

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

WRIT PETITION NO.2273 OF 2015

Krishnand Vishwakarma	...Petitioner
Versus	
The Municipal Corporation of Gr. Bombay	...Respondent

Mr. S.P. Srivastava for the Petitioner.
Ms. Pallavi Thakar for the Respondent.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, J.J.**

DATE : 16th JUNE, 2017

P.C.:

1. Rule. Learned Counsel appearing for the respondent waives service. Considering the narrow controversy involved, the petition is taken up for final disposal.

2. A show cause notice was served on the petitioner by the respondent/Municipal Corporation on 8th June, 2015. The petitioner is holding a licence under section 313-A of the Mumbai Municipal Corporation Act, 1888 (in short the “said Act”) for carrying on business in a stall admeasuring 1 meter x 1 meter situated at Fashion Market, opposite Bombay Gymkhana, M.G. Road, Mumbai. The licence has been granted to the petitioner to carry on business of hosiery and ready-made clothes. It was alleged in the notice that when the stall of the petitioner was

inspected, he was not found. It is also alleged that the petitioner was found using excess area and certain articles were found to be kept hanging outside the stall.

3. The petitioner replied to the said notice by a reply dated 9th June 2015 pointing out that at the time of inspection, he was in Tata Memorial Hospital where his son was being treated for cancer. It is further stated that he has been running his business personally and he is displaying items on the top front side of his stall. He stated that all the hawkers of the Fashion Market have applied for permission to hang the articles and/or to display the items for sale. He has accepted that the articles were hanging at his business premises. He has requested to forgive him. He has also given assurance not to commit any such mistake again.

4. We may note here that certain documents have been annexed to the petition which show that the petitioner's son is undergoing a treatment in Tata Memorial Hospital for cancer. The said documents are at Exh.E, Exh.E-1, Exh.E-2 and Exh.E-3. By the impugned order dated 16th June, 2015, the Assistant Commissioner of 'A' Ward, cancelled the licence held by the petitioner.

5. After having heard the learned Counsel appearing for the parties, we find that the explanation given in the reply to the show cause notice has not been considered by the Assistant Commissioner, 'A' Ward. He has brushed aside the said reply by merely observing that the contents therein are noted and are not at all acceptable and satisfactory.

6. The petitioner has tendered an undertaking on oath on 15th June 2017 in which he has undertaken to remain in the permitted area and has undertaken not to increase the size of his stall. He has also undertaken not to display and keep articles hanging outside the permitted area/stall.

7. The impugned order shows non-application of mind as no reasons have been assigned as to why the contentions raised in the reply have been rejected. There was an explanation given by the petitioner for his absence which is not considered in the impugned order.

8. Hence, the impugned order deserves to be set aside. Accordingly, we pass the following order:-

ORDER

(i) The impugned order dated 16th June 2015 is hereby set aside;

(ii) We direct the petitioner to appear before the Assistant Commissioner, 'A' Ward, Mumbai Municipal Corporation, on 7th July 2017 at 11.00 a.m. It will be open for the petitioner to produce additional documents on that day;

(iii) After giving an opportunity of being heard to the petitioner, the Assistant Commissioner, 'A' Ward, shall pass appropriate order in accordance with law on the show cause notice dated 8th June, 2015 within a period of two months from 7th July 2017;

- (iv) All the contentions of the parties on merits are kept open;
- (v) The undertaking of the petitioner dated 15th June 2017 is hereby accepted;
- (vi) We make it clear that if the Assistant Commissioner, 'A' Ward, Municipal Corporation, finds that the petitioner has committed any breach of the undertaking, he will be entitled to revoke the licence of the petitioner;
- (vii) The petition is disposed of in the above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S. OKA, J.)