

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1957 OF 2015

M/s. Hotel Jayesh Lodge	..	Petitioner
vs.		
State of Maharashtra & Ors.	..	Respondents

Mr. R. D. Soni i/b. Shree & Co. for Petitioner.
Ms Vaishali Nimbalkar – AGP for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 24 February 2015

Date of Pronouncing the Judgment : 26 February 2015

JUDGMENT :-

1] Not on board. Upon production, taken on board.

2] This petition is directed against the order dated 14 January 2015 made by the Commissioner of Police, Navi Mumbai cancelling the petitioner's licence to operate a lodge, which licence had been issued under the provisions of the Bombay Police Act, 1951 and the Rules framed thereunder ("said Act" and "said Rules").

3] The petitioner, in the petition has stated that as against the impugned order dated 14 January 2015, the petitioner has instituted a statutory appeal under Section 33 of the said Act. However, as the appellate authority has not taken up the appeal for consideration, the petitioner has no other alternative but to file the present petition

challenging the legality, validity and propriety of the impugned order directly before this Court.

4] Accordingly, Mr. R. D. Soni, the learned counsel for the petitioner was heard in support of the petition. Mr. Soni submitted that the impugned order is based upon incident dated 28 May 2014, in respect of which there is a prosecution pending. Relying upon the decisions of this Court in the case of *Dilip J. Bhatia vs. The Commissioner of Police, Thane & Anr.*¹, Mr. Soni submitted that matters, in respect of which prosecution is pending, can never be taken as the basis for issuing orders of cancellation or suspension of licence. Mr. Soni further submitted that the impugned order misinterprets the petitioner's reply as well as statement, by treating the same as admission of the charges referred to in the show cause notice. Mr. Soni further submitted that the mere non compliance of conditions of licence cannot *per se* justify suspension of licence. In this regard, reliance was placed upon the decision of this Court in the case of *Allahbaksh Ismail Ibrahim vs. Commissioner of Police & Ors.*² Finally, Mr. Soni submitted that the penalty of cancellation of licence is grossly disproportionate to the charges levelled. On all these grounds, Mr. Soni submitted that the impugned order dated 14 January 2015 ought to be set aside.

1 2001 (1) Bom. C.R. 443

2 2004 (1) ALL MR 677

5] Having heard the learned counsel for the petitioner and perused the record, there is no case made out to interfere with the impugned order. At the outset, there is no allegation that there was any breach in compliance with the principles of natural justice and fair play before making the impugned order. The show cause notice, apart from alleging other breaches, emphasized that on 28 May 2014 at about 6.30 p.m., when the petitioners lodging was raided, six women were apprehended in the lodging and upon inquiries, it was revealed that one Mr. Subodh Daagi and Pande have procured them for the purposes of prostitution. Statement of the lodge Manager Krishna Divakar Sharma and the lodge operator one Mr. Anil Shetty was recorded. Arrests were also made. Breach of condition no. 10(1) was alleged, in as much as the petitioner was not present at the lodging and the aforesaid two persons were unauthorizedly managing the lodge.

6] The petitioner submitted the detailed response dated 6 November 2014 to the show cause notice. A perusal of the response would indicate that the petitioner has at no place denied the incident of 28 May 2014 or the charge set out in the show cause notice. All that the petitioner has stated was that he trusted one Mr. Sudhakar Naik by handing over the lodge premises on leave and licence to him, and that the said Sudhakar Naik has betrayed the

trust. The reply states that Sudhakar Naik, has assigned the operations at the lodge in favour of one Balkrushna Devkote from Nepal and that such assignment is unauthorised. Finally, the reply states that after the receipt of the show cause notice, the petitioner has terminated the leave and license and the petitioner assures that such incidents will not recur in future.

7] The impugned order dated 14 January 2015 made by the respondent no. 3, records that the petitioner's reply was duly considered. The impugned order further records that the petitioner was afforded a personal hearing in the matter. Further, in the course of such personal hearing, the petitioner admitted his defaults and even asked for forgiveness in the matter.

8] The learned counsel for the petitioner submitted that the petitioner never admitted the charges and the petitioner's response or for that matter statement in the course of personal hearing has been misunderstood or misinterpreted. Such submission cannot be accepted. In the reply, there is no denial with regard to the incident of 28 May 2014. At the highest, the attempt is to pass on the buck upon Mr. Sudhakar Naik or Balkrushna Devkote. The petitioner at no stage, applied before the respondent no. 3 for correction of record, if indeed, in the course of personal hearing, the petitioner

had not admitted the charges in the show cause notice. Further, and most importantly, in the memo of appeal instituted by the petitioner there is not even any ground that such an admission was never made by the petitioner in the course of personal hearing. Incidentally, there is no difference between the grounds in the memo of appeal and the grounds urged in the present petition. In the grounds to the present petition as well, there is no case made out that such an admission was not made by the petitioner, in the course of personal hearing.

9] This is not a case where matters with regard to which prosecution is pending, have been made the base for issuance of the impugned order. The show cause notice, merely records that prosecution has been launched against six women and the managers and the operators of the lodging. If the impugned order is perused, then the same is based upon the contents of the petitioner's response as also the admission with regard to the charges in the show cause notice. In such circumstances, the decision in the case of *Dilip Bhatia* (supra) is inapplicable. Besides, in this case, breaches of the terms and conditions of the licence as also the provisions of the said Rules are clearly made out. There is no apparent explanation, except that the petitioner has tried to pass on the buck to one Sudhakar Naik or Balkrushna Devkote.

10] In the case of *Allahbaksh Ibrahim* (supra), this Court has held that mere non compliance with conditions of licence cannot by itself a ground for suspension of licence. This is not a case of mere non compliance with the terms and conditions of the licence. In this case, the petitioner admits that the operation of the lodging was handed over to some other persons, and it is the case of the petitioner that if the said persons have indulged into acts which may not be conducive to the maintenance of law and order, the petitioner cannot be held as responsible. It is the case of the petitioner that in the leave and licence document, by which the lodging was handed over to Sudhakar Naik, there is clause which states that Sudhakar Naik will be responsible for any illegal or immoral activities, if carried out in the premises. This is not merely any breach of the terms and conditions of licence, but also the said Rules. Again, there is virtually no defence raised by the petitioner, except by way of passing the buck to the said persons.

11] Finally, on the aspect of disproportionate penalty, there is no material placed on record by the petitioner. Ground (N) of the petition merely states that in case of similarly situated hotels, respondent no. 3 has imposed a minor penalty. Apart from this ground, there is no other ground alleging disproportionality. That

apart, the charge against the petitioner's establishment is a serious one. The petitioner's lodging was being used for the purposes of prostitution. The petitioner in the detailed reply has merely blamed Sudhakar Naik and Balkrushna Devkote. The petitioner admits having licensed the lodging premises to Sudhakar Naik. There is nothing on record that appropriate permissions were obtained prior to such assignment. The licences under the said Act, are personal in nature. In these circumstances, it cannot be said that the penalty imposed is disproportionate.

12] In the aforesaid circumstances, there is no case made out to interfere with the impugned order dated 14 January 2015. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka