

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.400 of 2018

Daljit Singh S/o Shri Amolak Singh Bhatia, aged 35 yrs, Prop :
 Hotel Center Point Naveen Market, Tatyapara Chowk, Raipur
 (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Collector, Raipur, Distt - Raipur (CG)
2. The Commissioner, Department of Excise Raipur, Distt-Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Anurag Dayal Shrivastava, Advocate
For State	:	Mr.Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/03/2018

1. The petitioner was granted FL3 licence for sale of foreign liquor in 'Open bottle' at 'Bar and Restaurant' of Hotel Center Point, Raipur, which was valid up to 31.3.2018. The petitioner was served with a show-cause notice asking him to show-cause as to why action be not taken against him in accordance with Rule 23(1) of the Chhattisgarh Excise Settlement of Licenses for Retail Sale of Country/Foreign Liquor Rules 2002 read with Section 31 (1) (b) of the Chhattisgarh Excise Act, 1915 (hereinafter called as "the Act of 1915") as he has violated clause 8, 4(C) and 6 of terms and conditions of his licence. The petitioner appeared before the Licensing Authority and submitted his reply stating inter-alia that cognizance for alleged violation of Section 39 (b) & (c) of the Act of 1915 can be taken only by the concerned Magistrate, therefore, the matter be made over to the Court of the concerned Magistrate, if any, for

further necessary action.

- 2.** Learned Collector-cum-Licensing Authority by order dated 31.1.2018 considered the reply filed by the petitioner and finding that the petitioner has violated clause 6 and 8 (4) (c) of the General Licence Condition and also appears to have committed offence under Section 39 (b) and (c) of the Act of 1915, exercised the power conferred under Section 31 (1) (b) of the Act of 1915 and revoked the bar licence granted to the petitioner leading to filing of the present writ petition questioning the impugned order passed against him.
- 3.** Mr.Anurag Dayal Shrivastava, learned counsel appearing for the petitioner would submit that the impugned order passed by learned Licensing Authority-cum-Collector (Excise), Raipur is unsustainable and bad in law on the following grounds:-

 - (i) Learned Licensing Authority has not followed the procedure prescribed in Section 31 (1-A) of the Act of 1915 while cancelling the licence of the petitioner.
 - (ii) Learned Licensing Authority has acted upon a direction given by the Commissioner (Excise) dated 7.11.2017 in which the Commissioner (Excise) has clearly directed the Licensing Authority to cancel the petitioner's licence finding sufficient ground.
- 4.** Mr.Shashank Thakur, learned Government Advocate appearing for the respondents/State while opposing the writ petition would submit that learned Licensing Authority finding that the petitioner was found guilty of violating terms and conditions of the licence granted to him and after giving him show-cause

notice, his bar licence has rightly been cancelled by the Licensing Authority in which neither there is any illegality nor any jurisdictional error. Therefore, the writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 31 (1) (b) of the Act of 1915 which states as under:-

“31. Power to cancel or suspend licence, etc.(1)

Subject to such restrictions as the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it-

(b) in the event of any breach by the holder thereof or by any of his servants, or by any one action on his behalf with his express or implied permission, of any of the terms or conditions thereof.”

7. Section 31 of the Central Provinces Excise Act, 1915 also had pari materia provisions to Section 31(1) (b) of the Act of 1951, which was considered by a Division Bench of the Madhya Pradesh High Court in **Sukhlal Sen v. Collector, Dist. Satna and other**¹ in which it has been held that while cancelling the licence under Section 31(1) (b) of the Act of 1915 the Licensing Authority has to act judicially. Their Lordships interpreting the said provision held as under:-

“8..... It must be noticed that the charge of breach of terms or conditions of a licence is one which will require investigation before it is found as a fact and if the licensee against whom such a charge is levelled is given an opportunity to meet it, it may be possible for him to disprove the same. Cancellation of a licence is a serious matter as it deprives the licensee

¹ AIR 1969 Madhya Pradesh 176

of his right to carry on business. In our opinion, the nature of the duty to determine whether the licensee has committed any breach of terms or conditions of his licence and whether for that reason the licence should be cancelled, imposes upon the authority the duty to act judicially. It necessarily follows that the authority must follow the requirements of natural justice and must give an opportunity to the licensee to meet the allegations of breaches of terms and conditions of the licence reported against him before cancelling the licence.”

