

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8208 OF 2006**

**Hotel Yatri (Lodging House))
a Partnership Firm carrying on business)
at Madhuvan Building, S. V. Road, Junction)
Near Chincholi Railway Crossing Malad (west))
Mumbai 400 067) ..Petitioner**

Vs.

**1 The Commissioner of Police)
having his office Opp Mahatma Phule Market)
Mumbai 400 001)

2 The State of Maharashtra)
through the Hon'ble Minister of State (Home))
Mantralaya Mumbai -32) ..Respondents**

**Ms Veena Thadani for the Petitioner
Mrs. Vaishali Nimbalkar AGP for the Respondent Nos.1 and 2**

**CORAM : R. M. SAVANT, J.
DATE : 10th July, 2015**

ORAL JUDGMENT

1 The Writ Jurisdiction of this court under Article 227 of the Constitution of India is invoked against the order dated 1-12-2006 passed by the Appellate Authority i.e. the then Hon'ble Minister for Home, Government of Maharashtra, by which order, the Appeal filed by the Petitioner against the order dated 17-6-2006 passed by the Licensing Authority suspending the licence for 45 days came to be dismissed.

2 The Petitioner is running a residential hotel (lodge) pursuant to the licence issued by the Municipal Corporation of Greater Mumbai (for short Mumbai Corporation of Greater Mumbai). The Petitioner is also holding a Public Entertainment Licence (for short PPEL) which is issued under the Bombay Police Act, 1951, by the Respondent No.1 who is the Licensing Authority.

3 The Show Cause Notice came to be issued to the Petitioner on 1-8-2002 alleging that the Petitioner is not abiding by the terms of the licence and that certain immoral activities mentioned in the Show Cause Notice are noticed in the licenced premises. The said Show Cause Notice was replied on behalf of the Petitioner vide its reply dated 3-10-2002. The Petitioner once again came to be issued with a Show Cause Notice on 18-10-2003, a copy of which is at Exhibit B to the above Petition. In the said Show Cause Notice, the gravamen of the allegations against the Petitioner was again the carrying out of illegal / immoral activities in the licenced premises and that the Petitioner was turning a blind eye to the said illegal / immoral activities. In the said Show Cause Notice, the prosecution which is lodged against the Petitioner under the Prevention of Immoral Traffic Act were referred to. The said Show Cause Notice make a reference to the two cases which were registered against the Petitioner under the said Act and were pending before the concerned Criminal Courts. In the said Show Cause Notice, the allegation was also made in respect

of the violation of Rules 8(1) and 8(2) of the Rules in as much as it was alleged that the persons whose names are appearing in the licences were not found in the licenced premises when visited by the police. The Petitioner replied to the said Show Cause Notice and in the reply it was the case of the Petitioner that the Petitioner has applied for inclusion of names to the authorities and therefore the violation of Rules 8(1) and 8(2), could not be alleged against the Petitioner, as the said applications have not been dealt with by the authorities. In respect of the cases which were mentioned in the Show Cause Notice, it was the case of the Petitioner that the said cases could not be taken into consideration in view of the fact that they were subjudice and in the light of the pronouncement of this Court the mere filing of the case cannot be a consideration for action to be taken. The Licensing Authority adjudicated upon the said Show Cause Notice and by its order dated 17-6-2006 ordered the suspension of the licences for a period of 45 days. The grounds urged on behalf of the Petitioner in the said reply were not accepted by the Licensing Authority i.e. the Deputy Commissioner of Police Mumbai.

