

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

WRIT PETITION NO.1403 OF 2010

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Aroop Bishwanath Das
of M/s.Blue Diamond 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 10 days.

2. The Petitioner is running a Bar & Restaurant under the name and style of "Blue Diamond Restaurant & Bar". The Respondent No.3 issued a Notice dated 25 August 2009, inter alia, calling upon the Petitioner to show cause why the Police Licence of the Petitioner should not be suspended for 30 days. In the said Show Cause Notice, it is stated that the Petitioner had committed breach of Rule 8(1), 8(2), 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 8(1)

From the report and papers received against your Establishment it is noticed that, on 21-11-008 at about 21.30 hours you were not present and you were found running the Establishment through a person by name Shankar Babu Samani, 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).

(ii) Breach of Rule 8(2):

From the reports and the papers received with regard to our Establishment, it is seen that on 21-11-2008 at about 21.30 hours, you were not personally present and you were running the Establishment with so called Manager Shri Shankar Babu Samani.

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).

(iii) 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 20.45 hours 6 ladies waitress and on 22-12-2008 at about 20.00 hours 6 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.

(iv) 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 21-11-2008 at about 21.30 hours your Establishment was found open beyond time and the 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 Local Police inspected your Establishment on 22-11-2008 at about 20.45 hours 6 ladies waitress and on 22-12-2008 at about 20.00 hours 6 ladies waitress were found behaving indecently and in obscene manner.

From the above, you have time and again committed breach of Rules 8(1), 8(2) 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 all the cases which have been registered against the Petitioner, the Competent Court had discharged the Petitioner and other accused persons therein and had passed an acquittal order. It was further pointed out that the person who is stated to be the Manager is not a Manager, but was an employee working in the establishment of the Petitioner and he was holding a valid Naukarnama and his name appeared in the Wage-cum-Muster register.

4. After hearing the Petitioner the Respondent No.3-Dy.Commissioner of Police passed an order suspending the Police Licence of the Petitioner for a period of 10 days, which was confirmed in Appeal by the Respondent No.4-Minister by the impugned order dated 21 April 2010. Hence this Petition.

5. The Respondent No.3-Dy.Commissioner of Police 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) The cases referred to in the show cause notice, the accused are been acquitted and the case registered on 18-2-2009 is subjudiced. I am agreeing on this point.
- iii) In this proceeding only breach of rules is taken into consideration.
- iv) From the cases registered against the establishment and the papers and the report it is seen that there is breach of Rule 8(1). Further the ladies waitresses were found behaving indecently.

- v) From the past antecedent it is seen that earlier for the breach of rules the police license came to be suspended for the period of 10 days in the year 1999 and 3 days in the year 2002. It is seen that there is no improvement in your behavior and you are repeatedly committing breach of rules.

Considering the aforestated facts I am passing the following order:

ORDER

The police license bearing No.37 issued to Jyotsna B. Das and Bishwnath K. Das of M/s.Blue Diamond Restaurant & Bar, Rajaram Mohan Roy Marg, Girgaum, Mumbai has been suspended for a continuous period of 10 days.

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

6. In Appeal the Respondent No.4-Minister (Home) has upheld the order of the Respondent No.3-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 30 days as per the Show Cause Notice is reduced by the impugned orders to 10 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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