

(2022) 07 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 9574 Of 2022, Civil Miscellaneous Application
No. 28584 Of 2022

M/S Konnect Hospitality

APPELLANT

Vs

Commissioner Of Police & Anr

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Delhi Police Act, 1978 — Section 2(1), 28, 141(2)

Delhi Eating Houses Registration Regulations, 1980 — Regulation 11, 14

Citation : (2022) 07 DEL CK 0018

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : R. K. Saini, Varun Nagrath, Arun Panwar

Final Decision : Dismissed

Judgement

Jasmeet Singh, J

1. The present writ petition has been filed by the Petitioner firm who is presently running a cafe & bar in the name and style of " M/s Uncultured" located at HS-12, 2nd and 3rd Floor, Kailash Colony Market, New Delhi- 110048 (hereinafter referred to as the said restaurant). The petitioner is challenging the show-cause notice cum order issued by the Respondent No.2 vide SCN No.23307 dated 07.06.2022.

2. Briefly stating the facts giving rise to filing of the present writ petition are that:

3. The petitioner has been running the said restaurant since 2017.

4. The petitioner on 29.07.2020, received the Certificate of Registration for operating its restaurant from the Office of the Additional Commissioner of Police, Licensing, under the provisions of "Delhi Eating Housing Registration Regulation: 1980 Promulgated under the Delhi Police Act, 1978".

5. On 04.06.2022, an FIR No. 132/2022 was lodged at PS- Subzi Mandi, District -

South (Delhi) under section 188 of the IPC, 1860. In the FIR, it was alleged that the Petitioner had kept the said restaurant open beyond the permissible time.

6. Thereafter, on 07.06.2022 the impugned show cause notice was issued against the Petitioner, whereby, the petitioner was called upon to show cause within 15 days from the date of receipt as to why its registration should not be cancelled for alleged "repeated acts of omission and commission". The impugned show cause notice had also suspended the Petitioner's Registration Certificate till the outcome of the impugned show cause notice without affording the Petitioner the opportunity of being heard in that regard. The Petitioner was thus directed to cease operations in the said restaurant immediately.

7. It has been stated by the counsel for the Petitioner that the impugned show cause notice shows the said restaurant to be involved in 9 cases and "kalandras" from 07.07.2018 till 04.06.2022. However, simultaneously the Petitioner's license was renewed on 29.07.2020, after due verification and due diligence by the office of the Additional Commissioner of Police, Licensing, Delhi and had the Petitioner's restaurant been a "repeated offender" the same license would not have been duly granted to him. Thus, it is argued that in light of the same, any incident before the issuance of their license, had been duly considered by the competent authority and cannot be used by the Respondents to justify their act of suspending the Petitioner's license preemptively. The incidents alleged in the impugned show cause notice are from nearly 4 years earlier and cannot be a ground for the impugned show cause notice today.

8. It is argued before me that the only incident that can be considered is the one stated in FIR No.132/2022.

9. It has also been argued before me, that the FIR No. 132/2022 was registered just 3 days before the impugned show cause notice, which shows the malafide that the FIR was registered only to create a ground for issuance of the impugned show cause notice to arbitrarily shut down the Petitioner's restaurant and to pressurize the petitioner to give into the illegal demands of the Respondent.

10. Further, the counsel for the Petitioner has argued that suspending the license of the Petitioner till disposal of the matter is arbitrary, and is in gross violation of the principles of natural justice, as the Petitioner was not even afforded the opportunity of being heard and the said decision amounted to awarding the Petitioner a punishment without any adjudication on the matter, in turn affecting its livelihood.

11. It has been argued by the learned counsel for the petitioner that the show cause notice cannot be a mere empty formality to be exercised malafidely and at any time as an afterthought by the competent authority.

12. The learned counsel for the Petitioner has relied on "ORYX Fisheries Private Limited v. Union of India & Ors" (2010) 13 SCC 427 which states :

"31. It is of course true that the show cause notice cannot be read hyper-

technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

13. Lastly, it has been contended that even if the said restaurant had committed the alleged offence leading to the registration of FIR No. 132/2022, suspending the Petitioner's license without giving them an opportunity of being heard, specially considering they have been running their business since 2017 without any problems is an extremely harsh punishment and goes against the principle of "audi alteram partem".

14. Per contra, the learned counsel for the Respondent has drawn my attention to Section 28 of the Delhi Police Act, 1978 which empowers the Commissioner of Police to frame regulations for the licensing and control of places of public entertainment or public amusement and to provide for the registration of eating houses, including the power to grant a certificate of Registration to an eating house. In light of this provision, it is submitted that the Delhi Eating Houses Registration Regulations, 1980 were framed. He has also placed reliance on section 141(2) of the Delhi Police Act, 1978 which states that any license or permission granted under the act may be suspended or revoked by the Competent Authority if any of the terms and conditions or restrictions are infringed or evaded by the person to whom it is granted.

15. The counsel contended that any place or venue where alcohol or intoxicating drugs were supplied and that fell within the ambit of a "place of public entertainment" under Section 2(I) of the Delhi Police Act, 1978, was permitted to remain open only till 1 a.m. Thus when the petitioner company operated the said restaurant beyond the permissible limit of 1 a.m amongst the several other complaints as stated in the impugned show cause notice, the Respondents had the power to suspend the license of the Petitioner company and issue the said

show cause notice to the Petitioner company.

