



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5060 OF 2022**

Manjuben Mukesh Tandel
Proprietor, Widow of Mukesh Tandel,
H.No.9/304, Master Sheri,
Behind Sovereign Hotel,
Nani Daman, Daman

... PETITIONER

versus

1. Commissioner of Excise,
Department of Excise, Daman.
2. Dy. Commissioner of Excise cum
Dy. Collector, Daman and Diu
3. The Administrator,
Union Territory of Daman and Diu
4. The Advisor to Administrator
Union Territory of Daman and Diu
5. Union of India through
Union Territory of Daman & Diu

... RESPONDENTS

Mr. Bhavesh Parmar with Ms. Reshma Nair i/by Devmani Shukla, for Petitioner.
Mr. Hiten Venegaonkar, for Respondents.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 15 JUNE 2023

PRONOUNCED ON : 13 SEPTEMBER 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned
Counsel for the parties, heard finally.

2 This Petition under Article 227 of the Constitution of India assails the

legality, propriety and correctness of an order dated 1 February 2022 passed by the Advisor to the Administrator, Union Territory of Dadra, Nagar Haveli and Diu and Daman, whereby the Advisor affirmed the order dated 19 May 2020 in Appeal No.6 of 2022 passed by the Collector – Cum – Commissioner of Excise, Daman cancelling the excise licences Nos.WS/IMFL/35 and WS/CL/Village/36 in the trade name of Infinity Traders issued in favour of the Petitioner.

3. The Petition arises in the backdrop of the following facts :

3.1 The Petitioner was dealing in the business of sales of liquor under the name and style of Infinity Traders. The Petitioner was granted the above licences. On 2 and 3 May 2020, the Deputy Commissioner of Excise, conducted a surprise check at the premises of the Petitioner. It was alleged that there was huge difference in the stock found at the premises and the stock as per IERMS (online data).

3.2 A notice was issued to the Petitioner on 4 May 2020 to explain and justify the difference in stock, within a period of three days. The Petitioner was directed to close the outlet till further orders.

3.3 The Petitioner gave reply on 7 May 2020. It was contended that the discrepancy in the stock allegedly noted in the inspection could be on account of incomplete maintaining of the physical stocks and books in view of the exigency of the situation which arose on account of Covid-19 Pandemic.

3.4 The Collector – cum – Commissioner of Excise, Daman, after

considering the explanation to the show cause notice and the panchanama drawn and statements recorded at the time of inspection, passed an order on 19 May 2020 cancelling the above licences with immediate effect. The Collector was of the view that the Petitioner had appointed a Manager for the said outlet without intimation to or knowledge of the Excise Department in violation of the provisions of Rule 104(1) of the Goa, Daman and Diu Excise Duty Rules, 1964 (GDDEDR Rules, 1964). The Petitioner had not maintained the sign board outside the outlet in breach of Rule 103 GDDED Rules, 1964. CCTV cameras were not available and that only 10 cases of different brands of liquor / beer were found physically lying in the godown, whereas IERMS stock details showed the stock of 15498 cases. Hence, there was breach of Rules and terms and conditions subject to which licences had been granted.

3.5 Aggrieved by the aforesaid order, the Petitioner preferred an Appeal before the Administrator. By an order dated 3 November 2020, the Administrator was persuaded to dismiss the Appeal.

3.6 In Writ Petition No.5697 of 2021, a Division Bench of this Court by an order dated 21 September 2021 set aside the order passed by the Administrator on the ground that it was bereft of reasons and, thus, remitted the matter. As the Division Bench was informed that the appeal would lie before the Advisor to the Administrator, the Appeal was remanded to the Advisor for afresh decision after recording reasons.

3.7 Post remand, the Advisor to the Administrator, after providing an

opportunity of hearing to the parties, dismissed the appeal preferred by the Petitioner opining, inter alia, that the Appellant had violated various provisions of Rules, 1964 and there was no merit in the appeal.

3.8 Being further aggrieved, the Petitioner has again approached this Court.

3.9 An affidavit in Reply is filed on behalf of the Respondents in support of the impugned order.

4. I have heard Mr. Bhavesh Parmar, learned Counsel for the Petitioner, and Mr. Hiten Venegaonkar, learned Counsel for the Respondents at some length. The learned Counsel took the Court through the pleadings and material including the orders passed by the authorities below.

