

GOVERNMENT OF JAMMU & KASHMIR
OFFICE OF THE EXCISE COMMISSIONER, J&K
EXCISE AND TAXATION COMPLEX, RAIL HEAD, JAMMU
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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: