

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 34 OF 2015

Rajeev S. Mehta	.. Petitioner
vs.	
The Commissioner of Police (Hotel Branch) and anr.	.. Respondents

Ms Veena Thadhani for the Petitioner.
Mr. P.G. Sawant B Panel, AGP for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 15 January 2015.
Date of Pronouncing the Judgment: 22 January 2015.

JUDGMENT :-

1] Rule. With the consent of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against the orders dated 12 September 2014 made by the Commissioner of Police (Hotel Branch) and State order dated 18 December 2014 confirming the same in appeal, both of which have effect of denying the petitioner, '*Public Entertainment Licence*' under Bombay Police Act, 1951 (said Act).

3] The petitioner is a sole proprietor of the restaurant functioning under the name and style of '*M/s. Senorita Bar and Restaurant*', which has been issued licences by several authorities, *inter alia*, for carrying on the business as a Restaurant / Eating House. The Commissioner of Police (respondent No.1) has itself

granted Eating House Restaurant Certificate No.5/11, some time in the month of May 2011, which has been renewed from time to time. Similarly, the petitioner has been granted FL-III Licence by the Collector, Mumbai city, in terms of the Bombay Foreign Liquor Rules, 1953 framed under the Bombay Prohibition Act, 1949. In respect of FL-III Licence which was granted on 20th February 2014 and which has since been renewed, the petitioner has paid the licence fees of Rs.3,63,000/-. Although the FL-III Licence authorizes the petitioner to sell and serve foreign liquors, before the petitioner can actually sell or serve foreign liquors, the petitioner is required to obtain Public Entertainment Licence under the said Act. This is because Section 2(10) of the said Act defines a place of public entertainment as an Eating House, where the liquor is served. Rule 3 of the Public Entertainment Rules framed under the said Act further provides that a Public Entertainment Licence can be granted only after a licence for the sale of liquor is issued under the Bombay Prohibition Act, 1949. In this case, as noted earlier, the petitioner has already obtained FL-III Licence under the Bombay Prohibition Act, 1949.

4] The petitioner's application for Public Entertainment Licence was however rejected by the Commissioner of Police (Hotel Branch) vide order dated 12 September 2014 on the ground that the petitioner does not have its own parking lot, sufficient for parking of at least five vehicles. Aggrieved by the same, the petitioner had preferred Writ Petition No.10188 of 2014, which was disposed of by an order dated 20 November 2014 directing expeditious disposal of the petitioner's appeal against the order dated 12 September 2014.

5] In pursuance to the order dated 20 November 2014, respondent No.2 acting through Principal Secretary, Home Department has made the order dated 18 December 2014, dismissing the petitioner's appeal. As noted earlier, this petition is directed against the orders dated 12 September 2014 and 18 December 2014, which shall be referred to as the impugned orders.

6] Ms Thadhani learned counsel for the petitioner by placing reliance upon several decisions of this Court submitted that once FL-III Licence has been issued under the provisions of Bombay Foreign Liquor Rule 1953, there arises no question of rejecting Public Entertainment Licence under the provisions of the said Act. This is because the provisions of Bombay Prohibition Act, 1949 and the Foreign Liquor Rules, 1953 made thereunder contemplate a stricter scrutiny with regard to both the location of the premises and suitability of the licensee. Ms Thadhani also submitted that in the present case, the petitioner is to provide for valet parking, for which purpose the petitioner has already acquired parking place vide agreement dated 1 February 2014. This was placed on record before the respondents. In any case, Ms Thadhani again relying upon certain decisions of this Court submitted that non-availability of parking place cannot be a ground for rejection of the Public Entertainment Licence, particularly since the authorities have already issued licence to operate an Eating House from the very same premises. Ms Thadhani ultimately submitted that there are several other establishments in the locality, which have been issued Public Entertainment Licence by the respondents, notwithstanding, the circumstance they have made no arrangements whatsoever, in

the matter of parking of vehicles. For all these reasons, Ms Thadhani submitted that the impugned orders are required to be set aside and directions issued for the grant of Public Entertainment Licence to the petitioner within some reasonable time.

7] Mr. Sawant, learned AGP for the respondents submitted that under Rule 5 of the Public Entertainment Rules, it is for respondent No.1 to satisfy himself that the applicant is suitable and locality where such place of entertainment is to be opened is fit for the purpose proposed, particularly, in matters of entrance and exist therefrom. Learned AGP submitted that the impugned orders have been made consistent with the powers vested in the authorities by Rule 5 of the Public Entertainment Rules and this is not a case where licence has been rejected on the grounds which are either extraneous or irrelevant. In such circumstances, learned AGP urged that this Court ought not to interfere in the matter.

8] Having heard learned counsel for the parties and perused the record, the impugned orders shall have to be interfered with in the light of several previous decisions of this Court, in situations virtually identical to the present one.

9] In case of *Krishna A. Pujari vs. State of Maharashtra*¹, learned Single Judge of this Court (Dr. D.Y. Chandrachud, J., as he then was) ruled that where an establishment had already been granted a licence to keep a public place of entertainment without any objection on the ground of its having inadequate parking place, there was no

1 W.P. No.2075 of 2004 decided on 9 March 2004

reason to decline the performance licence to provide facility of an Orchestra within the premises of restaurant. In this context, the following observations were made:

“Moreover, the authority should have due regard to the fact that in a city like Mumbai, denial of licence due to want of parking space would result in closing down of a large number of establishment on that ground. In so far as the fifth and sixth grounds are concerned. Learned Counsel appearing on behalf of the petitioner submits that the aforesaid grounds also relate to the licence for the place of public entertainment, but that in any event the petitioner is willing to furnish such assurances to the authority so as to ensure that there is no breach of the conditions of licence.”

