

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8804 OF 2015

Chandrakala w/o Arun Choudhari,
Age: 50 years, Occ: Business,
R/o. Savada, Tq. Raver,
Dist. Jalgaon

...Petitioner

versus

1. The State of Maharashtra,
Through District Magistrate,
Jalgaon
 2. Tahsildar cum Executive Magistrate,
Tahsil Office, Raver
- ...Respondents

**WITH
WRIT PETITION NO. 8805 OF 2015**

Subhash s/o Rambhau Choudhari,
Age: 50 years, Occ: Business,
R/o. Savada, Tq. Raver,
Dist. Jalgaon

...Petitioner

versus

1. The State of Maharashtra,
Through District Magistrate,
Jalgaon
 2. Tahsildar cum Executive Magistrate,
Tahsil Office, Raver
- ...Respondents

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Mr S. N. Boiwar, Advocate holding for Mr M. K. Deshpande, Advocate for
petitioners;
Mr A. V. Deshmukh, Asst. Govt. Pleader for respondents

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CORAM : N.W. SAMBRE, J.

DATE : 1st DECEMBER, 2015

ORAL ORDER :

In both these petitions, the petitioners claim to be holding an

Eating House Licence, pursuant to Jalgaon District Eating Houses Registration Rules, 1969.

2. The Tahsildar, by order impugned dated 29th November, 2014 was pleased to cancel the eating house licence of the petitioners, in exercise of the provisions of section 33-C of the Bombay Police Act, 1951. Being aggrieved thereby, the petitioners preferred an appeal under section 33 of the Bombay Police Act before the District Magistrate/Collector, Jalgaon, which also came to be dismissed by an order dated 26th June, 2015. Thus, the present petitions.

3. As the date of passing of the orders impugned, by the Collector/District Magistrate is same and the issues raised are also same, both these petitions are heard and disposed of by this common order.

4. Learned Counsel appearing on behalf of the petitioners would urge that the cause cited by the respondent – Tahsildar, for cancellation of licence is no way identified under the requirements as are provided under the Eating House Rules referred supra. In support of his contentions, he has relied upon the provisions of Rule 3. According to him, having satisfied the requirements of the Rules, the licence was granted by the Tahsildar, however, for the reasons

which are not germane to the cause, the cancellation is ordered. He would then urge that the alleged inspection that was carried out on 20th November, 2014, in the establishment of the petitioner, was duly answered to, however, the explanations given by the petitioners are not at all dealt with by the Tahsildar. According to him, there is no legal basis for cancellation of the licence and as such, according to him, the order of the Tahsildar is not sustainable. Learned Counsel would then urge that the appellate authority, without considering the provisions of the Eating House Rules, has in a stereo type manner, proceeded to approve the order passed by the Tahsildar and dismissed the appeal. According to him, the petitioners hold appropriate licenses under the Bombay Shops and Establishments Act and have also paid the relevant fees thereunder. He would then urge that the licence as was issued to run and administer the eating house, was also available.

5. According to the learned Counsel, as such, the orders impugned are not sustainable.

6. Learned Asstt. Govt. Pleader, while supporting the case would urge that the orders passed by the Tahsildar and the District Magistrate, are in tune with the requirements of the Bombay Police Act and the Eating House Rules. He would then urge that the

petitioners have failed to demonstrate the documents which were called for at the time of inspection. According to him, the gas cylinders which are made available at the subsidized rates were found to be used by the petitioners for cooking food and it being a commercial establishment, the same is not permissible and is an offence. According to him, the petitions lack merit and are liable to be dismissed.

7. Having bestowed my anxious thought to the submissions made, it is to be noted that the cause as is cited in the show cause notice and the order impugned, passed by the Tahsildar, reflects that there are minor discrepancies noticed, such as not displaying the Eating House Licence, non maintenance of consumption of commercial gas cylinder register and not making available the certificate issued by the Food and Drugs Department not, so also from the Municipal Council and Medical Officer. The gas cylinder meant for domestic use was found to be under use for cooking food, which is a commercial activity.

8. Upon perusal of the Rules, it is to be noted that there are no such express powers provided under the Rules to call for stringent action of cancellation of licence of the parties, in case of such defaults as are noted in the order impugned. It is required to be

noted that violation of the provisions of Rules and Act are not formed to be the basis for recording the findings of cancellation of Licence, but vague observations could be noticed in the order impugned about technical violation to which I do not notice any basis in law. It is required to be further noted that though the respondent has placed reliance upon clause 7 of Rule 36 of Keeping Places of Public Entertainment in Jalgaon District (Second Amendment) Rules, 2003, so as to draw support *qua* requirement of the above referred certificates/documents, in my opinion, the Eating House Rules govern the field and not the Rules governing Places of Public Entertainment. The District Magistrate, who is an appellate authority, has also lost sight of the same by making applicable the provisions which are not attracted to the case in hand. At least, no such submission in law could be made by the learned A.G.P. to that effect. Thus, the orders impugned are not sustainable in law.

9. In view of above, in my opinion, it will be appropriate to allow both these petitions. I, therefore, pass following order :-

The order dated 29th November, 2014, passed by the Tahsildar, Raver and the order dated 26th June, 2015, passed by the appellate authority, i.e. District Magistrate, Jalgaon, are hereby quashed and set aside.

Writ Petitions stand allowed in above terms with no order as to costs.

[N.W. SAMBRE, J.]

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