

# Brindco Sales Pvt. Ltd vs Govt. Of Nct Of Delhi & Ors on 7 December, 2022

**Author: Tushar Rao Gedela**

**Bench: Tushar Rao Gedela**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 16479/2022

BRINDCO SALES PVT. LTD.

Through: Mr. Rajiv Nayar, Senior A  
with Ms. Simran Brar, Ms.  
Varma, Ms. Kiran Devrani  
Shubhankar Choudhary, Adv

versus

GOVT. OF NCT OF DELHI & ORS.

Through: Mr. Santosh Kumar Tripath  
(Civil) GNCTD with Mr. Ar  
Panwar, Ms. Mehak Rankawa  
Mr. Praduman Rao, Advocat

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA  
ORDER

% 07.12.2022 CM APPL. 53060/2022 (for recall of order dated 01.12.2022)

1. This is an application filed on behalf of the petitioner seeking recall of the order dated 01.12.2022 passed by this Court disposing of the writ petition along with application Nos. 51757/2022 and 51758/2022 with certain directions based on the concession given on instructions, by learned counsel appearing for the respondents.

2. Mr. Rajiv Nayar, learned Senior Counsel appearing for the petitioner submits that in deference to this court's order dated 01.12.2022, the petitioner in all earnest and to show its bona fide filed the appeal under Section 72 of the Delhi Excise Act, 2009 within 24 hours from the time of passing of the order dated 01.12.2022.

3. Learned senior counsel further submits that despite petitioner complying its part of the order of filing the appeal and informing learned counsel for the respondents simultaneously, the access to ESCIMS was not accorded to the petitioner contrary to the concession and directions of this Court.

4. It is not disputed by learned counsel appearing for the respondents that the said appeal, in accordance with the directions of this Court, was in fact filed and the information relating thereto

was given also to his office. However, the respondents are found wanting in complying with the consequent directions passed by this Court on 01.12.2022. In fact from 02.12.2022 till today, the portal has not been opened depriving the petitioner from availing the directions as passed in order dated 01.12.2022.

5. Mr. Tripathi, learned counsel appearing for the respondents today submits that the instructions as conveyed to this Court by Mr. Meena, Assistant Commissioner (Excise), could not have been tendered due to lack of jurisdiction or authority in that regard. Mr. Tripathi also submits that the said officer was under bona fide mis- conception, while giving the concession and there was a mis-communication between Mr. Meena and him. Mr. Tripathi, learned counsel submits that in view thereof, this Court may pass appropriate orders.

6. This Court has considered the aforesaid submissions on behalf of both the parties and deems it fit to recall the order dated 01.12.2022 to the extent that the writ petition was disposed of. As a consequence, the writ petition is taken up for consideration.

7. It is the case of the petitioner that the respondents have cancelled L-1F license vide the impugned order dated 25.11.2022 without applying their minds to the facts of the case. It is seen from the records that the L-1F wholesale license was granted on 26.08.2022.

8. It is undisputed that the online application for the purpose of L- 1F license was submitted by the petitioner online on 12.08.2022. The respondents accepted the application of the petitioner and directed it to pay License Fee of Rs. 47,90,000/- which was duly paid by the petitioner on 26.08.2022. Consequent thereto, L-1F license was granted by the respondents in the name of petitioner-company for the period commencing 01.09.2022 through till 31.03.2023.

9. As per proviso to Section 13(1)(c) of the Delhi Excise Act, 2009, when the applicant is selected as a licensee, the said licensee would furnish a Police Verification Report within thirty days of the grant of license showing that "he possesses good moral character and has no criminal background or criminal record."

10. Accordingly, the petitioner company along with its application dated 12.08.2022 had submitted an affidavit pursuant to the provisions of Section 13(1) of the Act stating that "we shall furnish Police Verification Certificate as per Delhi Excise Act, 2009 within thirty days after grant of license to us".

11. It is stated by the petitioner that on 02.09.2022 through email, the petitioner received a letter dated 01.09.2022 directing it to furnish Police Clearance Certificate ('PCC') from the Police Station within three working days, even though the petitioner had until 25.09.2022 to submit the same. The said letter was stated to be on the basis of a secret complaint received by the office of the respondents. As per the said letter, the secret information was relatable to an FIR bearing No. RC0032022A0053 dated 17.08.2022 wherein the promoter of the petitioner, that is, Mr. Aman Deep Singh Dhall was named and this was stated to be the basis of violation of Section 13 of the Delhi Excise Act, 2009.

12. There is no dispute with the fact that the petitioner has been in the present business for the last more than 5 decades and has been continuing to get regular licenses from the respondents without any hitch.

13. It is informed that the petitioner is a company having a turnover of Rs. 1100 Crores. It is not disputed by Mr. Tripathi that the petitioner has been paying the requisite duties as imposed under the Act regularly, whether it was the previous regime or the new regime under which the business of liquor trade is permitted to be carried out.

