

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2016 of 2018**

- Hotel Imperial Lodge And Restaurant West Bhilai Through The License Holder Gurubinder Singh, S/o Pyara Singh, Aged About 50 Years, R/o ¼ Motilal Nehru Nagar, West Bhilai, District Durg, Chhattisgarh.

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Excise Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Excise Commissioner, Chhattisgarh Abkari Bhawan, Near Magneto Mall, Raipur, District Raipur, Chhattisgarh.,
3. Assistant Commissioner Of Excise, Durg, Collectorate Campus, Durg, District Durg, Chhattisgarh.,
4. The Collector, Durg, District Durg, Chhattisgarh.

---- **Respondent****WPC No. 2024 of 2018**

- Hotel Rejency Lodge And Restaurant G.E. Road Bhilai, Through The License Holder Dharam Singh S/o Bhim Bahadur Singh Aged About 40 Years, R/o Street No. 29, Flat No. 134, Smriti Nagar Bhilai, District Durg Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Excise Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Excise Commissioner, Chhattisgarh Abkari Bhawan, Near Magneto Mall, Raipur, District Raipur Chhattisgarh.
3. Assistant Commissioner Of Excise, Durg, Collectorate Campus, Durg, District Durg Chhattisgarh.,
4. The Collector, Durg, District Durg Chhattisgarh.

---- **Respondent**

WPC No. 2044 of 2018

- Hotel Punjab Lodge And Restaurant New Bus Stand, Durg Through The License Holder Sunny Singh S/o Late Balvinder Singh Bhogal, Aged About 30 Years, R/o Shankar Nagar, Durg District Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Excise Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Excise Commissioner Chhattisgarh Abkari Bhawan, Near Magneto Mall, Raipur, District Raipur Chhattisgarh.
3. Assistant Commissioner Of Excise, Durg, Collectorate Campus, Durg, District Durg Chhattisgarh.
4. The Collector, Durg, District Durg Chhattisgarh.

---- Respondent

WPC No. 2056 of 2018

- Hotel Meghdut, Power House Bhilai Through The License Holder Nirmal Singh S/o Harbans Singh, Aged About 63 Years, R/o G. E. Road Power House Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Excise Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Excise Commissioner, Chhattisgarh Abkari Bhawan, Near Magneto Mall, Raipur, District Raipur, Chhattisgarh.
3. Assistant Commissioner Of Excise, Durg, Collectorate Campus, Durg, District Durg, Chhattisgarh.
4. The Collector, Durg, District Durg, Chhattisgarh.,

---- Respondent

For Petitioners : Shri Awadh Tripathi, Advocate.
For Respondents : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/09/2018 :

1. Challenge in these Writ Petitions is to substantially common order though passed separately by the Excise Commissioner, Chhattisgarh affirming the order passed by the Collector, Excise, Durg, refusing to renew the petitioners' FL-3 licence.
2. Indisputably, the petitioners were earlier having FL-3 licence for the year 2016-17 which came to be cancelled on 12.4.2017 pursuant to the directions issued by the Hon'ble Supreme Court in the matter of **State of Tamil Nadu and others Vs. K. Balu and another** {(2017) 2 SCC 281}, as the petitioners' licenced premises were falling within a distance of 500 meter from the national highway. This order of cancellation of licence being result of implementation of the order passed by the Hon'ble Supreme Court, it was not assailed anywhere and has thus attained finality. The Hon'ble Supreme Court thereafter issued some clarifications on 11th July, 2017 i.e. after cancellation of the petitioners' FL-3 licence. Even thereafter the petitioners did not move before any authority challenging the order of cancellation of their FL-3 licence.
3. The petitioners thereafter moved before this Court by preferring Writ Petition (C) No.2582/2017 (Hotel Imperial Lodge and Restaurant Vs. State of Chhattisgarh & Others) and other connected matters which

came to be disposed of on 20.9.2017 directing the Licencing Authority to consider their cases for renewal of Bar Licence, in accordance with the directions issued by the Hon'ble Supreme Court in the matter of **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh** {SLP (Civil) No.10243/2017}. The Collector, Excise, Durg thereafter rejected the prayer for renewal of licence against which the petitioners again preferred Writ Petition (C) No.1426/2018, which was withdrawn with liberty to prefer an appeal before the Excise Commissioner. The Excise Commissioner has now passed the impugned order dismissing the application on the ground that the petitioners are not having facility of 3 star category hotel for their FL-3 licenced premises, therefore, they are not entitled for renewal of their Bar licence.

