

Parveez Ahmad Baba vs Union Territory Of Jk And Others on 3 November, 2022

Author: Moksha Khajuria Kazmi

Bench: Moksha Khajuria Kazmi

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
LPA no. 197/2022

Reserved on 17.10.2022
Pronounced on 03.11.2022

Parveez Ahmad Baba

.... Appellant(s)

Through: Mr M. A. Qayoom, Advocate with
Mr Mian Tuffail, Advocate
v.

Union Territory of JK and others

... Respondent(s)

Through: Mr D. C. Raina, Advocate General with
Mr Sheikh Mushtaq, AAG, for R-1 to 4
Mr Jahangir Iqbal Ganai, Sr. Adv with
Mr Wasil Rasool and MsRuqaiya
Siddique, Advocates for R-5

CORAM:

Hon'ble the Chief Justice
Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

JUDGMENT

Per Moksha, J 01/- By this Letters Patent Appeal, for short LPA, the appellant questions the judgment/ final order passed by the Writ Court in writ petition, WP(C) no. 1997/2021, for short impugned judgment, whereby the writ petition filed by the appellant, assailing the License dated 15th May, 2019 issued by the Designated Officer/ State Licensing Authority under the Food Safety and Standard Act, 2006, hereinafter for short as Act, in respect of Samci Restaurant, Residency Road, Srinagar; communication bearing No. FDA/FSSA/SGR/313-316 dated 2nd December, 2020, issued by respondent no. 4 intimating the appellant that the license dated 15 th May, 2019, is issued to the premises Samci Restaurant and not to respondent no. 5 and that it would be appropriate and in the interest of both the parties that the name of the appellant is also inserted in the application form as incharge operation and person responsible for complying the conditions of the license; and order dated 16th April, 2021, issued by respondent no. 2, whereby GST registration in favour of the petitioner has been cancelled w.e.f. 16th April, 2021 and a fresh registration has been issued in favour of respondent no. 5, on the grounds taken in the memo of appeal. BRIEF FACTS 02/- A writ petition had been preferred by the appellant against i) the cancellation of his Goods and Sales Tax, for short GST, registration; ii) issuance of License dated 15th May, 2019, issued by the Designated Officer/ State Licensing Authority under the Act, in respect of Samci Restaurant, Residency Road, Srinagar; and iii) the communication bearing No. FDA/FSSA/SGR/313-316 dated 2nd December,

2020, issued by respondent no. 4, intimating the appellant that the license dated 15 th May, 2019, is issued to the premises Samci Restaurant and not to respondent no. 5 inter alia on the grounds that the appellant is the sole proprietor of the above referred business concern "Samci Restaurant, Residency Road, Srinagar" running such business under valid licenses which have been issued in this behalf by the concerned authorities from time to time in favour of the appellant.

03/- While carrying on the said business, the appellant came to know that license to run the above said business has been issued in favour of respondent no. 5 in terms of License Number: 11019430000178 dated 15th May, 2019, by the Designated Officer, State Licensing Authority under FSSA, 2006. Subsequent thereto, vide communication bearing No. FDA/FSSA/SGR/313-316 dated 02/12/2020 issued by the Assistant Commissioner, Food, Safety, Department of Drug and Food Control Organisation, J&K, District Srinagar, Bemina, the application, filed by the appellant seeking cancellation of the license supra, has been disposed of. The concluding paragraph of the order is taken note of herein, thus:

"That the licence has been issued to premises of Samci Restaurant and not to non-applicant as is evident from copy of licence. Therefore, it is appropriate and in the interest of both the parties that name of applicant Mr. Parvaiz Majid Baba S/o Ab Majid Baba R/o Ganzkhud Srinagar is also inserted in the application form as person incharge of operation and responsible complying the conditions of licence. This is the best solution to dispose of the application as both applicant and non- applicant are real brothers."

04/- Thereafter, the registration granted under GST in favour of the appellant came to be cancelled by the State Taxes Officer, Circle F-Kashmir vide his order dated 20th March, 2021, providing that the effective date of cancellation of registration shall be 16th April, 2021.

05/- Aggrieved of the above referred three actions of the respondents the appellant filed a writ petition, WP (C) no. 1997/2021, seeking the following reliefs:

"I) By issuance of a Writ of Certiorari or any other writ, order or direction, the operation of the impugned licence dated 15.05.2019 of the State Licencing Authority under Food Safety and Standards Act, 2006, whereunder, the licence granted to the petitioner for running Samci Restaurant, Residency Road, Srinagar, has been transferred in the name of respondent no. 5; Letter bearing no. FDA/FSSA/SGR/313-316 dated 02.12.2020 issued by respondent no. 4, the order dated 16.04.2021 passed by respondent no. 2, whereunder, the petitioner's registration under Goods and Services Tax Act has been cancelled and GSTIN/UIN No. 01ALKPB3687R2ZO issued in favour of respondent no. 5, be quashed and set-aside;

II) By issuance of a Writ of Mandamus or any other Writ, Order or Direction, the respondents be directed to restore the licence issued under Food and Safety and Standards Act, in favour of the petitioner, as well as under Goods and Services Tax, forthwith.

III) By issuance of a Writ of Mandamus or any other Writ, Order or Direction, the respondent no. 5 be also restrained from causing any sort of interference in the running of Samci Restaurant, Residency Road, Srinagar, by the petitioner exclusively, being its sole Proprietor."

