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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7869/2022, CM APPL. 24044/2022 (Stay)

NATIONAL RESTAURANT ASSOCIATION OF INDIA AND
ANR. Petitioners

Through: Mr.Jayant Mehta, and Mr.Vinay
Kumar Garg, Sr. Advs. with Mr. P. S.
Singhal, Mr.Parv Garg, Mr.Pawas
Kulshrestha, K. S. Rekhi and
Mr.Akansh Singhal, Advs.

versus

COMMISSIONER OF POLICE AND ANR. Respondents

Through: Mr.Balbir Singh, ASG with
Mr.Harish V. Shankar, CGSC with
Mr.Srish Kumar Mishra, Mr.Sagar
Mehlawat and Ms.Suhasini Sen,
Advs. for R-1.
Mr.Santosh Kr. Tripathi, SC (Civil)
GNCTD with Mr.Arun Panwar,
Mr.Siddharth K. Dwivedi, Mr. H F
Sachdeva and Ms.Savita Sethi, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

03.06.2022

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1. This writ petition has been preferred by the National Restaurant Association of India essentially seeking a direction restraining the first respondent from interfering with the operation and running of restaurants and bars by the constituents of the petitioner till 3:00 A.M. It is contended that the aforesaid action of the first respondent is in violation of the Excise Policy as framed by the GNCTD and also violative of the rights of the

petitioner guaranteed under Articles 19(1)(g) and 21 of the Constitution. The prayer itself is addressed in the backdrop of clause 5.1 (ii) of the Excise Policy which provides that bars in Hotels, Restaurants and Clubs (HCR) would be permitted to operate till 3:00 A.M. except those licensees which may have been granted the right to operate and provide round the clock service of liquor.

2. Mr. Harish V. Shankar, learned CGSC appearing for the Delhi Police, has submitted that Section 28 of the Delhi Police Act, 1978 [1978 Act], empowers the Commissioner of Police to make regulations governing matters specified therein. The attention of the Court has been drawn to the power to frame a regulation for the licensing and control of places of public amusement or public entertainment. It becomes pertinent to note that an “eating house” is defined under the 1978 Act to mean any place to which members of the public may be admitted and where any kind of food or drink is supplied for consumption. However, a “place of public entertainment” stands specifically excluded from the expression “eating house”. A place of public entertainment is defined to mean a lodging house, boarding and lodging house, residential hostel including an eating house or other places in which any kind of liquor or intoxicating drug is supplied to the public for consumption. Learned CGSC submits that in exercise of the aforementioned power which stands conferred on the Commissioner of Police and which include its authority to regulate places of public entertainment, the Delhi Eating Houses Registration Regulation, 1980 were framed. These regulations empower the Delhi Police to issue licenses to eating houses. It was pointed out that by an order of 10 December 2020 taking into consideration a representation made by the petitioner itself, operational

timing of restaurants was prescribed to be 5:00 A.M. to 1:00 A.M. and 24 hours for one restaurant / coffee shop in all 5 star hotels throughout the year. Learned CGSC submits that any place or venue where liquor or intoxicating drugs are supplied which would fall within the ambit of a “place of public entertainment” and which by virtue of Section 2(l) of the 1978 Act would include eating houses, is thus permitted to remain open and operate till 1:00 A.M.

3. In the status report which has been filed on behalf of the first respondent, crime statistics for Delhi for the year 2021-22 have been placed on the record. Along with the report the first respondent has also placed details of the Drunken Driving challans issued in the last two years as also the number of road accidents that have taken place. It is submitted that the issue of opening of bars and other places where liquor may be served has an indelible connect with the issue of public order. According to learned senior counsel, it was bearing the aforesaid facts in mind and upon due consideration of the security of the public and the maintenance of law and order that Delhi Police has prescribed the outer limit to be 1:00 A.M. It is also stated that in view of the disclosures made in the status report it would be imprudent to increase their operational timing up to 3:00 A.M.

4. Mr. Tripathi, learned Standing Counsel, on the other hand submits that Rule 55 of the Delhi Excise Rules, 2010 [2010 Rules] empowers the Excise Commissioner to specify the hours that may be maintained by outlets and licensees for the sale of liquor. Taking the Court through the various provisions of the Delhi Excise Act, 2009, as well the 2010 Rules coupled with the provisions contained in the Excise Policy, it was submitted that in order to give an impetus to licensees, bring the operational hours of liquor

vends in sync with those situate in neighbouring States, the policy had permitted bars in HCR's to operate till 3:00 A.M.

5. When the writ petition was called on the last occasion, the Court had called upon the learned standing counsel to apprise it of whether the prescription of timing of liquor vends as contained in the Excise Policy was one which was framed with due consultation with the Delhi Police. Learned standing counsel was also directed to obtain instructions and apprise the Court whether the aforementioned stipulation in the Excise Policy was introduced bearing in mind the order of the Delhi Police dated 10 December 2020. Pursuant to the aforesaid, a short affidavit has been filed by an Assistant Commissioner, Excise. The affidavit tendered today is taken on board. Let a copy of the same be included on the digital record.

6. On a perusal of the contents of that affidavit the Court notes that it fails to deal with the queries which were addressed. It would therefore appear that the Delhi Police was neither consulted before the inclusion of the prescription with respect to timing in the Excise Policy nor was the order passed by the first respondent on 10 December 2020 taken into consideration. It would have been expedient for the excise authorities as well as GNCTD to have elicited the views of the Delhi Police before holding out that bars in HCR's would be permitted to operate till 03:00 A.M.

7. While the Excise Act and the 2010 Rules framed thereunder, may empower the Excise Commissioner to prescribe the operational timing of liquor vends, the same would have to be understood and interpreted bearing in mind the powers of the Delhi Police to control and regulate the functioning of eating houses and places of public entertainment. It may be observed that while the Court does not intend to stand in the way of the

Excise Department framing a policy or the exercise of power flowing from the Act and the Rules, that would necessarily have to be tempered by and harmonised with the authority of the Delhi Police to regulate the operational timing of eating houses and places of public entertainment as conferred by the 1978 Act and the Regulations framed thereunder. Bars or for that matter any establishment where liquor and intoxicating substances are served and to which members of the public may be admitted would clearly fall within the ambit of the above. Since the operation of those outlets and venues would undoubtedly have a bearing on issues such as security of the public, the issue of maintenance of law and order, it would not only have been expedient but the law itself would mandate a joint and consultative deliberation between the authorities of the Excise Department and the Delhi Police before directives such as those incorporated in Paragraph 5.1(ii) are framed.

8. Viewed in that backdrop it would be expedient to direct the Excise Commissioner as well as the Commissioner of Police to constitute a consultative group which may examine the feasibility of extending the operational timing of places of public entertainment up to 3:00 A.M. The joint consultative group may complete the aforesaid exercise within a period of two weeks from today and its report be placed on the record of these proceedings.

9. List again on 02.08.2022.

YASHWANT VARMA, J.

JUNE 3, 2022/bh