NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 22-01-2019

Order delivered on 14-05-2019

WPC No. 1576 of 2018

1. Sameer Nijhawan S/o Shri Yashpal Nijhawan Aged 44 Years R/o Near Rajdhani Auto Telibandha, Raipur District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Collector (Excise) Raipur District Raipur Chhattisgarh

2. The Commissioner Department Of Excise Raipur District Raipur Chhattisgarh.

3. The Collector , Department Of Excise Raipur District Raipur Chhattisgarh.

---- Respondent

For Petitioners	Shri Anurag Dayal Shrivastava, Advocate
For Respondent/State	Shri Sudeep Verma, Dy. Govt. Advocate

C A V Order

By

Prashant Kumar Mishra, J.

1. Challenge in this petition is to the appellate order dated 18-5-2018 (Annexure – P/1) passed by the Excise Commissioner, Chhattisgarh, in appeal No.REC 01/2018-19 dismissing the petitioner's appeal, which, in turn, was preferred against the order dated 28-3-2018 passed by the Licencing Authority i.e. the Collector (Excise), Raipur, to cancel the petitioner's FL-2 beer bar licence.

2. Facts of the case, as disclosed from the material on record, are that at the relevant time the petitioner was holding a licence in form FL-2 popularly known as beer bar licence to operate the said bar at his hotel named as ‘Tandoor Bar’. The licence was granted to the petitioner for a period of one year ending on 31-3-2018. On 8-2-2018 a show cause notice was issued to the petitioner stating, *inter alia*, that on inspection of the bar on 23-1-2018 by the Assistant District Excise Officer certain irregularities were found regarding non-production of permit of the stock available at the bar and further that certain beer of different batch numbers other than the batch allotted in the permit, was found in the stock, attracting violation of terms of licecence punishable under Section 39 (a) (c) of the Chhattisgarh Excise Act, 1915 (for short ‘the Act, 1915’). The petitioner was instructed to show cause as to why action should not be taken under Rule 23 (1) of the Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Luiquor Rules, 2002 (for short ‘the Rules, 2002’) read with Section 31 (b) of the Act, 1915.

3. Contesting the show cause notice the petitioner filed his reply stating that the permit was available in the licensed premises and that the liquor available in the stock was purchased from the Chhattisgarh State Marketing Corporation Limited. The

stock seized by the Excise Officer was purchased from Santoshi Nagar Shop on 20-1-2018 bearing batch No.119. The seller shop keeper was in a hurry, therefore, the batch number was not mentioned, which was later on inserted on 24-1-2018.

4. The Collector (Excise) was not satisfied with the explanation offered by the petitioner, therefore, the licence was cancelled on the ground that permit was not presented to the Divisional Flying Squad, Raipur, when raid/inspection was carried on 23-1-2018 and that the stock of liquor was having different batch number than the one purchased by the petitioner. This was in violation of condition No.5 of the licence, therefore, the same being serious in nature the licence deserves to be cancelled. It was mentioned that on two previous occasions also the petitioner had committed serious violation of the terms of the licence firstly on 13-11-2017 when the petitioner was found to sale other variety of liquor than the one for which licence has been issued. Again on 20-12-2017 the petitioner was found to sale Symba Strong Beer by parcel from its counter, which was in violation of condition No.2 of the licence because the licence is for sale of beer in open bottle in the restaurant itself. On the said occasion the petitioner was also found to violate the condition No.6 and 22

for not producing account register and inspection book to the Excise Officer. For the first violation the petitioner was imposed fine of Rs.10,000/- and for the second violation petitioner's licence was suspended for 7 days. Thus, he is habituated in violating the terms of licence. The order passed by the licencing officer has been affirmed by the Excise Commissioner under the order impugned.

5. Referring to the decision rendered by the High Court of Madhya Pradesh in **Sukhlal Sen v Collector, Dist. Satna and Others**[1] **AIR 1969 MP 176** , it is argued that there is serious violation of principles of natural justice for the reason that the petitioner was not provided opportunity to meet the charges. To support the argument it is further putforth that the supporting documents on the basis of which proceedings were initiated were not supplied to the petitioner neither the enquiry report of the Assistant District Excise Officer was supplied. It is further argued that no enquiry has been conducted before cancellation of licence and, as such, proper opportunity has not been afforded to the petitioner.

6. The main thrust of argument raised at the bar revolves around Section 31(1-A) of the Act, 1915 to bring home the plea of violation of principles of natural justice. In order to meet the

1 AIR 1969 Madhya Pradesh 176

argument it would be necessary to refer the said provision, which is quoted below :

> **31. Power to cancel or suspend licence, etc.--**
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> (1-A) Before making an order cancelling or suspending a licence permit or pass under sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard.

7. The provision extracted above makes it incumbent on the authority to record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard. The show cause notice issued to the petitioner vide Annexure – P/3 categorically records the reason as to the grounds on which the petitioner is liable to be proceeded for imposition of punishment under Section 31 (1) (b) of the Act, 1915. The said provision empowers the licencing authority to cancel or suspend a licence when any of the terms or conditions thereof have been breached by the holder or his servant or agent. When the show cause notice was replied by the petitioner vide Annexure – P/4 no ground was raised alleging violation of

principles of natural justice or that the servant or agent available in the shop was not authorized by the petitioner.

8. A close perusal of the reply would reveal that the petitioner had, in fact, admitted that the batch number was not mentioned in the permit because the shop keeper from whom the stock was purchased was in a hurry and could not mention that batch number, which was later on inserted on 24-1-2018. For the other violation regarding non production of permit at the time of raid/inspection also the petitioner did not state that the permit was shown to the Flying Squad Team. His statement in para 1 of the reply that the licence was available at the licenced premises falls short of making submission that the licence was produced before the Flying Squad Team.

9. On the basis of above, once it is found that the petitioner had no cogent reply to offer to the grounds for initiating action against him, as mentioned in the show cause notice, the licencing officer was fully justified in proceeding to take action in accordance with the provisions of Section 31 (1) (b) of the Act, 1915. The petitioner having not sought for copy of the report, the plea of violation of principles of natural justice appears to be after thought and moreover such plea is not sustainable because the show cause notice would

categorically mention the reasons for the proposed action. The judgment relied by the petitioner in the matter of **Sukhlal Sen** (supra) would not support, being based on different factual score.

10. Moreover, it is important to mention that at the time of raid/ inspection by the Flying Squad Team the petitioner's agent was present in the lienced premises and had admitted by writing that ‘charges admitted’ and putting his signature thereunder. It is not the case of the petitioner in his reply to the show cause notice that the authorized agent was misled or pressurized by the Excise Officer. The document containing signature of petitioner’s agent is available at page 12 of the counter affidavit filed by the State.

11. For all the above stated reasons, in my opinion, the petitioner has not made out a case for interference of this Court under Article 226 of the Constitution of India.

12. In the result, the writ petition, being devoid of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Judge
(Prashant Kumar Mishra)

Gowri