5. The learned Counsel for the Petitioner submitted that the order of cancellation of the licences dated 19 May 2020 has been passed in flagrant violation of the principle of natural justice and without providing an efficacious opportunity of hearing to the Petitioner. Amplifying the challenge, the learned Counsel for the Petitioner would urge that, firstly, the show cause notice dated 4 May 2020 was completely omnibus and did not indicate the alleged lapses on the basis of which the licences came to be eventually cancelled by the Commissioner of Excise. The show cause notice did not indicate the action which the Commissioner, Excise, proposed to take in the event of an unsatisfactory or no explanation. The consequences of non-explanation were not specifically spelled out, submitted Mr. Parmar. Secondly, the

Petitioner was given only three days time to file a reply/explanation to the show cause notice which in the backdrop of the exigency of the situation which arose on account of Covid – 19, cannot be said to be a reasonable notice. Thirdly, even otherwise, the Respondents did not indicate with necessary clarity as to the quantum of stock which was allegedly found deficient.

6. Laying emphasis on the said ground, it was urged that apart from bald words that there was ‘huge difference’ in the stock, the show cause notice dated 4 May 2020, did not divulge the details of the alleged difference in the stock and information and/or documents to support the said objection, was/were never furnished to the Petitioner. This also, according to Mr. Parmar, is in breach of fundamental principles of natural justice. Lastly, it was urged that the impugned order makes a reference to the alleged breach of Rules 103 and 104 of Rules, 1964, of which the Petitioner was never put to notice.

7. Likewise, the endeavour of the Respondents to support the impugned order by resorting to information and documents which were obtained subsequently, cannot be countenanced as it is impermissible to support the order passed by the quasi-judicial authority by banking upon further material and evidence. Legality, propriety and correctness of such an order is required to be decided on the basis of the material which was then in existence and considered by the said authority.

8. To lend support to the submission that the show cause notice must have

sufficient clarity, not only as to the alleged breach/violation, but also with regard to the remedial action proposed to be taken, especially when the consequences of cancellation of the licences affect the livelihood of a person, Mr. Parmar placed a strong reliance on the decision of the Supreme Court in the case of **Gorkha Security Services V/s. Government of NCT of Delhi and Ors.**¹

9. To bolster up the submission that the reasons in support of the quasi-judicial orders cannot be supplied by subsequent facts, Mr. Parmar placed reliance on the decision of the Supreme Court in the case of **Mohinder Singh Gill and Anr. V/s. The Chief Election Commissioner, New Delhi and Ors.**²

10. In contrast to this, Mr. Venegaonkar, learned Counsel for the Respondents submitted that there is neither any jurisdictional error nor procedural defect which would warrant interference in the impugned order in exercise of writ jurisdiction. It was submitted that the Petitioner cannot make a grievance of absence of an efficacious opportunity of hearing as the Petitioner was heard both by the Commissioner, Excise and the Advisor to the Administrator. The Reply to the show cause notice, according to Mr. Venegaonkar, clearly shows that no explanation worthy of consideration was offered by the Petitioner.

11. Mr Venegaonkar would further submit that the ground that the show cause notice did not contain the necessary particulars is a subterfuge. The

1 (2014) 9 SCC 105

2 (1978) 1 SCC 405

Respondent No.2 Deputy Commissioner had drawn proper panchanama, recorded statements of the persons present at the outlet and, therefore, the Petitioner was fully aware of the alleged breach of the rules and the terms and conditions of the licences. In such circumstances, according to Mr. Venegaonkar, the Petitioner cannot be permitted to urge that she was unaware of the precise breach/violations.

12. I have given careful consideration to the aforesaid submissions. Section 16 of the Goa, Daman and Diu Excise Duty Act, 1964 which empowers the Commissioner to cancel the excise licence reads as under :

16. Power to cancel licences – (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 this 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.

(e) 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.”

13. On a plain reading, the Commissioner is empowered to cancel the licence which has been granted under the provisions of the said Act and the Rules, for good and sufficient reasons. The Commissioner is, however, enjoined to record reasons and give an opportunity to the person concerned for making a representation against the cancellation and also consider such representation. Sub-section (2) of Section 16 enumerates particular eventualities justifying the order of cancellation or suspension of any licence or permit. Clause (b), inter alia, provides for cancellation upon breach of any of the terms and conditions subject to which the licence or permit has been granted or of the terms of any agreement executed under Section 17.

