

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.678 OF 2015

Mrs. Farida Ramjan Patel,
Proprietress of M/s. Slipdisc Restaurant .. Petitioner
vs.
The Additional Collector Entertainment
Tax Department and ors. .. Respondents

Mr. Sarosh Bharucha i/b T. N. Tripathi & Co. for the Petitioner.
Ms Vaishali Nimbalkar, AGP for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 2 MARCH, 2015

P.C. :-

- 1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 2] This petition is directed against the following orders:
 - (a) Order dated 30 November 2005 made by the Additional Collector (respondent No.1);
 - (b) Order dated 29 September 2010 made by the Divisional Commissioner (respondent No.2); and
 - (c) Order dated 10 October 2014 made by the Principal Secretary and Officer on Special Duty (respondent No.3).
- 3] All the aforesaid impugned orders have been made under the provisions of Bombay Entertainments Duty Act, 1923 (said Act), requiring the petitioner to pay entertainment duty of Rs.1 Lac and penalty of Rs.2 Lacs. The charge against the petitioner was that the petitioner was operating a discotheque without any valid licence for the same.

4] If the impugned order dated 30 November 2005 is perused, it appears that the Additional Collector has relied upon the following materials:

- (a) The report of Assistant Entertainment Duty Officer;
- (b) The statement of Shri. Irani, Manager of the petitioner;
- (c) The Panchanama.

5] Insofar as the statement of Shri. Irani is concerned, the same was prepared in Marathi language on 2 October 2005. The Manager Irani has admitted signing to the same, however, the same was subject to condition that the English copy will be supplied to him. There is on record, communication dated 17 October 2005, addressed by Mr. Irani retracting the contents of the statement, on the ground that the same was obtained from him by misrepresentation.

6] In matters such as these, it is necessary that the authorities to comply with the principles of natural justice before they impose any penalty. One of the facets of compliance with the principles of natural justice is that the adverse material, if any, against the party ought not to be used, unless such party afforded an opportunity to explain the same. In the present case, the petitioner has contended that she was never furnished with a copy of report of Assistant Entertainment Duty Officer or the panchanama upon which reliance has been placed by the Additional Collector in making the impugned order dated 30 November 2005. Besides, the circumstance that Mr. Irani retracted the statement as also not been taken into consideration. Accordingly, there is failure to comply with the principles of natural justice.

7] Upon the aforesaid short ground, the impugned orders are liable to be set aside. The respondents, however, are at liberty to furnish the petitioner copies of the report of Assistant Entertainment Duty Officer, Panchanama or any other adverse material, which they may have in their possession and which they may propose to use against the petitioner and thereafter decide afresh the Show Cause Notice dated 5 October 2005.

8] The decision on the Show Cause Notice shall be taken within a period of three months from today. In the meanwhile, there shall be a restraint upon the demand or recovery of penalty amount of Rs.2 Lacs from the petitioner.

9] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

dinesh