

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

WRIT PETITION NO.1302 OF 2006

**Messrs Irani Foods & Investment
Company Pvt. Limited and another ...Petitioners**

Versus

State of Maharashtra and another ... Respondents

**Mr. Cherag Balsara a/w Ms. Sanidha Vedpathak i/by
Maneksha and Sethna for the Petitioners.**

Mr. Hemant Haryan, AGP for the Respondent No.1.

Mr. R. V. Govilkar a/w Mr. Mihir R. Govilkar for the Respondent No.2.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 27th JULY, 2017

P. C. :

1. The Petitioner has approached this Court assailing the order dated 27.03.2006 passed by the Respondent No.2, whereby the Respondent No.2 has directed the Petitioner to close down its activity of running a bakery.

2 The Learned Counsel for the Petitioners states that the
Petitioner was incorporated in the year 1979. The Petitioner is
registered as small scale industrial unit in the year 1983. The

Department of Industries of Respondent No.1 issued letter to the Petitioner to establish its unit on 04.04.1989. The Learned Counsel submits that on 21.04.2001 factory licence was issued to the Petitioner No.1, so also the Municipal Health Licence, NOC of the Mumbai Fire Brigade is issued to the Petitioner on 28.04.2003 and on 21.12.2005 the Respondent No.2 issued consent letter to the Petitioner No.1 to operate its unit. The Learned Counsel submits that the Petitioner on or about 16.03.2006 received a Show Cause Notice contending that the Petitioner No.1 was operating aforesaid unit without the consent of the Respondent No.2. The Petitioner replied the said Show Cause Notice on 27.03.2006. Alongwith reply, all the necessary documents and permissions were annexed. However, on the very same day, the Respondent No.2 passed the impugned order. The Learned Counsel submits that the said order is passed without application of mind and without considering the reply and the documents on record. The order impugned states that the Petitioner does not possess the necessary consent from the Respondent No.2. The same is against the record and perverse. On the day reply was filed, on the same day order was passed. The same is erroneous.

3 The Learned Counsel for the Respondent No.2 submits that prelude to the Show Cause Notice issued to the Petitioner is the Public Interest Litigation filed in this Court. This Court took cognizance of the same and directions were issued. After making physical inspection of the site, the Show Cause Notice was issued and the impugned order was passed. The procedure was adhered to. The Learned Counsel on instructions states that even the permission/letter of consent issued to the Petitioner by the Respondent No.2 has come to an end.

4 We have considered the submissions canvassed by the Learned Counsel for the respective parties. We are deciding the Petition on the basis of the facts existing then. We are concerned with the validity of the impugned order.

5 It transpires that the Show Cause Notice was issued to the Petitioner by the Respondent No.2. Pursuant to the said Show Cause Notice dated 27.03.2006, the Petitioner had filed the reply. Perusal of the order dated 27.03.2006, it is manifest that the reply and the documents filed by the Petitioner were totally ignored and not considered while passing the impugned order. The Petitioner has filed on record the letter of consent issued by the Respondent

No.2 to operate its unit. The same was issued in the year 2005 and valid upto 30.11.2015. On the day the impugned order is passed, the letter of consent by the Respondent No.2 to the Petitioner was in force and operating. The Respondent No.2 as such has made erroneous observation in the order that the Petitioner is operating its establishment without consent of the Board.

6 The Respondent No.2 was required to consider the documents and the reply filed by the Petitioner threadbare and thereafter ought to have arrived at a conscious decision. In absence of the documents and the reply filed by the Petitioner not being considered, the impugned order cannot be sustained.

7 In the result, the impugned order is quashed and set aside.

8 It is made clear that we have not considered the events after the issuance of the Show Cause Notice. The parties are at liberty to take further steps as may be permissible in law. The Writ Petition is disposed of. Rule made absolute in the above terms.

(A. M. BADAR, J.)

(S. V. GANGAPURWALA, J.)