

Car Parking

OFFICE OF THE COMMISSIONER STATE
EXCISE, MAHARASHTRA STATE, MUMBAI

Appeal No. 115/98

Date of Institution: 6-6-1998

Name of the Appellant: Smt. Prabhavati Suresh Shetty,
& His Address: M/s. Splash Bar & Restaurant,
Dattatraya Co-op. Hsg. Socy.
RDP-5, Sector-5, Charkop, Kandivali (W),
Mumbai-400 067

Against the orders of Collector of Mumbai Suburban District
No. FLR. 1198/1190/E-1 dated 4th June 1998.

Under Section 137 of the Bombay Prohibition Act, 1949.

ORDER

No. FLR. 1998/115/I

Mumbai, 1st August, 1998.

This is an appeal against the order of the Collector of Mumbai Suburban District whereby the permit room licence-application of the appellant was rejected on the ground that there was no parking space available, the police report was adverse and there was a BEST depot nearby.

2. The appellant was heard on 28-7-1998 through advocate Smt. V:B. Thadhani. She argued that under rule 45 of the Bombay Foreign Liquor Rules, 1953, there is no provision of parking space as a necessity for the

permit room. Further, there is a provision that there should not be any S.T. Stand or S.T. Depot within 75 metres from the licensed premises, however there is no provision regarding the BEST Depot. She argued that the area is riot free area. Referring to the circular of this office dated 22-11-1989, she stated that the police report should only confine to the issue of riot proneness of the particular area in which the proposed permit room is proposed. She further contended that the police has already granted an eating house licence to the restaurant of the appellant i.e. M/s. Splash Restaurant. Therefore, the police is now estopped from refusing bar licence to the appellant. She also relied on the decisions of this office in similar other cases in which the department granted the licence.

I have carefully examined the case papers. The appellant has fulfilled all the formalities of FL.III application. A perusal of the police report shows that the objection of the police is based on the non-availability of a separate space for car parking for the customers of the proposed permit room.

I quote the relevant portion of the Police report as follows:

It is revealed from the report of the DCP Zone-10 that the hotel



establishment has not provided any separate space for car parking for their customers. Therefore, the cars of the customers will be parked on the road, which may create traffic problem and due to which there is a possibility of arising of law and order problem."

There is no provisions in the Bombay Foreign Liquor Rules, 1953 that separate parking space is required for a permit room. I agree with the contention of the appellant that the police should have been taken this objection at the time of granting eating house licence to the restaurant of the appellant. The permit room licence is by nature a subsidiary licence and it exists so long as the restaurant is in existence. Since the police has not taken any action to oppose the restaurant licence, there is no justification to oppose the grant of the permit room licence by the same agency.

4. As regards the issue of BEST Depot, there is no such provision in rule 45 of the Bombay Foreign Liquor Rules, 1953 and therefore, it would not be justifiable to deny the permit room licence to the appellant on this criteria.



5. In the result, the appeal succeeds and the following order is passed.

The appeal is allowed. The order of the Collector is set aside with the directions that the permit room licence shall be granted to the appellant forthwith.

(Ajitkumar, Jain)
Commissioner of State Excise,
Maharashtra State, Mumbai.

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Smt. Prabhavati Suresh Shetty,
Prop. M/s. Splash Bar & Restaurant,
Dattatraya Co-op. Hsg. Socy. RDP 5, Sector 5, Clarkop,
Kandivali (West), Mumbai-400 067

