

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4300 OF 2015

Mr. Kiran E. Bhoir .. Petitioner
vs.
The Commissioner of Police,
Navi Mumbai & anr. .. Respondents

Ms Veena Thadhani for the Petitioner.
Ms Vaishali Nimbalkar, AGP for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 17 February 2016
Date of Pronouncing the Judgment : 02 March 2016

JUDGMENT :-

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

2] The challenge in this petition is to the orders dated 21 August 2014 and 1 April 2015 made by the Respondents cancelling the Eating House Registration Certificate as well as Public Entertainment Licence held by the Petitioner in relation to Hotel Kishore Bar and Restaurant, Nerul, Navi Mumbai Thane .

3] The Petitioner, in paragraph '3' of the petition has averred that the Petitioner possesses Eating House Registration Certificate No. 27 dated 13 December 1989 and Public Entertainment License dated 8

April 2008 on the basis of which the Petitioner was conducting business under the name and style of M/s. Hotel Kishore Bar and Restaurant. The Petitioner has pleaded that Eating House Registration Certificate and the Public Entertainment Licence has been renewed upto 31 December 2013 and renewal applications for further years are pending consideration before the Respondents. The learned counsel for the Petitioner submits that there are provisions under the said Act and the Rules made thereunder, providing for deemed licence during the pendency of application for renewal of licence term.

4] By the show cause notice dated 5 April 2014, the Petitioner was called upon to show cause as to why the Petitioner's Public Entertainment License should not be cancelled as, the Petitioner was, *prima-facie*, found to have breached the provisions contained in Rule 33(3)(b) and Rule 33 (1) of the Public Entertainment Rules (Rules). It was alleged in the show cause notice that the Petitioner has breached the terms and conditions subject to which, the licensed had been issued. In the show cause notice, it was alleged that the Petitioner, employs bar girls, who indulged into indecent activities, in breach of terms of the license. Further, it was alleged that on

account of indecent activities taking place in the bar and restaurant, the people in the neighbourhood suffer obstruction, inconvenience, danger as well as fear. There was reference made to several non-cognizable cases lodged against the Petitioner, on account of the indecent behaviour and indecent dances, taking place in the premises.

5] The Petitioner filed reply to the show cause notice denying the charges leveled. The Petitioner pointed out that pendency of cases is no ground to take action for cancellation of licence.

6] The Respondent No.1, after afford of opportunity of personal hearing to the Petitioner, made order dated 21 August 2014 cancelling the Petitioner's Eating House Certificate Registration as well as Public Entertainment Licence. In the order dated 21 August 2014 (incorrectly mentioned date as 21/8/2013). It is recorded that the Petitioner, in the course of personal hearing, admitted charges referred to in the show cause notice.

7] The Petitioner, instituted appeal to the Respondent No.2. In the appeal, denied having admitted the charges referred to in the

show cause notice, submitted that personal hearing before Respondent No.1 was a mere formality and farce. Respondent No.2, after afford of opportunity of hearing to the Petitioner, dismissed the Petitioner's appeal by order dated 1 April 2015.

8] Ms Veena Thadhani, learned counsel for the Petitioner, at the outset, has submitted that the petitioner had never admitted the charges levelled in the show cause notice and therefore, the impugned order made on the said basis is clearly *ultra vires*, illegal, null and void. She submitted that it is settled position in law that the licence cannot be cancelled merely on the ground of pendency of some criminal cases against the Licencee. She relied upon several judgments in support of this proposition, as also, Circular dated 23 January 2009 issued by the State Government, making it clear that the licenses cannot be suspended or cancelled merely on the grounds of pendency of criminal cases. Ms Thadhani further submitted that in the present case, there was no independent or cogent evidence with regard to breach of terms and conditions of the licence. She pointed out that in the present case, there was no breach whatsoever of Rules 33(1) and 33(3)(b) of the Rules and in absence thereof, the Respondents were not entitled to exercise the powers conferred

upon under Section 162 of the Bombay Police Act, 1951 (said Act). She also pointed out that penalty imposed upon the Petitioner by way of cancellation of licence was gross and disproportionate, particularly since, in virtually similar situation, much lighter action has been taken by the Respondents. She submitted that there was no proper enquiry as contemplated by Rule 34(2) ever undertaken in the matter. For all these reasons, she submitted that the impugned orders are in breach of principles of natural justice and fair play, based upon no legal, valid material and in any case unreasonable and grossly disproportionate. She relied upon certain decisions to which reference will be made in the course of this judgment and order.

9] Ms Nimbalkar, learned AGP for the Respondents, defended the impugned orders, by submitting that it is not open to a party to challenge the statement in the order made by a *quasi judicial* authority either before the Appeal Court or this Court without first approaching the very authority to correct its recording. She submitted that the statement in the impugned orders that the Petitioner had admitted the charges levelled in the show cause notice, has to be accepted as correct. Ms Nimbalkar further

submitted that this is not a case where action has been taken on the basis of pending cases. The reference to pending cases is merely incidental and there is otherwise independent material on record to establish the breaches. She submitted that the action taken is quite proportionate to the charges established, particularly because the indecent activities, which were going in the Petitioner's bar and restaurant were a source of annoyance, inconvenience and even danger to the residents of neighbourhood. For all these reasons, Ms Nimbalkar submits that this petition be dismissed and the interim reliefs be vacated.

