

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPAOW No. 54/2012
CMA No. 81/2012

Date of decision: .09.2012

M/s Vishal Bar and Restaurant
v.
State of J&K and ors.

Coram:

Hon'ble Mr. Justice, M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For petitioner(s) : Mr. S. K. Shukla, Advocate
For respondent(s): Mr.G. S. Thakur, Advocate

Muzaffar Hussain Attar

1. License No. 91/JKEL-4 was issued on 17th September, 2005 in favour of the appellant, whereunder he was authorized to sell Foreign Liquor and Indian Made Foreign Liquor at a Bar located in a Restaurant, and the premises for conducting the business in aforementioned license was indicated as " New Plot, Jammu". About 25 ladies of different age groups filed writ petition bearing OWP No. 448/2006 before the writ court, in which, besides others, Excise Commissioner, J&K Government, Srinagar was impleaded as respondent no. 2 and present appellant was impleaded as respondent no. 5. The reason for filing of aforementioned writ petition was that the authorization to sell liquor in the Restaurant at New Plot, Jammu had

resulted in not only inconvenience to the women folk and children of the said area, but was also causing nuisance in the area. The writ court vide its interim order dated 14.06.2006 directed that, in case, competent authority is seized of any representation, same may be addressed on the touchstone of the Statute. Respondent no. 2 on 07.08.2006 passed order, whereunder, three months time was allowed to the appellant for changing location of bar, however, within the frame work of norms, rules and policy. It was also provided that license may subsist, but will remain non-functional till location is changed. The said order is taken note of:

**“OFFICE OF THE EXCISE COMMISSIONER,
J&K GOVERNMENT,
Excise and Taxation Complex, Rail Head Jammu,
180012**

In the matter of:- OWP No. 448/2006 titled Sushma Gupta and others v. State and ors.

In the matter of:- Consideration order regarding operation of M/s Vishal Bar with Restaurant, New Plot Jammu by Excise Commissioner as per the Hon'ble High Court directions dated 04.08.2006.

ORDER

M/s Vishal Bar with Restaurant and Smt. Sushma Gupta along with interest and concerned parties were called upon to appear before the Excise Commissioner in his office on 07.08.2006 to present their case and point of view in light of order of the Hon'ble High Court. They were called

through letter and media notice published in Daily Excelsior and State Times on 05.08.2006.

On 7th of August 2006, both the parties i.e. Smt. Sushma Gupta along with the residents of Mohalla, Prem Nagar, New Plot, Jammu and M/s Vishal Bar with Restaurant represented by owners appeared and present their case.

The petitioners in the matter represented by Smt. Sushma Gupta pleaded that continuance of Bar with Restaurant is a nuisance for the residents particularly for women and children, hence the Bar should immediately be closed.

The owner of the bar sought some time for shifting the Bar from the area, within the frame work of Excise Policy, norms and rules. To this argument, the petitioners agreed and however pleaded that during the period of shifting, the Bar shall remain closed. On the request of the owner of the Bar with Restaurant, the petitioners agreed to the continuance of restaurant, subject to the conditions that word "BAR" be omitted and the "Bar Closed" sign-board should be prominently displayed and all the tainted glasses should be removed.

After hearing both the parties and giving thoughtful consideration, the following orders are hereby passed in the matter:-

1. M/s Vishal Bar with restaurant shall immediately close the Bar and omit the words BAR from the main sign board.
2. A sign board "Bar closed" should be prominently displayed on the restaurant.
3. The restaurant may function within usual legal frame work and rules.
4. All the tainted glasses may be removed to have transparent view of the restaurant.
5. Inventory of the liquor stock shall be prepared by the concerned Excise and Taxation Officer and the stock of liquor shall be kept in a store under proper seal. The field staff shall ensure that there is not violation of rules. However, the license may subsist, but remain no-functional till change in the premises.
6. Three months time is granted to the owner for change in premises within the frame work of norms rules and policy."

2. It is this order, which was called in question by the appellant in OWP No. 589/2006 and writ court vide its judgment dated 08.06.2012 dismissed the same.

3. Mr. Shukla, learned counsel appearing for the appellant submitted that the order impugned in the writ petition is illegal, as same has been passed in violation of the J&K Excise Act Svt. 1958 (for short “the Act of 1958”) and the J&K Liquor License and Sales Rules, 1984 (for short “the Rules of 1984”). Learned counsel was, at pains, to explain that the area where appellant has been authorized to stock and sell liquor, has other bars also, which have been permitted to stock and sell liquor. Learned counsel further submitted that the inhabitants of the area, where the appellant’s bar and restaurant is located have no grievance against the appellant and that sale of the liquor in the premises of the appellant does not cause any inconvenience to the inhabitants of the said area. Learned counsel submitted that appellant, who has invested huge amount in setting up of bar and restaurant and who is dependant for his survival on the earnings of the said business, cannot be deprived of the same, in the manner, it has been done by respondent no. 2. Learned counsel submitted that appellant has not violated any of the terms and conditions of the license and, resultantly,

the order impugned in the writ petition ought not to have been passed.

4. Mr. G. S. Thakur, Learned GA appearing for the respondents submitted that order impugned in the writ petition has been passed by the competent authority, by taking into consideration all the relevant factors. Learned counsel submitted that order impugned has been passed after the parties in OWP No. 448/2006, which include the present appellant also, arrived at consensus for passing of same, thus is precluded in law from challenging the same before the court. Learned counsel submitted that none of the legal rights of the appellant have been infringed by passing impugned order.
5. It is no longer *res Integra* that no person has Fundamental Right to carry on trade/business in intoxicants. Appellant has no Fundamental Right, guaranteed under Article 19(1)(g) of the Constitution of India, to carry on trade and business in the sale of liquor. Appellant has been authorized to possess and sell liquor in accordance with license issued to him and is duty bound to comply with the mandate contained in the Act of 1958 and the Rules of 1984.

6. Contention of the learned counsel for the respondents that since sale of liquor at the premises of the appellant at New Plot, Jammu had become great source of inconvenience and nuisance to the inhabitants of the area and with the consent of the appellant, order for shifting of the bar to any other area has been passed and, consequently, none of legal rights of appellant have been infringed, has to be sustained.
7. Perusal of order dated 07.08.2006, which was impugned in the OWP No. 589/2006, would show that appellant sought time for shifting bar from existing location, within the frame work of excise policy, norms and rules. Petitioners in OWP No. 446/2006 agreed for running of restaurant, subject to the condition that word "**BAR**" would be omitted and "**BAR CLOSED**" would be prominently displayed on the sign board and all the tainted glasses would be removed. Respondent no.2, on the basis of request of appellant, directed that M/s Vishal Bar and Restaurant shall immediately close the bar and omit the words "**BAR**" from the main sign board. It was also directed that sign board "**BAR CLOSED**" be prominently displayed on the restaurant and all the

tainted glassed be removed to have transparent view of the restaurant. It was also directed that license may subsist, but will remain non functional till premises is changed within the frame work of norms, rules and policy.

8. License has not been cancelled and same has been allowed to remain in tact by respondent no. 2. Appellant at his own request was provided time for shifting of the bar from the area where it was functioning. In these circumstances, license of the appellant was kept in tact and he at his own request was given time for shifting of the bar, therefore, none of the legal, statutory or Constitutional rights of the appellant can be said to have infringed. The order impugned in the writ petition come into existence at the request of the appellant, he cannot be permitted to turn around and challenge the same. He is bound by his own commitment and cannot be permitted to wriggle out of the same.
9. In view of our aforementioned discussion, we find no merit in this appeal which is, accordingly, dismissed. The appellant is directed to close down the bar within a period of two weeks' from today and implement terms and conditions of the order dated 07.08.2006

passed by respondent no. 2, inasmuch as, he will omit word “**BAR**” from the main sign board and will display “**BAR CLOSED**” sign board on its premises. Appellant shall have further two weeks time to shift the bar to some other premises/locality strictly in accordance with the terms and conditions of the order dated 07.08.2006 passed by respondent no. 2.

JAMMU
.09.2012
Paramjeet

(Muzaffar Hussain Attar) (M. M. Kumar)
Judge Chief Justice