16. It has been argued that the appropriate party should first avail of the alternate remedy and show cause against the same before the appropriate authority concerned and only then in case of an adverse decision it will be open for the party to challenge the same in accordance with law.

17. The learned counsel for the respondent has subsequently presented the Delhi Eating Houses Registration Regulations, 1980 to state that even if the Petitioner's case was to be seen, the appropriate remedy would be to file an appeal before the Commissioner of Police and not this court. The relevant provisions of which are reproduced below :

"11. Cancellation of Registrations.--- The Certificate of Registration shall be liable to cancellation by the Registering Authority for violation of any of these Regulation or directions issued under regulation 14, after the holder of the certificate of Registration has been afforded a reasonable opportunity of showing cause against such cancellation.

13. Appeal.--- A person aggrieved by the orders of the Registering Authority may file an appeal before the Commissioner of Police within a period of 30 days from the date of order of refusal is communicated to him.

14. Power to issue directions.--- Every licensee shall comply with the direction that may be issued by the Commissioner of Police in this behalf from time to time."

18. This court on 22.06.2022, had issued notice to the Respondents and had directed the Petitioner to file a reply to the impugned to show cause notice before the Respondents on the same day itself. Simultaneously, the Respondents had assured that the reply to the show cause notice would be adjudicated upon in accordance with the law and as per applicable rules and regulations within 24 hours of receiving the same.

19. The reply by the Petitioner to the impugned show cause notice and the subsequent decision by the Respondents has been brought to court and has been produced before me today.

20. The Joint Commissioner of Police, Licensing, New Delhi passed an order dated 23.06.2022, determining the status of the Petitioner's restaurant license after hearing the partner representing the Petitioner company at length. It was noted in the order that during the oral hearing, the representative of the R/C Holder "could not provide any satisfactory explanation regarding the various violations of law and the cases registered against the R/C holder. He also inter alia admitted the violations of the terms and conditions of the Registration Certificate."

21. Thereafter, the Respondent-Authority after perusing the record and hearing the arguments on behalf of the Petitioner, has cancelled the Registration

Certificate of the said restaurant with immediate effect. However, they have given the Certificate Holder (petitioner herein), the liberty to file an appeal against the order within 30 days of receipt of the order before the Commissioner of Police, Delhi.

22. I have heard the counsels for the parties and gone through their rival contentions and submissions.

23. The Supreme Court in *Union of India v. Vicco Laboratories* (2007) 13 SCC 270 has held :

“Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show Cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be *prima facie* established to be so. Where factual adjudication would be necessary, interference is ruled out.”

24. Whether the show cause notice is right or wrong, must be limited to a jurisdictional error in light of there being an authority to adjudicate on the same at the first instance. Parties must only approach this forum after being satisfied that no other remedy remains before them except approaching the constitutional court.

25. I am of the view that this court would be reluctant to entertain Writ petitions at the show cause stage itself. The show cause notice in the present case is not without lack of jurisdiction.

26. The Petitioner was running an establishment duly registered under the “Delhi Eating Housing Registration Regulation: 1980 Promulgated under the Delhi Police Act, 1978” whether it did or did not violate any of these regulations can only be ascertained by the competent authority after issuing by the Show Cause Notice, calling for a reply and thereafter adjudicating upon it. Hence, when the matter came up before me on 22.06.2022, it was directed that the petitioners shall file a reply before the respondents. Accordingly, the petitioner filed a reply and a subsequent order by the Respondent- authority has been passed.

27. In the present case the Petitioners filed a reply before the respondent-authority after filing the present writ petition, which was duly adjudicated upon

and hence the challenge to the impugned show cause notice herein has become infructuous as the matter stands decided by the Respondents. The Respondents have shown that they had the jurisdiction to issue the impugned show cause notice and have now subsequently decided the matter vide order dated 23.06.2022, the present writ thus has seemingly become fruitless.

28. Even though the show cause notice is nomenclatured as an order, the pith and substance shows it to be a valid show cause notice. The direction of sealing the premises of the petitioner's restaurant till disposal of the show cause notice may be harsh, but will not invalidate the impugned show cause notice as the respondent has the power under section 141(2) of Delhi Police Act, 1978 to suspend the license of the petitioner.

29. Thus in view of regulation 11 and 14 of the Delhi Eating Houses Registration Regulations, 1980 and section 141(2) of the Delhi Police Act, 1978, the Respondent was within their right to issue the impugned show cause notice and there is no jurisdictional error apparent to me in the issuance of the Show Cause Notice.

30. I have not given an opinion as to the contents of the show cause notice and as to whether the same are right or wrong.

31. The petitioner will be well within its rights to challenge the final order dated 23.06.2022 passed by the Respondents and aver all grounds raised in the present petition of premeditated intent, malafides, arbitrariness and gross violation of the principles of natural justice.

32. This court cannot entertain this petition at this stage considering the factual scenario and the background of the legal principles set out above.

33. Having said the aforementioned, I am also of the view that the last 2 years have been catastrophic for the entire world on account of the COVID-19 pandemic. The restaurant and service industry is one of the industries which has been most severely hit by the COVID-19 pandemic. The Petitioner has been running a restaurant since 2017 and has been providing employment to a number of persons. I am hopeful that the Respondents will be sympathetic towards the cause of the petitioner.

34. With these observations and liberty as stated above, the present writ petition is dismissed.