

**IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI**

Case No. 29/2014

Appeal under Section 72(3) of the  
Delhi Excise Act, 2009.

In the matter of:-

M/s R.R. Footwear Private Limited,  
Through its Director  
Shop No. G-21A, G-22, G-23, RG City Centre,  
Lawrence Road,  
New Delhi

ꝝ Appellant

Versus

1. Department of Excise, Entertainment and Luxury Tax,  
Through its Deputy Commissioner,  
L & N Block, Vikas Bhawan,  
I.P. Estate,  
New Delhi-110002
2. Excise Commissioner,  
New Delhi

ꝝ Respondents

**D. M. SPOLIA, FINANCIAL COMMISSIONER**

Order dated April 11, 2014

1. This order shall dispose of the second appeal filed by the appellant, M/s R.R. Footwear Private Limited under Section 72(3) of the Delhi Excise Act, 2009 against the impugned order No. PS/EC/Appeal/09/2014/66 dated February 5, 2014 of the First Appellate Authority/Commissioner (Excise) vide which the appeal of the appellant was rejected. Ld. Counsel for the appellant was heard exhaustively. He submitted that the appellant herein is a Private Limited Company that had filed an application on March 08, 2013 before the Respondent No.1, Department of Excise, Entertainment and Luxury Tax for grant of L-10 License for opening of a liquor shop at Shop No. G-21A, G-22, G-23, RG City Centre, Lawrence Road, New Delhi. This application of the

appellant was rejected by the Deputy Commissioner (Excise) vide order dated March 21, 2013, which is reproduced as under:

%An application for grant of L-10 License has been filed by M/s R.R. Footwear Private Ltd., at Shop No.G-21A, G-22, G-23, RG City Centre, Lawrence Road, New Delhi on 08.03.2013. Subsequently, an order for site inspection by a team of excise officers was issued on 14.03.2013 for inspecting the proposed premises and also examine issues raised in the complaints filed by the local residents as well as nearby Government school against opening of liquor vend.

The team has reported that there are public sentiments against opening of shop and grant of license at this place would result in disruption of peace of the area and may lead to law and order problem.

Accordingly, the application for grant of L-10 license in Shop No.G-21A, G-22, G-23, RG City Centre, Lawrence Road, New Delhi is hereby rejected+.

2. Aggrieved by this, the appellant challenged the same before the Hon'ble High Court by way of a Writ Petition (C) No.2100/2013. The Hon'ble High Court through its order dated April 03, 2013 disposed of the said petition with liberty to petitioner (appellant herein) to take recourse to the alternative remedy of an appeal before the authority concerned under Section 72 of the Delhi Excise Act, 2009. Thereafter, the appellant filed the appeal (Appeal No.09/2013) before the Commissioner (Excise) who vide his order dated April 23, 2013 disposed of the appeal by remanding the case to Dy. Commissioner (Excise) Licensing Authority with certain directions. The operative part of this order reads thus:

% .. There are two issues . (i) whether opening of the liquor shop lead to any law and order problem, (ii) whether the NOC was obtained fraudulently. Both the issues require detailed investigation. As such the case is remanded to the Dy. Commissioner (Excise)/Licensing Authority with the direction to get a report from the SDM and SHO of the area about the law and order issue and secondly depute a senior officer to investigate whether the earlier NOC

submitted by the appellant was issued by a competent person of the builder or obtained fraudulently. Deputy Commissioner (Excise) to decide the case, as early as possible, after properly evaluating the above reports+.

3. Subsequently, the Dy. Commissioner (Excise)/Licensing Authority sought a report from the SDM and SHO of the area about the law and order issue. Also, one Asstt. Commissioner (Excise) was deputed as Inquiry Officer to investigate whether the earlier NOC submitted by the appellant was issued by a competent person of the builder or obtained fraudulently. The Inquiry Officer/Asstt. Commissioner (Excise) vide his report dated May 31, 2013 concluded that %the M/s R.R. Footwear Pvt. Ltd. has submitted requisite NOC in terms of L-10 license issued from all the co-owners of the said shops/authorised person+. Further, SDM (Saraswati Vihar) after seeking report from the police station (Keshavpuram) concerned forwarded the same to the Excise Department. The report of the police station (Keshavpuram) concerned reads as under:

% .. the propose liquor vend is in the immediate vicinity of MCD Primary School, DEIT teachers training school for girls, two community parks, two mandirs (Lord Shiva Temple on the right side and Satyanarayan Mandir on the left side) where lots of devotees visit.

