

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 896 OF 2019

Renuka Loknatya Tamasa Mandal
Sarul, Tal. Kej, Dist. Beed,
through it's Prop. Ramnath S/o Dharmraj
Dhakane, Age-45 years,
Occupation-Artist/Business,
R/o Village Sarul Tal. Kej,
Dist. Beed.

..PETITIONER

-VERSUS-

1. The State OF Maharashtra
through the District Magistrate
Beed.
2. The Superintendent of Police,
Beed.
3. The Tahsildar/Taluka Executive
Magistrate, Kej, Taluka-Kej,
District-Beed.

..RESPONDENTS

...
Mr.P.R. Katneshwarkar h/f Mr.S.R. Andhale,
Advocate for petitioner.
Mr.S.W. Mundhe, A.P.P. for respondent/State.

...
CORAM: V.L. ACHLIYA, J.
RESERVED ON : 12.07.2019
PRONOUNCED ON : 22.10.2019

JUDGMENT :

. Rule. Rule made returnable forthwith. By
consent heard finally.

2. By this Petition filed under Article 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 12.04.2019 (hereinafter referred to as "the impugned order") passed by the respondent No.1 i.e. District Magistrate, Beed. By the impugned order, the respondent no.1 has cancelled the licence issued in favour of the petitioner under the provisions of "The Rules for Licensing and Controlling Places of Public Amusements, (Other than Cinemas) and Performances for Public Amusement, including Cabaret Performances, Discotheque, Games, Pool Game Parlours, Amusement Parlours Providing Computer Games, Virtual Reality Games, Cyber Cafes, Games with Net Connectivity, Bowling Alleys, Card Rooms, Social Clubs, Sports Clubs, Meals and Tamashas Rules, 1960" (hereinafter referred to as "the said Rules") as well as sale of tickets for such performance. Being aggrieved the petitioner has preferred this Petition.

3. Heard learned counsel for the petitioner and learned APP representing the respondents. Perused the record and proceedings.

4. By referring to the overall facts of the case, learned counsel for the petitioner submits that the petitioner is holding the performance licence issued under said Rules, which is valid till the year 2021. Without issuing show-cause notice and giving opportunity of hearing to petitioner, the respondent no.1 has passed the impugned order. It is submitted that the action has been taken only on the basis of report submitted by respondent no.2 as to registration of offence U/Secs. 3, 4, 5, 7 and 8 of the PITA Act, 1959 and Sec. 370 of the IPC against the petitioner. Learned counsel submits that in the event of breach of any of the conditions of licence, the Licensing Authority ought to have given opportunity of hearing to petitioner before taking such drastic action. It is submitted that the registration of offence itself not sufficient

to cancel the licence. It is contended that an act and action on the part of the respondent no.1 to pass such order is in gross violation of principles of natural justice as well as violation of fundamental rights guaranteed to petitioner under the Constitution of India. It is further contended that in the catena of cases decided by this Court it has been consistently held that any action taken in violation of the principles of natural justice is unsustainable in law. In support of submissions advanced, learned counsel has referred and relied upon the following decisions of this Court :

(i) 1988(2) Bom.C.R. 95 (Datwani Hotels Pvt. Ltd., V/s. State of Maharashtra & others)

(ii) 2001(1) Bom.C.R. 448 (Dilip J. Bhatia V/s. The Commissioner of Police, Thane & another)

(iii) 1996(3) Bom.C.R. 714 (Kana Nagu Mhatre V/s. The Assistant Commissioner of Police & another)

(iv) 2000(3) Bom.C.R. 372 (Shri K.V. Acharya & another V/s. The State of Maharashtra and others)

(iv) Criminal Writ Petition No.330 of 2017 in the case of Babasaheb Kisanrao Goje V/s The State of Maharashtra & others, decided on 07.11.2017.

5. On the other hand, learned APP supported the order passed by the respondent No.1. It is submitted that the action on the part of respondent no.1 is neither illegal nor contrary to law. It is submitted that as per powers vested under rule 245 of Chapter XX of Rules for licensing and controlling places of Public Amusements (other than Cinemas) and performances for public Amusement including Melas and Tamashas Act, 1960, the respondent no.1 has suspended the licence granted in favour of petitioner. It is submitted that the respondent no.2 vide report dated 09.03.2019 reported to respondent no.1 about registration of offences U/Secs. 4, 5, 7 and 8 of the PITA Act, 1959 and U/Sec. 370 of IPC against the petitioner and other accused persons vide C.R. No.77/2019, dated 01.02.2019 with Police

Station, Kaij, Dist. Beed. It is admitted in the affidavit filed by respondent nos.1 to 3 that no show-cause notice issued to petitioner before passing the impugned order. The respondent no.2 requested for cancellation of licence issued in favour of petitioner. By referring the acts specifically attributed to petitioner in the first information report as to commission of offence, learned APP submits that under the guise of performance licence, the petitioner was running systematic racket of prostitution. Looking to the gross violation and misuse of licence on the part of the petitioner, the respondent no.1 has passed the impugned order. It is submitted that as the action taken by the respondent no.1 is based upon the actionable material, the impugned order cannot be treated as arbitrary and in violation of any provisions of law.

6. I have carefully considered the submissions advanced in the light of overall

facts of the case. The fact is not in dispute that licence of performance and sale of tickets for organizing performance i.e. "Tamasha" has been issued in favour of petitioner under said Rules. So also the recommendation has made for renewal of licence issued in favour of petitioner further period of three years w.e.f. 01.04.2018 and petitioner has deposited the requisite amount towards the renewal of licence. It is also not in dispute that the impugned order has been passed on the basis of the report dated 09.03.2019 forwarded by the respondent no.2 i.e. District Superintendent of Police, Beed without issuing show cause notice and giving opportunity of hearing to petitioner. By the report dated 09.03.2019, the respondent no.2 has informed the respondent no.1 about the registration of offence U/Secs. 4, 5, 7 and 8 of the PITA Act, 1959 and U/Sec. 370 of IPC registered vide C.R. No.77/2019, dated 01.02.2019 with Police Station, Kaij, Dist.

Beed against the petitioner and other accused persons. As per report submitted with copy of the first information report of crime registered, the respondent no.2 has reported to respondent no.1 that on the basis of the reliable information received that under the guise of performance licence issued, the petitioner is running prostitution racket, it was decided to conduct raid. As per his instructions, the Deputy superintendent of Police and other Police Personnel conducted the raid. In the raid conducted, the Police have caught on spot the women known as "Gharwali" running prostitution racket with the help of girls employed for prostitution from the licence premises of petitioner. So also the customers and women/girls indulging in prostitution were taken in custody. On the basis of report submitted by the respondent no.2, the respondent no.1 has passed the impugned order.

7. Thus on the basis of facts of the case and actionable material available with the respondent no.1, prima facie the action taken by the respondent no.1 cannot be termed as arbitrary and without basis. The report submitted by the respondent no.2 and first information report lodged prima facie make out a case that under the guise of performance licence issued to organized shows of Tamasha i.e. local Folk dance, the licence premises was used for running systematic activity of prostitution in breach of terms and conditions of licence. The Chapter IX of the said Rules provides for issuance of performance licence. Chapter XI provides specific/additional rules for issuance of licence for Tamashas. Chapter XX provides for the rules for sale of tickets etc for such performance. Thus, the activities permitted under licence are duly regulated by said Rules.

8. Chapter XIX provides for powers of

licensing authority to suspend and cancel the licence issued under said Rules. In the event of misuse and breach of conditions of licence, the Licensing Authority vest with powers to suspend as well as to cancel the licence. The licence issued nowhere entitle the persons to carry the activities prohibited under law. I am therefore not inclined to accept the contention of learned counsel for the petitioner that mere registration of offence itself not sufficient to suspend/cancel the licence. The terms and conditions of the licence itself provides for cancellation and/or suspension of licence in the event of breach of any condition of licence which includes the misuse of the licence for the activities contrary to the law as well as activities prohibited under law.

