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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1087 OF 2018

Dilip Sitaram Kale .Petitioner

Vs.

The State of Maharashtra through the Principal Secretary & ors. .Respondents

Mr. S. Patil, Advocate, for the Petitioner
Mr. S. H. Kankal, AGP, for the Respondents – State

CORAM : REVATI MOHITE DERE, J.

DATE : 01.11.2018

P.C.

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

3. It is not in dispute that the Petitioner is running a business in the name and style as 'Hotel Pratik' at Vaduj, Taluka – Khatav, District – Satara; that he holds a license in the form of FL-III Licence No. 322, granted by the Respondent No. 3 i. e. The

District Collector of Satara (State Excise Department), in exercise of the powers conferred under the Bombay Prohibition Act, 1949 and the Bombay Foreign Liquor Rules, 1953; that the said license is granted for serving alcoholic beverages in the restaurant to a person holding license for possession and consumption of alcoholic beverages under the Bombay Foreign Liquor Rules, 1953; and that the said license in the form of FL-III Licence No. 322 was valid upto 31.03.2017, subject to renewal for a further period of one year.

4. It appears that on 20.09.2016, the Inspector of State Excise, Phaltan visited the licensed premises i. e. 'Hotel Pratik' and carried out inspection. In the inspection, the Inspector found a few bottles (IMFL) with the label 'For Sale In Goa Only' in the said premises. Pursuant to the same, the Inspector of State Excise issued a charge-sheet as against the Petitioner and the Petitioner was directed to keep the licensed premises closed until further orders. What is alleged in the charge-sheet as against the Petitioner is; (i) that 67 bottles of 180 ml stating 'For Sale In Goa Only' were found in the licensed premises; (ii) that FLR-3 and

FLR-6 registers were not maintained after 14.08.2016; (iii) that Cash Memos were not produced for inspection & (iv) that 2 bottles of 1000 ml; 2 bottles of 750 ml; 102 bottles of 180 ml; 2 bottles of 60 ml; 60 bottles of strong beer 650 ml; 12 bottles of 330 ml and 6 bottles of 180 ml wine were found short. The Inspector accordingly also submitted a report to the Respondent No. 3 i. e. The District Collector, pursuant to which the District Collector of Satara issued a Show Cause Notice dated 18.10.2016 and called upon the Petitioner, to show cause as to why his license should not be suspended or cancelled under Section 54 and 78 of the Maharashtra Prohibition Act, 1949. It appears that alongwith the Show Cause Notice, the Respondent No. 3 suspended the license in Form FL-III with immediate officer. The Petitioner submitted his reply dated 24.10.2016 and denied the allegations made in the Show Cause Notice. Pursuant thereto, the Respondent No. 3 i. e. The District Collector, Satara in exercise of his powers conferred under Section 54(1)(c) of the Bombay Prohibition Act, cancelled the license FL-III vide order dated 23.01.2017, essentially on the ground that the allegations were serious in nature. Being aggrieved by the said order passed by the learned District Collector, Satara, the Petitioner preferred an Appeal before the learned Commissioner of State Excise, Mumbai. The learned Commissioner of State Excise vide order dated 8th June, 2017 dismissed the Petitioner's Appeal, observing that the breach was serious in nature.

5. The only submission of the learned counsel for the Petitioner is that the alleged breaches under Sections 82 and 108 of the Maharashtra Prohibition Act are compoundable under Section 104 of the Bombay Prohibition Act. He submitted that at the highest, without admitting that the bottles stating 'For Sale In Goa Only' were found in the Petitioner's premises, the same would only show that the Petitioner had evaded excise duty, leviable under Section 106 of the Maharashtra Prohibition Act. He submitted that under Section 104 of the Bombay Prohibition Act, the Authority could have imposed penalty and compounded the offences. He submits that the Petitioner has already suffered tremendous loss, inasmuch, as the business of the Petitioner was shut down for almost two years since 20.09.2016. Learned counsel relied on the order dated 04.04.1996 passed by this Court

(***Coram : B. N. Srikrishna, J.***) in ***W. P. No. 1989 of 1996*** in the case of ***Chandrapal N. Shetty of M/s. Hotel Samrat Vs. The Collector of Thane & ors.***, in support of his submission.

6. Learned AGP opposed the Petition. He submitted that the alleged offence as against the Petitioner was serious and as such, no interference was warranted in the impugned order. Learned AGP has also filed an Affidavit of Snehalata Shrikar – Narwane, Superintendent of State Excise, Satara.

7. Both the authorities have rejected the explanation offered by the Petitioner and I find no reason to differ.

8. The only question that arises for consideration is whether the punishment awarded to the Petitioner i. e. of cancelling the license FL-III is harsh and requires modulation. This Court in the case of ***Chandrapal N. Shetty of M/s. Hotel Samrat (Supra)***, in a similar situation has taken a view that imposition of composition fee would be adequate and that cancellation of the license was a harsh conclusion. Accordingly, this Court relying on

several other orders passed under similar circumstances directed that the Petitioner pay a composition fee and as such, allowed the Petition. It is not in dispute that the Petitioner's license was cancelled on 20.09.2016 and that it continues till date, there being no stay to impugned orders. Although, the learned AGP does not dispute that the offences alleged are compoundable, but submits that in the facts, no interference was warranted in the impugned orders.

9. Having perused the papers and having heard the learned counsel, I am of the opinion that the punishment awarded to the Petitioner, in the facts of this case, is harsh and requires to be modulated. Admittedly, the Petitioner's establishment has been closed down from 20.09.2016 and continues till date. Shutting down of the restaurant for the said period itself is sufficient punishment. Coupled with this, it would also be appropriate to impose compensation fee, as punishment. Thus, having regard to the fact that the offences with which the Petitioner is charged can be compounded under Section 104 of the Maharashtra Prohibition Act & having regard to the facts of this case, it would be

appropriate to direct the Petitioner to pay Rs. 50,000/-, as compensation fee, since the offence committed by the Petitioner is the first offence. The said composition fee of Rs. 50,000/- shall be paid by the Petitioner in the office of the Superintendent, State Excise Department, within one week of the receipt of this order.

10. In addition to the composition fee, the Petitioner shall pay excise duty on the 67 bottles of 180 ml, which were found on the licensed premises. The said amount also to be paid within one week from the date of receipt of this order in the office of State Excise Department, Satara. The Petitioner's license shall be deemed to have been suspended between 20.09.2016 till date. Accordingly, it is open for the Petitioner to apply for renewal of the license. If an Application for renewal of license is filed, the same shall be decided as expeditiously as possible and preferably within four weeks from the date of receipt of this order. The Petitioner to pay renewal fee, if any, to the concerned authority. The Respondent No.3 shall not charge any interest at the time of renewal of license, for the period during which the license was cancelled.

11. Rule is made absolute on the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)