14. An inbuilt mechanism of opportunity of hearing before the cancellation of licence is provided in sub-section (1) of Section 16. It envisages a notice to show cause as to why the action of cancellation should not be taken. Properly construed, an opportunity to make representation would mean a right to make representation against the proposed action of cancellation after being made aware that the act complained of is such that it may entail consequences of cancellation. The Commissioner is further enjoined to consider the representation so made.

15. In the context of the aforesaid nature of the power vested in the Commissioner, it may be appropriate to note that the Commissioner proceeded to pass

order of cancellation of licences on 19 May 2020 for four reasons, namely, the appointment of a manager to manage the business without intimation to or knowledge of the Excise Department in violation of Rule 104(1) of the Rules, 1964; non-display of sign board outside the godown/ship in violation of Rule 103; non-installation / non-availability of CCTV Camera in breach of the Circular dated 27 December 2019; and the discrepancy in the physical stock and the stock shown in IERMS, to the tune of 15498 cases.

16. It would be contextually relevant to note the contents of the show cause notice dated 4 May 2020. It reads as under :

SHOW CAUSE NOTICE

Whereas, on 02/5/2020 and 03/5/2020 the Excise team has taken the physical stock of your Wholesale Shop of random brands and found huge difference in the stock as per IERMS details and actual physical stock available in the wholesale/wine shop when closure due to lock down due to Covid-19 pandemic was declared on 21 March 2020.

NOW, THEREFORE, you are called to explain and justify the difference in stock during the lockdown period. The reply should reach the undersign within 3 days of receipt of this Show Cause Notice, failing which action as deemed fit will be initiated against you.

The shop/wholesale will not be opened till further orders.”

17. Reply of the Petitioner also deserves to be immediately noticed. It reads as under :

“Due to the sudden declaration of the lock down w.e.f. 21 March 2020 on account of the Covid-19, we had to shut down our shop, business and office,

with immediate effect. Our employees also were asked to stop coming to work with immediate effect from the date of the lockdown. As a result all our stock of goods, books etc., remained incomplete and could not be updated. The discrepancy noted during the course of the department's inspection could be the result of incomplete maintaining of the physical stock and also the books. Our earlier employees have still not returned to work and we are unable to seek any explanation from them on account of any variation in the physical goods available at our place of business with the registers.

We also submit that we have not indulged in any illegal activities and have not violated any provisions of the Excise Act and Rules.

Under the above circumstances, we humbly submit that we shall immediately try to verify our physical stock and the registers and inform your office accordingly and therefore, most humbly request your good self to condone the mistake on our side.

We also undertake that in future we shall not commit any such mistake from our side.”

18. In the context of the aforesaid show cause notice and the reply in response thereto, it becomes abundantly clear that the Petitioner was not put to notice as regards the alleged breach of Rules 103 and 104, namely appointment of a Manager to manage the business without permission of the Excise Department and non-display of the sign board. Nor the Petitioner was put to notice that the Petitioner had failed to install CCTV cameras or the CCTV cameras were non-functional.

19. Nonetheless, all these three grounds, as is evident, weighed with the Commissioner, Excise, as well as the Advisor to the Administrator. Breach of Rules 103 and 104 was specifically adverted to, by both the Commissioner and the Advisor in

the impugned order. Mr. Parmar was, thus, justified in canvassing a submission that the order of cancellation of licences came to be passed on the ground of which the petitioner was not put to notice.

20. As noted above, the provisions contained in Section 16 enjoin the Commissioner to provide an opportunity to make representation and also consider the said representation before taking action envisaged therein. Failure to state in the notice dated 4 May 2020 the alleged breaches of Rules 103 and 104 and the breach of circular to install /keep functional CCTV cameras, therefore, in effect deprived the Petitioner from making an effective representation. On the first principles, the Commissioner, Excise, could not have taken into account the aforesaid breaches, of which the Petitioner was not given notice and an opportunity to make a representation.

21. Issue of notice where there is a statutory mandate to provide an opportunity to make a representation (against proposed action), in my view, stands on a higher pedestal than a case where the principles of natural justice are considered to be implicit. Where the statute mandates that the authority shall provide an opportunity to make a representation, and also consider the representation so made, the obligation to give notice before taking an action can only be construed as an obligation to give such notice as to enable the noticee to make an effective representation. A notice which is bereft of the essential particulars indicating the

consequences which may follow either expressly or by necessary implication, may not satisfy the statutory requirements.

