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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 10th May, 2023**Date of decision: 18th July, 2023*

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W.P.(C) 5202/2023 and CM APPL. 20283/2023**PERNOD RICARD INDIA PRIVATE LIMITED** Petitioner

Through: Mr. Mr. Mukul Rohatgi & Mr. Akhil Sibal, Sr. Advocates with Mr. Anuj Berry, Ms. Anusha Ramesh, Ms. Megha Janakiraman, Ms. Neharika Modgil, Ms. Tejaswita, Advocates. (M: 8527944978)

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through: Mr. Santosh Tripathi, SC Civil GNCTD with Mr. Arun Panwar, Mr. Pradyumn Rao, Mr. Utkarsh Singh and Mr. Kartik Sharma, Advocates. (M: 8285021263)

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The Petitioner - Pernod Ricard India Pvt. Ltd. has filed the present petition challenging the impugned order dated 13th April, 2023 passed by the Office of the Commissioner Excise, Entertainment and Luxury Tax, GNCTD (*hereinafter, 'licensing authority'*) by which the L-1 License application made by it before the Respondent No.2 – Department of Excise, Government of NCT of Delhi has been rejected.
3. This is the second round of litigation before this Court. In the first round, in writ petition being **W.P.(C) 4057/2023** titled ***Pernod Ricard India***



Private Ltd. v. Government of National Capital Territory of Delhi & Anr.,
the Court had considered the contentions of the Petitioner that the Respondent No.2 had not taken a decision on its L-1 License application i.e. “wholesale vend of Indian liquor license”. In the said petition on 29th March, 2023, the following order was passed:

“8. Initially, the license period was to be only till 31st March, 2023, the same extended circular dated 24th March, 2023 to 30th September, 2023. Thus, it is the submission of Mr. Akhil Sibal, Id. Sr. Counsel that the Petitioner is suffering due to non-issuance of the license by the Respondents as it is unable to sell its products within the territory of Delhi.

9. Considering the fact that the Petitioner has now complied with all the directions and submitted the requisite police verification, there ought not to be any delay in considering the application for the grant of an L-1 license to the Petitioner.

10. Accordingly, it is directed that the decision of the grant of the L-1 license and in respect of the representation dated 13th December, 2022 be taken within a period of two weeks and the same be communicated to the Petitioner. The same shall be a reasoned order. All remedies, if required, are left open and to be availed of in accordance with law.”

4. At that stage, the reason cited by Respondent No.2 for not taking a decision on the L-1 License application of the Petitioner was that some documents relating to the police verification of the directors of the Petitioner, were submitted belatedly. In the said order dated 29th March 2023 the Petitioner’s stand that it had submitted the requisite Police Verification Certificates (PVCs) was duly recorded. In view of the said submissions, the Court had directed Respondent No.2 to take a decision on the L-1 License application within two weeks with a reasoned order. Pursuant to the said order,



the impugned order dated 13th April 2023 was passed by the Excise authorities Licensing Authority, rejecting the L1 license application of the Petitioner. It is this impugned order that is under challenge in this petition.

Brief Facts

5. The Petitioner is a private limited company incorporated on 3rd September 1993, and is registered with the Registrar of Companies, Delhi. It is engaged in manufacturing and bottling of Indian Made foreign Liquor (IMFL) and has substantial market presence across India especially in the NCTD. It is stated from 1993-till 2021 the Petitioner held valid licenses for the sale of liquor in NCTD. It held licenses for its different units located at various locations in India including units located in Uttar Pradesh, Punjab, Madhya Pradesh etc.

6. The Petitioner last held a valid L-1 License issued by the GNCTD for its two units namely, M/s Gwalior Alcobrew Pvt. Ltd (Gwalior Unit) and Village Haripur Hindu, Derabassi, Distt. Mohali, Punjab (Mohali Unit) till 16th November, 2021.

7. The Delhi Excise Policy, 2021 (*hereinafter, "Excise Policy, 2021"*) was notified by the GNCTD and brought into effect from 17th November, 2021. The Excise Policy, 2021 put in place various modifications and amendments in relation to the eligibility criteria, procedures for application and grant of licenses, and license fees payable for L-1 Licenses and brand registration. Pursuant to Clause 3.1.1(iii) of the Excise Policy, 2021, the entities undertaking manufacturing of liquor anywhere in the country were ineligible to hold L-1 Licenses in NCTD. Accordingly, since the Petitioner was undertaking liquor manufacturing activities in different states, it was ineligible to hold L-1 Licenses under the Excise Policy, 2021. Consequently,



the Petitioner did not undertake wholesale vending of Indian/ foreign liquor under the Excise Policy, 2021.

