

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

WRIT PETITION NO.2673 OF 2008

Anand Narayan Shetty

..... Petitioner

V/s

State of Maharashtra & Ors.

..... Respondents

Mr. D.B. Sawant for Petitioner.

Ms. Geeta Shastri, Additional Government Pleader for Respondents.

CORAM : A.A. SAYED, J.

DATED : 20 FEBRUARY 2015

P.C.

1 This Petition has been filed under Article 226 of the Constitution impugns the order dated 13 October 2008 passed by the Minister (Home), confirming the order dated 5 September 2008 passed by the Deputy Commissioner of Police, Hotel Branch, suspending the License to Keep a Place for Public Entertainment (Police License) issued to the Petitioner under the Rules for Keeping Places for Public Entertainment in Greater Bombay, 1953 (hereinafter referred to as 'the Rules of 1953') framed in exercise of powers under the Bombay Police Act, 1951, for a period of 60 days.

2 The Petitioner is carrying on business under the name and style of "Hotel Sainath". The Petitioner is holding various licenses under the Mumbai Municipal Corporation Act, Prevention of Food Adulteration Act, Shop and Establishment Act, Bombay Prohibition Act and Bombay Police Act. The

Petitioner had applied to the Collector of Mumbai Suburban District for grant of license in form FL-III for sale of foreign liquor. After recommendation of the concerned Committee, the Collector of Mumbai Suburban District granted the FL-III license. As the Petitioner was desirous of selling foreign liquor in the restaurant, he was required to obtain a License to Keep a Place of Public Entertainment. The Rules for said License are framed in exercise of power conferred under section 33 of the Bombay Police Act, 1951. 'Place of public entertainment' is defined under section 2(10) of the Bombay Police Act, 1951 which reads as follows:

“2(10) “Place of public entertainment” means a lodging-house, boarding and lodging house or residential hotel, and includes any eating house in which any kind of liquor or intoxicating drug is supplied (such as a tavern, a wine shop; a beer shop or a spirit, arrack, toddy, ganja, bhang or opium shop) to the public for consumption in or near such place.”

The Petitioner was issued the License of Class “A” under the Rules of 1953.

3 According to the Respondents, as the Petitioner violated the Rules of 1953, the police have registered case against the establishment of the Petitioner for the incident from 16.07.2007 and 17.07.2007. A Notice dated 21 January 2008 came to be issued to the Petitioner to show cause why the Police License should not be suspended for 7 days. Thereafter, a fresh show cause notice came to be issued to the Petitioner on 1 March 2008 by withdrawing the earlier Show Cause Notice dated 21 January 2008 and

adding one more incident of 4 February 2008. The Show Cause Notice dated 1 March 2008 alleged breaches in the following terms:

“i) Breach of Rule No.8(1):

At the time of the raid by the local police the owner did not remain present and hotel was conducted through Manager – Manjunath Laxman Shetty and Nagesh Ganraj Shetty.

ii) Breach of Rule No.8(2):

After granting licence to Keep a Place of Public Entertainment you have not registered the name of the Manager so also submitted the specimen signature and thumb impression in triplicate.

iii) Breach of Rule No.6:

Under provisions of Shop and Establishment Act, 1948 the lady waiters are prohibited after 9.30 p.m. However, in the action initiated by local police station the lady employee were found after 9.30 p.m.

iv) Breach of Rule No.24:

From the action initiated against you it is revalidate that you are conducting business in breach of the law and irregularity and therefore committed breach of Rule No.24.

From above paras 2 and 3 it will be clear that you are contravening the provisions of license to keep a place of public entertainment”
The Petitioner replied to the Show Cause Notice through his Advocate denying the allegations.”

4 After hearing the Petitioner, the impugned order came to be passed by the Deputy Commissioner of Police on 9 September 2008 suspending the license of the Petitioner for 60 days which was confirmed by an order of the Minister (Home) in the Appeal. Hence, this Petition.

5 In the order dated 9 September 2008, the Deputy Commissioner of Police has observed as follows:

“From the above I came to following conclusion:

- 1) I have considered the facts placed before me, documents, show cause notice, reply and arguments at the time of personal hearing.*
- 2) At the time of personal hearing you have requested to consider the action initiated on 19.6.2008.*
- 3) Against your establishment the cases have been registered on 16.7.2007, 17.7.2007, 4.2.2008 under section 33(w) and 110 of Bombay Police Act and therefore the show cause notice was issued to you on 1.3.2008. In spite of these facts you did not take care and therefore on 19.6.2008 the case was registered against 23 lady waiters and 2 others. The same charges have been proved.*
- 4) While considering above, it appears that your negligent and have no respect for law and therefore you are committing breach of Rule No.8(1), 8(2) and 6.*
- 5) From the above, it will be clear that there is no improvement in your behaviour and therefore strict action is required.*
- 6) Therefore the proposed punishment of 60 days suspension is proper and hence I pass following order:*

ORDER

The Police Licence No.35/1999 issued to Shri Anand Narayan Shetty, M/s. Hotel Sainath, Gandhi Nagar, Laljipada, Kandivali (West), Mumbai – 400 067 to keep a place of public entertainment is hereby suspended for 60 days continuously.

If you are aggrieved by the said order you can file appeal before Government within 30 days failing which if you have agreeable and if you have keeping your licence premises close for 60 days, please inform to local police station so also this office a day in advance.

*Sd/-
(Vijaysingh Jadhav)
Dy. Comm. of Police.”*

6 The Minister (Home) in the impugned order dated 13.10.2008 has observed in paras 7 to 9 as follows:

“7 I heard the Appellant and Respondent at the time of hearing and also perused the documents available before me. While going through the documents I found that the Appellant has committed the offences mentioned in para 2 and therefore 3 C.R.'s have been registered against the establishment. Out of 3 in one case the Hon'ble Court has imposed the fine whereas in 2 cases the deposit amount has been forfeited and therefore the Appellant has no respect for law and he is violating the law continuously. It appears that he has no fear of law. The Appellant is bound by Rule 8(1) of Licence to keep a Place of Public Entertainment Rule, 1953 to the effect that he is required to remain present in the establishment. Furthermore, in the event the licence holder intends to appoint manager or conductor in such case he is required to obtain prior permission from the authority under Rule

8(2). However, without obtaining such permission the appellant appointed a manager and therefore he has committed a breach of Rule 8(2). The Appellant has knowingly violated the conditions of Bombay Shop & Establishment Act, 1948 by allowing lady employee to work beyond prescribed time, therefore, violated Section 6. He also conducted business illegally and hence committed a breach of licence condition No.24. He also violated the terms and conditions of license which will be seen from above fact.

8 After considering all above aspects it will be seen that the Appellant is violating the terms and conditions. The 3 offences were registered during 2007-08 out of which in one case the Hon'ble Court has imposed fine whereas in 2 cases the deposit amount has been forfeited. For the offences of 16.07.2007 and 17.07.2007 the show cause notice was issued for 7 days suspension and during pendency of the proceedings the fresh show cause notice was issued on 01.03.2008 for 60 days suspension. The Appellant was given sufficient opportunity. The Appellant continuously violating the terms and conditions of the licence and therefore in order to control the tendency of the Appellant the licence is suspended for 60 days. Before issuing said order sufficient opportunity was given and since it was proved that the Appellant has committed breach, the penalty imposed upon the Appellant is proper. I have come to conclusion that the penalty imposed upon the Appellant by the authority is proper and correct.

9 After considering the above facts I am rejecting the Appeal filed by the Appellant and confirm the Order passed by the Dy. Commissioner of Police (HQ-1), Greater Mumbai dated 05.09.2008 and, so also, reject the prayer for stay of the order.”

7 In the Affidavit dated 6 February 2015 on behalf of the Respondents it is pointed out that even during the pendency of this Petition, on 2 April 2013 a Notice was issued to the Petitioner for show cause why his license be not suspended for a period of 30 days on account of breaches of the terms of license. After hearing the Petitioner an order was passed by the Deputy Commissioner of Police on 7 May 2013 suspending the Petitioner's license for 21 days for having committed breaches under Rules 8(1), 8(2) and 24 of the Rules for Keeping Places of Public Entertainment in Greater Bombay, 1953 framed under section 33(w) of the Bombay Police Act, 1951. It is further averred in the Affidavit that after the aforesaid order dated 7 May 2013, the Petitioner by letter dated 22 November 2013 had confirmed the closing of establishment from 22 May 2013 to 11 June 2013 in compliance with the said order.

8 Learned Counsel for the Petitioner submitted that having obtained a FL-III license it was not necessary for the Petitioner to obtain the Police License under the Rules of 1953. I do not find any such plea having been taken before the Appellate Authority or any such ground in the present Petition. Hence, it is not necessary to consider the said contention.

9 Learned Counsel for the Petitioner has relied upon the judgment of the learned Single Judge in **Bharat Petroleum Corporation Ltd. vs. The Municipal Corporation of Greater Bombay, 1998 (4) Bom.C.R. 3** in

support of his contention that when there is a conflict between the Central Act and the State Act, the Central Act to prevail. I am unable to see, how this judgment can come to the aid of the Petitioner in the facts in the present case. In any event, this contention had not been raised in the Petition or before the Appellate Authority. Learned Additional Government Pleader on the other hand has relied upon the following judgments of Single Judge of this Court: i) Ramarai Rammilan Rai vs. State of Maharashtra, 2012 (5) Bom.C.R. 264 and ii) Surendrakumar S. Surana vs. State of Maharashtra, 2002 (1) Mh.L.J. 504.

10 Having considered the rival contentions and in the facts and circumstances of the case, I am not inclined to interfere with the impugned orders. Even during the pendency of this Petition, the Petitioner's license came to be suspended and the establishment had remained closed for 22 days in the year 2013. In these circumstances, the Petitioner, it appears, has no regard for law and has repeatedly violated the terms and conditions of the Licence and the Rules. In my view, the Petitioner does not deserve any indulgence at the hands of this Court and I am not inclined to interfere in the the concurrent findings of the Authorities below. The Writ Petition is accordingly dismissed. Rule is discharged. No order as to costs.

11 Upon the request of the learned Counsel for the Petitioner, the operation of this order is stayed for a period of four weeks.

(A.A. SAYED, J.)

katkam