10] Upon due consideration of the submissions made by the learned counsel for the parties and perusing the material on record, it is quite clear that action in the present case is not based upon the mere pendency of complaints or cases against the Petitioner or the Petitioner's establishment. No doubt, number of cases are quite plenty, however, as has been held by this Court, mere pendency of the cases cannot be the ground for cancellation of licence. Although, reference was made by Ms Thadhani, number of decisions, including the decisions in case of *Kana N. Mhatre Vs. Assistant Commissioner of Police, Navi Mumbai – 1996 (2) Mh.L.J. 1052*,

Girija T. Shetty Vs. The A.C.P Wagle Estate, Div. Dist. Thane and ors. - 1997(1) ALL MR 256, and Dilip J. Bhatia Vs. The Commissioner of Police, Thane – 2001(1) Bom.C.R. 448, it will suffice if reference is made to the decision in case of *Padma N. Kokarne (M/s. Pooja Bar & Restaurant) V/s. The Commissioner of Police, Mumbai & anr. - Writ Petition No. 1181 of 2004* decided on 17 June 2014.

11] In case of *Padma Kokarne (supra)*, the learned Single Judge of this Court has clarified that the authorities are not justified in relying upon the mere pendency of a criminal case to hold that there has been a breach of the license conditions. However, in the same decision, it has been clarified that even during the pendency of criminal cases, the authorities are not foreclosed from proceeding against the license holder for breach of the license conditions. The action for breach of the license conditions under the Bombay Police Act stands on a completely different footing from a criminal prosecution for an offence against the penal law of the land. But while it is open to the authorities to proceed against the licence holder if there is a breach of the conditions governing the licence, that breach must be established by cogent material. Mere allegations

in the show cause notice does not constitute a breach.

12] As noted earlier, if the impugned orders are perused, it cannot be said that the action is on the basis of mere pendency of criminal cases against the Petitioner or the Petitioner's establishment. Apart from the aspect of pendency, there is reference to other material, which establishes that the Petitioner had engaged female employees, who were behaving indecently or indulging into indecent dances, thereby, not only breaching the provisions contained in Rule 33(1) of the said Rules, but also occasioning obstruction, inconvenience, annoyance, risk, danger or damage to the residents of the area in the vicinity, thereby, breaching the provisions contained in Rule 33(3) (b) of the said Rules. In such circumstances, there is no reason to fault the findings of fact recorded by the two authorities concurrently.

13] In the impugned order dated 21 August 2014, Respondent No.1 has recorded that the Petitioner, in the course of personal hearing virtually admitted the charges levelled in the show cause notice. The record of *quasi judicial authority*, cannot, ordinarily be questioned by instituting an appeal before the Appellate Authority. If

at all, there is any mistake or inaccuracy in the record, the party concerned is required to make appropriate application before the very same authority and urge that such record be corrected. In this case, the Petitioner has made no application before the Respondent No.1 for correction of the record particularly to the extent, the record indicates that the Petitioner accepted the charges levelled against him in the show cause notice.

14] The Hon'ble Supreme Court in the case of ***Ram Bali vs. State of U.P. (2004) 10 SCC 598*** has held that the statement of, as to what transpired at the hearing, the record in the judgment of the court is conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happening in court has been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still afresh in the minds of the judges who have made the record, to make necessary rectification. That is the only way to have the record corrected.

15] In the case of ***State of Maharashtra vs. Ramdas Shrinivas Nayak 1982 (2) SCC 463***, the Hon'ble Supreme Court refused to

launch an enquiry as to what transpired before the Court by observing : *'It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in courts. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or before admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in the court have been wrongly recorded in the judgment, it is incumbent upon the party, while the matter is fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only method to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course, a party may resile and*

the appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making concession as recorded in the judgment.'

16] In this case, the impugned orders have been made upon due compliance with principles of natural justice and fair play. In the impugned orders, there is reference to the history, which is in the facts and circumstances of the present case, are not altogether irrelevant. In the reply filed, it is stated that total 59 cases were registered against the Petitioner's establishment and further, even the Eating Housing Registration had been suspended from 26 April 2002 to 25 May 2002, 28 September 2004 to 4 October 2004. Once again, it is clarified that the action in the present case is not on the grounds of mere pendency of cases against the Petitioner or Petitioner's establishment. The reference to history is only for purposes of emphasizing that even in the past, action has been taken against the Petitioner, which is not altogether is an irrelevant circumstance. In the year 1999, only one case was registered against the Petitioner. The number however, increased to six in the year 2000, twelve in

the year 2010 and finally twenty four in the year 2012. The fact that repeated complaints came to be made against the Petitioner and Petitioner's establishment, is sufficient to establish that there were indeed indecent activities taking place in the Petitioner's bar and restaurant, thereby occasioning inconvenience, annoyance and danger to the residents of the vicinity. There is no case made out to interfere with the impugned order upon such grounds.

17] On the aspect of proportionality, however, there is some merit in the contentions of Ms Thadhani, the learned counsel for the Petitioner. There is some material brought on record to indicate that in circumstances, which at least broadly appear to be similar, licences were not cancelled but were suspended and in some cases, even warnings issued. The material on record is however not sufficient on the aspect of antecedents of such parties or the mitigating circumstances, if any, that may have obtained in the said cases. As noted earlier, the applications for renewal of licences are pending before the Respondent no. 1. The Respondent no. 1 is accordingly directed to take some suitable decision, both in the matter of renewal, as also imposition of some penalty, now that it is established that the Petitioner had indeed breached the terms and

conditions of the licence as also, the provisions contained in Rules 33(3)(b) and 33(1) of the Rules. For this purpose, the Petitioner is granted liberty to make representation to the Respondent no. 1 within a period of two weeks from today. In the representation, the Petitioner is at liberty to make reference to cases and decisions, in the context of proportionality of penalty. The representation as also the application for renewal of licence to be disposed of within 12 weeks from today. During this period of 12 weeks or until necessary decision is taken in the matter of renewal and imposition of penalty, the interim order granted in this petition, to operate.

18] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)