

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on : 31.08.2022
Pronounced on : 13.09.2022

WP(C) No.1997/2021

Parveez Ahmad Baba

...Petitioner(s)

Through:- Mr.M.A.Qayoom, Advocate with
Mr.M. Tufail, Advocate

V/s

Union Territory of J&K and others

...Respondent(s)

Through:- Mr. Jahangir Iqbal Ganie, Sr.
Advocate with Mr. Muzaffar Nabi
Lone, Adv. for R-5

Coram: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

JUDGMENT

1. The petitioner is aggrieved of and has challenged the following orders:-

- i) License dated 15th May, 2019 issued by the Designated Officer/State Licensing Authority under the Food Safety and Standard Act, 2006 ["the Act"] in favour of respondent No.5 in respect of "Samci Restaurant", Residency Road, Srinagar.
- ii) Communication bearing No.FDA/FSSA/SGR/313-316 dated 2nd December, 2020 issued by respondent No.4, whereby the petitioner is intimated that the license dated 15th May, 2019 is issued to the

premises “Samci Restaurant” and not respondent No.5 and that it would be appropriate and in the interest of both the parties that the name of the petitioner is also inserted in the application form as incharge operation and person responsible for complying the conditions of the license.

- iii) Order dated 16th April, 2021 issued by respondent No.2, whereby GST registration issued 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.

2. Apart from assailing the aforesaid orders [“impugned orders”], the petitioner also prays for a direction to respondent No.4 to restore his license issued under the Act as also registration under the Central Goods and Services Tax Act, 2017 [“ GST”] forthwith with a further direction to respondent No.5 not to interfere or cause any sort of interference in the running of Samci Restaurant, Residency Road, Srinagar.

3. The reliefs claimed by the petitioner are predicated on the following factual foundation laid in the petition.

- a) In the year 1993, the petitioner and respondent No.5 jointly purchased a two storeyed tin roof building along with land measuring 1844 sq. feet situate at Kothibagh Bund, Srinagar [“the subject property”] from one Mohd. Sultan R/o Gow Kadal, Maisuma, Srinagar in terms of a sale deed executed on 17th May, 1993. It is, however, the case of the petitioner that the entire consideration amount was paid by him and the name of respondent

No.5 being his brother was also included in the sale deed as vendee, though, he had not paid even a single penny towards purchase of the subject property.

- b) The petitioner further claims that the subject property was rebuilt into a six storeyed building and in the ground floor whereof, he started running a restaurant under the name and style of Samci Restaurant and rest of the floors were rented out by the petitioner to different tenants.
- c) The Samci Restaurant was got registered with the Srinagar Municipality by the petitioner in his own name and not only did he deposit the fee payable to the Municipality but he also incurred from his own pocket other charges as well. It was in the year 2005, M/s A.R. Traders, Residency Road Srinagar raised dispute in respect of a shop in the ground floor, claiming the same to have been purchased by him from the erstwhile owner i.e. Sh. Mohd. Sultan.
- d) M/s A.R.Trader filed OWP No.933/2005 in this Court. The petitioner settled the dispute with M/s A.R.Traders and in terms whereof, the petitioner paid Rs.4,50,000/- to M/s A.R.Traders and in lieu of the said amount M/s A.R.Traders relinquished their claim and accepted the judgment of the Financial Commissioner (R), J&K as well as the Deputy Commissioner, Srinagar as valid.
- e) The petitioner applied for and was granted license under the Prevention of Food Adulteration Act on 1st November, 2006 for

running the restaurant by Srinagar Municipal Corporation, the Licensing Authority. The petitioner also simultaneously obtained a certificate of registration from the Directorate of Tourism in the year 2008. The petitioner submits that he also availed loan from the Jammu & Kashmir Bank Limited for running the aforesaid business and in this regard got a deed of guarantee executed from respondent No.5 and one Ishtiyaq Ahmed Baba with the bank on 22nd November, 2013. Respondent No.5 not only acknowledged the petitioner as sole proprietor of M/s Samci Restaurant but he also stood as guarantor for repayment of the loan taken by the petitioner for maintenance and running of the restaurant. The petitioner has also placed on record several other documents to fortify his claim that insofar as Samci Restaurant is concerned, it is the petitioner and petitioner alone, who is sole owner exclusively running it and with which respondent No.5 has no concern or connection.