9. In view of the admitted position that the impugned order has been passed without issuance of show-cause notice and opportunity

of hearing provided to the petitioner, it is necessary to examine whether the action on the part of the respondent no.1 is sustainable in law. Chapter XIX of said Rules of 1960 provides for powers vested with the Licensing Authority to suspend or cancel licence granted under said Rules. Rule 238 is the enabling provision for suspension or cancellation of licence granted under said Rules. Rule 238 reads as under :-

"238. Powers to suspend or cancel
licence :-

(1) The Licensing Authority may suspend or cancel any licence granted under these rules for contravention of any of these Rules or of failure of the licensee to comply with any reasonable directions which the Licensing Authority may issue in order to prevent any obstruction, inconvenience, annoyance, risk or danger to the members of the audience in the theater provided that the Licensing Authority shall give the licensee an opportunity to show cause before taking any action under this sub-rule.

(2) Notwithstanding the provisions of sub-rule(1) the licence shall be liable to immediate suspension or cancellation by the Licensing Authority if in the opinion of the Licensing Authority, the appliances in the premises for protection against and for extinguishing fire are inadequate or in any way insufficient or in unsatisfactory condition.

(3) Notwithstanding the provisions of sub-rules (1) and (2) the Licensing Authority may, in its absolute discretion at any time cancel or suspend any licence granted under these Rules and may direct and may direct the licensee to close the premises either permanently or temporarily, or direct him to comply with such directions and instructions that he may issue in order to prevent any obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passers-by in the vicinity or for the maintenance of public safety and the prevention of disturbance in the premises and every licensee shall forthwith comply with such directions or instructions given by the Licensing Authority, and if the

licensee fails to comply with such directions and instructions is license shall be liable to immediate suspension or cancellation.

(4) Notwithstanding the provisions of sub-rules (1), (2) and (3) the Licensing Authority may cancel or suspend any license granted under these rules and may direct the licensee to close the premises permanently or temporarily if the licensee fails to carry out any reasonable directions given to him by the Licensing Authority on receipt of a complaint about inconvenience caused to the spectators.

(5) Notwithstanding the provisions of sub-rules (1), (2), (3) and (4), the Licensing Authority may cancel or suspend any Licence granted under these rules for contravention of any condition of the Licence or of any of these rules or for failure to comply with any reasonable order or direction issued by the Licensing Authority in this regard."

10. Thus perusal of Rule 238(1) spell out that the Licensing Authority can suspend or cancel any licence granted under said Rules in the eventuality of contravention of any of the provisions of Rules as well as failure on the part of licensee to comply with any reasonable directions issued by the Licensing Authority to prevent the eventualities referred in said Rules after giving opportunity to licensee by issuing show-cause notice before taking any such action under said Rules. In that view there is no ambiguity in provision and prescribes in clear terms that opportunity of hearing must be given to an aggrieved person i.e. licensee before taking drastic action of suspension as well as cancellation of licence granted under said Rules.

11. Sub-rule (2) to (5) of Rule 238 makes an exception to sub-rule (1) to Rule 238 of said Rules 1960 to issue show cause notice and give opportunity of hearing before

cancellation or suspension of licence. Sub rule (2) to (5) of Rule 238 provides for authority vest with licensing authority to take immediate action of suspension or cancellation of licence without fulfilling the mandate of law U/Sec. 238(1) of said Rules if the eventualities as mentioned in said Rules occurs and immediate action called for at the instance of Licensing Authority. In the case in hand, no such eventualities as referred in sub-rule (2) to (5) of Rule 238 mentioned in the impugned order for exercise of powers by the Licensing Authority to suspend/cancel the licence. So also none of the circumstances and eventualities referred under rules 239 to 242 of said Rules also exists to justify the act of cancellation of licence without affording opportunity of hearing to the petitioner.

