

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

**WRIT PETITION (L) NO. 976 OF 2019**

Ashok S. Shetty

...Petitioner

vs

State of Maharashtra & Ors.

...Respondents

Mr.Pankaj Kansara I/b. Kansara and Thanekar for Petitioner.

Mr.Abhay L. Patki, Additional Government Pleader for Respondents.

**CORAM : S.C.GUPTE, J.**

**DATE : 8 APRIL 2019**

**P.C. :**

Rule. Rule made returnable forthwith by consent of counsel.  
Heard learned counsel for the parties.

2           This writ petition challenges an order passed by Deputy Commissioner of Police (Respondent No.3), who is the Licensing Authority for premises' licence under Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016. The Petitioner originally had a premises licence bearing No.120/1999. The licence was renewed from time to time, the last of such renewals being operative till 2005. The Petitioner thereafter was granted premises licence under the same licence number for performance of orchestra. This was with an endorsement that entry of deletion or insertion would be made subject to the final verdict of this court on the then pending petition challenging amendment to the Bombay Police Act made on 14 August 2005. This licence with endorsement was valid upon its being renewed from time to time till about 2016. In the pending

writ petition, this court quashed the amendment to the Bombay Police Act. The matter was thereafter carried by the State before the Supreme Court. On or about 10 May 2016, the Petitioner made an application in that pending appeal before the Supreme Court seeking directions to the licensing authorities to issue him the premises licence. The Supreme Court directed the licensing authority to consider grant of licence to the Petitioner. On 12 May 2016, the Petitioner was granted premises licence under the new licence rules. He was directed to deposit a demand draft or pay order of Rs.2 lakhs in favour of the licensing authority drawn on a scheduled bank. Admittedly, the Petitioner deposited this sum with the licensing authority and was thereupon issued a premises licence under Rule 5 of the new rules against payment of licence fees of Rs.2 lakhs. It appears that sometime on 11 January 2018, a show cause notice was issued by the Deputy Commissioner of Police, Greater Mumbai to the Petitioner under Rules 238 and 239 of Public Amusements Rules framed in pursuance of power conferred on him under Section 33 of Mumbai Police Act. It was claimed in the show cause notice that as per the order passed by the Supreme Court for grant of premises licence, the Petitioner was to submit an NOC from fire brigade. It was claimed that the fire NOC was not submitted by the Petitioner, and accordingly, notice was given to him under Rules 238 and 239 to show cause why the premises licence should not be permanently cancelled. It appears that there was some hearing before the Deputy Commissioner, at which the Petitioner sought time to furnish a fire NOC. The authority refused to grant such time and by its final order dated 7 February 2018 cancelled the Petitioner's premises licence permanently. This order was challenged by the Petitioner in a writ petition, being Writ Petition No.10353/2018. At the hearing of the petition, the Deputy

Commissioner of Police tendered a letter dated 5 October 2018 issued by Senior Police Inspector (Head Branch), confirming *inter alia* that the office of Deputy Commissioner had received the requisite fire NOC dated 8 May 2018. The letter was taken on record by this court and the assurance of the Deputy Commissioner that the Petitioner's application will be considered in three months was noted and accepted. This court, in the premises, quashed the impugned final order of 7 February 2018 as well as the order of Principal Secretary, Home Department of the State dated 22 March 2018 confirming that order. This court directed the Petitioner to appear before the Deputy Commissioner of Police, who was to decide his application for issuance of licence as expeditiously as possible and in any event, within three months from 15 October 2018, uninfluenced by the earlier orders passed by the Deputy Commissioner of Police and Principal Secretary, Home Department. The Petitioner, accordingly, appeared before the Deputy Commissioner of Police. By his impugned order dated 14 January 2019, the Deputy Commissioner of Police refused to renew the Petitioner's licence and once again cancelled the premises licence permanently. The reason cited for such cancellation was that the Petitioner was informed when he was issued premises licence under the new licence rules on 12 May 2016 to surrender his old orchestra licence and despite such requisition, the Petitioner had failed to handover the old orchestra licence. It is the case of the Petitioner that he has already surrendered his old orchestra licence and it is only upon his surrender of licence and payment of licence fee of Rs.2 lakhs that the original premises licence was issued to him under the new rules on 13 May 2016. The record of the case does not indicate that at any stage any requisition was made after the issuance of the premises licence to the Petitioner for surrendering his old orchestra licence. The only hitch in

renewing the Petitioner's performance licence was non-submission of an NOC of fire safety. It was accepted by the Deputy Commissioner of Police before this court in Writ Petition No.10353/2018 that no objection certificate of fire safety had since been received; the Deputy Commissioner's office had acknowledged the same and assured the court that they would consider the Petitioner's application for renewal of licence within three months.

3            Learned Additional Government Pleader does not dispute the fact that fire NOC, which was the only outstanding condition for renewal of the Petitioner's licence, had been duly received by the Deputy Commissioner of Police. If that is so, he ought to have renewed the Petitioner's licence. He could not have cancelled the same permanently on account of a complete non-issue, such as failure to surrender the old orchestra licence. The impugned order of the Deputy Commissioner of Police passed on 14 January 2019, accordingly, cannot be sustained and deserves to be set aside. The authorities must issue and renew the requisite Premises licence, since there is no other infirmity in the Petitioner's application for renewal.

4            Accordingly, the petition is allowed by making Rule absolute and quashing and setting aside the impugned order of the Deputy Commissioner of Police dated 14 January 2019. The Deputy Commissioner of Police is directed to forthwith renew the petitioner's licence bearing No.3/2016 in accordance with the Petitioner's application.

**(S.C. GUPTE, J.)**