

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.33981 OF 2016

M/s. Sagar Restaurant & Bar and another	..Petitioners
Versus	
The Commissioner, Food & Drugs Administration, Bandra, Mumbai and another	..Respondents

**Mr. P. A. Pol i/by Pol Legal Juris for the Petitioners.
Mr. S. D. Rayrikar, AGP for the Respondents.**

**CORAM : R. M. SAVANT, J.
DATE : 22nd DECEMBER, 2016**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 25.11.2016 passed by the Food Safety Commissioner, Food and Drugs Administration, Government of Maharashtra. By the said order, the Appeal filed by the Petitioners came to be dismissed and resultantly, Petitioners' licence was suspended for a period of 2 days i.e. 22.12.2016 and 23.12.2016 (wrongly mentioned in the order annexed to the Petition as 21.12.2016 to 23.12.2016).

2 The Petitioner runs a Restaurant and Bar at Panvel, District Raigad. The Petitioner's premises were inspected by the officials of the Food and Drugs Department, pursuant to which, certain deficiencies were found. A report dated 19.01.2016 was accordingly submitted. The said

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report bears the endorsement of the Petitioner No.2 as having received it. A notice under Section 32(1) of the Food Safety and Standards Act, 2006 (For short “the Food Safety Act”) based on the said report came to be issued to the Petitioners on 27.01.2016. The Petitioners were called upon to rectify the defects within 15 days and accordingly submit compliance report. It appears that no reply was received from the Petitioners to the said notice issued under Section 32(1) of the Food Safety Act. An inspection was therefore carried out once again on 30.04.2016. The Petitioner sent his reply dated 02.05.2016 and the said reply was in respect of the deficiencies which were mentioned in the notice dated 27.01.2016. In the said reply, it was stated on behalf of the Petitioners that there were compliances which were made. However in the last line of the reply, it has been stated that the Petitioners may be pardoned for the delay in sending the reply. In view of the fact that the Petitioners had not replied to the notice within the time frame mentioned in the notice dated 27.01.2016, a show-cause notice dated 30.07.2016 came to be issued to the Petitioners. In the said show-cause notice, the fact that inspection was carried out on 30.04.2016 was mentioned. It was stated that the Petitioners have not complied by rectifying the deficiencies which were noticed. It was further stated in the notice that the licence holder is required to comply with the licence conditions as also part 2 and 5 of

Schedule 4 and in spite of the same, condition 7 of the licence condition has been infringed by the Petitioners. The show-cause notice therefore called upon the Petitioners to show-cause as to why the licence should not be suspended or cancelled. The Petitioners were asked to reply within 3 days. The Petitioners vide its reply dated 08.08.2016 replied to the said show-cause notice. In the said reply, it was mentioned that since the last about 6 months the work relating to the renovation of the kitchen was going on and if something is remaining, on that account the Petitioners should be pardoned. It was also stated in the said reply that the Petitioners be pardoned for replying to the said notice late. Based on the said show-cause notice, the Designated Officer and Assistant Commissioner by order dated 09.09.2016 suspended the Petitioners licence for the period between 04.10.2016 to 07.10.2016.

3 The Petitioners aggrieved by the said order 09.09.2016 filed an Appeal before the Appellate Authority i.e. Food Safety Commissioner. The Appellate Authority has by the impugned order dated 25.11.2016 dismissed the Appeal, however, has reduced the suspension period of the licence of the Petitioners from 4 days to 2 days i.e. 22.12.2016 and 23.12.2016. The Appellate Authority has referred to the fact that the Petitioners did not reply to the improvement notice dated 27.01.2016 within the time stipulated in the same. The Appellate Authority has also

referred to the fact that the work in the Petitioners kitchen was going on for the last 6 months. The Appellate Authority has observed in the order that after the inspection report, for a period of 3 months compliance remained to be done. The Appellate Authority therefore held that there was non-compliance of the Food Safety Regulations however the Appellate Authority deemed it appropriate to reduce the suspension from 4 days to 2 days.

4 The Learned Counsel for the Petitioners would contend that after the improvement notice issued under Section 32(1) of the Food Safety Act, the Petitioners should have been given a period of 15 days to comply with the same. It was also the submission of the Learned Counsel for the Petitioners that the said improvement notice dated 27.01.2016 was not received by the Petitioners till 30.04.2016 when inspection was once again carried out of the premises. The Learned Counsel sought to place reliance on the orders passed by a Division Bench of this Court dated 03.10.2008 in Writ Petition No.2195 of 2008 and companion Writ Petitions as also the order passed by a Learned Single Judge of this Court dated 04.07.2013 in Writ Petition No.5674 of 2013. In support of his contention that the grant of 15 days time is a mandatory condition otherwise the proceedings stand vitiated.

5 In my view, it is not possible to accept the said contentions urged on behalf of the Petitioners. With the assistance of the Learned Assistant Government Pleader, Mr. S. D. Rayrikar, I have gone through the notices etc. which are annexed to the Petition. In so far as the inspection report dated 19.01.2016 is concerned, the said report has been furnished to the Petitioners as is evidenced by the signature by the Petitioner No.2 which is endorsed on the said report. The said report was a precursor to the improvement notice dated 27.01.2016 issued under Section 32(1) of the Food Safety Act. Though it is the case of the Petitioners that they had not received the said notice dated 27.01.2016, significantly in the reply dated 02.05.2016 no such mention of non-receipt of the notice finds a place. In fact, in the said reply, it is stated that the Petitioners may be pardoned for replying late. Implicit in the said fact is the fact that the Petitioners had very much received the notice dated 27.01.2016, but had chose to reply only on 02.05.2016 i.e. much beyond the period stipulated in the said notice for compliance and reply. As indicated above, a fresh inspection was carried out on 30.04.2016 i.e. after a period of 3 months and based on the said fresh inspection that a show-cause notice dated 30.07.2016 came to be issued. It is pursuant to the said show-cause notice that the Designated Officer and Assistant Commissioner has passed the order dated 09.09.2016 suspending the licence of the Petitioners for

breach of the licence conditions as well as the rules mentioned therein. The suspension was for a period of 4 days. Against the order passed by the Designated Officer, the Petitioners had filed an Appeal which as indicated above has been dismissed by the impugned order. In the aforesaid conspectus of facts, the judgments of the Division Bench of this Court as well as the judgment of a Learned Single Judge of this Court would not aid the Petitioners in contending that the orders passed by the Authorities below are vitiated.

6 It is required to be noted that in spite of the suspension of the Petitioners licence for 2 days i.e. today 22.12.2016 and 23.12.2016, the Petitioners have kept the premises open today i.e. on 22.12.2016 as per the instructions of the Learned AGP. This shows the manner in which the Petitioners have sought to treat the orders passed by the authorities under the said Food Safety Act. A Writ Court obviously cannot aid such Petitioners. Hence no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]