

E.S. Beena vs State Of Chhattisgarh on 16 August, 2022

Author: P. Sam Koshy

Bench: P. Sam Koshy

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HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (CIVIL) NO. 2248 OF 2021

1. E.S. Beena, W/o M.A. Mohan Dasan, aged about 55 years, R/o Quarter No.7/C, Street No.10, Sector-1, Bhilai, District Durg (C.G.)

2. M.M. Arun, S/o M.A. Mohan Dasan, aged about 31 years, R/o F-21, Dream Homes, CHPL, Nehru Nagar, Bhilai, District Durg (C.G.)

... Petitioners

versus

1. State of Chhattisgarh, through: Principal Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District Raipur (C.G.)

2. Collector, District Durg (C.G.)

3. Commissioner, Municipal Corporation, Durg-Bhilai, District Durg (C.G.)

4. Sunil Agrahari, Zone Commissioner, Municipal Corporation, Bhilai, District Durg (C.G.)

... Respondents

For
Petitioners : Mr. Sumit Singh, Advocate.

For Respondents No.1 & 2 : Mr. Pragyaditya Acharya, P.L. For Respondents No.3 : Mr. S.C. Verma, Senior Advocate, a/w Mr. Harshwardhan Parganiha, Adv.

F o r R e s p o n d e n t N o . 4 : M r . P a n k a j A g r a w a l , A d v o c a t e

Hon'ble
Shri Justice P. Sam Koshy C.A.V. Order Reserved on : 27-06-2022 Pronounced on : 16-08-2022

1. The present Writ Petition has been filed by the Petitioners primarily demanding a compensation from the Respondents to the tune of Rs.25 Lakh. The additional prayer that has been made by the Petitioners is for ordering an enquiry against the Respondent No.4 and other concerned responsible Officers.

2. The whole dispute arises from a raid conducted on 1.2.2021 by Respondent No.4 in the capacity of Zone Commissioner of the Municipal Corporation, Bhilai, District Durg, at the Restaurant that was being run by the Petitioners in the name and style of "FAT CLUB".

3. Brief facts relevant for the adjudication of the claim raised by the Petitioners in the instant Petition are, that the Petitioners had taken on rent a property belonging to one Mohinder Singh located at shop No.68, Residential- cum-Commercial Complex, Nehru Nagar (East), Bhilai, District Durg. In the said premises, the Petitioners were running a Restaurant/Cafe at the first floor in the name of "F.A.T. (Cafe)". The second floor was being used as "Cadence Academy". The agreement to rent was entered into with the property owner Mohinder Singh in the name of Petitioner No.1. The Petitioner No.2 is the son of Petitioner No.1. The lease agreement for the said property was entered into in September, 2019. The Petitioners got a license from the Municipal Corporation, Bhilai to run the Restaurant in the name of "FAT FOOD FOR ANY TOMMY RESTAURANT". The Petitioners also subsequently applied for the registration of the same with the Department of Food Safety and Standard under the Food Safety and Standard Act, 2006 and they got the registration immediately. The Petitioners were operating the said business peacefully.

4. That, the Respondent No.4 abruptly on one fine evening forcefully entered into the Restaurant of the Petitioners and forced them to close down the Restaurant without any justifiable reason or a notice or an order being issued in this regard. Neither was the step of the Respondent No.4 firstly in conducting of the raid and secondly in forcefully making the Petitioners to close the Restaurant with any authority of law. Apart from the ordering for the closure of the Restaurant on the said date, the Respondent No.4 also had sealed the Restaurant for an indefinite period without there being any order issued in this regard.

5. The Petitioners' Restaurant stood sealed up till 27.3.2021. Thereafter, the Respondents removed the sealed from the Petitioners' Restaurant. Meanwhile, because of the inability for the Petitioners in operating the said Shop/Restaurant and also since they were finding it difficult to make payment to their staff and also the rent for the said premises, they decided to close the Shop. It was only after 27.3.2021 that the Respondents unsealed the Shop and permitted the Petitioners to remove the articles and furnitures belonged to the Petitioners from the said premises. It is this action on the part of the Respondents, particularly on the part of the Respondent No.4, in forcefully closing the Shop/Restaurant of the Petitioners without any order whatsoever and without any notice, which is under challenge in the present Writ Petition.

