

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2029 of 2019

Renuka Sanskritik Kala Kendra,
Through Its Proprietor
Jyoti Motambai Pawar,
Age 36 years, Occupation Business,
R/o Moha Tal. Jamkhed Dist.
Ahmednagar.

...Petitioner

VERSUS

- 1) The State of Maharashtra,
Through The Additional District
Magistrate, Dist. Ahmednagar.
- 2) The Collector,
Ahmednagar Dist. Ahmednagar.
- 3) The Superintendent of Police,
Ahmednagar.
- 4) The Tahsildar & Executive Magistrate,
Jamkhed Dist. Ahmednagar.
- 5) Grampanchayat Moha,
Through Its Sarpanch
Tal. Jamkhed Dist. Ahmednagar.

...Respondents

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Advocate for Petitioner : Mr. J. V. Patil

APP for Respondent-State : Ms. V. S. Choudhary

Advocate for Respondent No.5 : Mr. S. S. Thombre.

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WITH
CRIMINAL WRIT PETITION NO.102 OF 2020

Natraj Sanskrutik Kala Kendra,
Through Its Proprietor,
Smt. Mangal Popat Jadhav,
Age 40 years, Occupation Business,
R/o Moha Tal. Jamkhed Dist.
Ahmednagar.

...Petitioner

VERSUS

- 1) The State of Maharashtra,
Through Its Secretary,
Home Department, Maharashtra
State, Mantralaya, Mumbai.
- 2) The Collector, Ahmednagar
Dist. Ahmednagar.
- 3) The Additional District Magistrate,
Ahmednagar Dist. Ahmednagar.
- 4) Grampanchayat Moha,
Through Its Sarpanch,
Tal. Jamkhed Dist. Ahmednagar.

...Respondents

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Advocate for Petitioner	: Mr.P.R.Katneshwarkar
APP for Respondent-State	: Ms. V. S. Choudhary
Advocate for Respondent No.4	: Mr. S. S. Thombre.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgement :
05-01-2021.**

**Date of Pronouncing The Judgment :
09-02-2021.**

JUDGMENT :

1. The petitioners in both the writ petitions are challenging the order passed by the respondent No.2 District Magistrate / Collector, Ahmednagar bearing Outward No.D.C./Karya-9D/1076/2019, dated 29-11-2019 and D.C./Karya-9D/1075/2019 of the same date, thereby cancelling the performance licences granted to the petitioners under the Rules For Licensing And Controlling Places of Public Amusements (Other Than Cinemas) And Performances For Public Amusement, Including Cabaret Performances, Discotheque, Games, Pol Game Parlours, Amusement Parlours Providing Computer Games, Virtual Reality Games, Cyber Cafes, Games With net Connectivity, Bowling Alleys, Card Rooms, Social Clubs, Sports Clubs, Melas And Tamashas Rules, 1960 (Hereinafter referred to as "Rules").

2. FACTS IN CRIMINAL WRIT PETITION NO.2029 of 2019 :-

The petitioner contend that the said Kala Kendra was initially started in 2013 under the licence dated 19-06-2012 issued by Taluka Executive Magistrate, Jamkhed. The said licence has been renewed from time to time. The last renewal was on 11-02-2019. The Kala Kendra is situated in Gut No.68/1 and 69/2 in village Moha Taluka Jamkhed District Ahmednagar. The petitioner has taken

huge loan for construction of the Kala Kendra. It is the only earning source for the performers who are performing in the said Kala Kendra. At the time of grant of licence as well as at the time of subsequent renewals thereto, all the procedure as contemplated under the Act and the Rules have been followed. There are about 39 female and 19 male performers, out of them 10 are the permanent employees. The popularity of the Kala Kendra got increased, and therefore, the villagers from Moha with the political influence, started creating pressure on the State authorities. A proposal was submitted on 26-11-2018 to the District Magistrate, Ahmednagar to cancel the licence granted to the petitioner. Show cause notice was issued on 26-02-2019 and reply was solicited from the petitioner within 24 hours. It was also stated in the show cause notice that if the petitioner failed to give reply within the said period then it would be presumed that the petitioner does not want to respond. However, the petitioner made request to the respondent No.1 to grant time to file reply, but that was rejected. Under the said circumstance, she was constrained to file the reply on the same day i.e. 27-02-2019 on the basis of the record available before the petitioner. The respondent No.1- State hurriedly, hastily and without application of mind passed order on 01-03-2019 suspending the licence of the petitioner. Therefore, the petitioner approached