22. Reliance by Mr. Parmar on the decision of the Supreme Court in the case of **Gorkha Security Services (supra)**, wherein the Supreme Court adverted to the adequacy of the contents of the show cause notice appears to be well-founded. In the said case, the question arose in the context of the form and contents of the show cause notice that was required to be served before deciding as to whether the noticee was to be blacklisted or not. In paragraphs 21 and 22 the Supreme Court observed as under :

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he get an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the

consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

i) The material/ grounds to be stated on which according to the Department necessitates an action;

ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

(emphasis supplied)

23. The Supreme Court has, thus, in terms, observed that in order to fulfill the requirement of principles of natural justice, a show cause notice ought to satisfy two requirements. First, the alleged breaches and defaults which constitute the material / ground necessitating the action. Second, the nature of the action which is proposed to be taken so that the noticee is in a position to point out that the proposed action is not warranted, even if there is no satisfactory explanation regarding the alleged breaches/defaults.

24. Mr. Venegaonkar, learned Counsel for the Respondents, however, submitted that in the case at hand, the aforesaid violations were self-evident. No prejudice had been caused to the Petitioner by not mentioning the alleged breaches as these facts were evidenced by the Panchanama which was drawn on 2nd and 3rd May 2020 and the statement of Mr. Hiren Patel, who was found at the outlet. The

Petitioner cannot, therefore, draw any mileage from the fact that the aforesaid breaches did not find mention in the show cause notice.

25. I find it difficult to accede the aforesaid submissions. The show cause notice is conspicuously silent about the aforesaid first three breaches. It is for this reason that the Petitioner also gave explanation only regarding the alleged difference in the physical stock and the stock noted in IERMS. As the mandate of the statutory provision contained in Section 106 of the Act is clear and explicit and further fortifies the principle of natural justice, the Commissioner, Excise could not have lawfully taken into account the aforesaid three breaches in ordering the cancellation of the licences, as the Petitioner was not given an opportunity of hearing to meet the proposed action on the strength of those alleged breaches /defects. Thus, the order passed by the Commissioner, Excise, to the extent it draws support and sustenance from the aforesaid three breaches does not appear to be sustainable.

26. I am mindful of the proposition that if the order passed by the authority can be sustained on one ground, though it cannot be sustained on the other grounds ascribed by the authority, the ultimate action can still be sustained.

27. Mr. Parmar, learned Counsel for the Petitioner, submitted that even the fourth count of the alleged difference in the physical stock and that shown in IERMS also suffers from infirmities. It was submitted that the show cause notice merely records that there was huge difference in the stock without quantifying the difference.

Moreover, the show cause notice does not indicate as to what was the stock as per IERMS and actual physical stock. Nor the show cause notice gives any inkling as to action proposed to be taken. It is in justification of the order passed by the Commissioner, Excise, the Respondents have sworn an Affidavit and placed documents which, according to Mr. Parmar, is again impermissible. The order passed by an administrative / quasi judicial authority must sustain or perish by the weight of the reasons ascribed in the said order and those reasons cannot be supplemented, submitted Mr. Parmar.

28. The legal position seems to be well recognized. The legality of an order passed by an administrative / quasi judicial authority has to be decided on the basis of the reasons evident from the said order. Those reasons cannot be subsequently supplied by filing affidavit. In the case of **Mohinder Singh Gill (supra)**, the Constitution Bench of the Supreme Court enunciated in clear terms that when statutory functionary makes the order based on certain ground, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, the impugned order may get validated by additional grounds brought out subsequently. Paragraph No.8 reads as under :

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get

validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji³

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

29. In the light of the aforesaid enunciation, reverting to the facts of the case, it is pertinent to note that the show cause notice does not divulge as to what was the stock as per IREMS details and the actual physical stock found during the course of inspection. It simply refers to difference as ‘huge’. Nor a copy of the panchanama or the statements of the witnesses recorded during the course of said inspection, seem to have been annexed to the said show cause notice on 4 May 2020. Prima facie, the show cause notice does not indicate the difference in stock with an element of certainty.