6. Contention of the learned Counsel for the Petitioners is that the action on the part of Respondent No.4 amounts to violation of Articles 21 and 19(1)(g) of the Constitution of India. According to him, in spite of a surprise raid conducted by Respondent No.4 and his Officers, they could not find any illegality or irregularity in the course of the raid. Further, that during the raid also the Respondent No.4 and his team of Officers could not lay hand on anything that was illegal and prohibited under Law. That because of the act on the part of Respondents No.3 & 4, the Petitioners have suffered substantial damage both on the monetary front as also the image of the Petitioners in the society got tarnished, which in other words directly attributes on the character of the Petitioners. To add with it, the Petitioners also had to close down their business, which too has caused great loss, hardship, inconvenience to them in the society and the market where they were operating their business earlier. It is in this context that the Petitioners have sought for a relief from this Court seeking compensation to the tune of Rs.25 Lakh from the concerned Respondents.

7. Opposing the Petition, learned Senior Counsel appearing for the Municipal Corporation submitted that the raid was conducted on receipt of a large number of complaints in respect of alleged public nuisance that was being created in and around the Restaurant operated by the Petitioners. That, it was for this reason that the Respondents No.3 & 4 thought it proper to conduct a raid on 1.2.2021. That, though the Petitioners had obtained the license for running a Restaurant but as per the complaint in the garb of operating a Restaurant, the Petitioners were running a Hookah Bar. That, a large number of equipments used for the purpose of smoking/hookah were recovered and seized from the Petitioners' premises. Further, that during the raid it was found that the Petitioners did not have a license to run the Hookah Bar and they were operating the same without any authority of Law. That, in respect of the alleged illegalities, the Respondents No.3 & 4 have already issued a written letter to the Station In-charge, Police Station Supela, Bhilai, District Durg.

8. During the course of argument, learned Senior Counsel appearing for the Municipal Corporation further submitted that on the raid it was found that the license of the Petitioners for running the Restaurant had already got lapsed for quite sometime and thus operating a Restaurant without a valid license or permission is fully illegal in accordance with the Municipal Corporation Act. Therefore, the action on the part of the Respondents No.3 & 4 cannot be said to be either arbitrary, illegal or bad in law. According to him, under the Municipal Corporation Act, the provisions under Section 66(1)(e) read with Sections 248 & 249 empower the Corporation's Authorities to enter upon any premises in order to ensure that no nuisance or illegal activity is carried out within the Municipal Corporation area.

9. Lastly, it was contended by learned Senior Counsel for Respondent- Corporation that subsequently the Petitioners themselves had vacated the premises, further closed the Restaurant and left the premises voluntarily. The Respondents thereafter would not be liable for any compensation whatsoever. Moreover, the property itself has been subsequently de-sealed and upon the Petitioners' vacating the premises it now stands vested with the original owner. Thus, at this juncture, the present Writ Petition has become infructuous and deserves to be dismissed.

10. From the submissions that have been made by learned Counsel appearing on either side, the issues which need to be delved into in the instant Petition are: (i) Whether the action on the part of Respondents No.3 & 4 was in accordance with law? (ii) Whether the Respondents No.3 & 4 had any authority conferred upon them under any of the statutes for the action that they have taken? (iii) If the action on the part of Respondents No.3 & 4 was without any force of law, whether it would amount to be an action which could be termed to be illegal, arbitrary and unjust? If yes, whether the Petitioners would be entitled for any suitable compensation?

11. The admitted factual matrix of the case is that the Petitioners took a building on rent from one Mohinder Singh. The said premises was used for the running of a Restaurant/Cafe in the name of "F.A.T.". Another floor of the said premises which was taken on rent was used as "Cadence Academy". That, on 1.2.2021, the Respondents No.4 conducted a raid at the said Restaurant of the Petitioners. They immediately ordered for the sealing of the Restaurant. They also prepared a Panchnama and seized various articles from the said Restaurant belonging to the Petitioners. The

Restaurant remained sealed up till 27.3.2021. Surprisingly, in between, there has been no prosecution case initiated against the Petitioners for any violation whatsoever in the operation of the Restaurant. No criminal case has been registered. No F.I.R. was lodged.

12. From the afore given factual matrix which goes undisputed from the Reply submitted by the contesting Respondents as well, what is apparent is the fact that there was no material available with the Respondents No.3 & 4 for ordering to seal the Restaurant of the Petitioners. Neither the Respondent No.3 nor the Respondent No.4 has been able to point out any illegal act on the part of the Petitioners during the course of the raid. This fact gets further substantiated as there has been no criminal case registered against the Petitioners, nor any prosecution initiated and no F.I.R. was also lodged.

13. The plain perusal of the contentions that have been raised by the contesting Respondents 3 & 4 in their Reply would also establish that in the course of the raid the Respondents also could not find any sort of misuse of the said premises or the use of the premises in contravention to any of the statutory provisions of Law. Respondents No.3 & 4 also miserably failed in spelling out the authority which was exercised by Respondent No.4 while ordering to seal the Restaurant of the Petitioners not only on the date of raid but thereafter for a continuous period of almost two months. No written orders have been issued whatsoever intimating the Petitioners as regards the action of the Respondents No.3 & 4, nor were the Petitioners at any point of time informed about their illegality, if any.

14. During the course of arguments, learned Counsels representing Respondents No.3 & 4 pointed out to the fact that the Petitioners did not have the valid licence to run the Restaurant as the previous licence of the Petitioners had already got lapsed on 26.4.2020 and the subsequent licence was renewed only on 9.2.2021. Thus, on the date of raid, the Petitioners did not have the valid licence to operate the said Restaurant. It was further contended by learned Counsels for the contesting Respondents that they have invoked the powers which are otherwise conferred upon them under Section 66(1)(e) and Sections 248 & 249 of the Municipal Corporation Act, which for ready reference are being reproduced herein below:-

"66. Matters to be provided for by Corporation.- (1) The Corporation shall make adequate provision, by any means or measures which it may lawfully use or take, for each of the following matters, namely :-

(e) regulating or abating dangerous or offensive trades or practices;

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248. Regulations of dangerous and offensive trades.- Except in accordance with the provisions of this Act, no person shall-

(a) store or keep in premises any articles mentioned in any bye-

laws made under this Act as dangerous or offensive, or as being, or likely to be a nuisance to the public, or dangerous to life, health or property;

(b) store or keep in any premises the hide or any part of the carcass of any animal afflicted at the time of its death with infectious or contagious disease; or

(c) carry on or allow to be carried on any premises any trade, manufacture, industry or operation mentioned in any bye-laws under this Act as dangerous to life, health or property or as likely to create a nuisance, either from its nature or by reason of the manner in which the conditions under which the same may be carried on :

Provided that nothing in this section shall affect the provisions of the India Explosives Act, 1884, or the Petroleum Act, 1934.

249. Premises not to be used for certain purposes without a licence.- (1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, namely :-

(a) carrying on within the city the trade or operations of a farrier;

(b) keeping articles in excess of the maximum laid down for such articles by the bye-laws;

(c) keeping any article which, except for domestic purposes, is prohibited by any bye-laws;

(d) keeping in or upon any building used or intended to be used as a dwelling house or within fifteen feet of such building any quantity of cotton in excess of such quantity as may be prescribed by bye-laws in this behalf;

(e) keeping horses, cattle or other four-footed animals for sale or hire or for the sake of the produce thereof, or for any purpose for which any charge or remuneration is made or received;

(f) carrying on any of the prescribed trades or operations connected therewith, or any trade or operation which in the opinion of the Commissioner is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, it is carried on.

Explanation I. - A person shall be deemed to know that a trade or operation is in the opinion of the Commissioner, dangerous or create a nuisance within the meaning of this clause after a written notice to that effect signed by the Commissioner has been served on him or affixed to the premises to which it relates.

Explanation II. - A person shall be deemed to carry on a trade or operation or to allow to be carried on within the meaning of this clause, if he does any act in furtherance of such trade or is in any way engaged or concerned therein as principal, agent, master or servant or in any other similar capacity, or who does not prevent carrying on of such unauthorised trade or operation on such premises as are his or under his control.

(2) It shall be in the discretion of the Commissioner to grant a licence for any of the purposes referred to in sub-section (I) subject to such restrictions or conditions as he may think fit to specify or to refuse to grant such licence.

(3) Every person to whom a licence is granted by the Commissioner under sub-section (2) shall exhibit such licence in or upon the premises, to which it relates.

(4) Nothing in this section shall be deemed to apply to mills for spinning or weaving cotton, wool, silk or jute or to any other mill or factory which the Commissioner may with the previous approval of the Mayor-in- Council from time to time, specially exempt from the operation thereof."

15. Though learned Counsels for the contesting Respondents have relied upon the aforesaid provisions of the Municipal Corporation Act but there is no document to show that the Respondents have invoked these provisions at any point of time. Rather, from the pleadings it appears that they have abruptly entered into the premises of the Petitioners and have straightaway sealed the Restaurant.

16. What further needs to be considered is the fact that when the Officers of the Corporation intended to seal the Shop or for that matter the Restaurant, there should have been a specific provision of law to be made applicable for the purpose. If the Respondents had conducted the raid on 1.2.2021, what primarily needed is that they should have found the Petitioners to have violated any of the statutory provisions of Law, which in the instant case there was none. The second thing that is required is that in the course of the raid, the Officers of the Corporation who had conducted the raid should have found misuse of the said premises in contravention to any of the Laws framed by the Government at the relevant point of time. This again does not seem to be available on record.

17. Next what is also at this juncture to be appreciated is the fact that while a Restaurant has to be sealed, the owner of the Restaurant or the licensee of the Restaurant are required to be issued with a formal order, intimating the action on the part of the Authorities of sealing of the said premises. In the instant case, no such orders as such have been issued by the Respondents intimating the owner in respect of the sealing of the said Shop/Restaurant.

18. Lastly, perusal of the Panchnama that was prepared during the course of the raid also would not disclose, firstly of the fact that the said premises was being misused; secondly, the premises was being misused in contravention to any of the statutory Laws and thirdly, who are the persons who were found to be misusing the said premises. In the absence of any such material it is difficult to infer that the Petitioners were in any manner misusing or abusing the premises or were conducting in a manner in contravention to any of the Laws in force on 1.2.2021.

19. Now, as regards the contention of learned Senior Counsel for Respondent No.3 that in the course of raid the Petitioners did not find themselves to have a valid licence, this again may not be a ground available to Respondent No.3 to seal the premises. Moreover, the Panchnama that was prepared during the course of the raid does not reflect the Petitioners' serving the food to any of the customers in their Restaurant. No uncooked or cooked food was found in the premises on the date of the raid. One should not forget the fact that it was the peak time of COVID-19 pandemic and the Petitioners did have the valid licence till 26.4.2020 and the subsequent licence has also been renewed on 9.2.2021. In between, was the period which substantially went through the lockdown. Most of this time, the Shops and Restaurants remained closed.

20. As has been reflected in the findings in the preceding paragraphs, during the course of the raid the Respondents could not find anything which was illegal on the part of the Petitioners. That no spurious articles were seized in the course of the raid. Neither was there any evidence of misuse or abuse of the said premises for any illegal act or activities. Thus, it appears that the Petitioners have become a victim of the executive arbitrariness and administrative highhandedness. The action on the part of Respondents No.3 & 4 clearly depicts executive arbitrariness and administrative highhandedness. There was a clear exhibit of blatant abuse of the dominant power attached to the post held by Respondent No.4. The executive arbitrariness also stood depicted from the fact that no proceeding whatsoever under any provisions of Law was initiated against the Petitioners at any point of time, be it before the raid, during the raid or after the raid. Neither was there any written order issued to the Petitioners. Though the Respondents have tried to take a shelter that they have received complaints in respect of misuse of the premises by the Petitioners but there has been no proof of anything illegal that was found by the Respondents in the course of the raid. In spite of all that, the Respondents took a decision to seal the premises without any written instructions in this regard. It is this misuse and abuse of power on the part of Respondents No.3 & 4 which has led to the Petitioners' filing of the instant Writ Petition seeking for a direction to the Respondents to compensate the Petitioners and also for taking appropriate action against the Respondent No.4, the concerned Officer.

21. In spite of this Court reaching to the conclusion that the action on the part of the Respondents, particularly on the part of Respondent No.4, being an act of executive arbitrariness and administrative highhandedness, if at this juncture this Court closes its eyes and relegate the Petitioners to approach the Civil Court for appropriate damages and compensation, it would all the more constitute miscarriage of justice. The act on the part of Respondents No.3 & 4 seems to be an act of moral policing. No provisions of Law be that of the Municipal Corporation Law or Act or any other provisions of Law empower the Respondent No.3 or for that matter the Respondent No.4 to exercise the powers of moral policing by venturing into the private affairs of individuals only on the basis of complaints from neighbour or from the neighborhood.

22. Article 19 of the Constitution of India deals with the right to freedom and Article 19(1)(g) gives the protection of rights regarding freedom to practice any profession or to carry out any occupation, trade or business. Article 19(2) enforces certain restrictions in the course of practice of any profession or carrying out of any occupation, trade or business subject to the Laws so framed by the State or the Central Government issuing reasonable restrictions on the exercise of such powers

which are enshrined under Article 19. It was this right that is conferred under Article 19(1)(g) of the Constitution of India which was being enjoyed by the Petitioners and which has been abruptly curtailed by Respondents No.3 & 4, particularly by Respondent No.4, without any justifiable or cogent reason whatsoever. Infringement of Article 19(1)(g) also directly affects the protection of life and personal liberty which is a right enshrined under Article 21 of the Constitution of India which guarantees the protection of life and personal liberty of a person. Article 21 clearly lays down that no person shall be deprived of his life or personal liberty except according to the procedure established by Law. The Respondents No.3 & 4 miserably failed to show that the action on their part was in accordance with any of the Law in force at that point of time.

23. Given the said facts, this Court has no hesitation in reaching to the conclusion that the action on the part of Respondents No.3 & 4 was per se illegal, without authority of law, and in the process the fundamental rights guaranteed by the Constitution of India i.e. Article 19(1)(g) and Article 21 stood blatantly violated.

24. The Hon'ble Supreme Court in the case of Rudul Sah Vs. State of Bihar [1983 (4) SCC 141] in Paragraphs 10 & 12 dealing with such a situation where the fundamental right under Article 21 stood violated, held as under:-

"10. ...Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

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12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative...."

25. A similar view was also taken by the Hon'ble Supreme Court in the case of Bhim Singh Vs. State of J & K & Others [1985 (4) SCC 677] :-

"2. ...We can only say that the Police Officers acted in a most high-handed way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals ! Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs otherwise is now established by the decisions of this court in *Rudul Sah v. State of Bihar and Anr.* 1983 (3) SCR 508 and *Sebastian M. Hongray v. Union of India* 1984 AIR SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this court and paid to Shri Bhim Singh."

26. Given the entire facts and circumstances of the case and the specific finding of this Court that the action on the part of the Respondents is per se illegal, without jurisdiction and without any authority of law, it clearly constitutes executive arbitrariness and administrative highhandedness. The Petitioners apart from facing the humiliation in the society and in the neighborhood where both of them were operating their business, they have also been immensely put to loss so far as their social status is concerned and also as regards the financial implications on account of closure of their Shop/Restaurant for almost two months. Only because the Respondents No.3 & 4 have subsequently de-sealed the Restaurant by itself would not restore the lost image of the Petitioners. Moreover, the said Respondents in between had used all their influences and powers in ensuring that the rental agreement of the Petitioners with the landlord also stood terminated.

27. There is no evidence on the part of the Petitioners' quantifying the compensation for the illegal act on the part of the Respondents. In the absence of which, it would be difficult to command the Respondents to compensate the entire loss caused to the Petitioners for the period of around two months. This Court therefore reserves the right of the Petitioners, if they so want, to approach the concerned competent Civil Court for claiming appropriate damages against the concerned

Respondents.

28. However, the conduct on the part of Respondent No.4 in the given factual backdrop and the legal position as it stands, makes it clear that the acts committed by Respondent No.4 are not one which are in any manner excusable or pardonable. Having reached to the conclusion that the acts of Respondents No.4 are one of executive highhandedness, arbitrary and also without any authority or force of law, an order of deterrent is required to be passed not only against the Respondent No.4 but also a message should be passed as a deterrent to other Officials as well, ensuring that such acts of highhandedness are not repeated.

29. As regards the acts of executive arbitrariness and administrative highhandedness on the part of Respondents No.3 & 4, as a deterrent to Respondent No.4 for his illegal activity and also for misuse and abuse of his power as Zone Commissioner under the Respondent No.3-Municipal Corporation, this Court orders the Respondent No.4 to pay a cost of Rs.50,000/- (Fifty Thousand Rupees) to the Petitioners within an outer limit of two months. This cost imposed upon the Respondent No.4 would not preclude the Petitioners from claiming appropriate damages against the concerned Respondents, if they so want, by filing an appropriate suit before the competent Civil Court having jurisdiction for the same.

30. Writ Petition thus to the aforesaid extent stands allowed and disposed of accordingly. Sd/-

Sd/-

(P. Sam Koshy) Judge /sharad/