
(2019) 03 UK CK 0094

In the Uttarakhand High Court

Case No : Writ Petition No. 504 Of 2019 (M Of S), 3868 Of 2018 (M Of S)

Deep Upadhyay & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Excise Rules, 1944 — Rule 31(2)

Citation : (2019) 03 UK CK 0094

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Aditya Singh, P.C. Bisht

Final Decision : Disposed Off

Judgement

Lok Pal Singh, J

1. Writ petition no. 504 of 2019 has been filed seeking the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 09.01.2019 issued by the respondents to the extent it contains the name of the restaurant of the petitioner, namely City Club, Rampur Road, Haldwani Nainital contained as Annexure No. 1 to the writ petition.

(ii) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 09.02.2018 (date wrongly mentioned in the said order) bearing no. 19680/ (M/S)/2018/Dehradun contained as Annexure No. 2 to the writ petition.

(iii) Issue a writ order or direction in the nature of mandamus directing the respondent no. 3 to grant Bar License FL-7 in favor of the petitioner for the Restaurant City Club, Rampur Road, Haldwani as it is already approved by the State Government vide order dated 16.12.2016 on the recommendation of respondent no. 3.

2. Writ petition no. 3868 of 2018 has been filed seeking writ of mandamus

directing respondent no. 3 to grant Bar License FL-7 in the favour of the petitioner for the Restaurant City Club Rampur Road, Haldwani as it is already approved by the State Government vide order dated 16.12.2016 on the recommendation of respondent no. 3

2. Facts in brief are that the petitioner took property on rent from one Pushkar Singh S/o Kheem Singh r/o Kamal Nayan, Bari Mukhani Haldwani, District Nainital @ Rs. 40,000/- per month. Petitioner entered into rent agreement with Mr. Pushkar Singh and the property is let out to the petitioner for a period of 8 years. Thereafter, on 4.06.2016 the petitioner applied for bar license before the District Magistrate, Nainital; a report was called from S.S.P. Nainital, S.D.M, Nainital, Executive Engineer P.W.D., Haldwani, Deputy Director Tourism, Nainital, Deputy Commissioner Trade Tax Haldwani, Additional Director, Zila Panchayat, Nainital and Excise Inspector, Area 02 Haldwani; petitioner also deposited the fee for application form as well as the processing fee of Rs. 50,000/- by way of draft issued by Almora Urban Cooperative Bank Ranikhet as charged by the authority under rule 31 (2) of Excise Rules applicable in the State of Uttarakhand; after receiving the reports, called from the various departments, the District Excise Officer, Nainital recorded its satisfaction and vide letter dated 21.09.2016 recommended the matter to the District Magistrate, Nainital for grant of Bar License FL-7 in the favour of the petitioner. After perusal of the recommendation of the District Excise Officer as well as reports of the various authorities, the District Magistrate, Nainital, after recording its satisfaction, recommended the matter to the Excise Commissioner Uttarakhand. The Additional Secretary, State of Uttarakhand granted approval for running Bar License FL-7 in City Club Restaurant in the favour of the petitioner on 16.12.2016. After grant of approval of Bar License FL-7, the Excise Commissioner, Uttarakhand issued letter dated 19.12.2016 to the District Magistrate, Nainital for grant of Bar License FL-7 in the favour of the petitioner as per the applicable rules and Government Order prevailing at the time of issuance. In the meantime, the Hon'ble Apex Court in SLP No. 12164 to 12166 of 2016 State of Tamil Nadu vs. K. Balu and other had stopped the sale of liquor with the distance of 500 meters from the outer edge of the every National Highways and State Highways in all the states of India. Due to said reason, the petitioner was not called to deposit the license fee. Subsequently, another SLP(Civil) No. 10243 of 2017 'Arrive Save Society Chandigarh vs. the Union Territory and anr.' has been filed before the Hon'ble Apex Court in which clarification was issued vide order dated 11.07.2017 that the order dated 15.12.2016 does not prohibit the shops within the municipal areas.

3. Learned counsel for the petitioner would contend that after decision of the Hon'ble Apex Court dated 11.07.2017 several representations were made by the petitioner, requesting the authority to grant the Bar License FL-7 in the favour of the petitioner in pursuance to the approval granted by the State Government vide order dated 16.12.2016 and 19.12.2016 but best reasons known to the respondent, license has not been granted in the favour of the petitioner. It would further contended that license have been granted to the similarly situated

persons pursuant to the approval granted to the petitioner i.e. 22.12.2016 but despite the fact that approval has been granted in the favour of the petitioner, respondents have not considered the case of the petitioner and have not granted license to the petitioner.

4. Respondent no. 1 Additional Secretary, Department of Excise, Government of Uttarakhand in its counter affidavit stated that though approval was made in the favour of the petitioner, but, eligibility criteria for obtaining/granting the Bar License in the financial year 2018-19 are different from the eligibility criteria prescribed in the financial year 2016-17, thus approval granted to the petitioner has no sanctity at this juncture, more particularly when no license was issued to the petitioner at the said point of time on the basis of the said recommendation. It is further contended that processing fee for an amount of Rs. 50,000/- was deposited through bank draft, because of expiry of the said draft the amount cannot be realized by the department. It is further contended that location of the bar should be in the municipality area, is not the only criteria for granting the bar license and the location of the proposed bar of the petitioner is within the ambit of the criteria fixed by the Hon'ble Apex Court will not grant the right in the favour of the petitioner and other conditions are required to be fulfilled as per rule. Respondent no. 2 and 3 also filed counter affidavit stating therein same version as stated in the counter affidavit of respondent no. 1.

5. Perusal of the pleadings of the writ petition and counter affidavit filed by the respondents makes it clear that averments in the writ petition have not been specifically denied. By means of counter affidavits, the respondent have tried to say that policy for granting license for financial year 2016-17 has been over, and, subsequently criteria for grant of bar license has been changed but respondents have not disclosed what new criteria they have set. If the new criteria has been fixed, it was incumbent upon the respondents to plead it specifically. Since, specific version has not come from the side of the respondents in regard to the new criteria of grant of bar license, this Court cannot presume that new criteria has been fixed by the respondents.

6. Learned counsel for the State would submit that respondents are discharging sovereign duty. The petitioner cannot claim grant of bar license as a matter of right, as the business of liquor cannot consider as a fundamental right.

7. No doubt, the petitioner cannot claim business of liquor as a fundamental right. Once the State Government has framed the policy to grant license to sell the liquor, the State Government cannot deny the same policy to the petitioner, as, similarly situated persons have been granted bar license by the State Government.

8. Order dated 09.02.2018 has been passed without assigning any reason and has been passed merely on presumption. No specific reason has been mentioned in declining the license to the petitioner.

9. In view of the above, order dated 09.02.2018 is hereby quashed. Mandamus

is issued directing the respondents to consider the case of the petitioner for grant of Bar License FL-7 in his favour at City Club Restaurant, Rampur Road Haldwani keeping in mind the previous reports submitted by the departments and recommendation made by the District Magistrate Nainital. The entire exercise has been done preferably within three weeks from the date of production of certified copy of the order.

10. In view of the above both the writ petitions stands disposed of.

11. No order as to costs.