8. Thereafter, the GNCTD vide notification dated 2nd August, 2022 issued a new policy specifying terms and conditions for issuance of L-1 Licenses for the licensing year 2022-2023 w.e.f. 1st September, 2022 (*hereinafter, "L1 Policy, 2022"*). Under the new policy, the disqualification imposed on manufacturers from applying for L-1 Licenses, under the 2021 policy was lifted. Thus, even liquor manufacturers could apply and obtain a L1 license under the L1 Policy, 2022.

9. Accordingly, the Petitioner on 24th August, 2022 vide applications nos. ARN0000069880 and ARN0000070043, applied to Respondent No. 2 for the grant of L-1 Licenses for financial year 2022-2023 for its business in NCTD through the Mohali Unit and the Gwalior Unit. The applications were submitted online pursuant to the L1 Policy, 2022.

10. The L-1 License registration was sought in respect of the following brands of the Petitioner:

S. No.	Brand
1.	Imperial Blue select grain whisky
2.	Royal Stag barrel select whisky
3.	100 Pipers exceptional blended malt scotch whisky aged 8 years old
4.	Royal Stag superior whisky
5.	Blender's Pride ultra-premium whisky;
6.	Blender's Pride reserve collection exclusive whisky;
7.	100 Pipers exceptional blended scotch whisky;
8.	100 Pipers exceptional blended scotch whisky aged 12 years old;



9.	Passport blended scotch whisky
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11. It is the case of the Petitioner that on 30th August, 2022, , it issued a letter to Respondent No. 2 clarifying that one of its employees was named in the FIR bearing no. RC0032022A0053 dated 17th August 2022 registered by the CBI (*hereinafter*, “CBI FIR”), however none of its salesman, employee or representatives in Delhi had been convicted in a criminal offense. Thus, it satisfied the criteria under Section 13 of the Delhi Excise Act, 2009 (*hereinafter*, “Excise Act, 2009”) and was therefore, eligible to obtain the L-1 License. The said letter placed on record reads as under:

“Subject: Declaration in respect of Section 13 of Delhi Excise Act, 2009

Sir,

I, Ranjeet Oak, Director at M/s Pernod Ricard India Private Limited (“PRI or “Company”) have applied for grant of L-1 License for wholesale of liquor in Delhi for the year 2022-2023 in favor of the company.

As per the requirements of the application process, the applicant is required to furnish an affidavit confirming that he is eligible for the grant of license, inter alia as per the requirements of Section 13 of the Delhi Excise Act, 2009.

Pursuant to the above, PRI has submitted an affidavit along with the application for grant of L-1 License, as the company strongly believes that none of its salesmen or representatives in Delhi have been convicted in a criminal offence and that the PRI is eligible under Section 13 of the Delhi Excise Act, 2009. However, as a responsible organization, we would like to place on record the following facts before you which have come to our knowledge:

- One of our employees responsible for Delhi has been named as an accused in an FIR number*



RC0032022A0053 dated August 17, 2022, filed by the Central Bureau of Investigation; and

• We have recently come across some media reports which suggest that the said employee also went through a criminal trial regarding an incident in 2013. Per the statement given by the said employee to us, he stands acquitted. We understand that the complainant in the said case has filed a petition before the appellate court for leave to appeal against the order of acquittal of the said employee and same is still pending.

We request your good self to keep this information on record and let us know if you need any further clarification in this regard.

Thank you”

12. The above letter dated 30th August 2022 is disputed by the Respondents who argue that no acknowledgement exists for this letter. Thus, the issuance of this letter is itself suspect, as per the Respondents whose stand is that the existence of criminal complaint against one of the employees was deliberately concealed by the Petitioner.

13. Respondent No.2 issued communications dated 31st August, 2022 and 1st September, 2022 conveying the approval for grant of L-1 license to the Petitioner *qua* both locations. Thereafter, the Petitioner, deposited the license fee of Rs.1,75,00,000/- and Rs.52,40,000/- which is not in dispute.

14. Respondent No.2 had, thereafter, received communication from the Directorate of Vigilance GNCTD of the registration of a FIR by CBI against one of the employees of the Petitioners viz., Mr. Manoj Rai. The Respondent No.2, then issued a communication dated 2nd September, 2022 directing the Petitioner to provide police verification certificates of all its directors within three working days. The said letter indicated that the submission of the Police verifications was being directed in view of Section 13(1)(c) and 13(1)(g) of



the Excise Act, 2009. The police verifications of all Directors were finally submitted by the Petitioner on 13th December, 2022. Despite this submission no action was taken. In view thereof, **WP (C) 4057/2023** was filed by the Petitioner.

15. As per order dated 29th March 2023 in **WP (C) 4057/2023**, a decision was to be taken by the Respondents within a period of two weeks by way of a reasoned order.

16. A reasoned order being the impugned order dated 13th April, 2023 has now been passed rejecting the L-1 License application of the Petitioner on the ground that documents have been received from investigating agencies alleging the participation of the Petitioner and its employees in what is now commonly referred to as the “Delhi Excise Policy Scam”. The operative portion of the said order reads as under:

“3. Provisional Attachment order no.- 02/2023 received in this office from Head Office Investigation Unit, Directorate of Enforcement vide F.No. ECIR/HIU-II/14/2022 dated 24.01.2023 wherein the enforcement Directorate (ED) has arrested Benoy Babu, another employee of M/s Pernod Ricard under section 19 of the Prevention of Money Laundering Act. In the provisional attachment order, it is mentioned that the investigation agency i.e. CBI has filed a chargesheet dated 25.11.2022 with respect to their investigation done in the above-mentioned FIR no. RC0032022A0053 dated 17.08.2022 in the Special Court, New Delhi. The gist of the CBI-charge-sheet at page 03 to 06 is as under:

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5.As per above summary which is result of investigation done, it is evident that M/s Pernod Ricard India Private Limited is one of the accused covered in the subject prosecution complaint, which through Sh Benoy Babu and others, in conspiracy with the super cartel and Sh



Vijay Nair, gave their wholesale business to Indo Spirits. Sh. Binoy Babu and other related individuals have also been subsequently arrested by the Directorate of Enforcement. Sh. Vijay Nair who has been charge sheeted by the CBI, named in prosecution complaint of the Directorate of Enforcement and whose assets have been attached by the Directorate of Enforcement, in the matter of irregularities in framing and implementation of the New Excise Policy 2021-22, of Delhi, has been seen to have an active involvement in M/s Pernod Ricard India Private Limited.

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7. Also, as per Section 44 of the Delhi Excise Act 2009 regarding Liability of employer for offence committed by his employee or agent, says that:

"The holder of a licence or permit granted under this Act, as well as the actual offender, shall be liable for an offence committed by his employee or his agent, unless he proves that due and reasonable precautions were exercised by him to prevent commission of such offence."

8. As such, on basis of above mentioned documents received from Investigating Agencies, it is evident that applicant i.e. M/s Pernod Ricard India Private Limited and its employees had active involvement in the said criminal conspiracy and charge sheet also been filed against them.

Now therefore, in view of foregoing material facts on record, I, Deputy Commissioner(Excise)/Licensing Authority, is of the considered view that the applicant has not fulfilled the conditions for grant of license L- 1 License for the year 2022-23 in term of Sections 13 & section 44 of The Delhi Excise Act, 2009 and accordingly, hereby rejects the application dated 13.12.2022 of M/ s Pernod Ricard India Private Limited for grant of L- 1 License.



Further, the applicant is at liberty to file an appeal against the order, before the Appellate Authority, in term of section 72 of the Delhi Excise Act, 2009.”

Submissions

17. Mr. Mukul Rohatgi and Mr. Akhil Sibal, Id. Sr. Counsels for the Petitioner submit as under:

- (a) that the only employee of the Petitioner against whom allegations are made is Mr. Benoy Babu and he has been arrested by the ED. One employee's arrest, cannot result in the company lacking moral character or having criminal antecedents/background in terms of Section 13(1)(c) of the Excise Act, 2009;
- (b) that the impugned order incorrectly records that the CBI FIR was concealed by the Petitioner, whereas on 30th August, 2022 the details of the same were given to Respondent No.2. Subsequently, PVCs of all the directors of the Petitioner have also been submitted;
- (c) that the CBI FIR would not have any bearing on the Petitioner's L1 license application as none of the Petitioner's employees have been charge sheeted in the said FIR;
- (d) that Section 17(d) of the Excise Act, 2009 which provides for the circumstances under which a license can be suspended/cancelled itself states that an existing license can only be cancelled upon conviction. Therefore, it would be inconsistent and arbitrary to read criminal background under Section 13(1)(c) in any other manner except to mean conviction. Insofar as criminal background or good moral character or criminal record



is concerned, the same would relate to non-excise laws. Since the allegations in the CBI FIR and the ED complaint are concerned, they are merely allegations and there is no conviction under excise or other relevant laws, thus the disqualification under Section 13 of Excise Act, 2009 would not apply.

- (e) that the term ‘criminal background’ in Section 13 (1)(g) of the Excise Act, 2009 would have to be read in the same way as is being interpreted for Section 13(1)(c) and ‘criminal background’ and can only mean conviction and not merely pendency of FIRs or charge sheet;
- (f) that in the present case, the Petitioner is being ousted without any conviction. Reliance is placed on the judgment of the Hon’ble Supreme Court in *Manoj Narula v. Union Of India, 2014(9) SCC*;
- (g) that the impugned order is passed contrary to the Principles of Natural Justice inasmuch as the same sets out new facts which the Petitioner was previously not confronted with, the Petitioner has also not been called to give an explanation in this regard;
- (h) that the Court ought to lean in favor of a harmonious construction of the statute. The judgements of *Anwar Hasan Khan v. Mohd. Shafiq & Ors., (2001) 8 SCC 540*, *CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57* and *Mohinder Singh Gill & Anr. v. The Chiief Election Commissioner, New Delhi & Ors.* are relied upon to argue that the impugned order must be tested on the content of the said order itself and it cannot be supplemented in



any manner by the affidavits which may have been filed by the excise department;

- (i) that Section 72(7) of the Excise Act, 2009 provides that an appeal shall be heard and decided within 1 year from the date on which it is filed. This is not an efficacious alternate remedy as, if the Petitioner is relegated to the alternate remedy, any decision in terms of Section 72(7) of the Excise Act, 2009 will be beyond the validity of the present licensing year thereby rendering the entire appeal infructuous;
- (j) that the impugned order was without jurisdiction as it is passed contrary to Section 13(1)(c), Section 13(1)(g) of the Excise Act, 2009 and Rule 23 and 35 of the Delhi Excise Rules, 2010 (*hereinafter "Excise Rules, 2010"*). Moreover, the impugned order also relies on Section 44 of the Excise Act, 2009 which is wholly inapplicable;
- (k) that the appellate authority will not be able to overrule the investigative findings of another agency i.e. ED;
- (l) that it is a settled principle of law that a person is innocent until proven guilty thus, merely because there may be certain allegations in an FIR or chargesheet against the Petitioner, the Petitioner cannot be equated with a criminal or be considered as having a criminal background.

18. Mr. Tripathi, Id. Standing Counsel for the GNCTD submits as under:

- (a) that there is an efficacious alternative remedy available with the Petitioner in the form of an appeal before Commissioner, Excise as per Section 72 (2) of the Excise Act, 2009;



- (b) that the letter dated 30th August, 2022 by the Petitioner has not been received. Further, details of pending FIRs have not been provided by the Petitioner;
- (c) that the ED has initiated an investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 dated 22nd August, 2022 under Section 120B of the IPC and Section 7 of the Prevention of Corruption Act, 1988;
- (d) that in the supplementary complaint dated 27th April, 2023 filed by the ED various allegations have been raised against the Petitioner and Mr. Binoy Babu and they have also been arrayed as accused in the same.
- (e) that as per the complaint filed by the ED as also the Provisional Attachment Order bearing no. 02/2023, it is evident that the Petitioner was involved in a conspiracy and in view of the same, Mr. Binoy Babu is now in judicial custody;
- (f) that the CBI has filed a chargesheet dated 25th November, 2022 with respect to their investigation done in the CBI FIR in the Special Court, New Delhi. Petitioner's employee - Mr. Manoj Roy, was arrayed in the CBI FIR however, he has not been arrayed in the chargesheet;
- (g) Section 13 of Excise Act, 2009 cannot be read in the same way as Section 17 of Excise Act, 2009 as these two sections have different roles to play in two different eventualities. Section 13 ensures that no person having any conflict or engagement with the law enforcement agency in the form of criminal background or conviction, or criminal record should not be granted an excise



license which is otherwise intoxicant and as such is a controlled commodity. Whereas, under Section 17, the Government may suspend or cancel the license after giving an appropriate opportunity of hearing if there is a conviction.

- (h) that section 13(1)(c) of the Excise Act, 2009 must be read in a broad manner to include any FIRs or other engagements with law enforcement agencies;
- (i) that Section 13(1)(g) requires that the company ought not to employ any representative or salesman who has a criminal background;
- (j) that when the Petitioner and its employees are facing such serious allegations, Article 19(1)(g) of the Constitution cannot be invoked. Insofar as the judgment in *Manoj Narula (Supra)* is concerned, the purpose and provisions of the Representation of Peoples Act, 1951 are different from the Excise Act, 2009 and thus, no parallel can be drawn between the two statutes. Thus, the meaning of criminal background as per the said judgment would be of no relevance;
- (k) that the draft excise policy was found with Mr. Binoy Babu and Mr. Manoj Rai prior to it being announced by the GNCTD;
- (l) that the Petitioner did not fulfil the conditions for grant of L-1 License for the year 2022-23 in term of Sections 13 and 44 of the Excise Act, 2009.

Analysis and findings

19. The prayers sought in this writ petition are as under:



“(a) Issue a writ of certiorari or any appropriate writ, order, or direction, quashing and setting aside the order dated 13.04.2023 bearing reference no. bearing reference no. F.No. L-1/155/Ex/IMFL/2022-23/4858; and

(b) Issue a writ of mandamus or any other appropriate writ, order, or direction, directing Respondent No. 2 to grant the L1 Licenses to the Petitioner for the licensing year 2022-2023, including the extended period for the licensing year, for its business through the Gwalior Unit and Mohali Unit pursuant to the Application No. ARN0000069880 dated 24.08.2022, and ARN0000070043 dated 26.08.2022 submitted by the Petitioner and in line with the approvals already granted by Respondent No. 2 on 01.09.2022 in a time bound manner;

(c) Pass any other order/direction (s) as this Hon'ble Court may deem appropriate in the facts and circumstances of this case.”

20. Section 13 of the Excise Act, 2009 provides for the qualifications required for the grant of license. Sections 16 and 17 deal with the power of the competent authority to cancel or suspend a license given under the Excise Act, 2009. Further, Section 18 provides for the bar to the right of renewal of license. The relevant provisions of the Delhi Excise Act 2009 are set out below:

“13. Qualifications for grant of licence

(1) While considering an application for grant of licence or permit, the licensing authority shall have regard that the applicant—

(a) ,is a citizen of India;

(b) is not a defaulter, or black-listed or debarred from holding an excise licence; (c) possesses good moral character and has no criminal background or has not been convicted of any offence punishable under this or



other relevant Acts: PROVIDED that in case he is selected as licensee, he shall furnish within thirty days of the grant of licence a certificate issued by the Superintendent of Police of the district or the Commissioner of Police, as the case may be, of which place he is the resident, showing that he possesses good moral character and has no criminal background or criminal record;

(d) is not in arrears of any Government or public dues; and

(e) is solvent and has the necessary funds or has made arrangements for it, for conducting the business:

PROVIDED that the details of such funds shall be made available to the licensing authority, if required;

(f) possesses or has an arrangement for taking on rent suitable premises for the licence and such premises have not been constructed in violation of any law;

(g) shall not employ any salesman or representative who has criminal background or suffers from any infectious and contagious disease or is below twenty-one years of age.

(2) The licence shall be liable for cancellation, if any document produced with the application is found to be false or forged.

16. Power to withdraw licence and permit

(1) Whenever the authority which granted a licence or permit under this Act, considers that such licence or permit should be withdrawn for any reason, it may do so on expiry of fifteen days' notice of its intention to do so or forthwith for reasons to be recorded.

(2) If any licence or permit is withdrawn, the licensee or the permit holder shall be refunded any fee paid in advance or deposit made by the licensee or the permit holder in respect thereof after deducting the amount recoverable by the Government.

17. Power to suspend or cancel licence and permit



(1) Subject to such restrictions as the Government may prescribe, the authority granting any licence or permit under this Act may suspend or cancel it in the following circumstances after giving reasonable opportunity of being heard—

(a) if the licence or permit is transferred or sublet by the holder thereof without the permission of the licensing authority;

(b) if any excise revenue payable by the holder thereof is not duly paid;

(c) in the event of any breach by the holder of such licence or permit or by his servant, or by any one acting on his behalf, with his express or implied permission, of any of the terms and conditions of such licence or permit;

(d) if the holder of licence or permit or his agent or employee is convicted of an offence punishable under this Act or any other law for the time being in force, relevant and connected with excise matters relating to excise revenue or of any cognizable and non-bailable offence under any other relevant law;

(e) if the purpose for which the licence or permit was granted ceases to exist;

(f) if the licence or permit has been obtained through mis-representation or fraud.

(2) When a licence or permit is cancelled under sub-section (1), the aforesaid authority may cancel any other licence or permit granted to such person under this Act or under any other law relating to excise revenue.

(3) In the case of cancellation or suspension of licence under sub-section (1), the fee payable for the balance of the period for which any licence would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.

(4) The holder of a licence or permit shall neither be entitled to any compensation for the cancellation or suspension thereof nor to refund of any fee paid or deposit made in respect thereof.



18. Bar to the right of renewal and to compensation

No person to whom a licence or permit has been granted, shall be entitled to claim any renewal thereof, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a licence or permit on the expiry of the period for which the same remains in force.”

21. The impugned order dated 13th April, 2023 has been passed by the Licensing Authority taking into consideration the qualifications prescribed under Section 13 of the Excise Act, 2009. Reliance is also placed upon Section 44 of the Act, which reads as under:

“44. Liability of employer for offence committed by his employee or agent The holder of a licence or permit granted under this Act, as well as the actual offender, shall be liable for an offence committed by his employee or his agent, unless he proves that due and reasonable precautions were exercised by him to prevent commission of such offence.”

22. A perusal of the above provisions would show that as per the scheme of the Excise Act, the ‘Licensing Authority’ defined under Section 2(44) must take into consideration the requisite qualifications under Section 13 of the Excise Act, 2009 prior to grant of a license. In the present case, the Licensing Authority i.e. Office of the Commissioner Excise, Entertainment and Luxury Tax, GNCTD has rejected the L1 license application of the Petitioner by relying on Section 13(1)(c) and 13(1)(g) of the Excise Act, 2009.

23. Further, the impugned order dated 13th April, 2023 indicates that a letter was received from the Directorate of Vigilance GNCTD dated 29th August, 2022 which further referred to the CBI FIR. The Licensing Authority also



received intimation of the ECIR No. ECIR/HIU-II/14/2022 filed by the ED and proceedings arising therein.

24. In the said CBI FIR, one of the Petitioner's employee, Mr. Manoj Rai, has been mentioned as one of the accused. However, he has not been arrayed as an accused in the chargesheet arising out of the FIR. In the second proceeding arising out of the ECIR, filed by the Enforcement Directorate initially, in the complaint dated 26th November 2022 filed by the ED, no reference was made to the Petitioner or its employees. However, in a supplementary complaint filed by the ED, Mr. Binoy Babu, who is employed as a regional manager with the Petitioner was named as an accused. In the said supplementary complaint the Petitioner is also arrayed as an accused. Further, Provisional Attachment Order No. 2/2023 has also been filed by the ED wherein references are made to the Petitioner as also its employees - Mr. Binoy Babu and Mr. Manoj Rai. Pursuant to the same, Mr. Binoy Babu has been arrested under Section 19 of the PMLA Act, 2002. These and other allegations contained in the proceedings arising out of the CBI FIR, the ECIR as also the chargesheet have formed the basis for the impugned rejection order passed by the Licensing Authority.

25. It is argued on behalf of the Petitioner, that a corporate entity cannot be presumed to have criminal background on account of a mere mention of one employee as an accused in an FIR without conviction. It is vehemently urged by Mr. Rohatgi, and Mr. Akhil Sibal Id. Sr. Counsels for the Petitioner that the language in Section 13 and Section 17 of the Excise Act, 2009 ought to be read as meaning that the conditions for cancellation of a granted license i.e. a conviction of offence punishable under this Act or any other law, would also be applicable in the case of Section 13 as well. Mr. Akhil Sibal Id. Sr.



Counsel submits that mere mention in an FIR leading to non-grant of L-1 License would lead to disastrous consequence for the Petitioner which is one of the leading liquor manufacturer companies in India as also in the world.

26. On the other hand, the submission of Mr. Tripathi, Id. Standing Counsel for the GNCTD is that the word “criminal background” ought to be interpreted in a wide manner to include persons who may have been arrayed as an accused in FIR, who are charge sheeted or arrested due to criminal investigation as also other entanglements with law enforcement agencies. He further submits that the entire conspiracy which has been unraveled in the CBI FIR and in the various complaints of the ED would go to show that the Petitioner and its employees were fully involved in the conspiracy relating to the Delhi Liquor Policy Scam and were the beneficiaries of the said conspiracy. Thus, if the license is granted to such an entity, it would mean that a premium is being given to such conduct of the Petitioner and its employees. Mr. Tripathi also submits that there is an alternative efficacious remedy available with the Petitioner in the form of an appeal before Commissioner, Excise as per Section 72 (2) of the Excise Act, 2009.

27. The impugned order then refers to the order passed by this Court on 29th March, 2023 in **WP(C) 4057/2023** and takes into consideration both the proceedings before the CBI and the ED to reject the license.

28. From the impugned order dated 13th April, 2023 and the submissions made on behalf of the parties, two primary issues arise before this Court. The same are as under:

- i) whether the present writ petition is maintainable in view of the existence of an alternate efficacious remedy under the Excise Act, 2009 and;



- ii) whether the Petitioner is entitled for grant of L-1 license under the provisions of Excise Act, 2009 and the Rules therein.

29. A perusal of the order dated 29th March 2023 passed by this Court in **WP(C) 4057/2023** in the first round of litigation would show that the approval in respect of grant of license was issued by the herein Respondent No.2 and the only issue that was raised by the Respondent No.2 at that point of time was in respect of belated submission of the PVCs of the directors of the Petitioner. However, the license was not issued to the Petitioner. It was only in this background the said order was passed. As per the said order passed by this Court, within two weeks, a decision was to be taken by the Respondents in respect of the Petitioner's application for the grant of L-1 License in NCTD. However, the events that are transpired thereafter, would show that the Licensing Authority has now passed a decision i.e. the impugned order wherein the application has been rejected taking into consideration the following three circumstances/documents:

- (i) A letter dated 29th August, 2022 received from the Directorate of Vigilance GNCTD.
- (ii) FIR No. RC0032022A0053 registered by the CBI and the charge sheet pursuant to the said FIR.
- (iii) Proceedings commenced by the ED vide ECIR No. ECIR/HIU-II/14/2022 dated 24th January, 2023 under the PMLA Act, 2002.

The above three documents and circumstances which have now been considered by the Licensing Authority for rejecting the L-1 license application of the Petitioner reveal a rather stark situation. The allegations made therein against the Petitioner and its employees are serious and cannot be dismissed



outrightly as the same are relevant to the liquor business of the Petitioner and thus is directly connected to the Excise licence.

30. Detailed submissions have been made as to what would constitute criminal background and good moral character and whether conviction would be necessary for disqualifying an entity under Section 13 of the Excise Act, 2009. Section 13(1)(c) and Section 13(1)(g) enumerate the following factors:

- i) that the Applicant ought to possess moral character;
- ii) that the Applicant ought not to have a criminal background;
- iii) that the Applicant ought not to have been convicted of any offence punishable under the Excise Act, 2009 or other relevant Act;
- iv) that the Applicant does not employ any salesman or any representative who has criminal background.

31. Any of the above factors can constitute a disqualification for issuance of a license. Thus, the statute clearly distinguishes between conviction on the one hand and criminal background on the other. The same cannot be read synonymously as is canvassed by the Petitioner. Thus, in the opinion of this Court, the proposition sought to be urged that even for Section 13 of the Excise Act, 2009, a conviction would be required, would be contrary to express language of the statute.

32. Admittedly, the Petitioner or any of its employees have not been convicted of any offence punishable under this or other relevant Acts. Thus, in view of the aforementioned discussion on section 13 of the Excise Act, 2009, the question that arises in the present case is whether the allegations against the Petitioner and its employees reveal good moral character or existence of a criminal background. The Licensing Authority in the impugned



order is of the opinion that the same does not constitute good moral character and in fact reveals criminal background, due to the criminal proceedings initiated by the CBI and ED.

33. While it can be argued by the Petitioner that it cannot be blamed for any unauthorised conduct of its employees, such an argument has not been placed before this Court. In the case of a corporate entity like the Petitioner, whose employees are not claimed to have acted in their individual capacity and continue to remain in the employment of the Petitioner, the said allegations could not have been brushed aside by the Licensing Authority. Moreover, the allegations also reveal that the employees represented themselves to be acting for Pernod Ricard. The allegations go to the root of good corporate governance of a company like the Petitioner.