12. In the affidavit in reply filed by the respondent nos.1 to 3, the respondent nos.1 to 3 have supported their action in

exercise of powers U/Sec. 245 of Chapter XX of the rules for licensing and controlling places of Public Amusement (other than Cinemas) and performance for public Amusement including Melas and Tamashas Act, 1960 (wrongly quoted as "Act" in place of "Rules"). In fact rule 245 of the said Rules, 1960 reads as under :-

"245. Notwithstanding anything contained in these Rules, in Greater Bombay, the Commissioner of Police may, on an application made to him in that behalf, exempt any person or party intending to stage a performance of public amusement, including dramas, melas, tamashas and ras, from obtaining from the Board a certificate of suitability of the proposed performance, or of the performance, itself, if there is no script, if he is satisfied that for good and sufficient reasons, the applicant has not got sufficient time to obtain such certificate before staging the performance and that the proposed performance is not unfit on any of the grounds referred to in rule 139:

Provided that such exemption shall be valid for a period of two months from the date of issue or till the date on which the Board grants the certificate or refused to grant it whichever is earlier.

13. On the face of rule as quoted above, referred in order, the action on the part of respondent no.1 is not sustainable in law. In fact rule 245 of said Rules of 1960, neither attributed nor same could have been invoked by respondent no.1 in passing the impugned order.

14. Thus in absence of any eventualities specified in sub-rule (2) to (5) of Rule 238 of said Rules, the Licensing Authority ought to have followed the mandate of law contained in rule 238(1) of said Rules of 1960. The Licensing Authority ought to have afforded an opportunity of hearing to the petitioner before passing the impugned order. Apart from this, the principles of natural justice deserves to be adhered before passing such

order having far reaching effect. The action of cancellation/ suspension of licence have drastic effect. It takes away right of person to carry the business/profession permitted under licence issued in his favour. Such action have far reaching effect and amounts to violation of fundamental rights guaranteed to such person under Article 19(1)(g) and Article 21 of the Constitution of India. So also such action cannot sustain being taken in violation of principles of natural justice.

15. In the impugned order although the respondent no.1 has mentioned that the order has been passed in exercise of powers under rule 245 of Chapter XX of said Rules and licence of the petitioner has been suspended, but the order nowhere reflects that the order has been passed as an interim order in contemplation of further proceedings to cancel licence to be initiated against the petitioner. In response to the query made,

learned APP on instructions made statement across the Bar that though the word "suspension" has been used in the order, the licence of the petitioner has been cancelled by virtue of impugned order. In my view, the word "suspension" and "cancellation" have different connotation. The action to suspend the licence can be taken as an interim measure in contemplation proceeding to be initiated for cancellation of licence. Whereas, the word "cancellation" connotes the final action taken against the licensee by the Licensing Authority to cancel licence granted in favour of such licensee. The order passed no where reflects that any further action contemplated on the part of respondent no.1 after affording an opportunity of hearing to the petitioner. In absence of any proceedings initiated for cancellation of licence, the order of suspension cannot operate for an indefinite period. In the facts and circumstances of the case and mandate of law contained U/Sec.

238(1) of said Rules of 1960, the respondent no.1 duty bound to follow the procedure prescribed under rule 238(1) of said Rules. It was incumbent upon respondent no.1 to provide opportunity of hearing to the petitioner before passing the impugned order to cancel the licence granted to petitioner under said Rules. I am therefore inclined to pass the following order:-

ORDER

(i) The Petition is partly allowed.

(ii) The petitioner is directed to appear before the respondent no.1 on 13th November, 2019 with the copy of the order and file his response by treating the impugned order as an interim order of suspension passed pending inquiry against the petitioner.

(iii) In the response to be filed, the petitioner shall deal with the registration of

offence and prosecution initiated against him for committing offence U/Secs. 4, 5, 7 and 8 of the PITA Act, 1959 and U/Sec. 370 of IPC, registered vide C.R. No.77/2019 dated 01.02.2019 with Police Station, Kaij, Dist. Beed.

(iv) The respondent no.1 is directed to pass the appropriate order in the matter after giving opportunity of hearing to the petitioner.

(v) The respondent no.1 is directed to decide the matter and pass the order on and before 31st December, 2019.

(vi) The impugned order dated 12th April, 2019 passed by the respondent no.1 to be treated as an order of suspension of licence operating till conclusion of hearing and passing of the order by the respondent no.1.

(vii) Rule made absolute in above terms.

(V.L. ACHLIYA, J.)

sga/-