this Court by filing Criminal Writ Petition No.442 of 2019. After considering the affidavit-in-reply in which there was mention of report by District Superintendent of Police; the petitioner has withdrawn the said writ petition with liberty to prosecute the proceedings pending before respondent No.1. Directions were given to the respondent No.1 to decide the matter in time bound manner. Thereafter, the respondent No.1 passed the impugned order dated 29-11-2019 thereby cancelling the licence granted to the petitioner. It has been wrongly stated by the learned Additional District Magistrate while passing the said order that the petitioner has committed breach of conditions of licence. In fact, the petitioner has not violated any terms. First Information Reports were considered by the State/ Additional District Magistrate bearing No.94 of 2015, 122 of 2016, 121 of 2016 and 43 of 2009, however they are against some other person and not in respect of the petitioner. When the petitioner is not involved in any crime or in any way the premises of the petitioner is not involved in those crimes, merely because some incident had taken place at a different place, it cannot be the ground for cancellation of the duly issued licence in favour of the petitioner. Therefore, the said order passed by the Additional District Magistrate is illegal and deserves to be quashed and set aside.

3. FACTS IN CRIMINAL WRIT PETITION NO.102 of 2020 : -

Respondent No.1 has issued licence in favour of the petitioner since 1986 and it has been renewed from time to time under either the old Act or the new Rules. The petitioner Kala Kendra is situated in Gut No.48 in village Moha Tal Jamkhed Dist. Ahmednagar. The petitioner has also taken huge loan to the tune of Rs.7 lakh from Bank in 2018. Taluka Executive Magistrate, Jamkhed issued licence to the Kala Kendra on 07-05-2018 under its name but prior to that since 1986 it was as per Rule 138 (1) under the Public Amusement Act. At the time of issuance of licence in 2018, all the formalities and mandatory things were considered. No objection certificate was issued by the police authorities. The last renewal was on 11-02-2019 and it is up to 31-03-2022. Due to the political pressure from the villagers in Moha, show cause notice was issued to the petitioner on 26-02-2019. The petitioner was also directed to file reply within 24 hours. Her application for extension of time to file reply was also rejected, and therefore, she has also filed the reply under constrained circumstance. Her licence was also suspended on 01-03-2019. She had also approached this Court thereafter by filing Criminal Writ Petition No.419 of 2019 and then she has also got it withdrawn with liberty to prosecute proceedings before the respondent No.2. Thereafter, the learned Collector cancelled the

licence by passing order dated 29-11-2019. She is also saying that the said order is illegal on the same line of the another petitioner and prays for setting aside the said order.

4. Heard learned Advocate Mr. J. V. Patil and Mr. P. R. Katneshwarkar for respective petitioners, Ms. V. S. Chaudhary for respondents-State and learned Advocate Mr. S. S. Thombre representing respondent Grampanchayat Moha.

5. It has been vehemently submitted on behalf of both the petitioners after reiterating the facts as narrated above that licences were issued after taking into consideration all the legal provisions and when it is issued by adopting the procedure, it can be cancelled only as per the procedure that has been laid down under the Act or Rules. In the impugned order it is absolutely not stated that there is any breach of condition by the petitioner. After the licence has been renewed when people from the village i. e. those who have been represented through respondent Grampanchayat Moha, took objection. The further procedure has been taken, however when at the time of renewing the licence even the District Superintendent of Police had recommended for issuance of such licence then the Grampanchayat or people residing in the village cannot take any objection. In the affidavit-in-reply filed by Vijaykumar Eknath

Bhandari, at the time of earlier round of litigation before this Court i.e. previous writ petitions, the then Residential Naib Tahsildar Tal. Jamkhed Dist. Ahmednagar had reiterated those facts which were before the Additional District Magistrate. Subsequent alleged fear or feelings of the Grampanchayat ought not to be considered. The petitioners have the fundamental right of carrying business of their choice. No doubt, the said restriction is not unfettered and it requires observance of terms and conditions, obtaining of licence after making application to various authorities and taking no objections from those authorities. Yet, when it comes to cancellation of such duly sanctioned/ issued licence, then it should be as per the procedure laid down under the Act only. For the subsequent events i.e. subsequent to the extension of the renewal of licence, the cancellation cannot be the legal remedy. Reliance has been placed on Rule 238 of the Rules 1960 would show that the cancellation of licence can only be under the said rule, which stipulates the facts constituting breach of conditions. Those facts never existed in present case. The said affidavit-in-reply did not point that the present petitioners have in any way breached any condition that was imposed while renewing their licence. The learned Advocates, therefore, prayed for allowing the writ petition by setting aside the impugned orders.

