IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 06.05.2025
Pronounced on: 23.05.2025.

LPA No. 163/2023 in WP(C) No. 1384/2021

Chief Executive Officer and Anr.

…Petitioner/Appellant(s)

Through: Mr. Muzaffar A. Dar, Advocate.

Vs.

M/s Highlander Bar and Restaurant and Ors.

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI with Ms. Nazima, Advocate for R2-R7.
Mr. Arun Dev Singh, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjay Parihar-(J)

1. By this letters patent appeal challenge is thrown to the judgment dated 19.05.2023 passed by the learned Single Judge in WP(C) No. 1384/2021 precisely on the ground that same is perverse, vitiated on fact and in law.
2. Briefly stating the factual background leading to the present appeal can be summarized in the manner that respondent No. 1 operates and runs business of liquor bar within Cantonment Area at Srinagar for which the Appellant-Board have granted him license to run and operate said bar which is commensurate to payment of fee which from time to time had been enhanced @10% from 2016 to 2021.Whereafter for financial year 2021-2022 the said license fee has been raised to Rs. 5,00,000/- with provision for increase @30% every year thereafter

which was in response to the minutes of the meeting drawn by the Appellant-Board whereby it reviewedfees realized from various business dealings. The respondent No. 1 had thrown challenge to the communication dated 12.07.2021 by which he was asked to deposit license fee of Rs. 5 lacs in terms of communication CB/BB/License/277/380 mainly taking the plea that the said license fee is unreasonable, exorbitant which has no reasonable objective to achieve. That the establishment of the respondent is within the Srinagar Municipal area and the local authority does not charge exorbitantly, whereas the impugned decision is arbitrary and violative of Article 14 of the Constitution of India. That the appellant cannot, under law, charge the fee beyond the stipulation contained in Section 277(4) of the Cantonment Act. That the fee charged by the appellant has no *quid pro quo* service or relationship between the respondent No. 1 and the appellant because the former did not provide any sort of service/facility etc. to the respondent No. 1 for running its establishment. That the said decision of enhancement of fee is irrational as the respondent No. 1 is already paying hefty fee towards license granted by the Excise Department and by realizing the fee payable to the appellant, the same amounts to double taxation which is impermissible and prohibited in law.

3. The learned Single Judge after hearing both the parties by way of the impugned judgment has proceeded to held as under:

> *"27. Petitioner herein, was though depositing the licence fee since 2015, whatsoever was being fixed by the respondents but in terms of the statutory provisions laid down in terms of section 277(4) of the Cantonment Act, 2006 the fixation of licence fee for the establishment of the petitioner as compared to the licence fee fixed in favour of the similarly circumstanced, eating establishments is not only unreasonable, arbitrary, but also is not sustainable in the eyes of law. Respondents have failed to justify their action of levying excessive fees for the petitioner that too in violation of Section 277 (4) of the Act. The discretionary powers*

must be exercised within its legal boundaries and must not become ultra vires of the statute. Discretionary power regarding policy-making, is not a licence to be used in an arbitrary and biased manner according to one's whims and fancies and personal interests.

28. In view of the foregoing discussion, the letter No. CB/BB/license/277/380 dated 12.07.2021 issued by respondent No.8, charging exorbitant trade licence fee and the Minutes of Meeting held on 19.12.2020, in the office of Chief Executive Officer, Cantonment Board, Srinagar, whereby, it has been decided under the category "eating establishments" at point No.7, that the bar shall pay the fee @ Rs. 5,00,000/- being in contravention to Section 277(4) of the Cantonment Act, 2006, are hereby, quashed. However, respondents are granted liberty to fix reasonable trade license fee strictly in terms of section 277(4) of the Cantonment Act, 2006, keeping in view the licence fee charged by the Cantonment Board in other States/UT of the country."

4. The appellant cantonment board has assailed the aforesaid judgment, inter-alia, on the plea that Writ Court cannot interfere with the policy decision of the competent authority as respondent No. 1 had been regularly paying fee, now he is estopped from claiming that the fee is exorbitant or excessive. That the Cantonment Board had the power to prescribe the license fee. That the trade license for running business of sale of wine/liquor of all kinds cannot be equated with business of any other such as essential eatable business like hotel and restaurantswhich are on a different footing. That the learned Single Judge has returned a finding that Srinagar Municipal Corporation is realizing a fixed fee of Rs. 30,000/- from wine/bar trade licensee, whereas, the Board has fixed such exorbitant fee which is perverse and contrary to material on record. That the license fee fixed by the Appellant-Board when compared with other authorities realizing such fee, the same is far less. That the learned writ court has also landed in error because the respondent had failed to show that one category of business constituting in law is being treated differently or different yardsticks have been applied by the competent authority. That since the nature of business of sale and stock of liquor is altogether different from the business

of restaurants or hotels and other eatables, so in that background the order dated 19.05.2023 of the writ court is bad in law.

