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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.896 of 2018

Digvijay Singh, S/o Shri T.S. Thakur, aged 54 yrs, Prop Hotel Natraj, Link Road, Bilaspur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Collector (Excise), Bilaspur, Distt. Bilaspur (C.G.)
2. The Commissioner, Department of Excise, Raipur, Distt. Raipur (C.G.)
3. The Assistant Commissioner, Department of Excise, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Anurag Dayal Shrivastava, Advocate.
For Respondents/State: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/04/2018

1. The petitioner was granted FL-3 license for sale of foreign liquor in open bottle at Bar and Restaurant at Bilaspur. He was subjected to show cause notice vide notice dated 16-2-2018 specifying the grounds on which the action is proposed to be taken and seeking explanation as to why strict action be not taken for serious irregularities and misconduct committed by him which the petitioner replied and ultimately, the Collector (Excise) by its order dated 6-3-2018 cancelled the license granted to the petitioner and thereafter, the petitioner's license period expired on 31-3-2018. Appeal taken against that order also remained unsuccessful leading to filing of this writ petition.

2. Mr. Anurag Dayal Shrivastava, learned counsel appearing for the

petitioner, would submit that the impugned order passed by the learned Collector affirmed by the Excise Commissioner is unsustainable and bad in law, as the show cause notice is blissfully silent as to which of the penalties provided in Section 31 of the Chhattisgarh Excise Act, 1915 (for short, 'the Act of 1915') was to be imposed, either it is cancellation or suspension of license or the prosecution of the petitioner which is in teeth of the provisions contained in the decision of the Supreme Court in the matter of **Gorkha Security Services v. Govt. of NCT of Delhi and others**[1].

3. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/respondents, would submit that the petitioner's conduct is extremely serious and serious irregularities were found in the shop of the petitioner leading to issuance of show cause notice for taking strict action and thereafter, license has been cancelled by the Collector (Excise) which has been affirmed by the Excise Commissioner.

4. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.

5. Show cause notice was issued to the petitioner vide Annexure P-3. Grounds for taking action have clearly been spelt out in the show cause notice, but the only action proposed to be taken against the petitioner for his alleged irregularities, is “strict action”. No action was proposed i.e. whether it is cancellation or suspension of license under Section 31 of the Act of 1915 or prosecution of the petitioner under Section 39 of the Act of 1915.

1 AIR 2014 SC 3371

6. The Supreme Court in **<u>Gorkha Security Services</u>** (supra), indicated the contents of the requirements to issue a show cause notice in para 20 as under: -

> "20. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:
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> i) The material/ grounds to be stated on which according to the Department necessitates an action;
>
> ii) Particular penalty/action which is proposed to be taken. ..."

7. Their Lordships further in paras 25 and 26 emphasized the need for mentioning the proposed penalty to be taken against the noticee by holding as under: -

> "25. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of blacklisting and/ or forfeiture of earnest money/ security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words "if so warranted", thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of blacklisting or forfeiture of earnest money/ security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that Clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.
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> 26. We are, therefore, of the opinion that it was

> incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."

8. Reverting to the facts of the present case, it is quite vivid that though the material or grounds on which the Department proposed against the petitioner are mentioned, but particular penalty / action which is proposed to be taken has not been mentioned.

9. The Supreme Court in **Gorkha Security Services** (supra) has clearly held that various actions are provided under the Act of 1915 which can be imposed by the Department, it must be specified and stated in the show cause notice and merely because, the provision empowers the Department to impose such penalty, it would not mean that penalty can be imposed without putting the person concerned to notice to this effect, as such, the order passed by the Collector (Excise) affirmed by the Excise Commissioner is in teeth of the decision in **Gorkha Security Services** (supra).

10. There is one more reason for not upholding the order passed by the Collector (Excise). Section 31(1-A) of the Act of 1915 clearly provides that before passing an order of cancellation or suspending a license, the authorities concerned 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. Though, show cause notice has been served to the petitioner, but in the opinion of this Court, the provision contained in Section 31(1-A) of

the Act of 1915 has not been followed.

11. As a fallout and consequence of the aforesaid discussion, the impugned orders passed by the Collector (Excise) and affirmed by the Excise Commissioner are hereby quashed. However, the petitioner would not be entitled to run the shop on the strength of the license as the period of license has already expired. This will not bar the respondents from proceeding further in accordance with law.

12. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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