

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14069 OF 2018

M/s. Hotel Kapal Restaurant

...Petitioner

Versus

The District Collector, Raigad / Alibaug

And others

...Respondents

....

Mr. R.D. Soni a/w. Sanjay Gawde, Anita Dubey i/b. Shree & Co. for the Petitioner.

Mr. S.H. Kankal, A.G.P. for Respondent No.1-State.

Mr. Avinash Ranpise, Inspector, State Excise, Panvel.

Mr. Mahesh R. Tambe, Sub-Inspector, State Excise, Mumbai (City).

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CORAM : R. G. KETKAR, J.

DATE : 13th DECEMBER, 2018

P.C.

1. Heard Mr. R.D.Soni, learned counsel for the petitioner and Mr.S.H. Kankal, learned A.G.P. for respondent-State, at length.

2. Rule Rule. Mr. Kankal waives service on behalf of the respondent-State. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 15.11.2018 passed by the Collector, Raigad-Alibaug in No.FLR.112018/5689/6127. By the impugned order, the Collector has suspended the petitioner's FL-3 Licence No.181 for a period of three months. Mr. Soni submitted that the impugned

order was served on the petitioner on 17.11.2018. The petitioner has instituted appeal before the Commissioner of State Excise, Maharashtra State, Mumbai along with application for stay on 21.11.2018. He submitted that by communication dated 26.11.2018, the Commissioner of State Excise was requested to consider the request for stay on 29.11.2018 as the hotel establishment of the petitioner is sealed due to the impugned order. This was followed by communication dated 30.11.2018 requesting the Commissioner to fix the stay application for hearing on 1.12.2018.

4. Mr. Soni submitted that if the appeal and / or the application for stay is not decided within a time bound manner, the appeal itself will be rendered infructuous as by the impugned order the licence is suspended for three months.

5. Mr. Soni further submitted that the offence alleged to have been committed by the petitioner is compoundable under Section 104 of the Maharashtra Prohibition Act (for short, 'Act') and the petitioner offered for compounding of the offence which is also recorded in the impugned order. He also invited my attention to the order dated 28.8.2015 passed by this Court in W.P. No.8606/2015 [**M/s. Krishna Bhel Puri House Vs. State of Maharashtra and others**].

6. On instructions, Mr. Soni submitted that in case the Court is inclined to stay the impugned order till disposal of the appeal and the petitioner ultimately fails before the Appellate Authority the period of stay

may be included in addition to three months' period as per the impugned order. He submitted that it may be made clear that this shall be subject to right of the petitioner to challenge the order of the Appellate Authority.

7. The matter was adjourned on 12.12.2018 till today so as to enable Mr. Kankal to take instructions as to within what time the appeal will be disposed of. Mr. Kankal has tendered a communication dated 13.12.2018 addressed by the Deputy Commissioner, State Excise, Maharashtra State, Mumbai to the Government Pleader, which is taken on record and marked 'X' for identification.

8. In view thereof, Mr. Kankal assures that the appeal will be disposed of in a period of four weeks from the appearance of the petitioner before the Appellate Authority. The learned Counsel for the parties agree that the petitioner will appear before the Appellate Authority on 20.12.2018. The Appellate Authority, namely, the Commissioner of State Excise, Maharashtra State, Mumbai will decide the appeal in accordance with law within four weeks from 20.12.2018.

9. In view thereof, the petition is disposed of in the following terms:

- i. The petitioner will appear before respondent No.3 Commissioner of State Excise, Maharashtra State, Mumbai on 20.12.2018 and for that purpose no fresh notice will be issued to him.
- ii. Respondent No.3 Commissioner of State Excise, Maharashtra State, Mumbai will decide the appeal in accordance with law within a

period of four weeks from 20.12.2018.

- iii. During pendency of the appeal, the impugned order shall remained stayed. It is made clear that by granting stay to the impugned order, this Court has not expressed any opinion on merits of the case on either way. All contentions of the parties on merits are expressly kept open.
- iv. In case, adverse order is passed by the third respondent, the same shall not be given effect to for a period of two weeks from the date of service of the same upon the petitioner.
- v. In case, the petitioner fails before the Appellate Authority, the period of stay shall be in addition to the period of suspension of three months subject to the right of the petitioner to challenge the adverse order.
- vi. Rule is made absolute in aforesaid terms with no order as to costs.
- vii. Respondent No.1 shall de-seal/remove the seal placed on the petitioner's establishment.
- viii. All concerned parties to act upon the authenticated copy of this order.
- ix. Order accordingly.

(R. G. KETKAR, J.)