

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1541 OF 2017

Sandip s/o Balbhim Khote

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.N.V.Gaware, Advocate for the petitioner.

Mr.S.G.Karlekar, Assistant Government Pleader for Respondents.

CORAM : NARESH H. PATIL, C.J. &

N.M. JAMDAR, J.

DATE : 13th December, 2018

PER COURT:

1 The petitioner was running “Om Video Game Parlour” at Asha Talkies Chowk, Ahmednagar without any license. By an order dated 24.12.2010, passed under Section 5(A) and 9(A) of the Mumbai Entertainment Duty Act, 1923, the Additional Collector, Ahmednagar, has imposed penalty of Rs.4,17,800/- in respect of seven such machines which were being commercially used in the Video Game Parlour. The petitioner raised challenge to the said order by filing an appeal before the Divisional Commissioner, Nasik. By an order dated 09.08.2011, in exercise of powers under Section 10(A) of the said Act, the Divisional Commissioner, by a reasoned order, dismissed the appeal by confirming the order passed by the Additional Collector. The petitioner preferred

Revision under Section 10(A) to the State Government. In between, the Sub Divisional Officer (Entertainment Branch) submitted a report to the Collector on 08.04.2013. The petitioner contends that by office note dated 08.04.2013, the Additional Collector directed to close the file.

2 No license is placed on record by the petitioner. To a query made during the course of hearing, Counsel for the petitioner submits that no such license is available with the petitioner. However, learned Counsel for the petitioner submits that some chalans were submitted to the Treasury and some amount was deposited and based on such chalans, the petitioner was running Video Game Parlour. The petitioner alleges that there is some interpolation made by the Additional Collector. Earlier, according to the petitioner, it was “मंजूर” (Granted) and thereafter there was interpolation by inserting word “नामंजूर” (Rejected).

3 The basic contentions raised by the petitioner are that:

(a) He was not heard by the Additional Collector before

passing the impugned order;

(b) He had withdrawn the Revision before the State as the file was closed making an endorsement that no amount of penalty is recoverable from the petitioner.

4 Respondents No.2 and 3 have filed affidavit-in-reply.
In para 14, the deponent states as under:

“14 I say and submit that the petitioner vide his application dated 19.09.2014 withdrew revision pending before the Government mala fide contending therein that vide communication dt.17/04/2013 waiver was sanctioned in his favour. I say and submit that the petitioner has not come with clean hands before the Hon'ble High Court and by misrepresenting and misinterpreting has raised a mala fide claim before the Hon'ble High Court.

I say and submit that the real brother of the Petitioner has filed Writ Petition No.1736/2017 and in the said Petition prayer is made for de-sealing of the premises where the Petitioner was illegally running business on the

ground that the said premises was being used by brother of the Petitioner who is petitioner in Writ Petition No.1736 of 2017.”

5 During the course of hearing, learned A.G.P., appearing for Respondents, states that the brother of the petitioner has filed Writ Petition No.1736 of 2017 wherein identical issues were raised. However, that petition is not placed before this Court. Learned Counsel for the petitioner states that he is not appearing in that petition.

6 The petitioner has preferred an appeal before the learned Divisional Commissioner against the adverse order passed by the Additional Collector. By a reasoned order, the Additional Commissioner has dismissed the appeal. The petitioner has withdrawn the Revision preferred before the State. We do not propose to go into the reasons which prevailed over the petitioner for withdrawing the Revision. In fact, running the Video Game Parlour, without getting appropriate license in accordance with law, was illegal. If the petitioner intends to file appropriate proceedings before the State, petitioner is free to do so and if such proceedings are initiated by the petitioner, the State would deal with the same strictly in accordance with law.

7 In exercise of extraordinary jurisdiction under Article
226 of the Constitution, we are not inclined to cause interference
in the petition.

8 Writ Petition stands dismissed.

N.M.JAMDAR, J.

CHIEF JUSTICE

adb/