

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9292 OF 2015

Surendra Premveer Pardeshi

.. Petitioner

V/s

The Commissioner of Police and Another

.. Respondent

Mrs Veena B. Thadhani for the Petitioner.

Mrs. M.S. Bane, 'B' Panel Counsel for the Respondent.

CORAM : M.S. SONAK, J.

DATED : 21 SEPTEMBER 2015

P.C. :

. This petition challenges the order dated 4 September 2015, which was received by the Petitioner on 14 September 2015 canceling the Petitioner's license for running a Bar and Restaurant.

2 Against the impugned order dated 4 September 2015, the Petitioner has instituted a statutory appeal u/s 33 of the Bombay Police Act, 1951 before the Respondent No.2 on a very next date, from the receipt of the impugned order i.e. 15 September 2015. On

16 September 2015, however, this petition has been filed by making an averments that the Petitioner's application seeking stay on the impugned order is not being considered by the Appellate Authority.

3 Mrs. Thadhani, the learned Senior Counsel for the Petitioner states that the impugned order dated 4 September 2015 is ex-facie and without jurisdiction. That apart, the learned Counsel points out that several decisions of this Court in which notice is taken of the circumstance that the Appellate Authority does not take up or decide the application for stay and therefore, this Court should at least direct the Appellate Authority to dispose the appeal expeditiously and in the meanwhile, the impugned order should be stayed.

4 Having heard the learned Counsel for the parties, in my judgment, this petition cannot be entertained. The law has provided for an alternative and efficacious remedy of appeal against the impugned order. Since the Appellate Authority has power to set aside the impugned order. It also has an ancillary and incidental power of granting stay on its implementation, provided ofcourse the case is made out for grant to such stay. Accordingly, the Appellate Authority

is duty bound to consider appeal. The Appellate Authority is also to consider the application for stay, in case the same is filed alongwith the memo of appeal. Further considering the nature of relief applied for, there is accommodation to decide and disposed of the application for stay as expeditiously as possible, so that parties are not compelled to approach the writ Court for such relief.

5. In fact, the Division Bench of this Court in case of Bhaskar B. Bhosale V/s State of Maharashtra and Others, **2003(6)**

Bom C.R. 592 at paragraph-7 has observed as under :-

“We find substance in the submission of the learned Counsel for the petitioner. If the order passed by the third respondent is subject to appeal and in fact, an appeal is filed within the stipulated period, and alongwith the Memorandum of appeal, an application for stay is also filed, it is obligatory on the appellant authority to pass an appropriate order on application for stay. Since, no order was passed by the Appellant Authority, in our opinion, the operation of the order of suspension deserves to be stayed till an application for stay is decided. We, therefore, direct the Appellate Authority to pass an appropriate order on application for stay of the petitioner. Till then, the order impugned in the appeal, shall not be implemented. Let such an order

on an application for stay be passed within four weeks from today.”

6 As of now, it has become almost a routine that the statutory appeal is preferred against the orders of cancellation of licenses and soon thereafter, the petition is filed before this Court seeking interim relief. Once, the interim relief is granted pending consideration of appeal, the Petitioner naturally request for continuation of such interim relief, even after the appeal is decided against them by the Appellate Authority. Further, the Appellate Authority is also, despite of earlier order made by this order, avoiding the taking up the application seeking interim relief, perhaps knowing fully well, the parties will approach this Court and obtain the interim relief. This situation is hardly satisfactory and requires improvement.

7 Mrs. Thadhani, the learned Senior Counsel appearing for the Petitioner has submitted that despite several attempts in the past, the situation has not improved and is unlikely to improve. Mrs. Thadhani, the learned Counsel points out that notwithstanding orders of this Court, the Appellate Authority, disregards the same and

do not decide the application for interim relief. Atleast of now, there is no material on record, which will support a charge of this nature. The learned Assistant Government Pleader also assures this Court that the Secretary, who is enjoined to take up for consideration such statutory appeals and applications for stay, will neither intentionally nor unintentionally disobey the directions made by this Court. The learned Assistant Government Pleader has undertaken to communicate this order to the Appellate Authority, so that directions issued are duly complied with.

8 Issue as to whether the impugned order is within the jurisdiction or without, is the matter which is required to be decided by the Appellate Authority. Further the Appellate Authority is also required to decide as expeditiously as possible the application for stay made by the petitioner.

9 Accordingly, although this petition is not being entertained, the directions are issued to Respondent No.2 i.e. Principal Secretary, Home Department to hear and decide the Petitioner's application for stay as expeditiously as possible and in any case within a period of one week from today on its own merits and in

accordance with law. This petition is disposed off with the aforesaid directions. It is made clear that this Court has not adverted to the merits of the appeal and it will be for the Appellate Authority to decide the merits.

10 All concerned to act upon an authenticated copy of this order.

(M.S. SONAK, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.