14. On the part of the respondents, it is submitted that though the online application was submitted on 12.08.2022, however, the FIR was registered on 17.08.2022, which included the name of Mr. Aman Deep Singh Dhall as one of the accused persons. Given this fact, the respondents submit that the violation of Section 13(1) of the Excise Act occurred.

15. Respondent had issued letter dated 01.09.2022 giving three days time to petitioner to submit PCC. This letter dated 01.09.2022 was challenged by way of W.P.(C) No.12880/2022 and this Court by the order dated 06.09.2022 had restrained the respondents from interfering or causing any hindrance in the working of the licence and granted access to the portal for facilitation of petitioner's business.

16. Subsequently, during the pendency of the aforesaid writ, the respondents proposed to withdraw the letter dated 01.09.2022, and the petition was disposed of on 03.11.2022. Subsequently, the respondents issued notice on 07.11.2022, which ended up in the instant impugned order dated 25.11.2022.

17. On the basis of the above FIR, the respondents submit that the L-1F license granted to the petitioner was liable to be cancelled or revoked and, therefore, the action taken by the department in passing the order dated 25.11.2022 is, in accordance with law.

18. Mr. Rajiv Nayar, learned Senior Counsel appearing for the petitioner submits that the issue in the present case would revolve around the fact as to whether the information regarding registration of FIR dated 17.08.2022 was in the knowledge of Mr. Aman Deep Singh Dhall as on the date of filing of the online application or not. Learned Senior Counsel submits that since the FIR was registered admittedly on 17.08.2022 which is post facto the online submission of application for L-1F license, it is apparent that on the date of filing online application, knowledge thereof, cannot be attributed to Mr. Aman Deep Singh Dhall and consequently, no concealment or misrepresentation of facts took place on 12.08.2022.

19. That apart, Mr. Nayar submits that on 19.09.2022 Mr. Aman Deep Singh Dhall had resigned from the petitioner-company.

20. Learned senior counsel submits that consequent thereupon, the PCC of the MD and the other two remaining directors was furnished on 25.09.2022, which was within the thirty days period as stipulated under the Rules. Learned counsel submits that by that time Mr. Aman Deep Singh Dhall

was not even a part of the petitioner-company.

21. Learned counsel also submits that having regard to the fact that the petitioner has been carrying on the business for the last more than 5 decades with the department and not having defaulted even on a single occasion, the over-enthusiasm of the respondents in proceeding to cancel the license, without even ascertaining the facts of the case, is violative of its fundamental rights.

22. Though learned senior counsel submits that the manner in which the respondents proceeded in cancellation without even issuing a show cause notice or giving a hearing to the petitioner was violative of the administrative law.

23. Learned senior counsel also submits that the FIR is registered under Sections 477A r/w 120-B IPC r/w Section 7 of the Prevention of Corruption Act, 1988, primarily against the Government officials.

24. Learned counsel also submits that there is no specific allegation against Mr. Aman Deep Singh Dhall or against the petitioner itself in the said FIR.

25. That apart, there is no allegation either in respect of the provisions of the Delhi Excise Act, 2009 against the petitioner or any of its directors including the erstwhile director Mr. Aman Deep Singh Dhall, therefore, 25.11.2022 cannot withstand the scrutiny of law.

26. This Court has considered the facts of the case as well as the rival contentions put forth by the parties.

27. In the considered opinion of this Court, the FIR which has been registered as of now cannot be taken as proof, prima facie, of the involvement of Mr. Aman Deep Singh Dhall in any of the offences mentioned therein coupled with the charge-sheet filed as obtaining today, Mr. Aman Deep Singh Dhall has not been named therein, prima facie, the reason for cancellation does not appear to be sound.

28. This Court is of the opinion that keeping in view the fact that the petitioner has been in this business for the last 5 decades without any complaints from the respondent department, as also that the PCC in respect of the MD and the other two remaining directors against whom there are no allegations, has been submitted to the department, for the time being and purely as an interim measure certain directions may be issued.

29. Resultantly, the L-1F license of the petitioner temporarily is restored to its original status and consequently, the respondents are directed to open ESCIMS portal, through which the business of the petitioner is conducted. Since the L-1F has to be restored by the Competent Authority, the Authority is given 24 hours to restore the license and to open the portal so as to enable the petitioner to access the ESCIMS to conduct its functionality.

30. In the meanwhile, the department may proceed with the appeal in accordance with law after affording an opportunity of hearing to the petitioner herein. The order passed thereon shall not be implemented for a week thereafter.

31. With the aforesaid directions, the application is disposed of. W.P.(C) 16479/2022

32. Learned counsel appearing for the respondents seeks four weeks time to file his reply. Reply may be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

33. List for consideration on 15.05.2023.

34. Order Dasti under the signatures of the Court Master.

TUSHAR RAO GEDELA, J DECEMBER 7, 2022/nd