2024:BHC-NAG:1042-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.271 OF 2024

M/s. Hotel Green City,
through its partners :

a) Shri Snehal s/o Umashankar Jaiswal, aged about 50 years, occupation : business, r/o 513, Garud Khamb Road, behind RSS Building, Mahal, Nagpur.

b) Smt. Kalpana w/o Navneet Samarth, aged about 50 years, occupation : business, r/o near NMC water tank, Mahal, Nagpur. ... Petitioner

- Versus -

Commissioner of State Excise, Maharashtra State, Mumbai, Office at Old Custom House, Second Flower, Shahid Bhagatsing Marg, Fort, Mumbai. ... Respondent

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Shri S.O. Ahmed, Advocate for petitioner.

Shri A.M. Ghogare, Assistant Government Pleader for respondent.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATED : JANUARY 15, 2024

ORAL ORDER (PER NITIN W. SAMBRE, J.) :

The present petition is arising out of the provisions of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as "the Act" for the sake of brevity) and Rules framed thereunder.

2) The petitioner claims to be a partnership firm, of which "a" and "b" are the partners. The said firm is said to be holding a FL-III licence, which is attached to a restaurant.

3) The prayer of the petitioner is to direct the respondent to decide the stay application dated 3/1/2024, which was moved along with Appeal No.4/2024 preferred under Section 137 of the Act. The petitioner, by way of interim relief, has sought stay to the order dated 27/12/2023 passed by the Collector, Nagpur – Prohibition Officer whereby objection of the land owner in relation to operation of FL-III licence came to be accepted after having noticed that the petitioner has practised fraud. The FL-III licence came to be cancelled in exercise of powers under Section 54(1)(e) of the Act. Needless to clarify that the appeal under Section 137 of the Act preferred by the petitioner is against the said order dated 27/12/2023 passed by the Collector, Nagpur.

4) The facts necessary for deciding the petition are as under :

The petitioner partnership firm by name “Hotel Green City” was earlier manned by two partners, namely, Pradeep Kakirwar and Kalpana Samarth, who were holding FL-III Licence No.497 approved on 21/11/2004. The configuration of the partnership firm underwent a change and Snehal Umashankar Jaiswal was inducted as a partner, which was approved by the Collector on 3/1/2005. The restaurant and FL-III licence, which was operated by the partnership firm, are owned by Snehal Jaiswal and Kalpana Samarth and erstwhile partner Pradeep Kakirwar informed to have taken the land in question on tenancy of ten years vide tenancy agreement dated 26/10/1999 and agreed to pay rupees four thousand per month for running an open air restaurant. The said property could be identified as Plot No.8 situated in the layout of the Modern Nagpur Cooperative Housing Society, Wardha Road, Nagpur.

5) The said tenancy came to an end in October 2009 and accordingly, notice of termination of tenancy was issued on 28/7/2011 by the landlady. The tenancy was also in relation to an open land. The landlady alleging that Pradeep Kakirwar was not

authorized to induct a sub-tenant or use the property in question means alleged tenancy right in the property as an asset of the partnership firm, lodged an objection stating that she never permitted either creation of partnership firm or running a liquor Bar in the premises in question under the Act. The said notice was resisted by Pradeep Kakirwar vide reply dated 22/8/2011.

6) In the aforesaid background, alleging that the licence was obtained illegally, an objection was lodged by the landlady with the Collector, Nagpur, who is a Prohibition Officer under the Act. The Prohibition Officer thereafter issued notice to the petitioner and after hearing the respective parties, vide reasoned order dated 27/12/2023 cancelled the licence by observing that the FL-III licence obtained by the petitioner was in contravention of the provisions of Section 54(1)(e) of the Act as the petitioner appears to have practised fraud. The nature of fraud practised by the petitioner is that there was a sanction to a structure to be constructed on the plot in question. By superimposing Building Permit Number on a separate plan, which was drawn for the purpose of securing liquor licence under the Act, the Authority was made to understand that the structure was legal. In absence of lease or tenancy agreement

between landlady and petitioner Firm, illegally licence to vend/ provide liquor was secured.

7) After the aforesaid order dated 27/12/2023 was passed by the Collector, the petitioner approached the respondent, i.e. Commissioner of State Excise, thereby invoking appellate powers under Section 137 of the Act. The said appeal came to be moved along with application for stay. Since the said application for stay was not decided, the petitioner has approached this Court.

8) The contentions of the learned Counsel for the petitioner are that the petitioner was operating a FL-III licence for last more than one decade and the Collector has suddenly cancelled the licence and that too, on the objection of the landlady, who was aware of operation of the licence for all these years. He would claim that in case stay is not granted, the appeal preferred by the petitioner under Section 137 of the Act would be infructuous. His further contention is that in Writ Petition No.4/2024, this Court has already extended interim relief for a period of one week with liberty to the petitioner to prefer an appeal and as such, interim relief needs to be extended with direction to the respondent to decide the appeal. He would

further urge that a civil dispute is pending before a competent civil Court.

9) As against above, Shri Ghogare, learned Assistant Government Pleader for the respondent, would strenuously urge that once finding of fraud being practised by the petitioner is recorded by the Collector, this Court should be slow in exercising extra-ordinary writ jurisdiction in favour of the petitioner, particularly when the petitioner intentionally has not joined the Prohibition Officer, i.e. Collector and the landlady as party respondents to the petition. He would claim that the petitioner must be put to strict proof of demonstrating that there was no fraud practised while securing licence under the Act.