30. Mr. Venegaonkar attempted to salvage the position by banking upon the reply dated 7 May 2020 to the Show Cause Notice by the Petitioner. It was urged that no explanation, as such, was offered for the difference in stock; a bald assertion was made that such difference could be a result of incomplete maintenance of physical stock and the books. In fact, the Petitioner prayed to condone the mistake with an

3 AIR 1952 SC 16

undertaking not to commit any such mistake. Therefore, according to Mr. Venegaonkar, now it is not open for the Petitioner to urge that there was no difference in the stock.

31. Mr. Venegaonkar would further urge with a degree of vehemence that the huge difference of 15498 cases, which turns out to 46,74,000 bottles/cans, in itself, is such that the explanation of an inadvertence or remissness in maintaining the accounts is unworthy of countenance. The aforesaid submission would have carried substance had the show cause notice indicated the quantity in IREMS and the physical quantity with sufficient clarity.

32. Nonetheless, in this Petition, this Court is neither equipped nor proposes to delve into the contentious issue of the quantum of the difference in the stock. Nor the merit of the decision to cancel the licence is open for the consideration in exercise of the writ jurisdiction. It is the decision making process which is within the remit of the writ jurisdiction.

33. The learned Counsel for the Petitioner submitted that in an identical case of breach of the terms and conditions of the licence, which arose out of the alleged huge difference in the stock in IERMS and the physical stock, the same Commissioner, Excise, condoned the lapses by imposing a penalty of Rs.50,000/-. Attention of the Court was invited to an order dated 17 June 2021 in the matter of Ravi Wines (pages 53-G to 53-L of the Petition). Whereas, the licences of the Petitioner

were straightway cancelled without even putting the Petitioner to notice. Such invidious discrimination surely justifies exercise of writ jurisdiction, submitted Mr. Parmar.

34. From the perusal of the said order in the matter of Ravi Wines (page 53-G), it becomes evident that the premises of the said licensee was also inspected on 2 May 2020 and allegedly there was huge difference in the actual physical stock and IERMS. The Commissioner, Excise, who passed the impugned order was, however, persuaded to pass an order to compound the offence and impose a penalty of Rs.50,000/-.

35. The upshot of aforesaid consideration is that three counts of breaches referred to above, could not have been made a ground for cancellation of licences as the Petitioner was not given an opportunity of hearing to either explain those alleged breaches or put forth the case for not initiating action thereon. As regards the alleged difference in the stock, the show cause notice did not indicate the action which the Commissioner proposed to take. To add to this, the same Commissioner, Excise, seems to have passed an order of compounding the offence and imposed a penalty instead of cancelling the licence of another licensee and, in the case at hand, proceeded to cancel the licences of the Petitioner.

36. There might be some additional factors or extenuating circumstances in the case of the said licensee Ravi Wines, who prima facie appears to be similarly

circumstanced. However, since the show cause notice did not, in turn, indicate the proposed action, the Petitioner was deprived of the opportunity to place all the material and circumstances, which the Petitioner could have urged had she been put to notice that the said discrepancy would entail the cancellation of the licences.

37. For the foregoing reasons, in my considered view, the matter is required to be remitted back to the Commissioner, Excise, to pass appropriate order afresh, even on the assumption that there was an admission as to the difference in the stock in the reply to the show cause notice.

38. The Writ Petition deserves to be partly allowed. Hence, the following order :

ORDER

- (i) The Writ Petition stands partly allowed.
- (ii) The impugned order as well as the order passed by the Commissioner, Excise, Daman, stand quashed and set aside.
- (iii) The matter is remitted to the Collector cum Commissioner of Excise, Daman to pass afresh order in Show Cause Notice No.3/1734 dated 4 May 2020, after providing an opportunity to the Petitioner to show cause to the action of cancellation of the licences.
- (iv) It is further clarified that till such afresh order is passed, the licence Nos.WS/IMFL/35 and WS/CL/Village/36 of the Petitioner shall remain

suspended and the Petitioner shall not be entitled to carry on any business under the said licences.

(v) The Commissioner, Excise, shall pass such order as expeditiously as possible and preferably within a period of two months from the date scheduled for the appearance of the Petitioner.

(vi) The Petitioner shall appear before the Commissioner, Excise, Daman, on 26 September 2023.

(vii) Rule made absolute to the aforesaid extent.

(N.J.JAMADAR, J.)