

Epiphany Hospitality Pvt Ltd vs The Commissioner Excise Entertainment ... on 9 April, 2025

Author: Sachin Datta

Bench: Sachin Datta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision

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W.P.(C) 4518/2025 and CM APPL.20895/2025 (Stay)

EPIPHANY HOSPITALITY PVT LTD

.....Petitioner

Through: Ms. Shyel Trehan (Sr. Adv) along with

Mr. Raghav Anand, Mr. Shubham

Kathuria, Ms. Vidhi Jain, Mr. Suha

Ahmed, Advs.

versus

THE COMMISSIONER EXCISE

ENTERTAINMENT AND LUXURY TAX

DEPARTMENT GOVT OF NCT OF DELHI & ANR.Respondents

Through: Mr. Satender Sangwan (ACP) along

with Mr. Mukesh Rana (Inspector) and

Mr. M. Singh (SI) for Delhi Police

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed by the petitioner, 'Epiphany Hospitality Pvt. Ltd. ', which operates a restaurant-cum-bar under the name and style of „M/s Social and Tinur ', also known as „Hauz Khas Social ', located at the First Floor of 9A, 12, T-12A, and Second Floor of 9A, 12, Hauz Khas Village, New Delhi-110016.

2. The petition has been filed on account of sudden disruption in the operations of the aforesaid restaurant-cum-bar of the petitioner in the evening of 03.04.2025. It is submitted that the respondent no.1 / Department of Excise, GNCTD, during the inspection at the petitioner's premises on 03.04.2025, issued a written direction to the manager of the petitioner's restaurant to put on hold, the sale of liquor therefrom, for the reason that no valid "Eating House License" was available with the petitioner.

3. It is undisputed that the petitioner holds L-17 and L-17F license for "Service of Indian Liquor and Foreign Liquor in independent restaurant". A copy of the license has been annexed to the present petition as „Annexure M '. Although the license was originally issued on 27.03.2023 and was valid until 31.03.2025, its validity has since been extended until 30.06.2025, pursuant to Circular No. Exc-HCR/2/2025-HCR-Excise/4167-4171 dated 26.03.2025, issued by the Department of Excise, GNCTD.

4. With respect to the Eating House Registration/License, it is submitted that the petitioner has been facing repeated administrative obstacles from the respondent no. 2/the Licensing Unit of Delhi Police, in connection with the process for renewal of the same, despite the submission of complete documentation and compliance with all requisite conditions. The validity of the petitioner's Eating House Registration/License was till 31.3.2024 and the petitioner has been pursuing for renewal ever since.

5. It is submitted that instead of renewing the Eating House Registration/ License, on 06.02.2025, the petitioner received a Show Cause Notice dated 21.01.2025 from respondent no. 2, alleging (based on information from the Delhi Fire Service) that the petitioner's restaurant was illegally serving alcohol within 100 meters of a government school and village temples. The notice claimed that such actions on the part of the petitioner violated the provisions of Delhi Eating House Regulations, 2023. The said SCN called upon the petitioner to respond as to why its Eating House Registration Certificate not be cancelled. The relevant portion of the said SCN is reproduced as under -

"Whereas, a information was received from DFS on 09/07/2024 wherein It is mentioned that the above Eating Establishment illegally serving alcohol to clients with 100m from Govt. School & Village temples. This conduct of yours renders you a person not suitable to operate an Eating House and the premises not a fit place as required by general conditions imposed upon RC holder in pursuance to Delhi Eating Houses Registration Regulations-2023.

Whereas, Section 141 (2) of Delhi Police Act envisages that any license or written permission granted under this Act may any time be suspended or revoked by the competent authority if any of its conditions or restrictions are infringed or evaded by the person to whom it has been granted.

THEREFORE, I, B. Shanker Jaiswal, Joint Commissioner of Police, Licensing, Delhi, in exercise of powers conferred upon undersigned under the provisions of "Delhi Eating Houses Registration Regulations-2023" do hereby call upon you to Show Cause within 15 days from the date of receipt of this notice, as to why your Registration Certificate should not be cancelled for the above said acts of omission & commission. Your reply, if any, should reach this office within 15 days, failing which it will be presumed that you have nothing to say in your defense and the decision will be taken ex-parte, on merits."

6. The petitioner duly submitted a detailed reply to the said Show Cause Notice on 19.02.2025. It is submitted that after submission of the aforesaid reply to the SCN, respondent no. 2 has not taken any further action.

7. In the above background, the respondent no.1 / Department of Excise, GNCTD, conducted an inspection at the petitioner's premises on 03.04.2025 and proceeded to seize the entire stock of liquor, citing the absence of a valid Eating House License.

8. The action taken by the concerned officials of excise department on 03.04.2025 is evident from a report (allegedly made by the concerned officials at the time of inspection), filed by the petitioner as Annexure-R, which reads as under:

"REPORT As per the directions of the Competent Authority, the undersigned team of Excise Inspectors visited the premises of M/s Social, First & Second Floor, 9-A&12, Hauz Khas Village, Delhi-110016 on 03.04.2025 at around 8:40 PM. Mr. Vipin Kumar, Manager found present at Restaurant. Team asked Manager for valid linked licenses but Manager failed to provide valid Delhi Police Eating House licence.

Therefore, as per directions the team seized the available liquor at Bar Counter & L-17 Store and passed the directions to Manager to not to sell liquor till further directions from Excise Dept. Further, team informed the Manager if the restaurant has valid Eating House licence, he may submit the same to Excise Dept.

-sd- -sd- -sd-

(Ashish Kr. Yadav)
E.I.

(Vikram Khatri)
E.I.

9. It is submitted on behalf of the petitioner that, as on date, it has a liquor license which is valid till 30.06.2025. The only reason on the basis of which the respondent no.1 has directed the petitioner to put on hold the selling of liquor is non-production of a valid Eating House Certificate/ License. It is contended that the same is untenable inasmuch an Eating House Certificate/ License has been validly issued in favour of the petitioner and only its renewal is under process; the same is pending at the end of respondent no.2. It is submitted that the delay in processing of the request of the petitioner for renewal of its Eating House License is completely unjustified.

10. In the circumstances, it is submitted by the petitioner that on the one hand, the processing of renewal of its Eating House Registration/ License is being unreasonably delayed by the respondent no.2; on the other hand, the respondent no.1 is seeking to take action against the petitioner, despite the petitioner having the requisite excise license (L-17 / L-17A), on the ground of non-availability of a subsisting Eating House Registration/ License.

11. Learned counsel for the respondent no.1 does not dispute that the petitioner is in possession of a valid L-17 / L-17A license, which is valid until 30.06.2025. It is also denied that any seizure has been done by the respondent no.1 on 03.04.2025. It is submitted that the respondent no. 1 has only issued directions that sale of liquor be discontinued till further directions from the excise department. It is submitted that the said measure has been taken on account of non-availability of a subsisting Eating House Registration/ License in favour of the petitioner.

12. Learned counsel for the respondent no.2 has submitted that the concerned authority is still seized of the petitioner's application for renewal of its Eating House Registration/ License. It is informed that the processing thereof has been held up only for want of „area suitability report“ from the concerned unit / officials of the Delhi Police.

13. Having heard respective counsel for the parties, it is evident that ever since 29.04.2014, the petitioner has held a valid Eating House Registration/ License for the subject premises, duly issued by the respondent no.2. The said Eating House Registration bearing no. ETHL/ ADDL.CP/ LIC/ 20/ 2/ 358/ Safdarjung Enclave has been renewed from time to time. The latest renewal being till 31.03.2024.

14. Crucially, the „Delhi Eating Houses, Registration Regulations, 2023“, framed in exercise of the powers conferred by Clause (za) and (zb) of sub section (1) of Section 28 of the Delhi Police Act 1978, clearly provides as under:

"6. Renewal of Registration Certificate:

i) Every application for renewal of the Registration Certificate under these Regulations shall be made online at least three months before the date on which the Registration Certificate is to expire, through the application form available on Unified Portal of Ministry of Home Affairs, Government of India. The Certificate shall be renewed by such authority on receipt of Health Trade License issued by the Municipal / Local Authorities and requisite reports from Local Police and Traffic, unless the application is refused/rejected.

ii) Where an application is made in accordance with sub-regulation (i), the premises in respect of which the Registration Certificate is to be renewed, shall be deemed to be duly registered until such Registration Certificate is renewed and delivered to the applicant online, or till an intimation that the renewal of the Registration Certificate has been refused, is communicated to such person.

iii) For processing the application for renewal of Registration Certificate, following documents shall be required: -

a) Primary Documents (To be obtained by Licensing Division)

(i) Health Trade License issued by the Municipal/Local Authorities.

(ii) Area Suitability Reports from Local Police and Traffic.

b) Secondary Documents - The Registration Certificate Holder shall upload an undertaking as per Form-2 (Annexure-2) on the Unified Portal of Ministry of Home Affairs, Government of India.

c) The Certificates/No Objection Certificates/Compliances (wherever applicable) with respect to Fire Safety, Environmental norms, Structural and Electrical safety, Disaster Management (including pandemic), other safety aspects, or otherwise as required in respective laws, shall be governed by the respective Agencies as per the extant laws, rules and/or bye-laws."

15. It has been brought out that the petitioner has duly applied for renewal of its Eating House Registration/ License, and has submitted all the requisite documents for the said purpose. It is submitted that only the „area suitability report is to be obtained from the „local police and traffic . The furnishing thereof is not in the hands of the petitioner. In case there is any delay on account of the same, the responsibility and consequences thereof cannot be fastened upon the petitioner. It is notable that para-6(ii) clearly contemplates that when an application for renewal of the Eating House Registration Certificate is duly submitted, then in such an eventuality, „the premises in respect of which the Registration Certificate is to be renewed, shall be deemed to be duly registered until such registration certificate is renewed and delivered to the applicant online, or till an intimation that the renewal of the registration certificate has been refused, is communicated to such person .

16. Learned counsel for the respondent no.2 is unable to controvert that the aforesaid provision in the notification dated 08.04.2023 is applicable in the present case.

17. On a specific query, it is submitted by the learned counsel for the respondent no.2, that the renewal of the Eating House Registration/ License of the petitioner is held up only for want of an area suitability report; it is stated that the petitioner s application for renewal has not yet been rejected/ declined.

18. It is also relevant to note that although an SCN dated 21.01.2025, was issued to petitioner by the respondent no. 2, calling upon the petitioner as to why its Eating House Registration Certificate be not cancelled, upon submission by the petitioner of its response dated 19.02.2025, no further action was taken by the respondent no.2 pursuant to the SCN. In the said reply it was pointed out that the DFS has re-inspected the premises on 03.02.2025 and satisfied itself that the premises in question are found compliant with all applicable fire prevention and fire safety requirements and/or other requirements. It was also pointed out that the Eating House License has been granted in respect of the petitioner s premises since the year 1994. It was specifically stated as under:

"ii. Further, as you must already be aware from the record available with you, Registration Certificates have been granted and renewed to eating establishments operating out of the said premises under various names and styles since the year 1994. Admittedly, out of the same location as the present eating establishment, the eating establishments earlier also operated as a restaurant cum bar serving alcohol to their clients, and have never for the said reason in question been found to be not a „fit place to operate an eating house and been disentitled to be granted and hold an eating house registration certificate issued in terms of the Delhi Eating House Registration Regulations, 1980 and now under the Delhi Eating Houses Registration

Regulations, 2023. There is admittedly no change in circumstances from earlier to now vis-à-vis the serving of alcohol on the premises and distance to a Govt. School and Village Temples, which would now for the said reason warrant the rejection/ cancellation/ suspension of an eating house registration certificate."

19. In the circumstances, by virtue of the prescription contained in para 6(ii) of the the Delhi Eating House, Registration Regulations, 2023, unless and until the petitioner s renewal application is declined, the petitioner s operations cannot be precluded for want of an Eating House Registration Certificate/license.

20. During the course of hearing attention of this Court has also been drawn to a SCN-cum-order dated 08.04.2024, that has recently been issued to the petitioner by the Respondent No. 1/ Department of Excise ; the same reads as under -

"SHOW CAUSE NOTICE CUM ORDER Whereas, the L-17/L-17F of M/S SOCIAL AND TINUR A UNIT OF EPHIPHANYHOSP PVT LTD licence bearing License id L17/2021/07266 (E-ABKARI ID 01/2024/1220) was renewed for the Year 2025-26 after payment of Renewal fee in accordance with circular No Exc

-HCR/2/2025-HCR-Excise/4167-4171 dated 26.03.2025 for service of liquor on licensed promises.

And whereas, it has come to notice that licensee does not having Eating House License issued by Delhi Police which is mandatory linked license u/s 51(10) of Dello Excise Rules 2010.

And whereas, a team of Excise Inspectors visited the premises of M/ SOCIAL AND TINUR A UNIT OF EPHIPHANYHOSP PVT LTD on 03.04.2025 and asked to produce valid linked licenses vis Eating House License, Health Trade License etc but the manager failed to produce valid Eating House License issued by Delhi Polic. It shows licensee does not have valid Link Licences which is a pre condition for issuance of excise L17/17 F Licences u/s 51(10) of Delhi Excise Rules 2010, which states that (10) Retal licences for consumption "on" the premises, shall be granted at a site, duly approved by the local authority concerned, provided that the following documents have been furnished, issued by the agencies concerned-

(a) Eating House Licence.

(b) Lodging House License in the case of L15 only

(c) Health and Trade Licence:

(d).....

(i)

(ii)

(iii)

(e).....

(f) Registration certificate under the Delhi Value Added Tax Act. 2004;

(g) Site plan including the story room, area for the bar and the area for the service of liquor, prepared by registered architect

(h) No objection Certificate from the Fire Department And whereas by not submitting the Mandatory Link Licences, the Licensee has violated the provision of Rule 51 (10) of Delhi Excise Rule 2010.

Therefore in view of above, the licensee is hereby called upon to Show Cause within 15 days from the receipt of this notice, as to why your Excise Licence should not be suspended for the above said lapse.

The Licenser should submit their reply along with copy of Link Licences within 15 days, failing which it will be presumed that the licensee is not in possession of Mandatory link Licences and the Licence will be suspended for violation of Rule 51 (10) of Delhi Excise Rule 2010 without further notice. In the meanwhile the Licensee is directed to cease the Operation of Service of Liquor till further directions from Excise Department."

21. As is evident from the said SCN-cum-order dated 08.04.2024 the action sought to be taken by the respondent no.1 is also predicated on the basis that the petitioner does not have an Eating House License/Registration, which, in terms of Rule 51 (10) of the Delhi Excise Rules, 2010 is in the nature of a "mandatory linked license".

22. Considering that under para-6(ii) of the Delhi Eating House, Registration Regulations, 2023, the registration already granted to the petitioner shall enure, till the renewal certificate is issued or till an intimation of refusal is issued by the respondent no.2, the direction contained in the aforesaid SCN-cum-order dated 08.04.2024, requiring the petitioner to "cease the Operation of Service of Liquor", is ex-facie misconceived.

23. Considering the aforesaid facts and circumstances, the following directions are issued:

(i) in terms of para-6(ii) of the Delhi Eating Houses, Registration Regulations, 2023, the petitioner's premises shall be deemed to be duly registered thereunder, until its registration certificate is duly renewed and delivered OR till an intimation is sent by the respondent no.2 that renewal has been refused.

(ii) the respondent no.2 is directed to process the petitioner's application for renewal of Registration / licence under the Delhi Eating House, Registration Regulations, 2023 and take a decision thereon (either accepting the renewal application or intimating refusal thereof), as expeditiously as possible, and preferably within a period of two weeks from today.

(iii) the direction contained in the SCN-cum-order dated 08.04.2025, issued by the respondent no.1, to the extent it directs that the petitioner shall cease operation of service of liquor from its restaurant, is stayed till adjudication of the said SCN. The petitioner shall duly respond to the SCN-cum-order dated 08.04.2025 (whereby the petitioner has been directed to show cause as to why its excise licence be not suspended) within the time granted thereunder. The same shall be duly adjudicated by the concerned licencing authority. The licensing authority/respondent no.1, shall take into account the provision/s of para-6(ii) of the Delhi Eating House, Registration Regulations, 2023 and the outcome of the petitioner's application seeking renewal under the said Regulations.

24. The petition is disposed of in the above terms.

SACHIN DATTA, J APRIL 9, 2025/cl