4. It is argued that the instructions issued by the Excise Commissioner on 23.7.2017 prescribed different criteria for renewal of licence and grant of fresh licence. At that time Section 17 of the Chhattisgarh Excise Act, 1915 (for short 'the Act') was not amended and since this Court had directed for consideration of the petitioners' case for renewal of licence, the requirement of having 3 Star Hotel facility would not operate against the petitioners, which is otherwise applicable to grant of fresh licence and not to renewal of licence.
5. Indisputably, a similar challenge was thrown by identically placed licensee by preferring a WPC No.2945/2017, which came to be dismissed by the coordinate Bench on 2.1.2018 by referring to amended Section 17 of the Act with effect from 17.8.2017. The coordinate Bench held thus in paras-7 & 8:-

7. Section 17 of the Chhattisgarh Excise Act, 1915 was amended with effect from 17.8.2017 and sub-section (3) in Section 17 was inserted which states as under:-

“(3) Sale or supply of liquor.-(a) The sale of liquor shall be permitted only through licensed vends, which shall not be located within 500 meters radial distance from the outer range of the National or State Highway or Service Lane along with highway and such liquor vends shall neither be directly visible nor accessible from such National or State Highway;

(b) Notwithstanding anything contained in any judgement, decree or order of any Court, Tribunal or Authority, hotels having a license shall be entitled to engage in the supply of liquor to members, guests or other persons for consumption of such liquor within the premises of such hotels, irrespective of whether such hotel is located on or near any National or State Highway;

(c) Notwithstanding anything contained in any judgement, decree or order of any Court, Tribunal or Authority, any license issued to any hotel and common drinking house for the sale of liquor shall be deemed to have been always issued for the supply of liquor and all relevant provisions of this Act and the rules made thereunder shall continue to apply as they did for sale of liquor.”

8. Since FL3 Hotel Bar License can be granted to the applicant having hotels at the level of 3 stars and above and since the petitioner does not fulfill the said criteria, his application for renewal of FL3 Hotel Bar License has been rejected by order dated 22.9.2017 (Annexure P/1) in the light of circular & amended provisions as quoted above. The petitioner has not questioned the legality and validity of the amended provisions contained in sub-section (3) of Section 17 of the Chhattisgarh Excise (Amendment) Act, 2017 and circulars issued by the competent authority in this regard, in which stringent condition has been inserted.”

6. As against the said order, Writ Appeal was preferred bearing WA No.16/2018, which was disposed of by the Division Bench in which I

was one of the Member of the Bench. In the Division Bench judgment, it has been held in paras-3, 4, 6, & 7 thus :-

“ 3. The Hon'ble Apex Court clarified its previous directions and the State of Chhattisgarh thereafter decided to make certain changes and amendments to the previous Chhattisgarh Excise Act, 1915, as amended in 2017.

4. The effect of the amendment to Clause 17 (3) (b) has already been dealt with by the learned Single Judge, therefore, we are not required to reconsider that aspect of the matter.

6. The learned Single Judge in paragraph 8 of the impugned order has taken note that a hotel can be granted bar licence having a three star rating and since he does not possess such a qualification, the refusal by the Excise Authority to renew or issue a licence in his favour cannot be said to be an erroneous order or interpretation.

7. However, keeping the totality of the issue in mind and the order dated 22.09.2017, which was Annexure-P/1 and subject matter of challenge in the writ petition, if the appellant fulfills all the requirements, which are mandated under the New Chhattisgarh Excise Amended Act of 2017, to become eligible for grant of such excise licence, he will be free to apply and it will be considered on its own merits.”

7. Needless to say, an order passed by the coordinate Bench affirmed by the Division Bench is binding on this Bench. Even otherwise, I am satisfied that since after 17.8.2017, when Section 17 of the Act has suffered amendment, FL-3 bar licence can be issued to a person

who is eligible in terms of the communication dated 24.8.2017, which has been reproduced by the coordinate Bench in its order.

8. Admittedly, the petitioners are not having 3 Star Facility in their hotel, therefore, they are not entitled to have bar licence. It is also to be noticed that the petitioners' earlier licence having been cancelled and the said order having not been assailed before any Court, in the case of the petitioners, the newly added criteria in relation to grant of FL-3 licence would be applicable.
9. Accordingly, the Writ Petitions being devoid of any substance deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve