

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4010 OF 2019

**ANKUSH SHARAD JAISWAL AND ANR.
VERSUS
THE COLLECTOR, HINGOLI AND ANR.**

...
Advocate for Petitioners : Shri R.N.Dhorde, Senior Counsel h/f.
Shri V.R.Dhorde
AGP for Respondents – State : Shri S.D.Ghayal
Advocate for Respondent No.2 : Shri S.V.Suryawanshi
...

**CORAM : P.R.BORA, J.
DATE: 26th March, 2019**

PER COURT:-

1 Heard Shri R.N.Dhorde, learned Senior Counsel appearing for the petitioners, Shri S.V.Suryawanshi, learned Counsel appearing for respondent No.2 and Shri S.D.Ghayal, learned AGP appearing for the respondent – State.

2 The grievance of the present petitioners against the impugned order passed by the Collector, Hingoli, whereby he had suspended CL-III licence in the name of the present petitioners, is that without giving due opportunity of hearing, the impugned order has been passed.

3 Shri Suryawanshi, learned Counsel appearing for

respondent No.2 resisted the submissions advanced on behalf of the petitioners. The learned Counsel submitted that the petitioners have filed on record a fabricated rent agreement and in the enquiry conducted by the Collector the said fact has come on record. The learned Counsel submitted that in the circumstances, the Collector has rightly passed the impugned order. The learned Counsel submitted that due opportunity was given to the petitioners by the learned Collector before passing the impugned order and the allegation made by the petitioners that they were not given any opportunity is absolutely false. The learned Counsel, therefore, prayed for dismissing the petition.

4 Shri S.D.Ghayal, learned AGP supported the impugned order. The learned AGP submitted that sufficient opportunity seems to have been given to the petitioners by the learned Collector before passing the impugned order.

5 I have carefully considered the submissions advanced by learned Senior Counsel for the petitioners, learned Counsel for respondent No.2 and learned AGP appearing for the State. I have also perused the impugned order and the other material placed on record. As noted herein above, it is the main grievance of the

petitioners that no due opportunity of hearing has been given to them by the learned Collector. On perusal of the impugned order and other material on record there appears substance in the submission so made on behalf of the petitioners. In the impugned order, though, it has been mentioned that on 19.03.2019, the petitioners and their Counsel were present for hearing, the record is apparently not supporting the said contention. It is the specific contention of the petitioners that on 19.03.2019, their Counsel was not present and in fact on that ground an adjournment was sought by them for advancing the arguments on their behalf. My attention was invited by the learned Senior Counsel to the Roznama dated 19.03.2019. The said Roznama admittedly does not reflect the presence of the Counsel of the petitioners. It is therefore difficult to discard the contention made by the learned Senior Counsel that in the impugned order it has been incorrectly mentioned that the Counsel for the petitioners was present and that his arguments were heard.

6 The another objection raised on behalf of the petitioners is also difficult to be ignored that they did not receive the copy of the written notes of arguments as is mentioned at document at Sr.No.6 in the title of the impugned order. It is not clear from the

Roznama as to who had filed written notes of arguments on the said date. Neither learned AGP appearing for the State nor learned Counsel appearing for respondent No.2 are in position to clarify that who submitted written notes of arguments on 19.03.2019.

7 Having considered the facts as aforesaid, it appears to me that without going into the merits of the contentions raised by the petitioners as well as by respondent No.2, the ends of justice would be met, if the matter is remitted to the learned Collector to decide afresh by giving appropriate opportunity to the petitioners to argue their case through their Counsel.

8 During the course of hearing, it was informed by the Shri Ghayal, learned AGP that in pursuance of the impugned order, the shop of the petitioners in the disputed premises have been sealed on 20.03.2019. In the circumstances, it was submitted by the learned AGP that if the Court inclines to remit the matter to the learned Collector for deciding it afresh, the position in respect of the Suit shop as on the date be directed to be maintained. The submission so made is opposed by the learned Senior Counsel.

The learned Senior Counsel further submitted that CL-III

licence in the name of the petitioners has to be renewed before 31.03.2019. The learned Senior Counsel, in the circumstances, prayed for further direction to the authorities concerned to allow the petitioners to complete the formalities of renewal of the licence before 31.03.2019.

9 In the result, the following order is passed:-

ORDER

I) The order impugned in the present petition passed by respondent No.1 on 20.03.2019, is set aside.

II) The matter is remitted to respondent No.1 to decide it afresh by giving due opportunity of hearing to the petitioners as well as to respondent No.2, as expeditiously as possible and preferably within two weeks after appearance of the parties.

III) The parties to appear before respondent No.1 on 01.04.2019.

IV) The copies of the documents filed on record in the proceeding before respondent No.1, if not previously supplied to the petitioners, be supplied to them.

V) It is clarified that though the matter is remitted for deciding it afresh, the request of the petitioners to de-seal the shop is declined. The same shall be subject to fresh decision by respondent No.1.

VI) It is also clarified that this Court has not considered the merits of the contentions raised in the present petition by the petitioners as well as by respondent No.2. All these contentions are kept open to be agitated by the parties before respondent No.1 and respondent No.1 shall decide the matter on its own merits.

VII) The respondents shall allow the petitioners to comply with the formalities for renewal of the CL-III licence before 31.03.2019. The renewal shall be subject to fresh decision by respondent No.1.

VIII) Writ Petition stands disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT