IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11014 OF 2019

Bhaniben Haribhai Damania ... Petitioner
V/s.
Commissioner of Excise,
Dept. of Excise, Daman and ors. ... Respondents

Mr.Sujay Kantawala with Mr.Vivek V. Khemka, Advocate for the Petitioner.
Mr.S.S.Deshmukh, Advocate for the Respondents.

CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 8, 2020.

P.C.:-

1. Heard Mr.Sujay Kantawala, learned counsel alongwith Mr.Vivek Khemka, learned counsel for the petitioner; and Mr.S.S.Deshmukh, learned counsel for the respondents.

2. By filing this petition under Article 227 of the Constitution of India, petitioner has challenged the legality and correctness of order dated 5th July, 2018 passed by the Commissioner of Excise, Daman and Diu i.e. respondent No.1 as well as the order dated 10th April,

2019 passed by the Administrator for the Union Territory of Daman and Diu i.e. respondent No.3.

3. Case of the petitioner is that petitioner is a licensee under the respondents and on the strength of the license was running the business of selling liquor under the name and style of "Vibhuti Wines" at Nani Daman.

4. It is stated that on 23rd November, 2017, Deputy Commissioner of Excise alongwith other excise officials carried out a surprise inspection of the wine shop of the petitioner, following which show cause notice cum suspension order dated 31st January, 2018 was issued by respondent No.1.

5. It was mentioned in the said show cause notice cum suspension order that petitioner was alleged to have conducted sale of liquor beyond the prescribed limit and was maintaining two types of account registers separately, one for official purpose of the Excise Department and the other for private and personal

transactions and accounting. Therefore, it was alleged that petitioner was carrying on business of sale of liquor in violation of the provisions contained in the Goa, Daman and Diu Excise Duty Act, 1964 (briefly "the Excise Act" hereinafter) and Goa, Daman and Diu Excise Duty Rules, 1964 (briefly "the Excise Rules" hereinafter). Petitioner was called upon to submit written explanation to the show cause notice alongwith documentary evidence within 5 days from the receipt of the said order.

6. Petitioner submitted reply to the show cause notice cum suspension order on 3rd February, 2018 addressed to the respondent No.1 explaining the position and requesting the authority to revoke the suspension order.

7. However, respondent No.1 passed the impugned order dated 5th July, 2018 cancelling the license of the petitioner with immediate effect. It was stated that there were sufficient grounds to cancel the license for violating different provisions of the Excise Rules and

therefore, in exercise of the powers conferred by Section 16 of the Excise Act, the cancellation order was passed.

8. Aggrieved by the said order of cancellation, petitioner preferred appeal before respondent No.3 on 31st August, 2018. The appeal was preferred under Section 40 of the Excise Act and was registered as Excise Appeal No.6 of 2018.

9. By order dated 10th April, 2019, respondent No.3 agreed with the findings given by respondent No.1 and dismissed the appeal.

10. Thereafter, the present writ petition has been filed.

11. Learned counsel for the petitioner has taken the court to Section 16 of the Excise Act and submits that under sub-section (2) thereof both cancellation and suspension of liquor license are prescribed as penalties. Either one of the penalties may be imposed as the word ‘or’ is used between the two penalties. Both penalties

cannot be imposed for the same infraction. In this connection, he has placed reliance on a Single Bench decision of the Patna High Court in **Pradhuman Chaudhary Vs. State of Bihar, 2010 SCC online Patna 2040** as well as a Division Bench judgment of Patna High Court in the case of **Shiv Chandra Jha Vs. Harideo Jha, AIR 2013 Patna 74**. In addition, he submits that both the impugned orders are non-speaking orders and on this ground alone the two orders are liable to be interfered with. His further contention is that penalty of cancellation of license is an extremely drastic measure and ought not to have been imposed even if infraction is admitted. In other words, penalty is disproportionate.

12. *Per contra*, learned counsel for the respondents supports the two impugned orders and contends that Section 16 of the Excise Act provides for only one penalty, that is cancellation of license. Authority invested with the power to cancel a license has also the incidental

power to suspend the license during the interregnum. He therefore, seeks dismissal of the writ petition.