5. Counsel appearing for respondent No. 1 supporting the tone and tanner of the judgment of the writ court argued that the judgement drawn by the writ court is reasoned one and does not suffer from any perversity or wrong application of law and that rule of estoppel cannot operate against the respondent No. 1. As much as what Section 277(4) of the Cantonment Act envisages, is charging of reasonable fee and the appellant who had been charging fee annually enhanced @10% have all of a sudden raised it to 30% which is unreasonable and lacks rationality

6. Per contra, counsel for the appellant relying on **'Ugar Sugar Works Ltd vs Delhi Administration And Ors, 2001 (3) SCC 635,** urged that mere fact of charge of more fee would hurt the business interest of a party does not justify invalidating the policy and here the license fee stood raised in terms of the mandate of statute and the respondent No. 1 had been paying enhanced fee with annual incremental raising @ 10% cannot now turn around and claim that raising of fee in terms of order dated 12.07.2021 is excessive. That the learned Single Judge has not dealt with the objection regarding maintainability of the writ petition on the principle of estoppel and has not considered the said objection in its right perspective. That the business of sale of liquor cannot be taken on similar footing with other categories of business of eatables. Even otherwise also business of trade and commerce is not a fundamental right so no right is vested to the respondent No. 1 to invoke writ jurisdiction. So the license fee prescribed by the appellant can neither be said to be exorbitant, irrational nor arbitrary as has been held by the learned Single Judge. That the judgments relied by the learned Single Judge were rendered in different fact

situation, thus, had no application to the case of the respondent No. 1. That the Cantonment Board prescribes trade business fee which is regulatory in nature and is also having nexus with generating revenue for providing amenities and facilities to public in general and with high inflation the Board is within its power to prescribe and refix such fee which cannot be questioned or overset by invoking judicial review.

7. We have heard the learned counsels at length and have also perused the record. Given the factual position as reflected in the pleadings, the respondent No. 1 runs business of bar (sale of liquor) within the Cantonment Area at Srinagar for which the appellant board has granted him license to run and operate the said bar and from 2016 till 2021 had been regularly paying license fee with 10% enhancement annually without any objection. It is only after 10th BoardResolution of 19-12-2020 when the appellant renewed his license for 2021-2022 with payment of enhanced fee of Rs 5,00,000/- with provision for increase @ 30% after every year. The respondent No. 1 felt aggrieved and filed the writ petition praying for the relief of quashment of letter dated 12-07-2021 for payment of fee which he claims to be in contravention of Section 277(4) of the Cantonment Act besides seeking quashment of minutes of the meeting and to fix reasonable license fee keeping in view the fee levied in this regard in a Municipality in the State/area where any such cantonment is situated.

8. The Cantonment Act of 2006 makes provision relating to administration of cantonment and to bring modern municipal management, procedureand techniques in such cantonment area. Inasmuch as to streamline its financial administration, improve finance base and change the tax mechanism keeping in view the needs of modern municipal administration. In terms of Section 277, Board is empowered to issue license for carrying on certain occupations of

trade or business in any part of the cantonment and in terms of sub-rule (4) thereof, Board may charge for the grant of licenses, under this section such reasonable fee, as it may fix keeping in view the fees levied in this regard in a municipality in the State where any such cantonment is situated.

9. Before we proceed to examine the challenge thrown to the judgment of the writ court, it is desirable to first have a look as to whether a right is vested to the respondent No. 1 to profess or carry any occupation or trade or business that too with regard to sale of potable liquor. In this regard, the law is clear when the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot claim discrimination between the citizens who were qualified to carry on trade or business. The State cannot prohibit trade or business in medicinal and allied preparations containing liquor or alcohol, however, under Article 19(6) it can place reasonable restrictions on the right to trade or business in the same way in the interest of general public. In order to determine reasonable restrictions envisaged in Article 19(6), regard must be had to the nature of the business and the conditions prevailing in that trade. Such factors would differ from trade to trade and no hard and fast rule concerning all the trades can be laid down. It cannot also be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. In **Khoday Distillery Ltd. vs. State of Karnataka, 1995 (1) SCC 574**, it was held "what articles and goods should be allowed to be produced, possessed, sold and consumed is to be left to the judgment of the legislative and executive wisdom. Things which are not considered harmful today may be considered so tomorrow in the light of fresh medical evidence. It requires research and education to convince the society of

the harmful effects of the products before a consensus is reached to ban its consumption". Alcohol has since long been known all over the world to have had harmful effects on the health of the individual and the welfare of the society. Even long before the constitution was framed, it was one of the major items on the agenda of the society to ban or atleast to regulate its consumption. That is why, it found place in Article 47 of the constitution. The apex court proceeded to observe that: -

