

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 266 OF 2015

Anil Parshuram Patil .. Petitioner
VS.
The Sub Divisional Magistrate,
Thane Division, Thane & Anr. .. Respondents

Mrs. Veena Thadhani for Petitioner.
Ms Vaishali Nimbalkar – AGP for Respondents - State.

CORAM : M. S. SONAK, J.
DATE : 03 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent of the respondents, Rule is made returnable forthwith.

2] This petition is directed against the orders dated 18 January 2015 and 30 October 2014 made by the respondents, by which the petitioner's lodging and boarding licence bearing no. 29 of 2005 has been cancelled by resort to provisions contained in Section 33(7) of the Bombay Police Act, 1951 ("said Act").

3] Section 33(7) of the said Act reads thus :

"33(7) : Notwithstanding anything hereinbefore contained in this section or which may be contained in any rule made thereunder, it shall always be lawful for the competent authority to refuse a licence for, or

to prohibit the keeping of any place of public amusement or entertainment [or any place used for conducting a dancing school] [or to refuse a certificate of registration for, or to prohibit the keeping of any eating house, as the case may be], by a person of notoriously bad character.”

4] In order to denote the petitioner as being a person of 'notoriously bad character', the respondents have basically relied upon a case instituted against the petitioner under Section 18(1) of the Immoral Traffic (Prevention) Act, 1956 (PITA) on 18 October 2013. Such case bears No.402 of 2013 and is presently pending before the Sub Divisional Magistrate, Thane. There is some issue as to whether such case is pending before the Sub Divisional Magistrate or some other Court. However, there is no dispute that the case pertains to Crime No. 190 of 2013 (page 73 of the paper book).

5] Mrs. Thadhani, the learned counsel for the petitioner urged the following in support of the petition:

(A) That even after the institution of prosecution under the PITA on 18 October 2013, the respondents have renewed the petitioner's licence on 1 January 2013 and 1 January 2014. Therefore, in the light of the law laid down by this Court in the case of *K. V. Acharya & Anr. vs. State of Maharashtra & Ors.*¹, the issue of pendency could not have been taken into consideration for the purposes of

1 2000 Cri.L.J. 2038

cancellation of the licence;

(B) That this Court, has time and again ruled that mere pendency of prosecution cannot be a ground for refusing to renew a licence or to cancel a licence already granted. In fact, in deference to the rulings of this Court, the State has issued circular, directing the police authorities not to refuse renewals or cancel licences on the mere ground of pendency of prosecution.

6] Ms Nimbalkar, the learned AGP submitted that in the present case the prosecution launched pertains not merely to offences under the PITA but also involves very serious offences punishable under Sections 366A, 370 and 372 of the Indian Penal Code (IPC). In such circumstances, if the authorities have come to the bonafide conclusion that the petitioner is a person of '*notoriously bad character*', then there was nothing wrong in the exercise of powers under Section 33(7) of the said Act.

7] Rival contentions now fall for my determination.

8] This Court in the case of *K. V. Acharya* (supra) has held that once the licensing authority has renewed the licence despite omissions, offences and breaches committed by the licensee earlier

thereto, then it would mean that such licensee has been found to be suitable person for renewal despite the said offences, breaches or incidents and, the very same offences, breaches and incidents could not be a ground for suspension of the licence. In the facts and circumstances of the present case, prosecution under PITA was launched against the petitioner on 18 October 2013. In terms of Rule 5 of the Rules appended to the very licence which has now been cancelled, the licensing officer may refuse to renew a licence, if it is satisfied, after such enquiry as he thinks fit that the licensee was not a suitable person for continuing to hold licence. Licence in the present case has been renewed on two occasions i.e. on 1 January 2013 and 1 January 2014. As such, it is reasonable to proceed on the basis that at the stage of renewal, the licensing authority did not regard the petitioner as being a person not suitable for continuing to hold the licence. The ratio of the decision in the case of *K. V. Acharya* (supra) would therefore apply and on basis of very same omissions, offences, breaches or incidents, it would not be appropriate for the respondents to cancel the petitioner's licence.

9] In the case of *Dilip J. Bhatia vs. The Commissioner of Police, Thane*², this Court has held that no order cancelling of licence passed until and unless conviction has been recorded. The

2 Writ Petition No. 7271 of 1999 Judgment dated 20 July 2000

relevant portion of the said judgment reads thus :

“This Court has held that pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the said business. Principle underlying the said decision is that even if a criminal case is pending, that by itself cannot be a ground so long as the licence holder himself or his agent or servant is convicted of the said offence. Our criminal jurisprudence recognizes that until a person is tried and held guilty, he should be treated as innocent. Other decisions have also dealt with the same subject matter, which have been included in the writ petition compilation. I do not think that it is necessary for me to refer to each of the said decision as the consistent view of this Court has been that pendency of the criminal proceedings cannot be a ground for cancellation of licence. Accordingly, petition should succeed on this issue.”

10] In the present case, the impugned orders of cancellation has been made on the ground of mere pendency of cases under PITA and IPC. In the light of the law laid down by this Court in the case of *Dilip Bhatia* (supra) and which is being followed in several other cases, it was not open to the respondents to make the impugned orders of cancellation, merely on the ground that the prosecution is pending under the provisions of PITA and IPC.

11] Accordingly, there is no option than to set aside the impugned orders and to make the Rule absolute in terms of prayer clause (b).

12] The learned AGP points out that there is no question of issue of any writ of mandamus to the 1st respondent directing renewal of

the lodging licence. This is because the lodging licence issued on 1 January 2014 has since expired on 31 December 2014. Accordingly, it shall be open for the petitioner to apply for such licence and the Authorities are directed to consider such applications expeditiously and in accordance with law.

13] Before I part with this judgment, it is necessary to observe that notwithstanding the serious charges leveled against the licensee, the orders cancelling the licence are required to be interfered with, on the ground that mere pendency of prosecution, cannot be a ground for cancellation. In the present case, the charges levelled against the petitioner are undoubtedly of a serious nature, particularly since some of them involve minors. In these circumstances, it would be appropriate to direct the Court before which the case against the petitioner (Crime No. 190 of 2013) is pending to dispose of the same in accordance with law as expeditiously as possible and in any case within a period of three months from the date of production of an authenticated copy of this order. The respondent no. 1 shall ensure that these directions along with an authenticated copy of this order is placed before the Court before which the prosecution against the petitioner is pending. Needless to add that in case any adverse orders are made by the Court before which such prosecution is pending, it shall be open for

the Authorities to take action in accordance with law against the petitioner.

14] With the aforesaid observations, the Rule is made absolute in terms of prayer clause (b) of the writ petition. There shall be no order as to costs.

15] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka