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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 585/2018 & CM No.2563/2018

M/S BONDSTREET HOSPITALITY &
EVENTS PVT. LTD.

..... Petitioner

Through: Mr Prashant Katara and Mr Soin
Khan, Advocates alongwith Mr Anil
Somani, AR of the petitioner.

versus

SUB DIVISIONAL MAGISTRATE
(S.D.M), & ANR

..... Respondents

Through: Mr Santosh Kumar Tripathi, ASC,
GNCTD/R-1.
Mr Sanjeev Ralli, Advocate for
DPCC/R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.02.2018

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 23.09.2017 issued by respondent no.1 (SDM, Hauz Khas), whereby the petitioner's premises - a restaurant/eating house run by the petitioner under the name "Capsule by Pink Room" at premises bearing no.29A, Second and Third Floor, Hauz Khas Village, New Delhi-110016 - was sealed.
2. The said premises were sealed pursuant to the observations made by a team deputed by R-2 (the Delhi Pollution Control Committee - hereafter 'DPCC') during an inspection conducted on 30.03.2017. Mr Ralli, the

learned counsel appearing for the DPCC states that pursuant to the said inspection, an order dated 21.07.2017 was passed issuing directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, *inter alia*, withdrawing the Consent to Operate granted to the petitioner under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. Further, the SDM (respondent no.1) was directed to take immediate steps to ensure “*the effective closure/sealing of the petitioner’s unit with immediate effect.*”

3. Admittedly, the petitioner’s premises in question were sealed by respondent no.1 pursuant to the aforesaid directions.

4. Thereafter, the DPCC issued an Office Order dated 02.08.2017, the relevant extract of which is set out below:-

“(ii) The unit can apply for fresh Consent Establish (CTE) (in case of change of activity/if not applied earlier) and Consent to Operate (CTO)/Authorization after 15 days of issuance of closure directions.

(iii) If the unit intend to run the same unit, they have to submit an undertaking stating that it would not run the unit till a fresh CTE/CTO/Authorization is obtained and also submit a ‘Environmental Compensation Security (ECS) for one year as per schedule below:-

Capital Investment	ECS *
Upto Rs.50 Lacs	Rs.2 lacs
Above Rs.50 Lacs to Rs 5 Crores	Rs.5 lacs
Above Rs.5 Crores	Rs.10 lacs

() The Environmental Compensation Security amount would be doubled in the case of Seriously Polluting Industry (SPI) before fresh CTE/CTO/Authorization is granted.*

(iv) On submission of undertaking and ECS, an order would be issued to allow the desealing of premises and restoration of electricity/water connections. Further, an inspection shall be carried out after 10 days after issue of such order by the concerned CMC and if unit is found operating without obtaining fresh CTE/CTO/Authorization, unit shall be asked to deposit 'Environmental Compensation Security' amount in form of Demand Draft in favour of Delhi Pollution Control Committee and the prosecution may be initiated against the unit if the unit fails to deposit 'Environmental Compensation Security' amount."

5. It is clear from the above that in terms of the said order, all units whose premises had been sealed would be permitted to operate subject to the said units obtaining the necessary Consent to Establish and Consent to Operate from the DPCC. It is not disputed that the Consent to Establish issued to the petitioner has not been revoked. However, in view of the order dated 21.07.2017, the petitioner no longer has the Consent to Operate a restaurant at the premises in question.

6. In view of the above, the petitioner has filed an application dated 06.10.2017 with the DPCC requesting for a fresh Consent to Operate. The counter affidavit filed on behalf of the DPCC indicates that the said request was declined by an order dated 31.01.2018.

7. This Court is not called upon to examine the merits of the aforesaid order. However, it is clear that once Consent to Operate has been rejected, the petitioner is not entitled to operate a restaurant from the premises in

question without obtaining the necessary permission.

8. The learned counsel appearing for the petitioner also undertakes that the petitioner will not commence operations of the restaurant from the premises without obtaining necessary permission from the DPCC. In view of the above, this Court finds no reason as to why the premises of the petitioner should continue to remain sealed. Plainly, the premises in question cannot remain sealed indefinitely and the purpose of sealing the same was to prevent the petitioner from carrying on a polluting activity. Accordingly, respondent no.1 is directed to de-seal the said premises. The petitioner would also be at liberty to remove equipments from the said premises. However, the petitioner will not commence business of any restaurant from the same premises without the requisite permissions.

9. Mr Ralli, the learned counsel appearing for the DPCC further submitted that the Hauz Khas Village presents a unique situation where permitting restaurants in such close proximity would be a fire hazard. He further submitted that a Division Bench of this Court in W.P.(C) 1393/2013 captioned as ***Pankaj Sharma v. South Delhi Municipal Corporation And Ors.*** is also examining the question whether such eating houses should be permitted in Hauz Khas Village given the fire hazard and the danger to the public at large.

10. In this regard, it is clarified that this Court has not examined whether any permission to occupy the said premises ought to be granted by the SDMC. Needless to mention, if the petitioner is required to comply with any other law for either occupying the premises in question or for operating any business from the premises, it would be necessary for the petitioner to

obtain the statutory clearances for the same. The order directing de-sealing of the premises should not be construed that the Court has countenanced the business of running eating houses at the premises in question and it would be for the concerned authorities to take appropriate decision in this regard.

11. The SDM is directed to de-seal the said premises within a period of one week from today. The petitioner would also be at liberty to apply for reconnection of utilities in accordance with law.

12. The petition and the application are disposed of.

13. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 07, 2018
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