> *"b. The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra commercium, (outside commerce). There cannot be business in crime.*
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> *c. Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium, being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.*
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> *d. Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The Statehas, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes."*

10. So what is envisaged from the aforesaid "supra" is that sale of liquor or dealing with its business cannot be termed to be one as a matter of right, but

same being under the regulations of the State is a kind of privilege extended to the citizen to be pursued with in accordance with law. Having said so, it is now to be seen whether the appellant was right in enhancing the license fee. In this regard given the provisions of the Cantonment Act, the board is empowered to regulate the management as well has also the power to generate revenues in order to administer the area coming within its precincts. Being creation of a statute, has to follow the basics of a welfare body desirable to render means of livelihood, health and general well-being and also administer Cantonment Area as well as to improve its financial base. In **Lala Ram (D) and ors vs. Union of India and ors, 2015 (5) SCC 813**, the appellants were licensee over railway properties which were in their use who had been asked to pay such fee at enhanced rate, failing which the license would be terminated. Aggrieved of which, the licensee filed a writ petition seeking mandamus against the railway authorities not to charge them with enhanced license fee. The High Court taking note of geographical situation of the premise property and surrounding circumstances took the view that mere fact that railway is a State Enterprise does not mean that it cannot charge enhanced license fee and that it must not look otherwise for funds. It held the action of railway authorities in charging enhanced fee as reasonable, therefore, declined to interfere. Agreeing with the finding of High Court, the Hon'ble Apex Court held as under: -

> *"8- Undoubtedly, the enhanced license fee being 13 times the earlier license fee amount, seems excessive, and such an observation was also made by the Hon'ble Railway Minister in his order dated 11.04.1981, but the enhanced license fee would be illusory if the same is compared with the prevailing license fee in the said market as applicable to private shops. A welfare state must serve larger public interest. Salus Populi (est) suprema lex, means that the welfare of the people is the supreme law. A State instrumentality must serve the society as a whole, and must not grant unwarranted favour(s) to a particular class of people without any justification, at the cost of others. However, in order to serve larger public interest, the State instrumentality must be able to generate its own*

> *resources, as it cannot serve such higher purpose while in deficit. Merely because the appellants have been occupying the suit premises for a prolonged period of time, they cannot claim any special privilege. In the absence of any proof of violation of their rights, such concession cannot be granted to them."*

11. The respondent No 1 had no objection to the yearly enhancement of license fee and is aggrieved only of the last increase which instead of being 10% per annum has been raised to 30%. Now, question would arise whether same is exorbitant or excessive or unreasonable. For that, the respondent No 1 was required to produce supporting material to persuade the writ court to take a view contrary to the one raised. Once the respondent No. 1 without any objection or demur was paying license fee, the board was fully authorized and competent to prescribe said fee. He cannot, as a matter of right, seek reduction of license fee because what he was dealing with was not a fundamental right to have a particular profession or occupation rather was bound by the contractual obligations. The board being the appropriate authority to issue license for running bar within its precincts cannot be, as a matter of right, be asked to fix a particular sum of fee that too to the liking of the respondent No. 1.

12. Before the writ court, the respondent had pleaded that in other cantonment areas license fee chargeable is less than the one propounded by the appellant, however, has not led any supporting material, rather has relied upon the plea that Srinagar Municipal Corporation has fixed Rs. 30,000-/ for wine/bar trade license, thus claims, on that analogy the fixation of fees by the board was exorbitant and arbitrary. Admittedly, respondent's claim that the fee charged by the appellant in the shape of fee is in the nature of license fee and not a tax and there is no *quid pro quo* service or relationship between the respondent establishment and the appellant which means the fee chargeable is at the discretion of the board who derives power under Section 277(4) to charge a

reasonable fee towards the grant of license. Whereas, Srinagar Municipal Corporation, even if assuming to be true, has fixed a rate of Rs. 30,000/- as license fee for wine/bar trade but factually no such trade license of the nature which is undertaken by the appellant is actually issued by the Srinagar Municipal Corporation. On that score alone, the fee chargeable by Srinagar Municipal Corporation cannot be equated with the license fee chargeable by the appellant. During the course of hearing, the learned counsel for the appellant has drawn our attention towards a Circular of Government of NCP of Delhi, which has fixed licensee fee for such type of trade @ 25 lacs as is evidenced by circular issued for the year 2021-22. So when compared thereto, the appellant is right in contending that board has, on that anvil, fixed far less license fee.