10) In the above background, having regard to the objection raised by the learned Assistant Government Pleader, we called upon the petitioner to produce on record sanctioned map and other relevant documents.

11) Tenancy agreement dated 26/10/1999 was executed between landlady Seema Arun Mankar and Pradeep Kakirwar in relation to plot in question and house constructed thereon. It was

agreed between Pradeep Kakirwar and landlady that rent of rupees four thousand shall be paid every month by Pradeep Kakirwar and he would carry on business of restaurant during tenancy period without damaging the building or property of the landlady. The tenant was not to sub-let or transfer the said tenanted premises or any part thereof to any other person. It appears that in spite of there being no recital in the tenancy agreement as to permission to obtain and operate a licence under the Act, alleging "no objection" from the landlady executed on 5/1/2004, FL-III licence appears to have been applied for. Though the structure of landlady appears to have been sanctioned by the Nagpur Improvement Trust as is apparent from the photostat copy of the sanctioned map, the petitioner, who appears to be beneficiary of such licence, superimposed the stamp of "Permit Number" issued by such Planning Authority on the map drawn by him for the purpose of running not only a restaurant, but also a FL-III licence.

12) In order to give complete opportunity to the petitioner, this Court called upon the learned Counsel for the petitioner to produce the original map, which is produced as document no.6 along with pursis dated 12/1/2024, which map was used for getting the

FL-III licence. The learned Counsel for the petitioner, on instructions, states that the map produced as document no.6 along with pursis dated 12/1/2024 is not a sanctioned one and only Building Permit No. CS/6672/21155 dated 11/4/2001 is used for the purpose of demonstrating that the property is regular.

13) We can infer on perusal of the said map that the petitioner had produced a false document for the purpose of securing FL-III licence, thereby trying to make the Authority understand that he has a sanctioned structure. The said fact can be easily inferred from the communication dated 13/3/2012 issued by the Building Engineer of Nagpur Improvement Trust.

14) In the aforesaid background, we are prima facie satisfied that the FL-III licence issued under the Act in favour of the petitioner was obtained by practising fraud and in such an eventuality, it is always open for the Prohibition Officer to consider the complaint of the landlady for the purpose of initiation of proceedings for cancellation of the licence.

15) Perusal of the impugned order depicts that on facts, the issue as regards the lease deed was looked into in Writ Petition

No.8245/2019 at the behest of the alleged lessee Pradeep Kakirwar and it is observed that the said lease document/entitlement was not proved by the original lessee/tenant Pradeep Kakirwar. The aforesaid facts are not explained by the petitioner though an opportunity was offered to it. As such, the very execution of lease deed is under doubt.

16) Section 54 of the Act confers power to the Prohibition Officer, i.e. Collector to cancel or suspend the licence. Clause (e) of sub-section (1) of Section 54 of the Act provides that if the licence, permit, pass or authorization has been obtained through wilful misrepresentation or fraud, the same is liable for cancellation. In the case in hand, the petitioner was served with the notice and heard by the Collector before passing the order of cancellation of licence. The document, which is produced by the petitioner and which was used for the purpose of securing FL-III licence can be seen by naked eye to be a tampered one and used as genuine for the purpose of obtaining a licence under the Act. As such, prima facie it can be inferred that the petitioner has used forged document for securing the licence. The licence, if obtained by fraud or misrepresentation and that too by use of a doctored document, in our opinion,

frustrates the very claim for grant of equitable relief as the fraud vitiates the proceedings.

17) In support of the aforesaid observations, reliance can be placed on the judgment of the Apex Court in the matter of ***FEDCO (P) Ltd. and another vs. S.N. Bilgrami and others*** (1959 SCC OnLine SC 79). The Apex Court in para (6) of the judgment has observed thus :

> *".... The entire scheme of control and regulation of imports by licences is on the basis that the licence is granted on a correct statement of relevant facts. That basis disappears if grant of the licence is induced by fraud or misrepresentation. Whether the licensee himself or some other party is responsible for the fraud or misrepresentation, the fact remains that in such cases the basis of the grant of licence has disappeared. It will be absolutely unreasonable that such a licence should be allowed to continue. We are therefore of opinion that the provision that licence may be cancelled, if it is found, after giving a reasonable opportunity to the licensee to be heard, to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of the general public on the exercise of the fundamental right of a citizen guaranteed under Article 19(1)(f) and (g) of the Constitution. The cancellation being under a valid law there can be no question of any right under Article 31 of the Constitution having been infringed."*

18) A similar view is expressed by the Apex Court in the case of ***Munjal Showa Ltd. vs. Commissioner of Customs and Central Excise (Delhi-IV)*** (2022 SCC OnLine SC 1296). The relevant observations of the Apex Court in paragraphs (15) and (16) of the judgment read thus :

> *"15) From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scripps, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/fake DEPB licenses/Scripps) were found to be forged one and it was found that the DEPB licenses/Scripps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.*
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> *16) In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripps are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation."*

19) In the wake of above, we hardly see any reason to cause interference at the behest of the petitioner. Rather, we have seen from the conduct of the petitioner that the petitioner has tried to mislead this Court, which prompts us to saddle costs of rupees five thousand on the petitioner to be paid to the High Court Legal

Services Sub-Committee, Nagpur within a period of six weeks from today. The petition as such stands dismissed.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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