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

\+ **W.P.(C) 7662/2019 & CM No. 31858/2019**

AMIT MITTAL ..... Petitioner

Through: Mr D. K. Yati, Advocate alongwith petitioner in person.

versus

COMMISSIONER OF POLICE, DELHI AND ANR. ..... Respondents

Through: Mr Ramesh Singh, Standing Counsel, GNCTD with Mr Ishan Agarwal, Advocate with SI Anil, Licencing Unit.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 17.07.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 31.05.2019 (hereafter 'the impugned order') passed by respondent no.1 (the Commissioner of Police) rejecting the petitioner's appeal against an order dated 24.04.2019 passed by the Licencing Authority, cancelling the Registration Certificate issued to the petitioner under the "Delhi Eating House Registration Regulation – 1980" to operate an Eating Houses at premises bearing No.27, Ground Floor to Third Floor, Panchkuian Road, New Delhi.

2. The petitioner was operating a restaurant-cum-bar by the name of 'M/s VIP Lounge and Bar' in terms of the aforesaid Registration Certificate granted under the provisions of the "Delhi Eating Houses

Registration Regulation, 1980”.

3. It is alleged that on 08.10.2018, at about 11:20 PM, the police authorities had found that dancing girls were performing at the said restaurant and a FIR (FIR No.298/2018 under Section 188 IPC) was registered against the petitioner.

4. In view of the aforesaid allegations, a show cause notice was issued to the petitioner on 18.10.2018. Subsequently, by an order dated 20.12.2018, the Licencing Authority cancelled the Registration granted to the petitioner. Aggrieved by the same, the petitioner preferred a writ petition – being W.P.(C) 14087/2018 – before this Court. The said petition was dismissed as withdrawn on 28.01.2018 with liberty to the petitioner to file an appeal before the Commissioner. Thereafter, the petitioner preferred an appeal before the Commissioner, which was also dismissed by an order dated 04.02.2019.

5. Aggrieved by the same, the petitioner once again filed a writ petition before this Court being ***W.P.(C) 1580/2019*** captioned ‘***Amit Mittal v. Commissioner of Police, Delhi and Anr.***’. The said petition was allowed on 18.02.2019 and the matter was remanded to the Licencing Authority to consider it afresh. This Court found that the petitioner was not provided the material – video clippings of the dance performance at the petitioner’s eating house-cum-bar – on the basis of which the orders impugned therein were passed. In view of the above, this Court directed the Licencing Authority to consider the matter

afresh and to ensure that all material relied upon for taking any proposed action against the petitioner, is provided to the petitioner.

6. Admittedly, thereafter, the video clipping and other material relied upon by the Licencing Authority was provided to the petitioner.

7. Thereafter, the Licensing Authority issued a show cause notice dated 28.02.2019 and also provided all documents and video clipping to the petitioner. On 13.03.2019, the petitioner filed a detailed reply to the said show cause notice. The petitioner's response was found to be unmerited and the licence granted to the petitioner was cancelled by the order dated 24.04.2019.

8. The petitioner carried the said matter in appeal before the Commissioner of Police. The said appeal has been dismissed by the impugned order.

9. The learned counsel appearing for the petitioner has assailed the impugned order on two fronts. First, he submitted that the respondent had not provided any certificate as required under Section 65B of the Evidence Act, 1872 alongwith video clipping. He submits that this was a mandatory requirement and in absence of such certificate/affidavit, the respondents could not rely on the video clipping. Second, he submits that insofar live performance at the Eating House is concerned, the petitioner's L-17 licence granted under the Delhi Excise Act, 2010 permitted such a performance. He relied on the Circular dated 22.05.2018 issued by the Office of Commissioner Excise, Entt & Luxury Tax in support of his

contention.

10. This Court is not persuaded to accept either of the said contentions.

11. The petitioner is only entitled to the material relied upon by the respondents in order for the petitioner to meet the case set up against it. There is no requirement for the respondents to submit a certificate/affidavit under Section 65B of the Evidence Act, 1872 to the petitioner. The proceedings before the respondents were administrative proceedings. Moreover, the petitioner is not adjudicating any proceedings which require the respondents to establish their case before the petitioner.

12. The contention that the petitioner's licence (L-17) granted under the Delhi Excise Act, 2010 also permits the petitioner to hold live performances at the Eating House, is unmerited. The reliance placed by the learned counsel appearing for the petitioner on the Circular dated 22.05.2018, is misplaced.

13. The said Circular is set out below:

> "CIRCULAR
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> There has been mis-interpretation in various newspapers of the circular dated 16.05.2018 issued by the Excise Department. In this regard, it is to inform that Rule 53(4) of Delhi Excise Rules, 2010 states:
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> "The licensee shall not permit any professional entertainment or dancing, or the playing of musical

> instruments or singing by professionals, to be carried on his premises in such a way as to attract the general attention of his customers:
>
> PROVIDED that this condition shall not apply to a hotel or a restaurant or a club licensed in Forms L-15, L-16, L-17, L-28 and L-29, except insofar it is imposed by the Deputy Commissioner by general or special order. However, in the case of L-17 licensee only live singing/playing of instruments by professionals shall be allowed."
>
> The circular of the Excise Department is to be understood only in the limited context of para 53(4) and nothing more should be read out of it. Moreover, on the issue of playing of recorded music in the restaurants, no new direction has been issued by the Excise Department.
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> This issues with the approval of Commissioner (Excise).
>
> S/d
> (PRAVEEN MISHRA)
> DY. COMMISSIONER (EXCISE)/
> LICENSING AUTHORITY "

14. The said Circular has to be read in the context of the Delhi Excise Act, 2009 and the Delhi Excise Rules, 2010. It merely clarifies that a L-17 Licensee is not prohibited from permitting any professional entertainment or dancing or playing of musical instruments or singing by professional at the licenced premises. However, this cannot be construed to mean that the a licencee holding L-17 licence under the Excise Rules, is not required to obtain the licences under the Regulations for Licensing and Controlling Places of Public Amusements (other than cinemas) and Performances for Public

Amusement, 1980 as well as the Delhi Eating Houses Registration Regulation, 1980.

15. Mr Ramesh Singh, learned counsel appearing for the respondents has also referred to Regulation 116 of the Regulations for Licensing and Controlling Places of Public Amusements (other than cinemas) and Performances for Public Amusement, 1980 which expressly provides that "*no person shall hold a musical, dancing, dramatic, mimetic, theatrical or other performances for public amusement or any public exhibition or diversion of games, by whatever name called, unless and until he has obtained a performance license from the Licensing Authority to hold such performance*."

16. In view of the above, the impugned order cannot be faulted and this Court finds no ground to interfere with the same.

17. Having stated above, it is also observed that the Commissioner of Police had expressly indicated that the petitioner could apply afresh. This Court is informed that an application in this regard has already been moved. Needless to state that the same would be considered in accordance with law.

18. The petition is dismissed. The pending application is disposed of.

VIBHU BAKHRU, J

JULY 17, 2019
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