13. It was argued that the excessive license fee which is sought to be imposed has no correlation to the object for which it is being realized. The respondents fairly have conceded that board has the authority to charge a reasonable sum of fee for awarding such license. As already discussed above the business of selling wine within the precincts of Cantonment Board could only be undertaken on the strength of license and though there is no *quid pro quo,* however, the board cannot be stated to have been divested of its power to charge reasonable sum of fee. The business undertaken by the respondents is by way of a privilege and he had been paying license fee at the enhanced rate of 10% on yearly basis and lastly when the same was raised to 30%, keeping in view the requirement of the board, the respondent cannot now turn around and question the raising of fee. It does not lie in the realm of the respondents to claim that the Cantonment Board has acted unreasonably. It is true that the limitation imposed on a person in enjoyment of a right which is arbitrary or

excessive in nature and beyond what is required in the interest of public is a text book for an unreasonable restriction. But that proposition is not applicable to the case in hand because respondent is not rendering a public service rather is selling liquor so as to carry on his trade and business cannot as a matter or right seek that a particular fee be chargeable from him towards the grant of such license.

14. It was claimed that respondent is paying sanitation fee @ 12,000 per annum along with profession tax to the tune or Rs. 25,000/-, however, such operate in different directions because given the nature of trade and business undertaken by the respondent No. 1, such fees are required to be paid and he cannot claim that with the imposition of license fee he is put to double taxation. Had that been the case, then the respondent No. 1 would not have been paying the enhanced license fee @ 10% on regular basis from 2016 to 2021.

15. Learned writ court appears to have got swayed with the fact that since other business/occupations such as essential eatable businesses, hotel and restaurants are being charged less license fees as compared to bar for sale of liquor, it, therefore, proceeded to observe that the same is exorbitant and violative of Article 14. The said view of the learned writ court is erroneous in law because the business of sale of wine cannot be treated at par with other categories of business of eatables. At the cost of repetition, the occupation undertaken by the respondent No. 1 does not stem-out of a fundamental right, but by way of a privilege so respondent No. 1 cannot claim any discrimination that he is being charged with more license fee as compared to other businesses/occupations operating in the cantonment area.

16. It has to be appreciated that from sale of liquor in the bar, the respondent No. 1 must be earning handsomely and given the licence having been provided

to him, he cannot as a matter of right seek any parity with the payment of fee with other business establishments. The trade license fee prescribed by the board can neither be said to be exorbitant, irrational nor arbitrary, rather there appears to be no discrimination because the category of business undertaken by the respondent No. 1 stands on a different yardstick and the board having regard to the mandate of Cantonment Act and its objectives had all the power to generate its revenue for effective administration of the cantonment area. In absence of any material disclosing any violation of its right, the respondent No. 1 cannot claim that the board ought to have made concessions to him by reducing the license fee and continued to realize same from him @10% enhancement on annual basis. The board, in order to augment its resources, had a clear objective to achieve and by raising the annual realization by 30% does not make the same to be unreasonable nor can be said to be arbitrary as has been held in the aforesaid "supra".

17. In **Delhi Race Club Ltd. vs. Union of India and ors**, **AIR 2012 SC 3408** it was held, "*Thus it is clear that a license fee imposed for regulatory purposes is not conditioned by the fact that there must be a quid pro quo for the services rendered, but that, such license fee must be reasonable and not excessive. It would again not be possible to work out with the arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the state incurs and the fee charged, the fees could be sustained as reasonable."*

18. So placing reliance on the judgment *supra* the enhanced license fee cannot be held to be unreasonable or arbitrary warranting any interference by a court of equity. This is because the board has to serve a larger public interest and the appellant is right in contending that the judgments relied upon by the writ court

while passing the impugned judgment have been rendered on facts and situations distinctly different from the one constituting the fact situation in the writ petition of respondent No. 1.

19. For the aforesaid reasons, we find no reasons to concur with judgment of writ court, which is accordingly set aside, and writ petition is **dismissed**. Parties to bear own costs of proceedings.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
23.05.2025
"SHAHID"

Whether approved for reporting? Yes