- f) The petitioner submits that the electricity and water charges for electricity and water connection given by the PDD and PHE departments respectively have all along been paid by the petitioner. There is reference to a license given by Department of Health and Medical Education dated 15th May, 2019 under the Act, which license was valid upto 14th May, 2021.
- g) The petitioner claims that despite the fact that the petitioner had been running the Samci Restaurant to the exclusion of respondent No.5, respondent No.5 in connivance with the officials of Food Safety

Department succeeded in getting the petitioner's license, issued under the Act, transferred in his own name. This was so conveyed to the petitioner in terms of impugned communication dated 2nd December, 2020.

- h) The petitioner responded to the aforesaid communication and requested respondent No.4 to withdraw and cancel his order for transfer/grant of license in favour of respondent No.5. Besides the aforesaid grievance projected by the petitioner, it is also the case of the petitioner that the Samci Restaurant run by him had a valid registration under Value Added Tax Act, 2005 ["VAT"]. He has placed on record, copy of the registration certificate dated 15th April, 2008 issued under VAT Act. However, after coming into force the Central Goods and Services Tax Act (GST), the petitioner's concern was also registered under the said Act and a registration certificate in this regard was issued in his favour on 8th December, 2017. It is the grievance of the petitioner that respondent No.5 by abusing his trust and by sheer deception and misrepresentation also succeeded in getting the GST registration issued in favour of the petitioner, cancelled by the respondent No.2. The petitioner states that on coming to know of the cancellation of his registration under GST Act, he immediately applied to the authorities making it clear to them that he had not applied for any cancellation of his registration under GST Act. An application in this regard was also submitted to Deputy Commissioner (Appeals), Sales Tax Department raising

allegations that some of the employees of the department, who were in connivance with respondent No.5, had mischievously submitted online application for cancellation of registration under GST Act issued in favour of the petitioner. The petitioner has also made serious allegations of misusing his e-mail ID and creating new ID and password after logging in his e-mail ID. The Deputy Commissioner (Appeals) did not take any action on the application of the petitioner. Neither order of cancellation of his registration was revoked nor was any action taken against respondent No.5. The petitioner even approached the Superintendent of Police Cyber Crime, J&K, Srinagar and requested him to lodge FIR but the petitioner was told to approach the concerned Police Station. The petitioner submitted an application before the Station House Officer, Police Station, Kothibagh, Srinagar but no FIR was registered in the matter.

4) It is in these background facts, the petitioner has challenged the impugned orders, *inter alia*, on the following grounds:-

- i) The impugned order dated 15th May, 2019 whereunder the license granted to the petitioner for running Samci Restaurant has been revoked and transferred in the name of respondent No.5 is not legally sustainable because firstly, the said order has been obtained by respondent No.5 fraudulently and secondly, there is no provision in the Act conferring power of

transfer of the license issued under the Act from one person to another.

- ii) That the impugned order dated 15th May, 2019 was passed at the behest of respondent No.5 to the prejudice of the petitioner without affording any opportunity of being heard to the petitioner.
- iii) When there is overwhelming evidence that the petitioner alone is entitled to own and run Samci Restaurant, respondent No.4 could not have issued license under the Act in favour of respondent No.5. Respondent No.4 was apprised of the true legal position, yet he chose not to withdraw the license issued in favour of respondent No.5 but instead advised the petitioner to have his name also inserted in the application form as person incharge of operation and responsible for complying with the conditions of license. The entire action of respondent No.4 is, thus, illegal, arbitrary and without any sanction of law.
- iv) Order dated 16th April, 2021 is also not sustainable in law, for, the same is a product of misrepresentation and fraud played by respondent No.5 in connivance with authorities. Respondent No.5, after logging in his e-mail ID changed his e-mail ID and password and applied on his behalf for cancellation of GST registration when the fact remains that the petitioner had not submitted any such application. Respondent No.3 despite

having been made aware of the manipulation made by respondent No.5 did not restore his registration nor did he take any action against respondent No.5. The appellate authority, which was also approached in the matter, also failed to redress his grievance. The authorities under GST Act have, thus, failed to perform their statutory duty and have, thus, rendered themselves liable to be directed to withdraw the cancellation of GST registration issued in favour of the petitioner and initiate appropriate action against respondent No.5.

5) On being put on notice, respondent No.5 has filed detailed objections raising, *inter alia*, objection to the maintainability of the petition in view of the highly complicated disputed questions of facts involved for determination in the matter. Respondent No.5 claims that the license under the Act issued in his favour is a fresh license issued after he complied with all the requisite formalities and respondent No.4 made all the enquiries including spot inspection of the premises. It is contended by respondent No.5 that the impugned license issued in his favour by respondent No.4 is not by way of transfer of the license, which is claimed to be earlier issued in favour of the petitioner. It is, thus, submitted that in the instant case the transfer of license from the petitioner to respondent No.5 was not involved at all and, therefore, provisions of the Act and the Regulations framed thereunder relied upon by the petitioner were not attracted in the matter. It is submitted that it may be true that the petitioner was holding a license issued by the Municipal Authorities but the same was not a valid license

issued under the Act under which the local bodies including the Municipal Authorities have no right or authority to issue any such license. Respondent No.5 claims that the subject property including the Samci Restaurant is a property jointly owned and possessed by respondent No.5 and the petitioner and, therefore, exclusive claim of the petitioner over the Samci Restaurant is totally uncalled for and is not supported by any documentary evidence. Respondent No.5 submits that in the family arrangement, it was respondent No.5 who was entrusted the running of business of Samci Restaurant and, therefore, he applied to all the competent authorities for issuance of requisite license/registration. The license under the Act and the registration under GST Act already stand issued in favour of respondent No.5 and, therefore, he alone is competent to run the restaurant. Respondent No.5 has also placed on record certain documents to substantiate his plea that the subject property is jointly owned and possessed by the petitioner and respondent No.5 and that the Samci Restaurant is exclusively run and maintained by respondent No.5, in whose name license under the Act and the requisite registration under GST Act stand issued.

6) Both, the petitioner and respondent No.5, have also moved applications to place certain documents on record to fortify their respective stands.

7) The official stand is taken by respondent Nos. 1 and 4 i.e. the authorities under the Act. In the reply affidavit filed by respondent No.4, it is submitted that a license under the Act was issued to Samci Restaurant on

15th May, 2019 on the basis of an online application alongwith requisite documents including valid proof of possession etc. submitted by respondent No.5. It is denied by respondent No.4 that any order was passed by him transferring any license or document in favour of respondent No.5. It is further submitted that after issuance of license in favour of Samci Restaurant, on the basis of online application submitted by respondent No.5, an application was received from the petitioner on 4th July, 2019 seeking cancellation of the license on the ground that his brother i.e. respondent No.5 had deceitfully obtained the license under the Act. On receipt of aforesaid application, a show cause notice was issued to respondent No.5 on 27.07.2019 to which respondent No.5 filed his reply on 30th July, 2019. Respondent No.5 in the reply contended that he and petitioner are real brothers and that the registration under the Shops and Establishment Act and electricity bill having consumer ID 0201010004706 are all in the name of respondent No.5. After going through the application of the petitioner and the reply to the show cause notice submitted by respondent No.5, the Food Safety Officer, Zone-1 was directed to personally visit the restaurant and submit a report. A report in this regard was submitted on 1st November, 2019, which fortified the stand of respondent No.5 that he was in physical possession of the restaurant and, therefore, entitled to be shown in the license as person responsible for running Samci Restaurant and complying with the conditions of license.

8) Respondent No.4 also claims to have taken note of the fact that Srinagar Municipal Corporation Authorities had sealed the Samci

Restaurant and on 01.01.2020 order of de-sealing was obtained by respondent No.5, which fact would also go to show that the premises was in actual physical possession of respondent No.5. Respondent No.4, however, submitted that having regard to the documents submitted by the petitioner as well as respondent No.5, they were advised to have the name of petitioner also inserted as person incharge of operation and responsible for complying with the conditions of the license. It is also the stand of respondent No.4 that the license under the Act was issued to the premises and not to the person. Respondent No.4 further states that the license was valid only for a period of two years and, therefore, expired on 14th May, 2021. Respondent No.5 applied for renewal of the license in the month of April, 2021 but the same has not been renewed as dispute between the petitioner and respondent No.5 has yet not been settled by them. It is, thus, the stand of respondent No.4 that, though, in the year 2019, respondent No.4 had issued license under the Act in favour of respondent No.5 for a period of two years but the same has not been renewed after its expiry in view of the dispute between the two brothers i.e. respondent No.5 and the petitioner. It is also the stand of respondent No.4 that license under the Act was issued to the premises of Samci Restaurant and the name of respondent No.5, who had submitted application with all requisite documents, had been reflected as proprietor of the restaurant responsible to comply with the conditions of license. No transfer of license or other document had been effected by respondent No.4 in favour of respondent No.5. There is, however, no reply by respondents No. 2 and 3.

9) Heard learned counsel for the parties and perused the material on record.

10) With a view to regulate manufacture, storage, distribution, sale and import of articles of food and to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto, the Parliament has enacted The Food Safety and Standards Act, 2006 [“the Act”]. Chapter VII of the Act deals, inter alia, with licensing and registration of food business. Section 31 of the Act in particular deals with licensing and registration of food business, which, for facility of reference, is set out below:-

“31. **Licensing and registration of food business.**-(1) No person shall commence or carry on any food business except under a licence.

(2) Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food on a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator; but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers.

(3) Any person desirous to commence or carry on any food business shall make an application for grant of a licence to the Designated Officer in such manner containing such particulars and fees as may be specified by regulations.

(4) The Designated Officer on receipt of an application under sub-section (3), may either grant the licence or after giving the applicant an opportunity of being heard and for reasons to be recorded in writing, refuse to grant a licence to any applicant, if he is satisfied that it is necessary so to do in the interest of public health and shall make available to the applicant a copy of the order:

Provided that if a licence is not issued within two months from the date of making the application or his application is not rejected, the

applicant may start his food business after expiry of the said period and in such a case, the Designated Officer shall not refuse to issue a licence but may, if he considers necessary, issue an improvement notice, under section 32 and follow procedures in that regard.

(5) Every licence shall be in such form and subject to such conditions as may be specified by regulations.

(6) A single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area.

(7) If the articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence shall be issued in respect of such premises not falling within the same area.

(8) An appeal against the order of rejection for the grant of licence shall lie to the Commissioner of Food Safety.

(9) A licence unless suspended or cancelled earlier shall be in force for such period as may be specified by regulations:

Provided that if an application for a renewal of licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

(10) The licence shall subsist for the benefit of the deceased's personal representative or any other member of his family, until the expiry of-

(a) the period of three months beginning with his death; or

(b) such longer period as the Designated Officer may allow.”

11) To supplement the provisions of Section 31 is Chapter-II of The Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 [“the Regulations”], which lays down elaborate procedure for licensing and registration of the food businesses. A reading of Section 31 along with Regulation No.2.1.2 makes it abundantly clear that no person is entitled to commence or carry on any food business except under a license. A person desirous of commencing or carrying on any food business is required to make an application for grant of license to the designated officer in the manner and containing such particulars and fee

as is prescribed under Chapter-II of the Regulations in particular Regulations No. 2.1.2 to 2.1.4.

12) Sub Section 6 of Section 31 clearly provides that a single license may be issued for one or more articles of food and also for different establishments or premises in the same area. Sub Section 7 of Section 31 lays down that if the articles of food are manufactured, stored, distributed or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate license shall be issued in respect of such premises not falling within the same area.

13) Similarly, under Regulation 2.1.4 after the application for license is processed at different stages, the licensing authority shall issue license in Form-C under Schedule II of these Regulations, a true copy of which shall be displayed at a prominent place at all times within the premises where the food business operator carries on the food business. Form-C i.e. License Format contained in Schedule-II of the Regulations reads as under:-

FORM C
 LIICENSE FORMAT
 [See regulation 2.1.4(6)]
 Government of India
 Food Safety and Standards Authority of India
 License under FSS Act, 206

License No.....

1. Name and Registered Office address of licensee.....
2. **Address of authorized premises**
3. Kind of Business
4. For dairy business details of location with address and capacity of Milk Chilling Centers (MCC)/Bank Milk Cooling Centers (BMCs)/Milk Processing Unit/Milk Packaging Unit owned by the holder of license/RC.
5. Category of License.

This license is granted under and is subject to the provisions of FSS Act, 2006 all of which must be complied with by the licensee.

Place.....

Date.....

Stamp and signature of Designated Officer
 Food Safety and Standards Authority of India
 Validation and Renewal

Renewal Date	Period of validity	License fee paid	Items of Food products with capabilities authorized to Manufacture/Re-pack/Re-label	Installed/handling capacity	Signature of Designated Officer

14) From a conjoint reading of Section 31, Regulations 2.1.2 to 2.1.4 and the license format (Form-C), it is beyond any pale of doubt that a license to be issued under Chapter-II in relation to food business is granted to a person in respect of premises. The premises, which is licensed under the Act, is known as ‘Authorized Premises’ where a person is entitled to manufacture, store, distribute or exhibit for sale any article of food. The “**Food Business**” as defined in Section 3(1)(n) means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients. Similarly “**food business operator**”, as defined in Section 3(1)(o), would mean a person by whom the business is carried on or owned and is responsible for ensuring the compliance of the Act, Rules and Regulations made thereunder. Similarly, “**premises**”, as defined in Section 3(1)(zi) of the Act, would include any shop, stall, hotel, restaurant, airline services and food canteens,

place of vehicle or vessel where any article of food is sold or manufactured or stored for sale.

15) Under Chapter-II of the Regulations framed by the Food Safety and Standards Authority of India in the exercise of powers conferred by Clause (o) of Sub Section (2) of Section 92 of the Act read with Section 31 of the Act, The Food Business, The Food Business Operator and the Premises are required to be licensed and, therefore, to say that the license under the Act is issued to the person and not to the premises is not the correct position emerging from the reading of the provisions of the Act and the Regulations framed thereunder with regard to licensing and registration of food business.

16) When the case set up by the petitioner is viewed in the context of clear legal position emerging from reading of various provisions of the Act and the Regulations framed thereunder, this Court is not in a position to find any fault with the impugned order dated 2nd December, 2020 passed by the designated officer under the Act. Indisputably, the petitioner as well as respondent No.5 is joint owner in possession of the six storied building, which houses 'Samci Restaurant' in its ground floor. The petitioner and respondent No.5 have jointly purchased this building vide sale deed executed on 17th May, 1993. The property is joint and has not been partitioned between the brothers. That being the position, the petitioner as well as respondent No.5 are the joint owners of the entire property including the portion of the ground floor thereof, where Samci Restaurant is housed and established. It cannot be thus disputed that unless both of

them apply to the licensing authority for grant of license under the Act, it would not be possible for the designated officer to grant license for running the food business in the premises in favour of one and to the exclusion of the other. It may be true that prior to the year 2019, the Samci Restaurant, as is otherwise evident from the documents placed on record, was being run by the petitioner. Although, the property housing the Samci Restaurant was jointly owned by the petitioner and respondent No.5, yet in view of the cordial relations between two brothers, the petitioner, who was conducting the business had submitted applications to different authorities for seeking permissions and licenses required under law to carry on the food business in the premises. It appears that in the year 2019, somehow the reins of the Samci Restaurant came in the hands of respondent No.5. While he was on the driver's seat for running the restaurant, he appears to have approached various authorities including the designated officer under the Act for issuance of license for carrying on the food business in the name of Samci Restaurant. Since he was also owner of the premises along with the petitioner, he successfully applied online for the license and the same was issued by the competent authority after completing requisite formalities including making inspection of the premises to be licensed.

17) The petitioner after becoming aware of the issuance of license under the Act in favour of Respondent No.5 immediately moved an application before the designated officer seeking cancellation of the license issued in favour of respondent No.5 in respect of Samci Restaurant. Respondent No.5 was put on show cause notice by the designated officer, who, after considering the rival stand, was of opinion that since the license had been

issued to the premises of Samci Restaurant and not to an individual and, therefore, there was prima facie nothing wrong with the issuance of license sought to be cancelled. The designated officer, however, observed that it would be appropriate and in the interest of both the parties that name of the petitioner was also inserted in the application form as person incharge of operation and responsible for complying the conditions of the license i.e. **Food Business Operator.**

18) Order of the designated officer/authority is appealable under Section 31(8) of the Act before the Commissioner of Food Safety. However, the petitioner has not availed of the remedy of appeal for the reasons best known to him.