In addition to it a number of complaints have also been received as per your letter which may have effect on law and order situation. The resentment of public against the opening of wine and Beer shop/Liquor shop at the above said site can not be ruled out+.

4. Thereafter, based on the inspection report given by the team of officials of the Excise Department whereby the team has reported that there are public sentiments against opening of shop and grant of license at this place would result in disruption of peace of the area and may lead to law and order problems as well as in view of the

abovementioned report of the SDM/SHO concerned, the application for grant of L-10 license to the appellant was rejected by the Dy. Commissioner (Excise) vide his order dated June 12, 2013. Aggrieved by this, the appellant again filed an appeal (Appeal No. 20/2013) before the Commissioner (Excise). This appeal was rejected by the Appellate Authority/Commissioner (Excise) vide order dated July 31, 2013. The concluding paragraph (paragraph no.6) of this order reads thus:

6. I have gone through the appeal and order of Licensing Authority and there is only one issue which is to be decided that opening of the shop is likely to affect law and order and public sentiments. Though the statutory requirements are fulfilled but as Licensing Authority has to take overall view and in his estimation, which is based on police report granting of license is likely to create law and order problem and hurt public sentiments, no. of complaints have also received.

Keeping in view these facts and report of the Police which apprehends law and order may be adversely affected. I do not feel necessary to interfere with the order of Licensing Authority. Appeal is rejected.

5. Against this order dated July 31, 2013 of the First Appellate Authority/Commissioner (Excise), the appellant filed second appeal under section 72(3) of the Delhi Excise Act, 2009 before the Financial Commissioner (Case No.156/2013). While this Court was in the process of hearing the matter, the appellant again moved the Hon'ble High Court which directed that this matter be disposed of by the Court of Financial Commissioner latest by November 30, 2013.

6. Sticking to the deadline provided by the Hon'ble High Court, Ld. Predecessor of this Court vide order dated November 28, 2013 remanded the matter back to Commissioner(Excise) with direction(s) to pass a fresh and well reasoned order within a period of four weeks after

holding requisite inquiries in the matter. The operative paragraphs no. 5, 6 and 7 of the said order read thus :

5. It is obvious therefore that the Commissioner (Excise) admits that the appellant fulfils the statutory requirements for license but he feels that the Licensing Authority has to take an overall view and he makes a mention of the report from the police which points that there is likelihood of law and order as well as public sentiments being affected. He also makes reference in his impugned order to certain complaints received against opening of the liquor shop. These complaints were shared with the appellant on the last date of hearing. The appellant now claims that to check the genuineness of the complaints he has written letters to them and to his surprise he has discovered that the letters sent by speed post have returned back undelivered. He also claims that similar is the case with Resident Welfare Association of the area which is one of the said complainants.

6. These facts have to be evaluated and clarified by the Commissioner(Excise) and a decision will have to be taken by him on merits without shifting the responsibility to police or on to the unverified complaints. The impugned order is therefore liable to be set aside as perfunctory and devoid of proper application of mind and it is ordered accordingly.

7. The case, in consequence, is remanded to the Commissioner (Excise) with direction to pass a fresh and well-reasoned order after holding requisite inquiries in the matter after complying with the aforesaid directions, within a period of four weeks.+

7. The appellant again filed a writ petition before the Hon'ble High Court, WP(C) 250/2014 seeking quashing of this Court's order dated November 28, 2013. Hon'ble High Court vide its orders dated January 15, 2014 made the observation that the Financial Commissioner has set aside the order dated July 31, 2013 of Commissioner(Excise) which was against the petitioner (appellant herein) and had remanded back the matter to Commissioner(Excise) for fresh consideration and for passing a reasoned order after holding requisite inquiries. Hon'ble High Court also noted that the order of the Financial Commissioner dated November 28, 2013 was in favour of petitioner (appellant herein) and not against him. Hon'ble High Court disposed of the writ petition with

directions to the Commissioner (Excise) to decide the matter without fail within a period of four weeks.

8. In parallel, the respondent, Excise Department also filed a writ petition before the Hon'ble High Court, WP(C) 376/2014 challenging the order dated November 28, 2013 of Financial Commissioner vide which matter was remanded back to Commissioner(Excise) for fresh consideration. The Hon'ble High Court vide its order dated January 20, 2014 observed that the Commissioner (Excise) was required to decide the application of M/s. R.R. Footwear Private Limited for grant of liquor license without shifting the responsibility to the police or to the unverified complaints and while disposing the matter directed the Commissioner (Excise) to complete the entire exercise within a period of four weeks.

