

(2018) 01 KAR CK 0097
In the Karnataka High Court
Case No : 763 of 2018

AA HOSPITALITY LLP., (THE OPEN BOX)	APPELLANT
Vs	
BRUHAT BENGALURU MAHANAGARA PALIKE & ANR	RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Constitution of India, Article 19(1) -
Protection of certain rights regarding freedom of speech, etc

Citation : (2018) 01 KAR CK 0097

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : Ajesh Kumar S, V.Sreenidhi, A.K.Vasanth, Aravind Kamath K

Judgement

1. The petitioner, AA Hospitality LLP., (The Open Box) restaurant is aggrieved by the impugned notice issued by the respondent-Joint

Commissioner (East), Bruhat Bangalore Mahanagara Palike (BBMP), vide Annexure-A, dated 26.12.2017, calling upon the petitioner-restaurant

to close the said pub/public bar or the Restaurant on the roof top of the Building, which is a commercial building, on the ground that a lot of

complaints have been received from the public/residents of nearby area due to high noise pollution and other public nuisance caused by the

business activities of the petitioner-restaurant. The said Joint Commissioner has called upon the petitioner-restaurant to close down the said

establishment and if such an action is not taken, the needful action will be taken against the petitionerrestaurant under the provisions of the KMC

Act, 1976.

2. Mr. Ajesh Kumar, learned counsel appearing for the petitioner-restaurant has vehemently submitted that the petitioner-restaurant holds due and

proper Trade License granted to it for the year 2017-2018, vide Annexure-F, and the said petitioner-restaurant was even given an Award for

running a good establishment of this nature. But, the Respondent Authority has suddenly clamped down upon the said petitioner's roof top

restaurant and has asked to close down the same straightaway on the allegations which are unfounded nor it is based on any adverse material

against the petitioner-restaurant. Hence, the present writ petition.

3. Learned counsel for the petitioner-restaurant has relied upon certain judgments of this Court and one of them being in the case in S.N. Sinha vs.

State of Karnataka and others decided by a learned Single Judge of this Court on 14.12.2011 reported in 2012 (2) Kar.L.J. 701, to support the

contention that a notice in its vague form, as it has been given in the present case vide Annexure-A, dated 26.12.2017, is no notice in the eye of

law and, therefore, the petitioner-restaurant cannot be called upon either to show-cause before the respondent authority or to close down its

business activities without being heard. He also submitted that the impugned communication Annexure-A, dated 26.12.2017, though labeled as a

notice, is, in fact, an order against the petitioner-restaurant requiring it to close down its business activities though admittedly it is licensed to carry on

such trade at the specified premises.

4. I have heard the learned counsels at some length, perused the records and the judgments cited.

5. The courts throughout the country, including the Apex Court, are grappling with these kinds of public interest causes of rising noise pollution, be

it emanating from religious places or commercial establishments and a large chunk of courts' time is taken away by this kind of litigation, still the

problem seems to be not under control much less completely removed. It is more-so the result of timely and stringent regulatory measures rather

than any other reasons which only add to the volume of the problem.

6. The submission of learned counsels for the petitioner-restaurant that being duly licensed to carry on the trade and having obtained the consent

from the immediate neighbours and carrying on the business within the permissible parameters of law, is not enough to prematurely invoke the writ

jurisdiction of this Court extending a helping hand to allow them to carry on such trade, though the municipal authorities would like to examine and

ensure the compliance to be made on the part of the petitioner-restaurants and other similarly situated commercial establishments and would want to

ensure compliance not only with the conditions of license, but with other relevant laws, which have been enacted by the Parliament or by the State

Legislatures to ensure public peace and safety.

7. Such regulatory laws definitely are within the ambit and scope of reasonable restrictions, even if one were to claim the freedom of trade and

business under Article 19(1)(g) of the Constitution of India. No freedom including the freedom to carry on trade or business is only in leeway and

go-ahead and all such permissions and licenses are always issued subject to reasonable restrictions specified under various statutes, bye-laws and

regulations.

8. The very job and duty of the Municipal Corporations and the Councils and their authorities is to ensure the compliance of the regulations by

such licencees or persons who carry on such trade or business, subject to the parameters and the guidelines laid down under various enactments.

9. In the present case, it is misconceived on the part of the petitioner-restaurants to contend that the impugned communication is not a notice, but

an order. The threat to close down the business within seven days is coupled with the allegations that the business place of the petitioner-restaurant

is making noise pollution and other public nuisance, which have impelled the authorities of the Municipal Corporation to investigate into the matter

and then take appropriate suitable action in accordance with law, if the regulatory measures are not adequately complied with by the petitioner-

restaurants and other similarly situated commercial establishments.

10. As far as the proposition of law that how a notice has to be framed and for which, learned counsel for the petitioner-restaurant relied upon the

judgment in the case of S.N. Sinha (supra), there is no dispute and this Court respectfully agrees with the proposition of law propounded by the

cognate Bench of this Court in the aforesaid judgment. The relevant paragraph-4 of the said judgment is quoted below for ready reference:

4. The question that requires to be determined in this writ petition is, whether the impugned notice is valid in law ? When a notice can be said to

be valid in law? The term ""Notice"" originated from the Latin word ""Notitia"" which means "being known". It is equivalent to information, intelligence

or knowledge. Notice is the starting point of any hearing. The right to fair hearing covers every stage through which an administrative adjudication passes, starting from notice to final determination. Notice embodies rule of fairness and must precede an adverse order. It should clearly state the reason as to why a party is required to appear and/or his reply is required. The party concerned should be apprised of the evidence on which the case against him is based and be given an opportunity to rebut the said evidence. A notice, to be valid in law, should be clear and precise so as to give the party concerned adequate information of the case he has to meet. The adequacy of notice is a relative term and must be decided with reference to each case. The test of adequacy of notice will be whether it gives sufficient information so as to enable the person concerned to put up an effective defence. If a notice is vague or it contains unspecified or unintelligible allegations, it would imply a denial of proper opportunity of being heard. Natural justice is not only a requirement of proper legal procedure but also a vital element of good administration.

(emphasis supplied)

But, the question even if the notice impugned in the present case, which is only beginning point for enquiry in a process, falls short of the precise standard of notice as set out above, for which no mathematical precision can be delineated in such cases, the question still remains as to whether the court should invoke its extraordinary jurisdiction prematurely cutting short such enquiries and investigations at the hands of the authorities of the Municipal Corporations. The notice impugned before this Court cannot be said to be unfounded and without any basis. It neither lacks patently the jurisdiction nor is without any rhyme or reason that the Joint Commissioner served this notice upon the petitioner-restaurant. The purpose of issuing such a notice appears to be absolutely bona fide and reasonable. The increasing noise pollution in a metro city like Bengaluru is not only the concern of the Municipal authorities, but should be the concern of all public members and should be equally the concern of the petitionerrestaurant as well. Learned counsel for the petitionerrestaurant fairly agreed to it and, therefore, there is no doubt about this aspect of the matter.

11. The only grievance and apprehension of the petitioner-restaurant raised before this Court is that straightaway a direction to close down its

establishment has been issued without giving an opportunity of hearing or passing an adjudication order specifically pointing out the violation of various rules and regulations by the petitioner-restaurant is also rather an unfounded apprehension. The petitioner-restaurant has not even approached the respondent-Joint Commissioner by a suitable representation with relevant evidence. Therefore, it cannot be said whether the threat to close down the petitioner-restaurant is an adjudicatory order passed by the Joint Commissioner or is only an indicated consequence, which may follow, if the petitioner fails to show-cause before the concerned authorities.

12. To this Court, it is very clear that it is not merely the label of impugned communication, but the whole tenor of the impugned communication is only that of a notice and the threat of closure is only a consequence to follow, if adequate cause is not shown before the respondent authority.

13. Of-course, all these will require an adjudication process at the hands of the concerned authorities and, therefore, it would be misconceived and premature for this Court to cut short the said process and take it upon itself to undertake such an adjudication process. There is neither any evidence on record nor details of allegations and complaints of adverse material before this Court on the basis of which the said notice has been given to the petitioner-restaurant and it also appears that such notices have been given to a large number of commercial establishments of this nature in the city of Bengaluru. The Municipal authorities should ensure compliance with all relevant norms and standards including fire safety norms by the establishments. If all such individual causes were to be taken up by this Court so prematurely at this stage, the very purpose of giving all these notices for an adjudication to be made by the concerned competent authority is likely to be frustrated. This Court is not inclined to do so.

14. Therefore, it is considered appropriate, just and proper under these circumstances to direct the petitioner to appear before the concerned authority in pursuance of the said notice immediately and furnish all relevant evidence and materials before the concerned authority. It goes without saying that the said authority will put across whatever adverse material is available against the petitioner-restaurant or the norms and requirements which they should fulfill and after affording a reasonable opportunity of hearing and considering the evidence adduced by the petitioner-restaurant

and compliance with requirements made by them, a reasoned and speaking order would be passed by the concerned authority. That is the only appropriate way of complying with the principles of natural justice which is embedded in the rule of law, by which our country is governed in the constitutional scheme and which deserves to be followed without an iota of doubt in the cases of this nature as well.

15. Accordingly, the writ petition is disposed of. The petitioner is directed to appear before the respondent-authority in the first instance on

16.01.2018 at 11.00 a.m. During the course of enquiry, the respondent authority can even call upon the petitioner-restaurant to abide by other

regulatory measures including fire safety measures as is expected of the petitioner-restaurant and other similarly situated business establishments as

well. It is expected of the concerned authority to pass appropriate orders in the matter, as expeditiously as possible.

16. In W.P. No.1780/2018, the difference pointed out by the learned counsel for the petitioner in response to the impugned notice/order is that the

petitioner has already given its representation to the respondent-Joint Commissioner, but the respondent even refused to accept the same as stated

in paragraph 11 of the writ petition.

17. In these circumstances, the said writ petition is also disposed of in same terms and the petitioner herein would be at liberty to move the same

representation along with evidence and additional representation, if any, before the concerned Joint Commissioner on 16.01.2018 at 11.00 a.m.,

as aforesaid.