19) Be that as it may, in view of the categoric stand of respondent No.4 that the license, which was issued in favour of respondent No.5 on 15th May, 2019 was valid only upto 14th May, 2021 and same has not been renewed because of the dispute between the petitioner and respondent No.5 in respect of authorized premises, there remains nothing for this Court to adjudicate upon the issue raised by the petitioner in this regard.

20) True it is that if there are more than one owner of the authorized premises (premises to be licensed under the Act) and only one applies and the others object, it would not be possible for the designated authority to issue license qua such premises unless the dispute between the co-sharers is settled.

21) In the instant case, indisputably, petitioner and respondent No.5, who are joint owner of the premises, do not see eye-to-eye with each other. Both have lodged their respective claims before the authorities concerned including the designated authority under the Act for grant of license and registration etc. The licensing authority would not be in a position to grant license under the Act with respect to the premises, ownership and possession whereof is claimed by the petitioner as well as respondent No.5 nor it would be possible for the licensing authority to name any of them to be the **Food Business Operator** i.e. the person responsible to carry on the food business and comply with the terms and conditions of the license. The decision of the designated authority under the Act not to renew the license in favour of respondent No.5 is, thus, completely in consonance with law. The petitioner and respondent No.5 are required to settle their dispute amicably or through the intervention of Court. Partition between two brothers appears to be a viable solution of the problem which the petitioner and respondent No.5 are facing in respect of running the business of Samci Restaurant.

22) Similarly, on the analogy of what is stated above, the petitioner or for that matter respondent No.5 shall not be entitled to registration under the Goods and Services Tax Act, 2017 (GST). Chapter-VI of the GST deals with registration. In terms of Section 22 of the GST, every supplier shall be liable to be registered under the GST Act in the State or Union Territory from where he makes a taxable supply of goods or services or both, if his

aggregate turnover in a financial year exceeds twenty lakh rupees. The term “supplier” is defined under Section 2(105), which reads as under:-

“Supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to goods or services or both supplied”

There is not even an iota of doubt that person running a restaurant and selling the goods and providing restaurant services would be a ‘**Supplier**’ within the meaning of term defined under Section 2(105) of GST Act and, therefore, would require registration under the Act, if aggregate turn over in a financial year exceeds rupees twenty lakh.

23) Unless a person is permitted to run the business in accordance with law and legitimately attains a turnover of more than rupees twenty lakh, he cannot be registered under the GST Act. The turnover must be from a business, which is legitimately run by the supplier.

24) In the instant case, as held above, till dispute between the petitioner and respondent No.5 is settled and two, either jointly apply or property is partitioned and fall in the share of the person applying, no license can be issued by the designated authority under the Act.

25) From the above, this Court arrives at the conclusion that neither the petitioner nor respondent No.5 is entitled to have a license under the Act or registration under the GST Act in his favour to the exclusion of other. They may, if they so desire, bury the hatchet and apply jointly for grant of

requisite license and registration for running the food business of Samci Restaurant jointly. If they do so, there would be no difficulty either for the designated authority under the Act or the competent registering authority under the GST Act to grant license and registration for facilitating the running of food business of Samci Restaurant in favour of the petitioner and respondent No.5. However, if dispute between the two continues, it would be appropriate for both the authorities to refuse grant of license and registration to them. The petitioner as well as respondent No.5 is well advised to settle their dispute either amicably or through intervention of Court.

26) In the view I have taken, there is hardly any need to advert to the case law cited on both sides. This Court has neither entered in the arena of adjudication of complicated disputed questions of fact nor has it relegated the parties to the remedy of appeal before the authority under the Act and GST Act respectively in view of peculiar facts and circumstances of the case.

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.

(Sanjeev Kumar)
Judge

SRINAGAR
13.09.2022
Vinod.

Whether the order is reportable : Yes