6. Learned Advocate for the petitioners has relied on the decision of this Court in *Babasaheb s/o Kisanrao Goje v. The State of Maharashtra and Another*, (Criminal Writ Petition No.341 of 2006, decided on 12-12-2006), and *Babasaheb s/o Kisanrao Goje v. The State of Maharashtra*, (Criminal Writ Petition No.330 of 2017, decided on 07-11-2017). In both these cases it has been held that the licence cannot be cancelled for any such ground which is beyond the violation of conditions of licence. Reliance was placed in both the matters on the decisions of this Court earlier passed, especially the decision in *Dilip J. Bhatia v. The Commissioner of Police, Thane and Another*, reported in 2001(1) Bom.C.R. 448, wherein it has been held that,

"The licence cannot be cancelled on the ground of pendency of proceedings under the provisions of the Prevention of Immoral Traffic Act, 1956. Cancellation of licence can be ordered only for violation of any conditions of licence by licence holder or by his agent."

Further the reliance was placed on the decision in *Shri K. V. Acharya and Another v. The State of Maharashtra and others*, reported in 2000 (3) Bom.C.R. 372, wherein it has been held that,

" When the competent authority renewed the licence in favour of the petitioner after such offences were

committed by the petitioner, the licence authority had no power, competence or jurisdiction to take such offences into consideration for cancellation or suspension of licence.”

In this case though the offences were registered against the petitioner, yet the licences were renewed, and therefore, this Court was of the view that after renewal it cannot be cancelled for those events which had taken place prior to the renewal.

7. Learned Additional Public Prosecutor strongly opposed the petitions and submitted that though the licences were renewed, yet the events those had taken place after the renewal are required to be considered. Those incidence have been narrated in the affidavit-in-reply by the Naib Tahsildar Vijaykumar Eknath Bhandari, which was filed in the earlier round of litigation. The villagers from village Moha had submitted a representation on 14-02-2019 to Tahsildar, Jamkhed raising objections by pointing out the illegal activities carried out under the pretext of running Sanskrutik Kala Kendra, which included the Kala Kendras of the petitioners. Even the villagers told that they would go on hunger strike from 23-02-2019 if the petitioners are allowed to continue with their performances. A representation was forwarded by the villagers to the Superintendent of Police. Thereafter, actually the hunger strike had started on 23-

02-2019. It was represented by the villagers that the Zilla Parishad Schools and other schools were near from the Kala Kendra and as the illegal activities were going on, they had prayed for the close down of the Kala Kendras. As there was a problem of law and order situation, show cause notice was immediately issued and the reply was sought within 24 hours. It was alleged by the Grampanchayat that the performances at both the petitioner Kendras are creating nuisance to the nearby residents. Swift action was therefore necessary. Illegal activities were carried out at Natraj Sanskrutik Kala Kendra, and therefore, the offence was registered. The inquiry report called from Superintendent of Police, Ahmednagar, was still awaited when Mr. Bhandari had filed the affidavit-in-reply. The licence can be cancelled or suspended by the same authority who had issued the licence and further it was also considered that the Tahsildar who had renewed the licence had no authority to renew the same. Therefore, the order of cancelling the licence is proper and legal which does not require any kind of interference.

8. At the outset, it can be seen that once the licence is renewed, it cannot be cancelled on the ground that the authority renewing the licence was not in fact authorized under the Act. It can be the ground prior to the extension or issuing of a licence. In fact, when such application for renewal is presented to a particular authority

then either the said authority may issue/ renew the licence if he has power/ authority to issue the same. If he is of the opinion that the jurisdiction lies with another authority then he may direct the applicant to go to the particular designated officer, or even if the person to whom such application is tended is sub-ordinate, then he may place it before the superior for the necessary orders. But when once that jurisdiction is used, then another officer/ authority cannot have powers to cancel such licence or renewal thereof. Such renewal will have to be termed as 'duly issued licence or duly renewed licence'. The affidavit-in-reply does not specifically state that the authority in these cases who had granted the renewal had no such authority to renew the licence.

9. Once the licence has been renewed in both the cases, it presumes that the concerned authority had adhered to all the procedure as contemplated under the Rules or Act. Any subsequent derivation unless it comes under the breach of condition cannot give an authority to the licensing authority to suspend or cancel the licence. The said Rules of 1960 makes provision to suspend or cancel licence under Rule 238 which is reproduced as follows ;

"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 member of the audience in the theatre 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 direction 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 his 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 licence 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 his regard."*

10. Perusal of the above provision would show that upon the evidence for those breach of terms or stipulations in the event, the said licensing authority would get power to suspend or cancel the licence. In these cases along with the licence that was issued in favour of petitioners, there is list of conditions. Those conditions are also governed by circular issued by the Government dated 15-11-

2008. The respondents have not come with a case that any of those conditions and restrictions of the licence given on 11-02-2019 in both matters have been breached. Even in affidavit-in-reply the concerned Naib Tahsildar has not pin-pointedly stated which term or condition has been violated. Only on this count itself the writ petitions deserve to be allowed, however since certain other points have also been raised they are required to be considered.

11. It appears that the Grampanchayat has taken objection, however it is to be noted that it is after the licence was renewed on 11-02-2019. It appears to have been taken on 14-02-2019. The show cause notice which was issued on 26-02-2019 to both the petitioners gives four issues / points on which objection was taken. First is, that the villagers have passed resolution in Gram Sabha for closure of all the Sanskrutik Kala Kendras in the village. As regards this point, it can be said that under which provisions of law the Gram Sabha can take such decision, has not been pointed by learned Additional Public Prosecutor or by learned Advocate representing the Grampanchayat. The Kala Kendras are run on the premises of the property owned by the petitioners. They have every Constitutional right to carry out business of their choice. No doubt it is not an unfettered right, it comes with restrictions and in view of those restrictions, they had applied to the competent authority for the

licence and the renewal thereof subsequently. Therefore, Gram Sabha cannot have any such unfettered right to resolve that they would close such businesses. They can take objection to the appropriate authority, however it should be before the licence is issued or renewed. The second ground that is mentioned is, that some illegal activities are going on in the vicinity of the Kala Kendras. Third ground is that the offences under Prevention of Immoral Traffic Act have been lodged on the owner of the Kala Kendras, and the forth is that the law and order situation has arisen due to the Kala Kendras. All these points are inter related. The copies of the four First Information Reports produced on record would show that the petitioners Kala Kendras are not involved. Though in one matter it appears that the place in front of (not belonging to the petitioners) appears to be the place of offence. Therefore, when it has not been pointed out which illegal activity is going on in the petitioner's Kala Kendra and what kind of law and order situation has arisen, we cannot say that there was any substance in those points/ grounds raised. Further it is to be noted that at the time of renewal when the report was called from Superintendent of Police, he had recommended renewal. Further when the report of Superintendent of Police was called after the show cause notice was issued, yet the Superintendent of Police by

report dated 19-06-2019 recommended for giving permission to the Kala Kendras by giving additional conditions of installation of CCTV's and taking entry in respect of persons visiting the Kala Kendras. Therefore, according to the Superintendent of Police, Ahmednagar there is absolutely no law and order situation adversely affecting the villagers if the Kala Kendras are allowed to continue their performances. It will not be out of place to mention here that when the earlier two writ petitions filed by the present petitioners were withdrawn on 19-08-2019, in that writ petitions the Naib Tahsildar had stated in paragraph No. 12 of his affidavit-in-reply thus ;

*"12. In this view of the matter and the enquiry report so submitted by the Supt. Of Police Ahmednagar, **the order of suspension of license may be revoked subject to compliance of the terms and conditions mentioned by the Supt. Of Police Ahmednagar in its report, by the petitioner.**" (Stress supplied)*

And, therefore, it can be seen from the above statement on oath of the Naib Tahsildar that the Government was not in favour of revoking the order of suspension of licence. Now after the order is passed by the respondent No.2 on 29-11-2019, the Government cannot oppose the petition on some flimsy ground. The reasons quoted for cancelling the licence do not amount to breach of terms

of conditions of licence, and therefore, the said impugned order is without any authority and illegal.

12. The above said catena of Judgments relied by the petitioners would support the view of this Court that the licence cannot be cancelled on some other ground than the breach of terms of licence. In fact in *K. V. Acharya's case (Supra)*, there was an offence against the petitioner himself, yet taking into consideration the fact that the licence authority had no power, competence or jurisdiction to take such offences into consideration for cancellation or suspension of licence, the order of cancellation was set aside.

13. Under both the circumstances, the writ petitions deserve to be allowed, and they are accordingly allowed in terms of Prayer Clause "A".

14. No order as to the costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.