13. Submissions made by learned counsel for the parties have been considered.

14. At the outset, Section 16 of the Goa, Daman and Diu Excise Duty Act, 1964 (already referred to as "the Excise Act") may be adverted to. For ready reference, Section 16 is extracted hereunder:-

> "Power to cancel licenses:- (1) A licence or permit granted under this Act may be cancelled by the Commissioner for good and sufficient reasons to be recorded in writing, after giving an opportunity to the person concerned for making any representation and after considering such representation.
> (2) In particular and without prejudice to the generality of sub-section (1), the Commissioner may cancel or suspend any licence or permit granted under the Act –
> (a) If any fee or duty payable by the holder thereof be not duly paid; or
> (b) If there is any breach by the holder of such licence or permit, or by his servants, or by any one acting with his express or implied consent on his behalf, of any of the terms or conditions of such licence or permit or of the terms of any agreement executed under section 17; or

> (c) If the holder thereof is punished for any offence against this Act, or of any cognizable or non-bailable offence; or
> (d) If the conditions of the licence or permit provide for such cancellation or suspension.
> (3) The holder of a licence or permit shall not be entitled to any compensation for the cancellation or suspension thereof under this section nor to a refund of any fee paid or deposit made in respect thereof."

15. From a careful analysis of Section 16, it is seen that the section comprises of three sub-sections. As per sub-section (1) , a license or permit granted under the Excise Act may be cancelled by the Commissioner for good and sufficient reasons to be recorded in writing, after giving an opportunity to the person concerned for making any representation and after considering such representation. Therefore, what sub-section (1) provides is that a license or a permit granted under the Excise Act may be cancelled by the Commissioner subject to the following conditions:-

> (1) for good and sufficient reasons which must be recorded in writing;

(2) after giving an opportunity to the person concerned for making any representation;

(3) and after considering such representation.

15.1 Under sub-section (2), a Commissioner may cancel or suspend any license or permit granted under the Excise Act if there is infraction of the four conditions i.e. conditions (a) to (d) as mentioned in the said sub-section. Interestingly, sub-section (2) starts with a clarificatory note to the effect that the provisions of sub-section (2) may be invoked without prejudice to the generality of sub-section (1) which has already been discussed above.

15.2 Sub-section (3) is clarificatory in the sense that on cancellation or suspension of a license or permit, the license holder or permit holder would not be entitled to any compensation or refund of any fee paid or deposited.

16. Therefore, from a conjoint reading of the provisions contained in Section 16 it is quite evident that the Commissioner is invested with the power to cancel a

license or a permit. However, for the specific infractions mentioned in sub-section (2), the Commissioner may cancel or suspend any license or permit. In the case of such cancellation or suspension, the holder of the license or permit would not be entitled to any compensation or refund.

17. From the above, what is discernible is that only cancellation of license or permit is provided as a penalty under sub-section (1). However, for the specific instances of infraction as mentioned in sub-section (2), the Commissioner has the discretion either to cancel or suspend any license or permit. Therefore, if it is a case which comes within the four corners of sub-section (2), then the Commissioner has the discretion either to cancel or suspend any license, but if it is not a case coming within the ambit of sub-section (2), the only penalty provided is cancellation of license or permit. It is trite that an authority which is invested with the power to cancel a license or permit has also the power to suspend such license or permit which is an incidental

power. Suspension in such a case would not be and cannot be construed as a separate penalty distinct from cancellation. Therefore, this contention of learned counsel for the petitioner cannot be accepted. Reliance placed on the decisions in **Pradhuman Chaudhary (supra)** and **Shiv Chandra Jha (supra)** is misplaced as those decisions are clearly distinguishable in as much as clause (2) of the Bihar Licensing Order of 1984 as well as clause (7) of the Fair Price Shop Order of 2007 clearly mentioned that penalty provided for contravention of the terms and conditions of the license was suspension or cancellation or suspension/ cancellation which is not the position in the present case.