34. Thus, the only issue that remains is that the aforementioned material relied upon by the Licensing Authority in the grounds for refusal in the impugned order was not earlier put to the Petitioner.

35. In the opinion of the Court, a case of this nature which raises serious allegations against the Petitioner would require examination of facts and would not be one where discretion ought to be exercised in favour of the Petitioner in this Court's extraordinary writ jurisdiction under Article 226 of the Constitution of India.

36. The recent decision of the Hon'ble Supreme Court in ***South Indian Bank v. Naveen Mittal Philip [SLP (C)No. 22021/2022]***, clearly lays down that if an expert body has been constituted under the statute for the purposes of adjudication of disputes, writ jurisdiction ought not to be exercised. The relevant portion of the said judgment reads as under:



“13. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.

14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104.

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16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be



encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. We wish to quote with profit a recent decision of this Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771.

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

37. Admittedly, the impugned order has been passed by the Office of the Excise Commissioner under signature of the Deputy Commissioner Excise. The said order is appealable under Section 72 of the Excise Act, 2009. The said provisions reads as under:

“72. Appeal

(1) Any person aggrieved by any decision or order passed under this Act by an excise officer, subordinate to the Deputy Commissioner, may appeal to the Deputy Commissioner.

(2) Any person aggrieved by any decision or order passed under this Act by the Deputy Commissioner may appeal to the Excise Commissioner.

(3) Any person aggrieved by any decision or order passed under this Act by the Excise Commissioner may appeal to the Financial Commissioner. (4) Such appeal shall be filed within thirty days from the date of communication of such decision or order together with self-attested copy thereof:

PROVIDED that a further period of thirty days may be allowed if the appellant establishes that sufficient cause



prevented him from presenting the appeal within the aforesaid period of thirty days.

(5) At the hearing of an appeal, an appellant may be allowed to go into any ground not specified in the grounds of appeal or take additional evidence, if necessary, if it is established that such omission was not wilful or unreasonable.

(6) The appellate authority, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order, as the case may be.

(7) The appeal shall be heard and decided within one year from the date on which such appeal is filed:

PROVIDED that if an appeal is not decided within one year the relief prayed for in the appeal shall be deemed to have been granted.”

38. Further, the impugned order itself records that the Petitioner is at liberty to file an appeal against the order before the Appellate Authority, in terms of Section 72 of the Excise Act, 2009. The Petitioner can seek a hearing before the Appellate Authority which can go into factual and legal issues. In such an appeal, the Petitioner under Section 72(5) can raise various grounds including filing of additional evidence. The Petitioner in appeal will also be able to address the allegations raised in the impugned order which have not been gone into in this petition.

39. In view thereof, in the opinion of this Court, the entire matter shall have to be thrashed out in a substantive appeal which is maintainable under Section 72 of the Excise Act, 2009. Therefore, the question whether or not the Petitioner is entitled for grant of L-1 license under the provisions of Excise Act, 2009 and Rules therein is left open to be decided by the Appellate Authority.



40. This Court, accordingly holds that the present writ is not maintainable in view of the express statutory provision which permits the Petitioner to approach the Appellate Authority against the impugned order dated 13th April, 2023 in term of section 72 of the Excise Act, 2009. Accordingly, the following directions are issued:

- i) the Petitioner is permitted to approach the Appellate Authority under the Excise Act, 2009 by filing an appeal within two weeks. If such an appeal is filed within the period prescribed, the same shall not be dismissed on the ground of limitation;
- ii) in order for the Petitioner to have an effective hearing before the Appellate Authority, let all the material referred to in paragraph 29(i), 29(ii) and 29(iii) as also copies of other material relied upon by the Licensing Authority in the impugned order be provided to the Petitioner within one week thereafter;
- iii) if the Petitioner seeks to file a reply or seeks an oral hearing, the Appellate Authority shall grant an oral hearing to the Petitioner. The order shall thereafter be passed within one month of the hearing;
- iv) the impugned order would not have any bearing on the fresh consideration to be made by the Appellate Authority;
- v) the observations in this order shall not have any bearing on the Appeal filed by the Petitioner.

41. In view of the fact that the present petition is being dismissed due to non-maintainability, the merits of the contentions of the parties are not being gone into.



42. The remedies of the Petitioner in accordance with law and to raise all grounds which are available to it are not foreclosed.

43. In these terms, the present petition along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 18, 2023

MR /KT

