

GOVERNMENT OF JAMMU & KASHMIR
OFFICE OF THE EXCISE COMMISSIONER, J&K
EXCISE AND TAXATION COMPLEX, RAIL HEAD, JAMMU
E-mail: excise.commr@jk.gov.in

Subject: Consideration Order.

Order No: 156 -EC of 2023
Dated: 27-06-2023

WHEREAS, Shri Vishal Jandyal applied for issuance of Bar License for his Restaurant at New Plot, Jammu and after completion of requisite formalities, the Excise Department on 17.09.2005 issued License no. 91/JKEL-4 under name & style of M/s Vishal Bar and Restaurant at New Plot;

AND WHEREAS, Smt Sushma Gupta along with others had filed a writ petition bearing OWP No 448/2006, titled Sushma Gupta Vs State of J&K and Others wherein she had challenged the operation of M/s. Vishal Bar and Restaurant in her area on the allegation that the operation of licensed establishment in the area causes inconvenience to the women and children of the locality and the Hon'ble High Court vide its interim order dated 14.06.2006 directed the competent authority to decide the representation of the petitioners;

AND WHEREAS, the Excise Department after considering the representation of Smt. Sushma Gupta issued Order for closure of Bar on 07.08.2006 and directed the licensee to change the premises of the liquor establishment within a period of three months to restart its operation;

AND WHEREAS, M/s Vishal Bar and Restaurant through its proprietor Shri Vishal Jandyal approached the Hon'ble High Court and challenged the Order dated 7th August, 2006 passed by the Excise Commissioner through the medium of OWP No. 589/2006 titled Vishal Bar and Restaurant Vs State of J&K and Others wherein the Hon'ble Court vide Order dated 08-06-2012 dismissed the above titled writ petition on the ground that the Order dated 7th August 2006 was passed with the consent of the petitioner (M/s Vishal Bar and Restaurant) and the petitioner cannot now challenge the Order passed by the Excise Commissioner, J&K;

AND WHEREAS, aggrieved of the Order dated 08.06.2012 passed by the Hon'ble High Court single bench in OWP No. 589/2006, the petitioner namely M/s. Vishal Bar and Restaurant filed LPA (OW) No. 54/2012, titled M/s Vishal Bar and Restaurant Vs State of J&K and Others and the Hon'ble High Court's Division Bench vide Order dated 14.09.2012 upheld the order of the Hon'ble Single Bench dated 08.06.2012;

AND WHEREAS, the proprietor, M/s Vishal Bar & Restaurant filed SLP (Civil) No(s) 28368/2012, titled Vishal Bar & Restaurant Vs State of J&K and Others in the Hon'ble Supreme Court against the Order dated 14.09.2012 and the Hon'ble Supreme Court passed the following interim order:

"In the meantime, the petitioner may not shift the Bar and Restaurant"

AND WHEREAS, Smt. Sushma Gupta (who filed the initial petition vide OWP No 448/2006, on the basis of which operations of M/s Vishal Bar and Restaurant were closed) again approached the Office of Excise Commissioner through the medium of a representation dated 03.08.2012 along with the attested affidavit wherein she submitted that M/s Vishal Bar & Restaurant is running at its present place since last seven years without there being even a single instance of nuisance or any problem of law and order and we are satisfied as the owner of the Bar and Restaurant has been able to maintain proper discipline and has not given any opportunity to anybody including the neighbours residing in Prem Nagar, New Plot, Jammu and therefore withdraw the objections earlier raised in the year 2006 and also submitted that the petitioner has no objection to the running of the aforesaid Bar and Restaurant at its present location.

AND WHEREAS, the matter was listed for hearing before the Hon'ble Supreme Court on 02.05.2018 and the Hon'ble Court dismissed the above titled SLP on the ground that the petitioner is not present to inform as to whether the License of the petitioner is valid and subsisting, moreover the order of which the petitioner is aggrieved of is consent order passed with the consent of the parties, the operative part of Order dated 02.05.2018 passed by the Hon'ble Supreme Court is reproduced as under:

There is none to represent the appellant to inform us as to whether the licence of the appellant is valid and subsisting as on date. That apart, the order impugned in the writ proceedings by the appellant were a consent order. We will, therefore have no occasion to interfere with the order passed by the High Court. The Appeal consequently, is dismissed."

AND WHEREAS, vide No. 91-JKEL-4/DECEJ/Exc/10042 dated 27-04-2023 Deputy Excise Commissioner (Executive) Jammu directed the Excise & Taxation Officer, City Excise Range North to close the Bar of M/s Vishal Bar & Restaurant at New Plot, Jammu in compliance to the Hon'ble Supreme Court Order;

AND WHEREAS, the petitioner has filed a writ petition WP(C) No. 907/2023, titled M/s Vishal Bar and Restaurant, New Plot Jammu Vs UT of J&K and others for seeking direction from the Hon'ble High court for allowing the petitioner to run his Bar and the Licensed Business in the existing premises at New Plot Jammu and not to insist for shifting the Licensed business to any other place in view of the fact that no objections exists for running the licensed business in the existing premises and the petitioner has not caused any violation, disturbance or nuisance or inconvenience to inhabitants of the locality for the last 17 years.

AND WHEREAS, the Hon'ble High Court on 19.04.2023 directed the Excise Department to decide the representation of the petitioner within a period of two months. The operative part of the order dated 19.04.2023 is reproduced as under:

"Having regard to the submissions made by the learned counsel for the parties, the matter is taken up and is disposed of with the direction to the respondents to consider and decide the representation of the petitioner within a period of two months from the date copy of this order along with complete paper book is served upon the respondents by the petitioner."

AND WHEREAS, the Senior Law Officer, O/o Excise Commissioner, J&K Govt. has opined that since the Order dated 07.08.2006 was issued by the then Excise Commissioner on the objections raised by one Smt. Sushma Gupta against the operation of liquor Bar in their area which has been withdrawn by her in her representation vide affidavit dated 03.08.2012, as such, the objections raised in the year 2006 have become **non est**, moreover, other liquor establishments (JKEL-2) are operational in the same area without any objections and the applicant has also got the NOC from the District Magistrate Jammu for operation of his licensed establishment;

AND WHEREAS, the Senior Law officer further opined that petitioner may be allowed the renewal of his license for operation of same from the present premises in the interest of Government revenue and to avoid any contempt proceedings against the Department subject to condition that in case of objections from the people of the area, the licensee will have to shift his licensed establishment to some other place within locality.

NOW, THEREFORE, the case of the petitioner has been considered in light of (i) affidavit furnished by Smt. Sushma Gupta dated 03-08-2012, (ii) order dated 19-04-2023 passed by the Hon'ble High Court in WP (C) No. 907/2023, titled M/s Vishal Bar and Restaurant New Plot Jammu Vs UT of J&K and others, (iii) recommendation of the DEC (Exec) Jammu vide letter No. DECEJ/Exc/1814 dated 13-06-2023 and (iv) opinion of Senior Law Officer, O/o Excise Commissioner, J&K and permission to operate/renew the license of M/s Vishal Bar & Restaurant situated at New Plot, Jammu for the year 2023-24 is hereby granted.

PANKAJ KUMAR SHARMA
Digitally signed by PANKAJ KUMAR SHARMA
Date: 2023.06.27 19:54:49
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Excise Commissioner, J&K

No: EC/Exc/91-JKEL-4/2516-19

Dated: 27-06-2023

Copy for information and necessary action to the:

1. Deputy Excise Commissioner (Executive), Jammu.
2. Excise and Taxation Officer, City Excise Range, (North), Jammu
3. Sh. Vishal Jandyal, Prop. M/s Vishal Bar & Restaurant, New Plot Jammu.
4. Sr. Programmer I/c website jkexcise.nic.in
5. Order file/concerned file.