10] In case of *Harmesh V. Commissioner of Police*², another Single Judge of this Court (N.M. Jamdar, J.), in almost identical circumstance set aside the orders declining Police Licence Class-A by observing thus:

“13 As regards the issue of parking is concerned, the learned counsel for the Petitioner has placed on record the compilation of orders passed by the Court in Writ Petition No.2075 of 2004 in the case of Krishna A. Poojari Vs State of Maharashtra & Ors. ; Writ Petition Lodging No.2995 of 2012 – Manohar G Bhavanishankar Vs State of Maharashtra and ors. And in the case of Jagdish N. Shetty Vs. Commissioner of Police & Ors. reported in 2014 (1) ALL MR 225. There is no serious dispute on behalf of the State as regards the contention that availability of parking cannot be made as a ground for rejection of the Police license. In view of this decision, the objection based on parking will not survive. A statement is made by the learned counsel for the Petitioner that valet parking will be provided to the customers of the said establishment and valet parking will be organised in such a manner not to obstruct free-flow of traffic and cause other traffic problems. This statement on instructions is accepted. If this statement is breached it will be open to the authorities to take suitable action.”

² Writ Petition No. 253 of 2014 decided on 25 April 2014

11] Similarly, in case of *Iyandurai Chinappa Kaukar vs. The Commissioner of Police and anr*³, learned Single Judge of this Court (Ranjit More, J.), in the context of denial of Public Entertainment Licence on ground of non availability of the adequate parking place, made the following observations:

“13. The license claimed by the petitioner is rejected only on the ground of non-availability of parking spaces. As stated above, this ground is covered by series of decisions of this Court and in spite of the decisions of this Court, the authorities have been passing orders as if the decisions are not existing. No purpose would be served by remanding the matter back to the authority, since the issue is already settled, however, is being ignored by the authority. This course of action has already been indicated in the decision in Jagdish N. Shetty versus commissioner of Police and ors.2014(1) ALL MR 225. In that view of the matter, the petition deserves to be allowed. Rule is, accordingly, made absolute in terms of prayer clause (b). The writ petition, accordingly, stands disposed of.”

12] There is no appreciable difference in the fact situation prevalent in the aforesaid decisions and the present case. In this case, the petitioner has already been granted Eating House Registration Certificate as well as FL-III Licence under the said Act and the Bombay Prohibition Act, 1949 respectively. Further the statement has been made that the learned counsel for the petitioner that valet parking will be provided to the customers of the petitioner's establishment and the same will be organized in such a manner has not to obstruct the free flow of traffic or cause other traffic problems. The learned counsel has also stated that the agreement dated 1 February 2014 with the Proprietor of M/s. Dreamland Social Club for acquisition of almost ten parking places

3 Writ Petition No.7951 of 2014 decided on 18 December 2014

subsist and shall subsist co-terminus with licence period or its renewal terms. The society in which the parking places have been acquired have no objection to arrangements between the petitioner and M/s. Dreamland Social Club. All these statements are made on instructions from the petitioner and are accepted. If the statements are breached, it will be open to the authorities to take suitable action in the matter, in accordance with law.

13] On the aforesaid basis although the impugned orders deserve to be quashed and set aside, it must be noted that the submission with regard to so called discrimination, is not well taken. The alleged circumstance that other establishments in the locality have obtained licences without making any arrangement whatsoever for parking of vehicles, cannot be a ground for the petitioner to insist that a licence be issued to the petitioner without any condition with regard to parking facilities. In such matters, learned AGP is right in his submission that there can be no equality of illegalities. This submission was of course made on basis of a demurer. However, in light of petitioner's submissions and because no return has been filed on behalf of the respondents, it is only appropriate that the respondents undertake a survey in the matter, so that the issue of parking of vehicles at such establishment is not completely ignored. The insistence of some reasonable arrangement in this regard, can certainly not be regarded as alien to the purposes of Rule 5 of the Public Entertainment Rules. Rule 5, requires that the Commissioner of Police satisfies himself, *inter alia* as to fitness of the locality where such place of entertainment is to be opened and means of entrance and exit to and from the place. No doubt, in recording such

satisfaction, the Commissioner of Police is required to adopt an reasonable approach, because as observed by this Court in case of *Krishna A. Pujari (supra)*, a very rigid insistence might render the closing down of large number of establishments on that ground. In the present case, as noted above, the petitioner has made reasonable arrangement in the matter of parking of vehicles of customers visiting the petitioner's establishment. Accordingly, the impugned orders are liable to be set aside.

14] In the present case, the only reason for refusal to issue Public Entertainment Licence concerned the alleged deficiency in parking arrangement. In view of the findings recorded as also the statements made by and on behalf of the petitioner, such reason no longer survives. Neither in the impugned orders, nor in the course of submissions made before this Court, was it suggested that there might be any other ground for denial of Public Entertainment Licence to the petitioner establishment. In such circumstances, no useful purpose will be served by remanding the matter to the authorities. Instead, by following the course of action indicated in case of *Jagdish N. Shetty vs. Commissioner of Police & ors.*⁴, this petition can be allowed by making Rule absolute in terms of prayer clause (b) and thereafter directing respondent No.1 to issue the petitioner Public Entertainment Licence (i.e. Police Licence, Class-A) within a period of two weeks from the date of this order, subject of course to the petitioner satisfying other legal requirements.

4 2014 (1) ALL MR 225

15] Rule is made absolute to the aforesaid extent. No orders as to costs.

(M. S. SONAK, J.)