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

+ **W.P.(C) 7684/2018**

**VILLAGE BALCONY (A UNIT OF VILLAGE
PEOPLE RESTAURANTS LLP)**

..... Petitioner

Through: Mr Prashant Katara and Mr Soin
Khan, Advocates.

versus

**SUB DIVISIONAL MAGISTRATE (S.D.M.) AND
ANR.**

..... Respondent

Through: Mr Anuj Aggarwal, ASC with Mr
Kanishk Rana, Advocates for R-
1/SDM.

Mr Biraja Mahapatra and Mr T. K.
Nayak, Advocates for DPCC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **27.07.2018**

CM No.29440/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 7684/2018 & CM No. 29439/2018

2. The petitioner has filed the present petition, *inter alia*, praying as
under:-

“(i) Issue an appropriate writ quashing and setting aside the
order dated 23/09/2017, as issued by the respondent No.1 and
further directing the respondent No.1 to desal the unit of the
petitioner bearing details “Village Balcony (A Unit of Village
People Restaurants LLP) located at 26, 1st Floor, Hauz Khas
Village, New Delhi-110016” immediately.”

3. The petitioner was engaged in operating restaurant located in Hauz Khas Village. On 10.04.2017, the Delhi Pollution Control Committee (hereafter 'DPCC') served a show cause notice under Section 31(A) of Air (Prevention & Control of Pollution) Act, 1981 and under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 to show cause why action should not be taken against the petitioner for violation of the said Acts. Thereafter, on 21.07.2017, DPCC issued directions for closure of the petitioner's unit.

4. On 02.08.2017, DPCC issued an Office Order, clarifying that after issuance of closure orders under Section 31(A) of Air (Prevention & Control of Pollution) Act, 1981 and under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974, all consents/authorisations and pending applications, prior to the issuance of such directions shall be treated as null and void. However, it also clarified that such units were at liberty to apply for a fresh Consent to Establish (CTE) and Consent to Operate (CTO). Such units were also required to deposit the Environmental Compensation Security (ECSS) as per Schedule provided in the said Office Order. The relevant extract of the said Office Order is reproduced below:-

“(i) After issuance of the direction for closure u/s 31(A) of Air Act, 1981, u/s 33(A) of Water Act, 1974 & u/s 5 of Environment (Protection), Act, 1986, all the consent/authorization and pending applications prior to issuance of the said directions shall be treated as null and void and accordingly letter for refusal/revocation of consent/authorization shall be issued by the concerned Cell incharge.

(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 CMS 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. In terms of the aforesaid Office Order, the petitioner submitted an application on 16.09.2017 praying for grant of CTE. It is stated that on 20.09.2017, the petitioner also furnished the Environmental Compensation Security as well as the undertaking as contemplated in the Office Order

dated 02.08.2017. The petitioner has now approached this court, *inter alia*, praying for directions that its unit be de-sealed.

6. The learned counsel appearing for the petitioner has also referred to an order dated 16.05.2018 passed in the case of ***W.P.(C) 5269/2018*** captioned as ***M/s Bull Dogs (A Unit of S & A Hospitality) v. Sub Divisional Magistrate (SDM) & Anr.*** whereby in similar facts, this Court had directed to de-seal all the units subject to certain conditions. The learned counsel appearing for the parties state that the facts in the present case are similar to the facts in that case and it would be apposite to pass similar directions in the present petition as well.

7. In view of the above, the present petition is also disposed of in terms of order dated 16.05.2018. It is directed that the petitioner's unit would be de-sealed subject to the following conditions:-

(i) That the petitioner will obtain a CTE, CTO and all other requisite permissions and approvals before resuming the activity of running an eating house;

(ii) The petitioner will also put in place the necessary fire safety measures and in this behalf, would approach the concerned statutory authorities for approval if it intends to operate a restaurant or eating house.

(iii) The petitioner will file an undertaking in this behalf with this Court within two weeks of receipt of a copy of the order.

8. It is further directed that the copy of the undertaking furnished by the petitioner to this Court shall also be provided to respondent no.1 (SDMC). On the compliance of the aforesaid directions, the concerned SDM shall take immediate steps for de-sealing the units.

9. The petition is disposed of in the aforesaid terms. The application is also disposed of.

VIBHU BAKHRU, J

JULY 27, 2018
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