9. In short, the order dated November 28, 2013 of this Court was challenged by both the appellant as well as by the Excise Department by way of separate writ petitions. In both the petitions, the Hon'ble High Court took cognizance of fact that Commissioner(Excise) had to pass a well reasoned order after holding requisite inquiries without shifting the responsibility to the police or to the unverified complaints. Both these petitions were disposed of with the direction to Commissioner (Excise) to decide the matter within a period of four weeks.

10. After receiving the case in remand from this Court as well as from the High Court, the Commissioner (Excise) vide his order dated February 5, 2014 dismissed the appeal of the appellant. The relevant operative paragraphs of this order of Commissioner (Excise) read thus:

“8. I have gone through the material available on record. It is seen that the inspecting team from the Department of Excise has visited the area on 19.03.2013 and considered the complaints received before that time. Team has also interacted with the locals and opined that though technically location of religious/educational institutions is not a hindrance for grant of license as per Delhi Excise Act & Rules, but there are public sentiments against the opening of liquor shop. It was assessment of the inspection team that grant of license at this place could result in breaking of the peace in the area and may result to law and order situation. Similarly SHO has submitted his report which was duly forwarded by the SDM. In this report, it is mentioned that there is a MCD Primary School, DIET, Teacher Training School for Girls, two Community Parks and two Mandirs. Technically these places may be situated beyond the prescribed limit in the Act for grant of liquor license, but combination of all these educational institutions community parks and two religious temples suggest that opening of any additional liquor shop will not be conducive for the environment in area. Apart from that RWA’s, religious institutions and educational institutions have been opposing the opening of liquor shop. In my opinion there is sufficient material is available on the record and calling fresh police report of any other report is not necessary.

9. In view of the above, I feel the order of my Ld. Predisessor was not solely on police report and unverified complaints but there is a genuine reason that in order to keep peaceful atmosphere and sentiments of the people, no additional liquor shop should be allowed in the area. After considering and analysing all these various reports, I am of the firm opinion that L-10 License applied under the Delhi Excise Act, 2009 by the applicant should not be considered and accordingly licensing authority i.e. Dy. Commissioner (Excise) has rightly rejected this case for grant of license twice.

10. Therefore, appeal filed against the order of Licensing Authority Dy. Commissioner (E) dt.21.03.2013 and 12.06.2013 is dismissed. The case remanded back by Financial Commissioner is disposed off accordingly. Applicant to be communicated.”

11. Now, by way of present appeal the appellant has come before this Court again, against the above said order dated February 5, 2014 of the Commissioner (Excise).

12. As per the appeal, written submissions and the oral averments made in the Court, the main contention of the appellant was as under:

- i) That the appellant fulfilled all the statutory requirements for grant of an L-10 license for opening of a liquor shop and this fact had been admitted by the Excise Department also in the order dated July 31, 2013 of Commissioner (Excise). But the application for grant of L-10 license of the appellant had been rejected by the Excise Department on the sole ground that complaints had been received against opening of liquor shop and that there was a police report which says that granting of license was likely to create a law and order problem and hurt public sentiments.
- ii) As regards the complaints, the stand of the appellant was that the complaints were false and frivolous. To check the genuineness of these complaints he had sent registered letters to all the complainants which were returned back by the postal authorities unserved with the remark %not found+. Documentary proof was also submitted in this regard. This clearly showed that the complaints were not genuine but generated ones. As regards the claim that there was a school in the vicinity of the proposed license premises, the same was totally incorrect as the school did not fall within the prescribed limit of 100 meters as provided under Rule 52 of Delhi Excise Rules. Also, the said school was a primary school which was not covered under the criteria prescribed under the rules.
- iii) Further, one Sh. S.K. Kapoor was running an L-7 private liquor shop in the same area and potential competitor of the appellant, being an influential person, was the one who had

created the fabricated complaints to prevent the appellant getting a liquor shop license.

iv) As regards the criteria of %public sentiments+ and %likelihood of law and order problem+ there was no such criteria for grant of L-10 license in the existing Delhi Excise Act, 2009 and Rules, 2010. Further, there were already four liquor shops running in the same area; out of these, three belonged to government and one to a private person. Public sentiments cannot arise all of sudden in respect of a shop which was non-existent as on date and was merely a proposed one. It had to be in respect of all liquor shops running in that area.

v) That in view of above averments the rejection of grant of L-10 license to the appellant without any valid or substantial reason was a gross abuse of the process of law.

13. The written as well as oral averments of the respondent, Excise Department, were as under:

i) The application for grant of L-10 license in respect of the appellant was rejected by the department by invoking power enshrined in Section 22(2) of the Delhi Excise Act. This empowered Dy. Commissioner (Excise) to transfer any liquor shop from one locality to another in the interest of public at large, which is similar to refusal of grant of license at any particular place/location to protect public interest and specifically keeping in mind protests and sentiments of the public.

ii) The department had rightly and correctly rejected the application of the appellant after taking into account the detailed inspection report dated March 19, 2013 of the Excise Inspection Team, the report furnished by the local authorities, i.e. SDM and SHO concerned dated May 27, 2013 and various complaints received against the appellant. The gist of all these was that, public sentiment was against opening of a liquor shop at the proposed site and it could effect the law and order situation in the area as disruption of peace could not be ruled out.

14. The matter was heard exhaustively extended over a number of hearings. In the hearing on March 6, 2014 the Excise Department was pointedly asked to clarify the following :

- “(1) What was the department’s policy/criteria for grant of L-10 Licence for shops in Malls?*
- “(2) When was the policy decision taken to apply the criteria of “public sentiments” and /or “apprehension of disturbance of law & order”?*
- “(3) Whether the criteria of “public sentiments” and “apprehension of disturbance of law & order” as invoked in this particular case was rational or was it discriminatory & arbitrary? If it is rational, then whether the department shall be applying it across the board while considering all past and future applications for grant of L-10 licences?*
- “(4) In how many earlier cases of grant of L-10 licence : (a) criteria of “public sentiments” had been invoked? (b) department had acted on the basis of complaints and police reports had been sought ?*
- “(5) How would the department protect : (a) the rational objective criteria for grant of L-10 licence as provided in The Delhi Excise Act, 2009 and Rules 2010 against the subjective criteria of “public sentiments”/“law & order” (b) Its Licenses against motivated and generated complaints.”*

15. In response to this, vide its reply dated March 12, 2014 the Excise Department while annexing the department's policy/criteria for grant of L-10 license made the following submissions:

- i) That the criteria of public sentiment and/or apprehension of disturbance of law & order was not a part of any policy decision of the department.
- ii) That the Department in rejecting the appellants application had used the power enshrined in Section 22(2) of the Delhi Excise Act which empowered Dy. Commissioner (Excise) to transfer any liquor shop from one locality to another in public interest.
- iii) That the criteria of public sentiments and apprehension of law and order being exceptional in nature, had been invoked in this specific case only and as such this criteria had not been made a general point of consideration in all cases.
- iv) That the instant case was an exceptional case and normally the issue of public sentiments does not come into the picture. As per records, there was no other case, involving public sentiments.
- v) It was true that the criteria of public sentiments/law and order+had an element of subjectivity and complaints are at times motivated and generated. But all such issues/complaints are dealt with within the framework of Delhi Excise Act, 2009 and Rules framed thereunder.

16. On March 13, 2014, this Court further directed the Excise Department to clarify the following:

*“Whether any further evaluation/inquiry/verification was carried out by the Commissioner, Excise at his own level on the unverified complaints against the petitioner as directed by this Court vide its orders dated 28.11.2013 and further reiterated by the Hon’ble High Court vide its orders dated 15.01.2014 in WP(C) No.250/2014 OR he simply relied upon the already available inspection team’s report as well as the SHO’s report as referred to by the Department in Point No. 3 of its reply dated 13.03.2014.”*

In response to this, the Excise Department vide its reply dated March 19, 2014 has submitted the following :

*“The said order dated 05/02/2014 of the Commissioner (Excise) has been passed in pursuance of orders dated 28.11.2013 of Hon’ble Financial Commissioner and Hon’ble High Court’s orders dated 15.01.2014 and 20.01.2014.*

*The said order dated 05.02.2014 has been passed considering the fresh complaints dated 02.12.2013 made by RWA and 10.12.2013 made by Shree Badrikedar Dhyantshali Mandir as well as the earlier complaints and it relies upon the report dated 19.03.2013 of Excise Inspection Team and of SHO dated 27.05.2013 already available on record. The order dated 05.02.2014 also clearly mentions that considering the sufficient material available on record, calling fresh police report or any other report was not found necessary.”*

17. I have heard both the parties in detail and have gone through their written submissions as well as the case file. It is apparent that:

i) As per the department’s policy/criteria for grant of L-10 license for opening of liquor shops in Malls, as submitted by the department in the Court, it is clear that the department’s policy is determined, as it should be, by the conditions and criteria enshrined in the Delhi Excise Act, 2009 and Rules, 2010. The present decision of the department denying L-10 license to the appellant, seeks to import the subjective criteria of % public sentiments/apprehension of disturbance of law and order+. The department also admitted that these criteria were not even rooted

in any amendment to the laid down policy. This being so, while the appellant fulfils all the statutory provisions contained in Delhi Excise Act, 2009 and Rules, 2010 required for obtaining L-10 license, he has nonetheless been denied the said license. Though the department admits that the appellant satisfies all the statutory criteria/requirements for grant of an L-10 license but almost in a cavalier fashion dismisses it as a mere ~~technical~~ fulfilment of requirements. In doing so, it elevated the subjective criteria above the prescribed statutory conditions.

