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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12675 OF 2015

M/s. Hotel Shashwath (Family Restaurant
and Bar) through its proprietress

Smt. Sukhlata B. Shetty

... Petitioner

vs.

The State of Maharashtra & Ors.

... Respondents

Mr. R.D. Soni a/w. Mr. S.N. Gawale i/b. Shree & Co., Advocate for the
petitioner.

Mr. Pravin G. Sawant, A.G.P. for respondent nos. 1 to 4.

CORAM: MRS. MRIDULA BHATKAR, J.

DATE : AUGUST 9, 2016.

P.C.

Rule. By consent, rule made returnable forthwith.

2. This Writ Petition is directed against the orders dated 18th October, 2013 and 24th July, 2015. The petitioner is a proprietress of Hotel by name M/s. Hotel Shashwath (Family Restaurant and Bar). As per the case of the petitioner, eating house and bar is being run since 2003 and eating house certificate has been issued in favour of the petitioner. The Mumbai Police have also issued the Public Entertainment licence from 2003 onwards and is valid till today. It is the case of the petitioner that the performance

licence for orchestra has been rejected under section 33(W) of Maharashtra Police Act of 1951 in the year 2013 by order dated 18th October, 2013 by the Commissioner of Police, Navi Mumbai. The Appeal preferred against the said order by the petitioner before the Principal Secretary, Home Department is rejected and the order of the Licensing Authority is confirmed. Hence, this Petition.

3. The learned counsel for the petitioner has submitted that the Licensing Authority and the Appellate Authority have not heard the petitioner and have not passed reasoned orders. They did not consider a fact that criminal case filed under PITA by the police against the petitioner/accused is concluded in acquittal. He further submitted that the police has filed 163 cases against the petitioner but they all are NCs. Or petty cases. He further relied on the judgment of **Maruti Vitthal Gopale vs. State of Maharashtra & Anr. in Writ Petition No. 5675 of 2006 dated 12th October, 2006** and submitted that as there is no conviction against the petitioner, the pendency of the case should not come in the renewal of the performance licence. He submitted that the order is illegal and is to be set aside.

4. On query, learned AGP for the respondents confirmed that the Public Entertainment licence is valid till today, however, the performance permission for orchestra is rejected on the ground of previous criminal record of the petitioner.

5. Perused the orders passed by the police authority and the Home Department. It is a fact that the police have filed 163 cases against this petitioner. This shows that repeatedly the law and order was violated. I have considered the order passed by the Division Bench in the case of **Maruti Vitthal Gopale** (*supra*) wherein it is held that “pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the business”. The said case is not applicable to this case because in the present case 163 cases are pending against the petitioner. This itself is a distinguishable fact.

6. The petitioner has produced the judgment and order in Criminal Case No. 302 of 2010 in which the employees of the proprietress were acquitted from the offence under PITA. Hence, no case under PITA is pending

against either the proprietress or the employee of the proprietress in respect of Hotel premises. The authority has taken into account the pendency of this PITA case while refusing the licence.

7. Hence, I remand this matter to the Licensing Authority, i.e., Commissioner of Police, Navi Mumbai only on this ground. The impugned orders are set aside. It is also to be noted that along with pendency of PITA case, registration of 163 cases was also considered while passing the order. It is necessary for the Licensing Authority to give reasoning as to how due to the performance of orchestra, the provisions under section 33W or under section 131 of Maharashtra Police Act are violated. More specific reasoning is required. The Licensing Authority to pass the order afresh after giving hearing to both the parties preferably within six months.

8. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)