4 The Petitioner aggrieved the said order dated 17-6-2006 passed by the Licensing Authority challenged the same by way of an Appeal before the State Government. The Appellate Authority did not deem it appropriate to interfere with the order passed by the Licensing Authority and accordingly dismissed the appeal by order dated 1-12-2006. During the pendency of the

Appeal, the Petitioner filed a Writ Petition No.6577 of 2006 seeking a direction that the Appeal and the said application be directed to be disposed of within a particular time frame. A Division Bench of this Court in Writ Petition No.6577 of 2006 directed the Appeal to be disposed of within a period of three weeks from the date of its order and during the interregnum the interim relief granted earlier was continued. Hence the order of suspension was stayed by this Court in the said Writ Petition No.6577 of 2006. The Petitioner's Appeal thereafter came to be dismissed by the Appellate Authority i.e. the then Hon'ble Minister for Home, Government of Maharashtra by order dated 1-12-2006. It is thereafter that the instant Petition came to be filed by the Petitioner. The above Petition had come up for admission before a Learned Single Judge of this Court on 19-12-2006 who admitted the Petition and granted interim relief in terms of prayer clause (c). However it is the case of the Petitioner that between 11-12-2006 and 19-12-2006 the Petitioner's premises were closed, in support of which the Learned Counsel for the Petitioner relies upon the hotel register which according to her bears the endorsement of the police officer concerned in evidence of the fact that the hotel was closed between 11-12-2006 to 19-12-2006.

5 As indicated hereinabove, against the Petitioner offences were registered under the Prevention of Immoral Traffic Act, pursuant to which, the cases were pending before the concerned Criminal Courts. The Learned

Counsel for the Petitioner had filed a Civil Application in the above Petition being Civil Application No.1788 of 2011 for seeking expeditious hearing of the above Petition, in view of the fact that the Petitioner has been acquitted in the said two Criminal Cases reference to which is made in the Show Cause Notice. To the said Civil Application have been annexed the judgments of the concerned Criminal Courts acquitting the Petitioner in the said case. The Learned AGP Mrs. Nimbalkar would contend that though a reference has been made to the said two Criminal Cases which were pending against the Petitioner, the licence has not been suspended merely on the said grounds but has also been suspended on account of the violation of the licence conditions and on the ground that certain immoral activities were being carried out in the licences premises. No doubt, the Show Cause Notice makes a reference to violation of Rules 8(1) and 8(2), the Show Cause Notice also makes a reference to the alleged immoral activities carried out in the premises of the Petitioner and especially paragraphs 2 and 3 thereof.

6 In so far as as the violation of Rules 8(1) and 8(2) are concerned, it is required to be noted that the allegations against the Petitioner is that the persons whose name is appearing in the licence as Manager was not found in the licenced premsies when the authorities visited the same. In the said context, it is required to be noted that the Petitioner had applied for incorporation of the names of the persons as Managers in the licence on 7-1-

2002 and thereafter again on 6-11-2003, copies of which letters have been annexed to the above Petition at pages 33 and 35 of the above Petition. However, no action has been taken on the said letters by the authorities. In my view, therefore, there is no merit in the said allegations against the Petitioner in so far as the violation of Rules 8(1) and 8(2) are concerned.

7 In so far as the alleged immoral activities being carried out in the licenced premises, it is required to be noted that the Petitioner has been prosecuted for the same and a reference to the said prosecution as mentioned hereinabove is made in the Show Cause Notice. The said cases have resulted in the acquittal of the Petitioner. The judgments of the concerned Criminal Courts have been produced by the Petitioner by annexing them to the Civil Application. It is also required to be noted that it is the case of the Petitioner that between 11-12-2006 to 19-12-2006 i.e. till a Learned Single Judge of this Court granted stay, the impugned order was implemented. The register produce by the Learned Counsel for the Petitioner on which register there is an endorsement of the officer concerned, prima facie indicates that the premises of the Petitioner were closed for at least a period of 9 days. In my view therefore, in the light of the acquittal of the persons concerned with the Petitioner in the said two Criminal Cases as also considering the fact that the Petitioner's premises were closed for a period of 9 days in terms of the order passed by the Licensing Authority the punishment of suspension of the licence

for 45 days appears to be a bit excessive, the impugned order passed by the Appellate Authority confirming the order passed by the Licensing Authority suspending the Petitioner's licence for a period of 45 days, is therefore required to be quashed and set aside and is accordingly quashed and set aside. The Petition is accordingly allowed in terms of prayer clause (b). Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

8 A Photocopy of the extract of the hotel register is taken on record and marked as "X" for identification.

[R.M.SAVANT, J]