06/- The writ petition was resisted by the respondents on varied grounds. The respondents denied to have transferred any document in the name of respondent no. 5, but stated that a fresh licence has been issued to the Samci Restaurant after having verified, on the basis of the documents including the proof of possession, the title of the property being in the name of the applicant/ respondent no. 5. 07/- The respondents had further taken a stand that an application was submitted by the appellant on 4th July, 2019, seeking cancellation of licence on the ground that his brother has deceitfully obtained licence under Food Safety and Standards Act. Acting on the said application, the respondents issued a show cause notice to the respondent no. 5 for filing reply. Respondent no. 5, responded to the notice and submitted that the appellant and respondent no. 5 are real brothers and that the registration under Shops Establishment Act; electricity bill having consumer ID no. 0201010004706 is under the name of respondent no 5 and the taxes are also being paid by him to the Srinagar Municipal Corporation. Besides, the respondent no. 5 also claimed to be in physical possession of the restaurant. The physical possession of respondent no. 5 was also testified by the Food Safety Officer Zone-I in terms of his report dated 1.11.2019. 08/- The appellant is stated to have filed an application before the Deputy Commissioner (Appeals), Sales Tax Department, Kashmir Division, Srinagar, seeking revocation of order of cancellation dated 16th April, 2021 issued by the STO Circle F- Kashmir, on the ground that the application for cancellation of registration of Samci Restaurant has been fraudulently shown to have been filed by him, when as a matter of fact the same appears to be a mischief of some of his employee-accountant. The said application is stated to have not been decided so far. 09/- After exhaustive deliberation over the issues involved and after hearing the learned counsels for the parties, the learned Single Judge disposed of the writ petition vide impugned judgment, in the following manner:

"27) In view of the aforesaid analysis and in the given facts and circumstances of the case, this writ petition is disposed of by holding that so long as the premises to be licensed under the Act remains under dispute between the petitioner and respondent no.

5, the designated authority under the Act is well within its power not to grant or renew the license under the Act in favour of one and to the exclusion of other. The parties need to settle their dispute either amicably or through intervention of the Court. The petitioner as well as respondent no. 5 may, however, apply for grant of license jointly and in case they fulfill the requirements of the Act and the Regulations framed thereunder, they shall be granted the requisite license by the designated authority. Registering authority under GST Act shall also act on similar lines.

28) Needless to say, till the dispute is settled between the petitioner and respondent No.5 amicably or through intervention of the Court of competent jurisdiction, neither the designated authority under the Act shall issue the license nor registration shall be accorded under the GST Act by the authority concerned to either the petitioner or to Respondent no.5 in respect of premises "Samci Restaurant". In the absence of license under the Act, it would not be competent either for the

petitioner or for the respondent No.5 to carry on the food business in the premises known as "Samci Restaurant". The authorities shall take note and act accordingly."

10/- Feeling aggrieved of the impugned judgment, the appellant has filed the instant appeal seeking the relief supra.

11/- We have heard learned counsel for the parties at length, went through the impugned judgment, examined the material on record and considered the submissions made.

12/- During the course of arguments, the learned Advocate General submitted that the appellant had himself filed an application seeking cancellation of registration of his business unit which was allowed and the registration came to be cancelled accordingly. He further submitted that since the cancellation of registration was based on the request of appellant himself, therefore, there was no question of revoking the same again on his request. He submitted that there is no possibility of fraud having been played by any third person in seeking cancellation of the registration as the whole process is done online which can be initiated only on the request of the proprietor because during such process the proprietor is required to disclose certain confidential information that confirms the bona-fides of the applicant. 13/- The dual faceted situation involving a dispute over unpartitioned property and of the business concern is writ large on the face of record, however, the court would refrain from going into such issues and would only restrict itself to the legality or otherwise of the impugned judgment.

14/- The license of the appellant granted under the Food Safety and Standard Act was valid upto 29th January, 2018, while as the license of the respondent no. 5 was valid till 14th May, 2021. Therefore, admittedly, neither the appellant nor the respondent no. 5 was having a license, during the pendency of the writ petition, to run the business in question. The issue, as such, was yet again open to be considered afresh by the competent authority. As regards the registration of the business unit, the same stands cancelled on 16th April, 2021 insofar as the appellant is concerned, however, the same, as of now, is registered in the name of respondent no. 5. 15/- In such circumstances, the proper course was to leave the concerned authority free to take a decision as to who, out of the two, fulfils the criteria for holding a license without placing any embargo on its powers in contravention of the relevant provisions of the Act. The Writ Court, therefore, has erred in placing a restraint on the powers of the competent authority to grant a license in favour of the party fulfilling the criteria laid down under the relevant provisions of the law. Insofar as the registration of the business unit is concerned, the same is admittedly, at this stage, in the name of respondent no. 5, however, since the appellant has approached the concerned authority with an application seeking revocation of the cancellation order of his registration, therefore, the registration aspect of the business concern would also be decided once the application of the appellant is decided by the competent authority. 16/- Accordingly, while setting aside the paragraph nos. 27 and 28 of the impugned judgment, we dispose of the appeal by providing that the appellant as also the respondent no. 5 shall be at liberty to approach the concerned authority for issuance/renewal of license. The concerned authority, upon being approached, shall consider the individual claims in light of the relevant provisions of the law and decide the same within a period of one month from the date of receipt of such request, without getting influenced by any of the observations made either by the Writ Court or by this Court. The

application pending before the Deputy Commissioner (Appeals) Sales Tax Department, Kashmir Division, Srinagar, shall also be considered and decided after affording an opportunity of hearing to the respondent no. 5 also. Till the time the license is granted in favour of the rightful party by the competent authority, the Samci Restaurant shall not be operated/ run by any of the party. 17/- The writ petition as also the LPA are disposed of on the above lines. 18/- Record produced by the learned Advocate General shall be returned to the Assisting Counsel against proper receipt.

(Moksha Khajuria Kazmi)
Judge

(Ali Mohammad Magrey)
Chief Justice

Srinagar
03.11.2022
Amjad lone, Secretary

Whether approved for reporting: Yes/ No.