

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3042 OF 2015

Meena Satyakumar Gehi .. Petitioner
vs.
The Deputy Commissioner of Police
and anr. .. Respondents

Ms Veena Thadhani for the Petitioner.
Mr. Shekhar Ingavale, AGP for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 24 February 2016
Date of Pronouncing the Judgment : 14 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 5 March 2015 and 16 October 2015 made by the respondents suspending the Premises Licence for having orchestra performance for a period of thirty days in respect of '*M/s. Bulbul Bar and Restaurant*' operated by the petitioner.

3] Ms Thadhani, learned counsel for the petitioner, has submitted that the first respondent, by impugned order dated 5 March 2015, had suspended the Premises Licences for a period of sixty days. The

order dated 5 March 2015 was appealed by the petitioner to the respondent No.2. The respondent No.2 by impugned order dated 16 October 2015 scaled down the suspension period to 30 thirty days, but, proceeded to suspend the petitioner's Public Entertainment Licence as well for a period of thirty days. Ms Thadhani submitted that the appellate authority, clearly exceeded jurisdiction in suspending the Public Entertainment Licence in the appeal instituted against the order dated 5 March 2015, when in fact, the order dated 5 March 2015 had not even suspended the Public Entertainment License for any period.

4] Since, there was *prima-facie* merit in the contention of Ms Thadhani, the matter was adjourned from time to time to enable the respondents to seek instructions on the aforesaid aspect. Finally, on 23 February 2016, the respondents have issued a Corrigendum and clarified that suspension of thirty days shall operate only to the Premises License and not the Public Entertainment Licence. Although, Ms Thadhani questioned the power of the respondents to review its own orders, at least in the facts and circumstances of the present case, there is neither any merit in such contention, nor has the issuance of Corrigendum dated 23 February 2016, prejudiced the

petitioner. In fact, the main contention raised by the petitioner has been upheld and the error which had crept into the order of the appellate authority has been corrected. Strictly speaking, this is not exercise of any review jurisdiction, but mere correction of a possibly inadvertent error, which had crept into the impugned order dated 6 October 2015. Accordingly, the grievance with regard to suspension of Public Entertainment Licence no longer survives, in view of Corrigendum dated 23 February 2016 produced on record by the respondents.

5] Ms Thadhani, learned counsel for the petitioner, has then contended that the impugned orders to the extent they suspend the Premises Licence for a period of thirty days are vitiated on several counts. She submitted that in the impugned orders, reference has been made to some additional material, which did not form a part of the show cause notice issued to the petitioner. This according to Ms Thadhani constitutes violation of principles of natural justice and fair play. Further she submitted that the impugned orders have taken into consideration the antecedents, not of the petitioner but of her late husband and further, made reference to pending cases, which is quite impermissible in the light of several decisions of this Court as

well as Circular dated 23 January 2009 issued by the State Government, making it clear that the licences cannot be suspended or cancelled merely on the ground of pendency of criminal cases. Relying upon the decision in case of *Allahbaksh Ismail Ebrahim Vs. Commissioner of Police & ors.*¹, Ms Thadhani submitted that in the present case that there was no allegation of breach of public safety, disturbance in the premises, obstruction, inconvenience, annoyance, risk, danger of damage and in the absence of all these, the impugned order which suspends the petitioner's Premises Licence for a period of thirty days, is invalid and in any case, harsh and disproportionate.

6] Mr. Ingavale, learned AGP for the Respondents, has defended the impugned orders, by submitting that there was no violation of principles of natural justice and fair play in the making of the impugned orders. Further, Mr. Ingavale submitted that reference to pending cases is merely incidental and the impugned orders are on the basis of independent material on record, which establishes breaches. Mr. Ingavale submitted that the activities undertaken in the Bar and Restaurant were indeed a source of annoyance, inconvenience, risk and danger to the residents in the neighbourhood. For all these reasons, he submitted that the

1 2004(1)ALLMR 677

impugned orders, by which only a minor penalty of suspension of licence for a period of thirty days has been imposed, are legal, valid and justified, in the facts and circumstances of the present case.

7] Upon due consideration of the submissions made by the learned counsel for the parties and perusal of the material on record, there is no case made out to interfere with the impugned orders. The impugned orders have recorded concurrent findings of fact with regard to breaches and there is no perversity demonstrated in the record of such findings of fact.

8] There is no violation of principles of natural justice and fair play. Both at the original as well as appellate stage, the petitioner was afforded full opportunity to show cause, which opportunity, the petitioner has duly availed. Mere circumstance that there was no reference to the incident of 5 May 2013 in the show cause notice dated 12 December 2014 issued to the petitioner, is not sufficient to hold that some material, which did not form the subject matter of notice has been taken into consideration by the respondents, without afford of opportunity to the petitioner to explain such material. If the order dated 5 March 2015, by which, the penalty of suspension

of sixty days was imposed on the petitioner, is perused, it is quite clear that the petitioner was not only made aware that the effect of the incident dated 5 May 2013 will be taken into consideration, but further, the order records that the petitioner herself requested that the effect of such incident be taken into consideration at the stage of hearing. A clear statement to this effect has been recorded in the impugned order dated 5 March 2015. There is no reason to disbelieve such statement, particularly since any statement, as to what transpired at the hearing, as recorded in the judgment of the Court the conclusive of the fact so stated and it is impermissible for a party to contradict the same by affidavit or other evidence. This is clearly not a case where some additional material not reflected in the initial show cause notice has been taken into consideration whilst making the final order, without afford of opportunity to the petitioner to submit her say in that regard. Such opportunity was granted and has been availed by the petitioner. Therefore, there is no merit in the challenge based upon violation of principles of natural justice and fair play.

9] On perusal of the impugned order, it is quite clear that the action in the present case is not based upon the mere pendency of

complaints or cases against the petitioner establishment. Therefore, 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*, relied upon by Ms Thadani are distinguishable.

10] In fact, 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, 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 do not constitute a breach.

11] In this case, the two authorities, have concurrently recorded findings of fact with regard to breaches committed by the petitioner and as noted earlier, there is no perversity in the record of such findings of fact, which warrant interference under Articles 226 and 227 of the Constitution of India.

12] In this case, the two authorities have recorded the findings of fact that the petitioner was not even present at the establishment and the establishment was being operated by some unauthorised person. The two authorities have recorded the findings of fact that the female employees were behaving indecently and were indulging into indecent acts. There are findings of fact recorded that even the entertainment programmes were not being undertaken in the space demarcated for the purpose as per terms and conditions of the licence. For all these reasons coupled with repeated breaches, the two authorities have recorded the findings that the activities in the establishment of the petitioner are occasioning inconvenience,

annoyance, risk and danger to the residents of the area or vicinity. The predicates referred to in case of *Allahbaksh Ismail Ebrahim (supra)*, therefore, stand complied with.

13] The penalty imposed, is in fact, mild and there is nothing disproportionate about the same.

14] For all the aforesaid reasons, there is no merit in this petition and same is hereby dismissed. The interim order, if any, stands vacated. There shall however, be no order as to costs.

(M. S. SONAK, J.)

15] At this stage, the learned counsel for the petitioner, seeks for continuation of interim relief, which was already granted for a period of eight weeks from today. Considering that the interim relief was already in operation, same is extended by a period of eight weeks from today, so as to enable the petitioner to seek redressal against this judgment and order before the Hon'ble Supreme Court.

(M. S. SONAK, J.)