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

PUBLIC INTEREST LITIGATION NO. 31 of 2016

Mr.Sapan Shrivastava & anr. ... Petitioners

V/s.

Collector of Thane & ors. ... Respondents

Mr. Sapan Shrivastava, petitioner-in-person present.

Mr.A.B.Vagyani, GP a/w. Mr.V.S.Gokhale 'B' Panel, AGP for the State.

**CORAM : NARESH H. PATIL, C.J.**
**& M.S.KARNIK, J.**

**22nd November, 2018.**

**P.C.**

This petition is filed in the year 2016 and was heard from time to time on successive dates. The petition is canvassed by party-in-person Mr.Sapan Shrivastava who is present in Court today. Petitioners pray for following substantive reliefs:-

**(a)** Writ, Order or Direction in nature of Mandamus or any other appropriate writ, order or direction to the Respondent no.1 & 2 to investigate NOC's of all registered hotels, eating house and lodges enrolled in 2014-15.

**(b)** Writ, Order or Direction in nature of Mandamus or any other appropriate writ, order or direction to respondent no.1 & 2, cancel the registration which did not have proper NOC as per law.

**(c)** Writ, Order or Direction in nature of Mandamus or any other appropriate writ, order or direction to the Respondent No.1&2 TO MAKE COMMITTEE for registration of hotels, eating house and lodge which approve new hotels in 2016 and take action against non approved hotels etc in district level.

**(d)** Writ, Order or Direction in nature of Mandamus or any other appropriate writ, order or direction to the Respondents to enroll hotels, eating house, lodges via online process and their documents should be made online

in public domain.

**(e)** Writ, Order or Direction in nature of Mandamus or any other appropriate writ, order or direction to Respondent no.1 to take action against Respondent no.2 for any violation. Respondent no.3 should also conduct parallel enquiry. Ad-interim in terms of prayer clause (a) & (b).

2. On behalf of respondent no.2, affidavit is filed by Shri Kisan Kacharu Badhane,Tehsildar,Thane. Dr.Mahesh Patil, Superintendent of Police had also filed affidavit-in-reply. Mr. Vijay Damodar Patil, Dy. Secretary to the Government, Home Department, Mantralaya, Mumbai filed affidavit. In paragraphs 4 and 5, the deponent states as under:-

> "4. I say and submit that in the aforementioned meeting a conscious decision has been taken at Government level to cancel the requirement of time barred licenses after approval of the

concerned departments. Since, the rules regarding licenses of Eating House registration certificates, swimming pool license from Police, Public Entertainment license, license for lodging House from Police (Lodging license) pertains to Home Department, a decision to repeal the rules governing the above referred license was taken in consultation with the Law & Judiciary Department. Accordingly, by letter dated 22.12.2015 all the Commissioners and District Collectors were directed to take immediate action regarding repealing of the above referred rules. I say that the Commissioner of Police and District Magistrate are duly empowered and authorized under the provisions of the Section 33 of The Bombay Police Act, 1951 ("Police Act") to inter-alia make, alter or rescind rules or orders on matters more particularly mentioned therein.

5. I say that PIL No.22 of 2016 was filed before this Hon'ble Court and one of the reliefs claimed in the said PIL was challenge to the said communication dated 22/12/2015 by which power of police to grant licence under Section 33 of the Bombay Police Act, 1951 has been repealed as out-dated. By order dated 20/01/2017, the said PIL was dismissed and in Para 2 of the said order, the Hon'ble Court observed that the said communication dated 22/12/2015 was issued in consequence of the repeal of Section 33 of the Maharashtra Police Act, 1951. It was further observed that the amendment was brought about as there were parallel provisions governing the issue of licenses and in order to avoid any over-lapping, a notification dated 19/01/2016 was issued by the State Government notifying repeal of Section 33 of the Act and there is no challenge to

> the constitutionality of the amending Act. In Para 3 of the said order, the Hon'ble Court opined that communication dated 22/12/2015 was issued in consequence of the repeal of Section 33 by the amending Act, and the action to be accordingly taken by the concerned authority cannot be granted since the same being the necessary effect of the repeal of the provision in question. Hereto annexed and marked as Exhibit-I is the copy of the said order dated 20/01/2017 passed by this Hon'ble Court in PIL No.22 of 2016."

3. The party-in-person submits that under provisions of Section 3 of Maharashtra Fire Prevention Life Safety Act, 2006 fire safety permission is required to be obtained by persons who are running Restaurant/Eateries outside the Corporation limits of Thane and Bhayander areas. Party-in-person placed reliance on the noting made by him consequent to RTI applications. The

party-in-person submits that the Tehsildar had granted permission to these Restaurant/Eateries without calling for mandatory compliance in law for running a Restaurant. In case the Restaurants are permitted to run without mandatory compliances of Fire Safety, it may endanger life of customers and public at large.

4. We heard the learned Government Pleader on this issue. After taking into consideration the material placed on record and list of 439 Eateries and Restaurants which were presented by the party-in-person during the course of hearing, we are of the view that a comprehensive representation needs to be made by the party-in-person addressed to the Commissioner of the concerned Corporation in which Corporation area these Restaurants and Eateries are situated. The comprehensive representation may include names of these Restaurants/Eateries, their addresses, and specific issues be raised for consideration of the

Commissioner. Such a representation may be preferred within four weeks from today. In case the Commissioner of concerned Corporation receives such representation, we direct that the Commissioner shall look into such representation and deal with it in accordance with law. If necessary the Commissioner may call for necessary information from the Collector or Tehsildar office. The other organs of the State Government would co-operate with the concerned Commissioner.

5. With aforesaid observations and directions, Public Interest Litigation stands disposed of.

**M.S.KARNIK, J** **CHIEF JUSTICE**

**L.S. Panjwani, P.S.**