,

A Govt. liquor vend is recently opened at Shop No.2, Kh.No.5/18/11 Main 100 Ft. Road, Nathur Pura Road, Burari, Delhi-84 and this office received grievances from residents of Nathurpura Burari vide which it has been stated people consume liquor at open place and create nuisance.

Since the matter pertains to law & order situation around the vend area, it is hereby requested to take up necessary action to address the grievance and step up vigil around the vend to prevent any untoward incident."

(underlining supplied)

19. The respondent No. 2 with regard to the allegation that people drink in the open, a letter has written to the SHO to step up vigil in the area around the liquor vends to prevent any untoward incident and open drinking. Mr Kapil Kumar has been advised that in case open drinking happens in the vicinity of vend, the issue be taken with the local police directly. The letter further records that liquor vends are opened to provide authorized liquor otherwise unscrupulous elements may take benefit and further that if authorized liquor vends were not provided, then the space would be filled by bootleggers, which may cause hooch tragedies leading to loss of lives due to consumption of spurious liquor.

20. Reference may also be had to Section 25 of the Act, which reads as under:-

"25. Closing of shops for preservation of public peace.— The Deputy Commissioner or any other officer authorized by him may, by notice in writing to the licensee, require that any shop in which any liquor is sold shall be closed at such time or for such period as he may think necessary for preservation of public peace:

Provided that the total closure days in the licensing year shall not exceed fifteen days in all or more than three days continuously at any one time:

Provided further that if the Excise Commissioner is of the opinion that any particular shop or all shops in any particular area shall be closed for a period exceeding fifteen days in a year or more than three days continuously at any one time, he may do so for reasons to be recorded.”

21. Section 25 clearly stipulates that the Deputy Commissioner or any other officer authorized by him may require that any shop in which any liquor is sold be closed at such time or for such period as he may think necessary for preservation of public peace. However the first proviso to said Section stipulates that the total closure days in the licensing year shall not exceed fifteen days in all or more than three days continuously at any one time. The second proviso stipulates that where the Excise Commissioner is of the opinion that any particular or all shops in a particular area shall be closed for a period exceeding fifteen days in a year or more than three days continuously at any one time, he may do so for reasons to be recorded.

22. In the instant case, there are no reasons recorded in the file by the Excise Commissioner directing closure of the shop for continuously more than three days or for a period exceeding fifteen days. Furthermore, the impugned letter dated 08.08.2016 directing closure of the shop was issued more than fifteen days ago.

23. Section 25 does not permit closure of the shop beyond fifteen days except for the reasons to be recorded. Since no such reasons are recorded on

the file, the impugned letter cannot be sustained on this ground also.

24. The contention of the learned counsel for the respondent that the license agreement between the petitioner and the respondent No.3 cannot be looked into because it is neither registered nor sufficiently stamped, in my view is not sustainable. Even if it was construed to be a rent agreement, in the absence of registration, the same can always be relied upon for looking at the collateral purposes, i.e., the relationship of parties, the nature of tenancy and the rate of rent. Further, it is not a case where either of the parties to the agreement are seeking to enforce any clause of the Agreement. The Agreement has been relied upon by the petitioner only to show that the petitioner has some commercial interest in the liquor vend. In these circumstances, the contention of the learned counsel for the respondent is not sustainable.

25. In view of the above, the writ petition is allowed. The impugned letter/order dated 08.08.2016 is quashed.

26. It is clarified that the above order would not prevent the competent authority to pass appropriate orders in future, if the circumstances so warrant.

27. *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 24, 2016
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