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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.10561 OF 2014

Rajesh Manilal Patel ...Petitioner
vs.
Union of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.10560 OF 2014

Rajesh Manilal Patel ...Petitioner
vs.
Union of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.10562 OF 2014

Arun Subbayya Shetty ...Petitioner
vs.
Union of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.10563 OF 2014

Rajesh Manilal Patel ...Petitioner
vs.
Union of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.10564 OF 2014

Balkrishnan N. Shetty ...Petitioner
vs.
Union of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.10573 OF 2014

Manoj V. Shetty ...Petitioner
vs.
Union of India & Ors. ...Respondents

Mr.Shardul Singh a/w Vaibhav Ramchandra Gaikwad i/b
Ashoka Law Firm for the Petitioner
Mr.Parag Vyas a/w Mr.Dhanesh Ramanlal Shah for the
respondent No.1
Mr.Shrishailya Sadashiv Deshmukh for respondent
Nos.2 and 3.

CORAM : A.S.OKA, &
REVATI MOHITE DERE, JJ.
DATE : JUNE 29, 2015

P.C.:

1 Heard the learned counsel for the petitioner and the learned counsel representing the respondent Nos.2 and 3. Since the facts of all these petitions are more or less identical, for the sake of convenience, we are making a reference to the facts of the case in the Writ Petition no.10561 of 2014.

2 The petitioner is the proprietor of a Hotel at Nani Daman within the limits of the Union Territory of Diu and Daman. According to the case of the petitioner, he has been granted a licence to run a Bar and a Restaurant in the Hotel premises. On 14th march 2014, the petitioner was granted permission to organize Orchestra in the Hotel/Bar and Restaurant. The said permission was granted from 1st April 2014 to 31st March 2015. By the impugned order dated 29th November 2014, the permission granted to the petitioner to organize Live Orchestra in Hotel, Bar and Restaurant was withdrawn. It is this order which is impugned in this petition under Article 226 of the Constitution of India.

3 The submission of the learned counsel for the

petitioner is that the petitioner has a fundamental right to organize the Live Orchestra in his Hotel. His submission is that before withdrawing the permission, no opportunity of being heard was granted to the petitioner and, therefore, the order is in breach of principles of natural justice. The learned counsel for the petitioner pointed out that apart from the allegations made against the petitioner, the withdrawal of the permission is based on the cancellation of the earlier policy by the Union of Territory to permit the organization of Live Orchestra in Bars and Restaurants. Relying upon the decision of the Apex Court in the case of Onkarlal Bajaj and others vs. Union of India and another¹, he urged that as large number of persons will be affected by the said policy, an opportunity of being heard ought to have been granted before the change of policy. He urged that the terms and conditions on which the permission was granted, there are sufficient safeguards and without taking recourse to the safeguards, such a drastic action could not have been taken. He relied upon the decision of the Apex Court in the case of State of Maharashtra and another vs. Indian Hotel and Restaurants Association and others². The learned counsel for the respondent Nos.2 and 3 supported the impugned order.

4 We have considered the submissions. The permission which has been cancelled by the impugned

1 2003(2) SCC 673

2 2013(8) SCC 519

order was valid only till 31st March 2015. Perusal of the impugned order shows that there is no specific finding recorded against the petitioner that the petitioner himself has indulged in any breaches. What is recorded in the impugned order is perhaps the reasons as to why the Union Territory was compelled to withdraw its earlier policy. The relevant part of the impugned order reads thus:

“Whereas permission to organize Live Orchestra in Hotels Bars and Restaurants were given by the Collector, Daman as per the policy made in this regard.

And whereas these permissions were given subject to certain terms and conditions keeping in mind the concerns such as law and order and public decency. It was specifically stated that the Orchestra performance at the premises will not have any profanity or impropriety of language, any indecency of dress, dance, movement or gesture, will not have any bar girls serving or entertaining the customers and artists at any time will not be permitted to sit or mix with the customers or be present in any area other than the stage.

And whereas, it has been noticed that there have been frequent violation of the terms and conditions under which these permissions were given leading to

cancellation of some of these permissions.

And whereas, complaint has also been received from Police that these permissions for Live Orchestra are leading to law and other problems.

Now, therefore, it is ordered that the policy for granting permissions for Live Orchestra is hereby withdrawn and hence all such existing permissions given to Hotels, Bars and Restaurants for Live Orchestra under the policy stand cancelled with immediate effect. In case of violation of this order due action as per law shall be taken."

(underline supplied)

5 Though the learned counsel for the petitioner has strenuously urged that in this petition apart from other challenges, there is a specific challenge to the action of the withdrawal of the earlier policy, we find that there is no specific challenge incorporated in this petition. The learned counsel for the petitioner relied upon the Ground (h) on page 7 of the petition which reads thus:

"(h) the acts of the Respondents are arbitrary, illegal and in complete violation of the prevailing law of the land."

6 We do not agree with the learned counsel for the petitioner that there is a specific challenge

in this petition to the action of withdrawal of the policy. In any event, even assuming that there is such a challenge, the permission granted to the petitioner has already expired on 31st March 2015. Even assuming that the petitioner succeeds in this petition, now no order can be passed in favour of the petitioner permitting him to organize Live Orchestra in his Bar/Restaurant. Therefore, it is not necessary to entertain this petition on merits. If the petitioner is aggrieved by the new policy of the Union Territory of not permitting the conduct any Live Orchestra in the Hotels or Bars/Restaurants, the petitioner can always make an appropriate representation to the appropriate Authority of the Union Territory. If such a representation is made, the same shall be decided on its own merits in accordance with law as expeditiously as possible and within a period of six weeks from the date of which representation is made. The issue of the legality and validity of the action of withdrawal of earlier policy is kept open. The petitioners can always file a fresh petition challenging the same if their representation is not favourably considered.

7 Subject to the direction issued above, the petitions are disposed of.

(REVATI MOHITE DERE, J.)

(A.S.OKA, J.)