(ii) To a specific query of the Court %whether the criteria of ~~public~~ sentiments and/or apprehension of disturbance of law & order~~q~~ was a rational one or discriminatory and arbitrary?~~+~~, the department~~s~~ submission was that the sole criteria of ~~public~~ sentiments and/or apprehension of disturbance of law and order~~q~~ which had been invoked in this case was not a part of department~~s~~ policy decision and had an element of subjectivity. On a further query %whether the department shall be applying it across the board while considering all past and future applications for grant of ~~L-10~~ license?~~+~~, the department submitted that the same had been applied in this particular case only and as such had not been made a general point of consideration in all cases. The implication of these submissions needs no elaboration.

iii) The department was also asked as to in how many earlier cases of grant of L-10 license :

a. Criteria of public sentiments have been invoked?

b. Department has acted on the basis of complaints, police reports have been sought?

In response the department failed to cite even a single case and admitted that there was no other such case as per records. The department, however, claimed that the instant case was an exceptional one but could not convincingly satisfy the Court as to what made it an exceptional one.

iv) The contention of the Excise Department was that it had rejected the application in terms of the provisions of Rule 22 (2) of Delhi Excise Rules, 2010, which empowered the Deputy Commissioner (Excise) to transfer any liquor shop from one locality to another in public interest. Invoking the provisions of Rule 22(2) is of doubtful validity in the present context because the issue of transferring an already existing liquor shop due to valid concerns and reasons cannot be equated with the conditions and requirements for grant of license to open a proposed liquor shop.

(v) The order dated November 28, 2013 of my Ld. Predecessor read with orders dated January 15, 2014 and January 20, 2014 of Hon'ble High Court passed in WP(C) No. 250/2014 and 376/2014 respectively, required the Commissioner (Excise) to conduct an independent inquiry/evaluation/verification at his own level with respect to the unverified complaints against the petitioner. However, he chose to simply rely upon the material already available to him prior to the remand order itself and did not find it

necessary to hold any further inquiry or call for any fresh report on the subject. The Commissioner (Excise) has failed to conduct any independent assessment before passing the impugned order dated February 5, 2014.

18. In view of above, it is self evident that there is an element of arbitrariness in the repeated rejections of the applicant's application. The department is clearly on a slippery slope when it seeks to enshrine subjective criteria as the basis for its decisions. In fact, sooner or later this is bound to return to haunt the actions of the department and charges of discriminatory decisions are bound to fly thick and fast. If, however, its contention be that these constitute valid concerns, the department must incorporate them into a policy decision with approval of the competent authority and make it known to all prospective applicants that grant of licenses would be dependent on satisfactory evaluations in this regard. In any case, it cannot alter or apply evaluation criteria retrospectively or even mid-stream of consideration of an application. All such decisions can only be prospectively applicable and that too across the board. The department must provide a level playing field to all current and future applicants.

19. Even if the presumption of potential law and order problem (and at this point, it is both a presumption and an unsubstantiated potential) arising from aggrieved public sentiments is assumed to be grounded on some real factors, it is an aspect the Excise Commissioner was directed to consider and pointedly declined to. Department cannot and should not appear to be pandering to vague assertions of public sentiments and threats of unidentified individuals.

20. Receipt of complaints cannot be the ground for denying licenses. These must be thoroughly investigated. Depending simply on opinion reports of police or district administration is not sufficient. The conclusion of the police that resentment among public at the opening of liquor shop cannot be ruled out could be true of any site or situation. Besides, department cannot shirk its responsibilities because it is the duty of government to provide citizens with a safe and secure business environment. By asserting otherwise, the department brings government, as the ultimate guarantor of law and order, into disrepute. Therefore, the impugned order is set aside. The department is directed to ensure that the L-10 License, as applied for is issued within two weeks.

21. Announced in the open Court.

-sd-  
(D. M. SPOLIA)  
Financial Commissioner, Delhi.  
April 11, 2014