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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.571 OF 2019

Morenas & Co.and ors ... Petitioner.

V/s.

State of Maharashtra and ors ... Respondents

- Mr. Rajiv Narula i/by Jhangiani and Narula Associates, for the Petitioner.
- Ms. Pooja Yadav, for respondent corporation.
- Mr. Hemant Haryan, AGP for respondent State.

CORAM : G. S. KULKARNI, J.

DATE : 22nd FEBRUARY, 2019.

P.C. :

1] Heard Mr. Narulla, learned counsel for the petitioner, Ms. Pooja Yadav, learned counsel for the respondent corporation and learned AGP for the State.

2] The challenge in this petition filed under Article 226 of the Constitution of India, is to the communication dated 23.01.2019; whereby the Medical Officer Health ("A" Ward), of the respondent Municipal Corporation, has directed the petitioner to stop the activities of eating house, Bar and Restaurant of the petitioner viz. "White House Bar & Restaurant", located on the ground floor, 69, M. G. Road, Fountain Mumbai 400 023.

3] Mr. Narula, learned counsel for the petitioner submits that before the impugned communication was received, a show cause notice dated 21.01.2019, was issued by the very same Officer. It is submitted that before the petitioner could effectively reply to the show cause notice, the impugned communication is issued whereby the entire activities of the petitioner have come to a standstill. It is submitted that after the receipt of the impugned communication, the petitioner also approached the respondent Corporation by its letter dated 25.01.2019, requesting to revoke the communication dated 23.1.2019. However, it was of no avail. The contention of Mr. Narula, learned counsel for the petitioner, is that the impugned communication cannot be sustained in law, inasmuch as it is issued in breach of the principles of natural justice. He further submits that the documents as referred in the show cause notice were not furnished to the petitioner. He submitted that once show cause notice was issued, the respondent corporation ought to have taken a decision on the show cause notice. According to Mr. Narula, there cannot be a farce of a show cause notice and/or action of such serious nature is required to be taken only by following a due procedure in law.

4] Ms. Pooja Yadav, learned counsel for the respondent corporation would not dispute that the very authority of the Municipal Corporation had issued a show cause notice and to the fact that show cause

notice was not adjudicated as also the relevant documents were not furnished to the petitioner as referred in the show cause notice.

5] Having heard the learned counsel for the parties and having perused the record, in my opinion, the impugned communication dated 23.01.2019, cannot be sustained. This for the reason that two days prior to the issuance of the impugned communication, that is on 21.01.2019, a show cause notice was issued by the Medical Officer Health “A” ward of the Municipal Corporation, calling upon the petitioner to show cause as to why the Health licence issued to the eating house of the petitioner should not be revoked. Though the said notice was received by the petitioner on 21.01.2019 in the afternoon, it was yet to be responded. The documents as referred in the show cause notice were also not furnished to the petitioner. With these infirmities, the impugned communication came to be issued on 23.01.2019, within a gap of one day.

6] Considering these facts, in my opinion, it would have been appropriate for the Municipal corporation to grant a reasonable opportunity to the petitioner to submit a reply to the show cause notice on furnishing to the petitioner the documents as referred in the show cause notice, on the basis of which action was being initiated and only after hearing the petitioner an appropriate order ought to have been passed on the show cause notice as permissible in law. This course of action admittedly has not

been adopted. The impugned communication certainly entails civil consequences, by which the business activities of the petitioner stand suspended. Thus, in my clear opinion, there is breach of principles of natural justice in the respondent issuing the impugned communication. On this limited issue, the impugned order is required to be interfered. Hence, the following order.

Order

- I. The impugned communication dated 23.01.2019 (Exhibit “D”), issued by respondent-Municipal Corporation is quashed and set aside.
- II. The respondent Municipal Corporation is directed to furnish to the petitioner documents as referred in the show cause notice dated 21.01.2019 within one week from today.
- III. The petitioner, on receipt of said documents, shall file it's reply to show cause notice within one week thereafter.
- IV. The concerned officer of the Municipal Corporation shall hear the petitioner on the show cause notice within one week of the petitioner filing it's reply to the show cause notice and pass an order on the show cause notice within one week from the date of such hearing.
- V. All contentions in regard to show cause notice are expressly kept open.
- VI. Needless to observe, if the petitioner does not respond to the show cause notice after receipt of the documents, it would

be required to be presumed that the petitioner is not interested for adjudication of the show cause notice and in that event, the Corporation is free to pass further appropriate orders.

VII. As regards the the communication dated 05.01.2019 (Exhibit “Q”) by the Assistant Divisional Fire Officer, Mumbai Fire Brigade to the Commissioner of Police, the petitioner would approach the authorities of Fire Brigade Department of the Municipal Corporation with the proof of relevant compliances within a period of one week from today.

VIII. The concerned officer of the fire Brigade department shall consider compliances and after taking consequential necessary steps take appropriate decision on the compliances of fire safety requirements by the petitioner within two weeks thereafter.

IX. The petition is accordingly allowed in the aforesaid terms.

7] The parties to act on the authenticated copy of this order.

[G. S. KULKARNI, J]