8. In Prakash Ratan Sinha v. State of Bihar and others² the Supreme Court has held that if any of its actions or administrative decisions result in civil consequences, the actions or decisions could be judicially reviewed or tested on the anvil of principles of natural justice. Para 13 of the report states as under:-

“13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.”

9. Not only this, Section 31 (1-A) of the Act of 1915 has been inserted by M.P. Act No.23 of 1979 which provides as under:-

“(1-A) Before making an order cancelling or suspending a licence permit or pass under sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard.”

The aforesaid provision clearly obliges the Licensing Authority to record in writing the reasons for proposed action for cancellation of licence or suspension of licence as the case may be and further obliges the Licensing Authority to furnish to the holder thereof a brief statement of the same and afford him a

reasonable opportunity of being heard. Therefore, unless the reasons are recorded in writing for the proposed action and furnished to the licence holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard, licence cannot be cancelled.

10. The word 'reason' has been defined by the Supreme Court in the matter of **J. Ashoka v. University of Agricultural Sciences and others**³ in which it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.
11. Reverting to the facts of the present case, it is quite vivid that the Licensing Authority got an enquiry conducted through his Excise Inspector on 18.9.2017 and thereafter issued show-cause notice to the petitioner on 20.11.2017 and after receiving his reply straightway cancelled FL3 licence granted to the petitioner. Neither the reasons for proposed action has been recorded in writing nor brief statement has been furnished to the petitioner and reasonable opportunity of being heard has also not been provided except service of show-cause notice.
12. In the matter of **Khem Chand v. Union of India and**

³ (2017) 2 SCC 609

others⁴ the Supreme Court has explained the meaning of reasonable opportunity of being heard as under:-

“19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

13. The object of all excise laws is two-fold viz., to raise revenue and to regulate the trade in liquors which is a noxious substance. There is no fundamental right to trade in liquor (See **Distilleries Ltd. v. State**⁵).

14. Above-stated facts of the present case would show that Section 31 (1-A) of the Act of 1915 has been followed in its full breach, however, neither reasons have been recorded in writing nor it has been furnished to the licence holder and only on the basis of show-cause notice without making any further enquiry as contemplated by a Division Bench of the Madhya Pradesh High Court in **Sukhlal Sen** (supra), the petitioner's FL3 licence has been cancelled, which is in teeth of the provisions

4 AIR 1958 SC 300

5 (1995) 1 SCC 574

contained in Section 31 (1-A) of the Act of 1915, therefore, the impugned order cannot be sustained.

- 15.** Apart from this, there is one more reason for not sustaining the impugned order. In this case, the Excise Commissioner, who is an appellate authority against the order passed by the Licensing Authority issued a direction on 7.11.2017 which states as under:-

“होटल सेंटर पाइन्ट बार में काफी गंभीर अनियमितताएँ पायी गयी है, बार अनुज्ञप्ति निरस्त करने के लिए पर्याप्त आधार है। कृपया, नियमानुसार कार्यवाही कर इस कार्यालय को एक माह में अवगत कराने का कष्ट करें।”

Aforesaid direction has been taken cognizance by the Licensing Authority in opening paragraph of the impugned order and thereafter proceeded to cancel FL3 licence granted to the petitioner by the impugned order.

- 16.** It is well settled law that the authority has to act independently and should not follow a direction while performing statutory duty.

- 17.** The Supreme Court in the matter of **Uma Nath Pandey and Ors. v. State of U.P. and Anr**⁶ has held as under:-

“13. Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works (1985 (10) AC 229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the

substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.”

- 18.** In the light of principle of law laid down by the Supreme Court and the High Court of Madhya Pradesh in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that in this case a direction of the Excise Commissioner has been followed by the Licensing Authority/Collector while cancelling the licence of the petitioner, which could not have been followed and which is in teeth of the judgment rendered of the Supreme Court in **Uma Nath Pandey** (supra).
- 19.** As a fallout and consequence of the above-stated discussion, the impugned order passed by the Licensing Authority/Collector cancelling the licence of the petitioner cannot be sustained and it is hereby quashed. However, the respondents are at liberty to proceed further in accordance with law.
- 20.** The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-