18. However, having said so, impugned order dated 5th July, 2018 may be referred to, relevant portion of which is extracted hereunder:-

> “AND WHEREAS, during personal hearing in the matter held on 15/05/2018 before the Commissioner of Excise, Daman and as per the reply dated 03/02/2018 to the Show

Cause Notice dated 31/01/2018, it has been found that the licensee has violated the following provisions of Goa, Daman & Diu Excise Duty Act and Rule, 1964.

Sr. No.	Description of offence	Rule under which violated	Status of violation
1.	The licensee is a retailer and has conducted business as a wholesaler. (sold goods in bulk)	Rule-90	Serious
2.	Possession of illegal godown.	Rule-97	Serious
3.	The Licensee has maintained 02 types of accounts for official purpose of Excise and for personal transactions.	Rule-101	Serious

AND WHEREAS, from above it can be seen that there exist sufficient grounds to cancel the license of the licensee for violating different provisions of Goa, Daman and Diu

Excise Duty Act and Rules, 1964. The licensee has been given sufficient opportunity to submit documents/ records in her defence.

NOW THEREFORE, in pursuance to the provisions of Section 16 of Goa, Daman & Diu Excise Duty Act, 1964, I, Sandeep Kumar Singh, Commissioner of Excise, Daman & Diu, Daman do hereby pass an order to cancel the license No.RS/IMFLCL/PB/06, Vibhuti Wines, Dabhel in the name of Smt. Bhaniben Haribhai Damania with immediate effect."

19. From the above it is quite apparent that no reasons have been cited as to how and in what manner the alleged violations of the petitioner were found to be serious. Nothing has been stated as to the extent of the alleged violations. Merely saying that the status of violation is serious or that there exists sufficient grounds to cancel the license of the petitioner is not enough. The order must disclose how and in what manner the violation(s) had taken place and the extent of the

violation(s), if any. It must also indicate as to whether such violation(s), if any, would attract a penalty as severe as cancellation of license. Plainly speaking, the impugned order is a non-speaking one, as it does not disclose reasons for arriving at the conclusions.

20. Similar is the position in respect of the impugned appellate order dated 10th April, 2019. The appellate authority simply stated that the Commissioner had heard the petitioner at length and had passed the speaking order (which infact is not a speaking one) and thereafter, agreed with the findings of the Commissioner. Thus, the appellate authority also failed to give reasons while rejecting the appeal of the petitioner.

21. A Constitution Bench of the Supreme Court in **S.N. Mukherjee Vs. Union of India, (1990)4 SCC 594** held that reasons when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority.

That apart, the requirement of recording reasons would guarantee consideration by the authority; introducing clarity in decisions and minimize chances of arbitrariness in decision making. These considerations are of no less significance and show that recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making.

22. In **State of Orissa Vs. Dhaniram Luhar, (2004)5 SCC 568**, Supreme Court observed that reason is the heart-beat of every conclusion and without the same it becomes lifeless. After referring to a couple of English decisions it was observed that giving of reasons is one of the fundamentals of good administration. Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision maker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. One of the salutary requirements of natural justice is

spelling out reasons for the order made; in other words, a speaking-out.

23. Supreme Court in **East Coast Railway Vs. Mahadev Appa Rao, (2010)7 SCC 678** observed that application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons is clearly suggestive of the order being arbitrary, hence legally not sustainable.

24. This issue again drew the attention of the Supreme Court in **Kranti Associates Private Limited Vs. Masood Ahmed Khan, (2010)9 SCC 496** and in this context adverted to the expression "speaking order". It was emphasized that face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

25. On due consideration court is of the view that impugned orders are devoid of any reasons, rendering those orders wholly arbitrary, thus untenable in law. Consequently, the impugned orders dated dated 5th July, 2018 and 10th April, 2019 are hereby set aside.

26. Writ petition is accordingly allowed, but without any order as to costs.

(UJJAL BHUYAN, J.)

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