

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1419 OF 2010

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Aroop Bishwanath Das
owner of Swaroop Restaurant & Bar ...Petitioner

v/s.

State of Maharashtra & ors. ...Respondents

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Mr.Pankaj Kansara i/b Kansara Thanekar for the Petitioner.
Mr.R.J.Mane, AGP for the Respondents/State.

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CORAM : A.A. SAYED, J.

DATED : 8 MAY 2015

P.C.:

The Petitioner by this Petition under Article 226 of the Constitution impugns the order dated 21 April 2010 passed by the Respondent No.4-Minister (Home) in Appeal confirming the order dated 3 November 2009 passed by the Respondent No.3-Dy. Commissioner of Police suspending Licence to Keep a Place of Public Entertainment (Police Licence) issued to the Petitioner under the Rules for Keeping Places for Public Entertainment in Greater Bombay, 1953 framed in exercise of powers under the Bombay Police Act, 1951 for a period of 30 days.

2. The Petitioner is running a Bar & Restaurant under the name and style of "Swaroop Restaurant & Bar". The Respondent No.3 issued a Notice dated 10 September 2009, inter alia, calling upon the Petitioner to show cause why the Police Licence of the Petitioner should not be suspended for 120 days. In the said Show Cause Notice, it is stated that the Petitioner had committed breach of Rule 7A, 8(1), 8(2), 6, 21-A and 24 of the Rules for Keeping Place of Public Entertainment in Greater Bombay, 1953, the details whereof are as follows:

"(i) Breach of Rule 7A

Local police has submitted a report and papers in respect of your Establishment and it is seen that local police has visited your Establishment on 26-03-2009 at about 2:05 hours and it is noticed that your Establishment was kept open. As per Rule 7-A, Establishment is required to be closed at 01:30 hours. Still you have kept your Establishment open beyond the prescribed time and, therefore, you have committed a breach of Rule 7-A.

(ii) Breach of Rule 8(1)

From the report and papers received against your Establishment it is noticed that, on 09-05-2009 at about 21.20 hours you were not present and you were found running the Establishment through a person by name Sudeep Sadhana Datt, so called Manager.

As per Rule 8(1), it is obligatory on the part of the licensee to remain present. You were found running the Establishment through unauthorized person. In fact, there is a provision to enroll the name of the Manager on the license. For that you have not made necessary application and intentionally you were running the said Establishment through unauthorized person and, therefore, there is a breach of Rule 8(1).

(iii) Breach of Rule 8(2):

From the reports and the papers received with regard to our Establishment, it is seen that on 09-05-2009 at about 21.20 hours, you were not personally present and you were running the Establishment with so called Manager Shri Sudeep Sadhana Datt.

Upon perusing the Public Entertainment License, you have not taken prior permission for recording the name of the Manager and had not submitted three specimen signatures or thumb impression and, therefore, there is a breach of Rule 8(2).

(iv) Breach of Rule-6

It is obligatory on the part of licensee to abide the provisions of Mumbai Shop and Establishment Act, 1948. As per section 33 of the said Act, ladies employees are not permitted to work after 9:30.

Local Police on 12-12-2008 visited your Establishment at about 22:00 hours, 5 ladies waitress, 7 ladies waitress on 26-3-2009 at about 02:05 hours are found beyond time as in place of Public Entertainment. Further the said ladies waitresses were found behaving indecently and in obscene manner. You have therefore permitted the said ladies waitress to work beyond time and, therefore, there is breach of Rule 6.

(v) Breach of Rule 21-A

It is obligatory on your part to strictly abide by rules and regulations of Police Licence. The Local Police visited the Establishment on 22-11-2008 at about 21:10 hours 6 ladies waitress and on 22-12-2008 at about 21.10 hours 6 ladies waitress, on 18-02-2009 at about 20.45 hours 3 ladies waitress, on 2-3-2009 at about 20.45 hours 3 ladies waitress, on 26-3-2009 at about 2.05 hours 7 ladies waitress, on 25-4-2009 at about 19.30 hours 5 ladies waitress and on 9-5-2009 at about 21.20 hours 2 ladies waitress were found behaving indecently and in obscene manner. You have knowingly on the said date permitted the said ladies bar girls to behave indecently and in obscene manner and thereby committed breach of Rule 21-A.

(vi) Breach of Rule 24:

The Establishment owner has to consider the aim of Rule 24 and has to strictly abide the said rules.

From the reports, papers received from the Local Police station it is noticed that Local Police has inspected your Establishment on 26-03-2009 at about 2.05 hours your Establishment was found open beyond time. Similarly on 9-5-2009 at about 21.30 hours, Local Police has reported that you were not personally present and you were running the Establishment through so called Manager and you have no control over the same. Further on 22-11-2008 at about 21.10 hours Local Police inspected your Establishment, 6 ladies waitress, on 12-12-2008 at about 22.00 hours 5 ladies waitress, on 26-12-2008 at about 21.10 hours 5 ladies waitress, on 10-2-2009 at about 21.20 hours 5 ladies waitress, on 18-2-2009 at about 20.45 hours 3 ladies waitress, on 2-3-2009 at about 20.45 hours 3 ladies waitress, on 26-3-2009 at about 2.05 hours 7 ladies waitress, on 25-4-2009 at about 19.30 hours 5 ladies waitress and on 9.5.2009 at about 21.20 hours 2 ladies waitress were found behaving indecently and in obscene manner. Further on 12-12-2008 and 26-03-2009, the ladies waitress were found working beyond prescribed time.

From the above, you have time and again committed breach of Rules 7-A, 8(1), 8(2), 6 and 21-A and hence you are not running the said Establishment in accordance with law and irregularly. Hence, there is breach of Rule 24.

3. A reply was filed by the Petitioner through his Advocate to the Show Cause Notice denying the allegations. It was pointed out that in some cases which have been registered against the lady waitresses, the Competent Court had passed an acquittal order and some cases are pending. It was further pointed out that the person who is stated to be the Manager is not a Manager.

4. After hearing the Petitioner the Respondent No.3- Dy.Commissioner passed an order suspending the Police Licence of the Petitioner for a period of 30 days, which was confirmed in Appeal by the Respondent No.4-Minister (Home) by the impugned order dated 21 April 2010. Hence this Petition.

5. The Respondent No.3- Dy.Commissioner in his order dated 3 November 2009 has observed as follows:

“Considering the above said submission, I have come to the following conclusion.

- i) In this proceeding I have considered the facts, report, show cause notice and the reply and submissions made at the time of personal hearing.
- ii) I am agreeing to the submission made that the cases registered on 22-11-2008, 12-12-2008 and 26-12-2008 in

which discharge order is passed and in remaining 6 cases are subjudiced. From the above it is seen that you are not running the establishment smoothly.

- lii) From the action taken against your establishment time and again it is clear that you are not taking due diligence in running the said establishment. Further, considering the antecedent it is seen that earlier for the breach of rules, the local police has initiated the proceeding for which your police licence came to be suspended for 7 days, in the year 1999 and for 3 days in the year 2006. Still there is no improvement in your behaviour and you are repeatedly committing breach of rules. You have therefore committed breach of rules. You have therefore committed breach of Rule 7A, 8(1), 8(2), 6 and 21A and also Rule 24 of the Entertainment Rules, 1953. Because of the breaches of the rules committed regularly, there is likelihood of breach of peace in the nearby vicinity and it is therefore necessary to take necessary action.
- iv) As per section 131AA of the Bombay Police Act, the licensee is equally liable for any breach committed by any employee or officer from his establishment.

Taking into consideration the aforesaid facts I am passing the following order:

ORDER

The police license bearing No.49 issued to Shri Bishwanath K. Das, Shri Swaroopkumar B. Das, Shri Nirupkumar B.Das and

Shri Aroopkumar B. Das of M/s.Swaroop Restaurant & Bar, 542 Gulalwadi Corner, Teen Batti, Mumbai- 400 004, has been suspended for a continuous period of 30 days.

Sd/-
(Vijay Jadhav)
Dy.Commissioner of Police HQ-I
for Commissioner of Police”

6. In Appeal the Minister (Home) has upheld the order of the Dy.Commissioner by the impugned order dated 21 April 2010 and has observed in paras 5 & 6 as follows:

“5. Before taking decision in the above said appeal an opportunity of hearing was given to the Appellant. It is necessary to curb the illegal activity of the Appellant and therefore the Respondent has suspended the Police License of the Appellant for 10 days and the said punishment is fair and proper. The Hon'ble High Court Aurangabad Bench in Writ Petition No.72/2008 in case of Sanjay Jaiswal v/s. State of Maharashtra & ors. has passed an order that the Owner of Establishment is liable and responsible for any offence committed by the Staff or other. The Respondent as per section 33 and 10(2) of Mumbai Police Act is entitled to take action against the Appellant. The Criminal

proceeding and action for breach of rule are independent and separate. The licensing authority has power to take administrative action and in this proceeding only breach of rule as any correspondence. I have considered the above fact and I have come to conclusion that the order passed by Dy.Commissioner of Police (HQ-1) Greater Mumbai is proper to avoid law and order problem.

6. Considering the above said facts and submission made by the Advocate for the Appellant the order passed by the Dy.Commissioner of Police HQ-1 dated 03-11-2009 is confirmed and appeal filed by the Appellant is rejected.”

7. Having heard the learned Counsel for the Petitioner and learned AGP, I find that the Respondent No.3- Dy.Commissioner & the Respondent No.4-Minister (Home) in passing the impugned orders have considered all the facts and circumstances of the case and the proposed suspension period of 120 days as per the Show Cause Notice is reduced by the impugned orders to 30 days. I do not find any infirmity or illegality in the impugned orders to warrant interference in the exercise of writ jurisdiction of this Court under Article 226 of the Constitution. The judgments cited by the learned Counsel for the Petitioner do not assist

the Petitioner in the facts and circumstances of the present case.

8. The Petition is accordingly dismissed. Rule is discharged. No order as to costs.

(A.A. SAYED, J.)

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