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

+ W.P.(C) 9302/2018

AFAQ HUSSAIN CHAUDHARY Petitioner

Through: Mr Prashant Singh, Advocate.

versus

JOINT COMMISSIONER OF POLICE (LICENSING)

AND ANR.

..... Respondents

Through: Mr Devesh Singh, ASC (Civil),
GNCTD with Ms Sukriti Ghai and
Ms Urvashi Tripathi, Advocate for R-
1 & R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.09.2018

C.M. No.35972/2018

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 9302/2018 & CM No.35971/2018

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.07.2018 (hereafter 'the impugned order') passed by respondent no.2 (the Lieutenant Governor, Delhi – hereafter 'the Appellate Authority').

4. By the impugned order, the Appellate Authority had rejected the petitioner's appeal filed against an order dated 29.07.2016 passed by the Licensing Authority, whereby the petitioner's application for grant of

lodging license to run a guest house, was rejected.

5. On 17.06.2014, the petitioner filed an application for grant of lodging license to run a guest house in the name of 'Park View Guest House' in a building located at plot no. 29 (Old), New No. A-96, Ghazipur Village, Delhi-110096. The said application was rejected by the order dated 29.07.2016.

6. A plain reading of the said order indicates that the 'Area Suitability Report' was called from DCP, East District, Delhi. The said officer had submitted a report indicating that the reports were received from police alleging that the petitioner was running a guest house from the said premises without having a valid license. The concerned SHO had also reported that a number of complaints have been received from local residents, who had alleged that the guest house was involved in illegal activities. It was alleged that the petitioner was permitting minor girls and boys to stay in the guest house without making any entry or verifying their identity proof. Considering the said report, the Licensing Authority rejected the petitioner's application for a lodging license.

7. Aggrieved by the said decision, the petitioner preferred an appeal (Appeal No. 141/2016) under Regulation 39 of the Regulations for Keeping Places of Public Entertainment in the Union Territory of Delhi, 1980 (hereafter 'the Regulations'), before the Appellate Authority.

8. The petitioner states that during the pendency of the appeal, by an order dated 19.10.2016, the Appellate Authority permitted the petitioner to run the guest house till further orders. Thereafter, on 23.11.2016, the

Appellate Authority directed the Special Commissioner of Police (Special Branch) (hereafter ‘Special CP’) to conduct a discrete inquiry in respect of the guest house in question. The Special CP filed an adverse report dated 26.12.2016. In view of the said report, the Appellate Authority dismissed the petitioner’s appeal by an order dated 08.02.2017. Aggrieved by the aforesaid action, the petitioner preferred a writ petition – W.P.(C) No. 1872/2017 – impugning the order passed by the Appellate Authority.

9. The petitioner contended that the Special CP had not conducted any fresh inquiry but had merely relied on the material that was already available. It is relevant to note that the petitioner had claimed that the inquiry conducted earlier was at the behest of the local MLA and the facts stated therein were not correct and it is in this context that the Special CP had been directed to conduct an inquiry. Before this Court, it was stated that Special CP had not conducted an independent inquiry and consequently, the writ petition bearing no. W.P.(C) 1872/2017 was allowed by an order dated 19.07.2017, the operative part of which reads as under:-

“9. In view of the same, the impugned order is set aside and the matter is remanded to the Lieutenant Governor, with a direction that the Special Commissioner of Police (Special Branch Intelligence) conduct an independent inquiry and submit a report to the Lieutenant Governor. The Lieutenant Governor shall consider the same and pass such orders as he considers fit in accordance with law.

10. It is expected that the inquiry will be completed within a period of six weeks and the Lieutenant Governor would dispose of the petitioner’s appeal within a period of eight weeks, thereafter. The Special Commissioner will be at liberty to call the petitioner and hear his version before submitting its final

report.”

10. On 18.10.2017, the Appellate Authority once again rejected the petitioner’s appeal on the basis of a report dated 28.08.2017 submitted by the Special CP (Intelligence). The order dated 18.10.2017 was challenged by the petitioner by way of a writ petition – W.P.(C) 10415/2017. The petitioner impugned the report of the Special CP dated 28.08.2017 on several grounds including that the said report had been submitted by the same officer, who had submitted the earlier report dated 26.12.2016. The petitioner further claimed that no inspection had been carried out on 05.07.2017 as indicated in the said report. It was further contended on behalf of the petitioner that the said grounds could not be urged before the Appellate Authority, as the report of the Special CP was not available prior to the hearing before the Appellate Authority.

11. In view of the above, by an order dated 29.11.2017, this Court once again remanded the matter to the Appellate Authority, the operative part of which reads as under:-

“10. In the aforesaid circumstances, this Court considers it apposite to provide the petitioner one more opportunity to address its contentions, albeit, limited to the assertions/findings reported in the inquiry report dated 28.08.2017. Accordingly, the matter is remanded to respondent no.2 for consideration of the petitioner’s challenge in respect of the report of the Special Commissioner dated 28.08.2017, which form the basis of the impugned order.

11. It is clarified that this Court has not expressed any opinion as to the merits of the contentions advanced by the petitioner.”

12. On remand, the Appellate Authority found that the reports dated 26.12.2016 and 28.08.2017, on the basis of which the petitioner's appeals had been rejected, were made by the same officer. In view of the apprehension expressed by the petitioner that the officer could not be expected to retract his reports, the Appellate Authority had thought it fit to direct a fresh inquiry. Accordingly, by an order dated 07.03.2018, the Appellate Authority directed the Special CP (Intelligence) to conduct a fresh and independent inquiry and also furnish the same to the petitioner. In compliance with the aforesaid order, the Special CP (Intelligence) submitted an inquiry report dated 24.04.2018. In view of the aforesaid report, the Appellate Authority dismissed the appeal by the impugned order.

13. The learned counsel appearing for the petitioner submitted that one of the reasons why the petitioner's application has been rejected is the *kalandaras* prepared in respect of the guest house in question on three different occasions. He submitted that the *kalandaras* have been prepared in respect of other guest houses operating in the area as well, but no action has been initiated in respect of those guest houses. He also referred to an order dated 12.12.2017, whereby the show cause notice issued in respect of one "Akash Guest House" had been withdrawn. He submitted that there were number of *kalandaras* issued against the said guest house but the same had been over-looked. He earnestly contended that the petitioner was being discriminated against for the reason of belonging to minority community. He further submitted that the complaints against the petitioner were motivated at the instance of the Local MLA, as the petitioner had denied the use of the guest house at the time of elections.

14. This Court is unable to accept the contentions advanced on behalf of the petitioner. Indisputably, one of the factors that is required to be considered by the Licensing Authority is the inconvenience caused to persons in the vicinity. Regulation 37 of the Regulations is relevant and is set out below:-

“37. The Commissioner of Police or any other officer authorised by him in this behalf shall have the power in his discretion at any time to cancel a license granted under these regulations or to suspend it for such period as he may specify and to direct the keeper of any place of public entertainment to close place either permanently or temporarily or otherwise act with reference thereto if the Commissioner of Police or any other officer authorised by him in this behalf is satisfied after such enquiry as he deems fit that the license is not a suitable person for continuing to hold the license or in order to prevent any obstruction, inconvenience in the vicinity or to prevent disturbance in such place and every person keeping a place of public entertainment shall forthwith comply with such direction.”

15. In the present case, various police officials have reported that there were complaints against the petitioner from the residents of the area. Undisputedly, various complaints had been made by local residents to the police, licensing branch as well as to the Appellate Authority. These complaints were made either directly or through the Local MLA, Shri Om Prakash Sharma. Such complaints were made during the period 2014 to 2017. It was alleged that young couples used to visit the guest house in question for a short duration and it was suspected that they were indulging in immoral activities.

16. The report of the Special CP dated 24.04.2018 indicates that a discrete

inquiry had been conducted and as many as thirty residents from the locality were examined. All of the said residents had stated that the activities of the visitors to the guest house leave an adverse impact on the residents of the village in general and school children in particular, as the guest house is located adjoining to the Senior Secondary Boys and Girls Schools. The local residents had also reported that young couples visit the guest house frequently and hire rooms only for few hours. It was also reported that visitors to the guest house were seen engaged in public display of affection – described as “*indecent exposure/lewd gesture like kissing/hugging*” – on the balconies of the guest house.

17. In view of the various reports submitted, there can be no dispute that the local residents have serious objections to the petitioner running the guest house in question. In the circumstances, the decision of the Licensing Authority to reject the license and the impugned order rejecting the petitioner’s appeal warrants no interference by this Court.

18. The petition is, accordingly, dismissed. The pending application also stands disposed of.

VIBHU BAKHRU, J

SEPTEMBER 05, 2018
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