

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 5541 OF 2021

Navi Mumbai Hotel Owners & Anr. .. Petitioners

Vs.

The Commissioner of Police & Ors. .. Respondents

.....

Mr. R.D. Soni a/w Mr. Sujay Gawade, Ms. Mudita Pawar i/b Shree
& Co. for the petitioners

Mr. Tanveer Shaik, P.I. Navi Mumbai

Mr. Ganesh Kathawade, Under Secretary, Home Desk, Special -5

Mr. Sunil Nigade, Assistant

Mrs. S.S. Bhende, AGP for respondent State

**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, J.J.**

DATED : 16th SEPTEMBER, 2021

P.C.

1. Heard learned Counsel for the parties.
2. The petitioner no.1 is an association of Hotel and Restaurant establishments carrying on business in Navi Mumbai, have invoked writ jurisdiction of this Court *inter alia* praying for following substantive reliefs, which read thus :-

“(a) That this Hon’ble Court may issue a writ of certiorari or any other appropriate Writ, order or direction quashing and/or setting aside a notification dated 25.06.2019 being

UDAY
SHIVAJI
JAGTAP

Digitally signed
by UDAY
SHIVAJI
JAGTAP
Date:
2021.09.17
15:04:47 +0530

Exh. D hereinabove whereby the license fees for premises license issued under 213 rules is enhanced from Rs.2000/- in the proceeding year to Rs.2 Lacs per years.

(b) This Hon'ble court may quashed and set aside the enhancement of the performance licences fee of Rs.1500/- per stage per day as proposed by the Respondent and direct the Respondent to renew the performance licences of the Petitioner members Hotels against accepting licence fee of Rs.300/- per stage per day on par with the fee changes in the preceding years.

(c) That this Hon'ble Court may issue a writ of mandamus directing the Respondent to waive the proportionate performance and premises license fees for the period of compulsory closure as directed by the State Government under the National Disaster Management Act and the various circulars issued from time to time there under:

(d) That this Hon'ble Court may issue a Writ of mandamus or any other appropriate Writ, order or direction in the nature of Writ of mandamus, thereby directing Respondents to issue Premises License and Performance License which are issued under Rule 109 and the Rule 118 of Rules for Licensing and Controlling the Places of Public Amusement (other than Cinemas) and Performance for Public Amusements including Melas and Tamashas 1960 separately and not in a composite manner.

(e) That this Hon'ble Court may issue a Writ of mandamus or any other appropriate Writ, order or direction in the matter of Writ of mandamus, thereby directing Respondents to issue premises license annually and the Performance License monthly depending on

the number of Performance and number of stages which the Applicant proposes to perform during the relevant period.

(f) That this Hon'ble Court may issue a Writ of mandamus or any other appropriate Writ, order or direction in the nature of Writ of mandamus, thereby directing Respondents to permit member of the petitioner to temporary surrender the performance licences in respect of stages which they do not intent to operate for particular period and proportionately reduce the licence fee for such stages which are temporary suspended or surrender.

(g) Pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to quashing and/or setting aside the notification dated 25.06.2019 being Exh. D hereinabove whereby the licence fees for premises license issued under 23 rules is enhanced from Rs.2000/- in the preceding year to Rs.2 Lacs per years and 300/- to 1500/- in case of performance licence.

(h) Pending the hearing and final disposal of the Respondent be directed to renew the premises licence and performance licence of its members accepting the annual license fee of Rs.2000/- for the premises licence par with License Fee charged in preceding year and Rs.300/- per day per stage on monthly basis in case of performance.

(i) Interim and Ad-interim order in terms of prayer clause (f) and (g) be granted.

(j) Cost of the Petition be provided for.

(k) For such other and reliefs as the nature and circumstances of the case may require be granted”.

3. Briefly stated, the Association of the petitioners was established in the year 1987 for protecting the interest of the various Hotel and Restaurant owners in the city of Navi Mumbai. The affairs of the said association are governed by its bye-laws.
4. The respondent no.1 empowered to issue various licenses to the petitioner under the provisions of Section 33 of the Maharashtra Police Act and the Rules framed thereunder.
5. The petitioners in accordance with the procedure followed by the licensing department, have for their respective Hotels applied for renewal of the premises license in the Calendar Year 2020 and 2021. It is contended that before their renewal licenses were processed, the Central Government and the State Government declared a lock-down due to the Covid-19 pandemic by invoking the provisions of the Disaster Management Act w.e.f. 17th March, 2020. It is contended that the members of the petitioners' Association have applied for performance license in respect of number of stages, which they are proposed to operate for conducting Orchestra performances in their hotels. They were required to pay licence fees of Rs.1500/- per stage per day. However, due to the slow down and reduction in the business on account of Covid-19 pandemic and also in view of some of its members having surrendered their licenses for some stages, considering the lack of demand and, therefore, have applied

for temporary surrender of the licenses, which the said members desired not to operate for a particular period.

6. By Notification dated 25th June, 2019 the Commissioner of Police, Navi Mumbai increased license fees in respect of premises license from Rs.2,000/- to Rs.2,00,000/- per annum.
7. Our attention is drawn by the learned Counsel for the petitioners to the Notification dated 25th June, 2019, which is annexed at Exh.D on page 68 of the petition. The Notification also provides a cap for increase in license fees to the extent of maximum 10% of the license fees charged in the preceding year.
8. Having heard the learned Counsel for the petitioners and the learned AGP for the respondent – State, the parties are *ad idem* on the fact that a view earlier taken by this Court in the case of ***Anant Dattatray Patil Vs. The Commissioner of Police, Navi Mumbai & Ors.*** (Writ Petition No. 2802 of 2021) and ***Surendra Raghunath Samani Vs. The Commissioner of Police, Navi Mumbai & Ors.*** (Writ Petition No. 478 of 2021) can be made applicable to the present petition also. A Division Bench of this Court, after recording the consensus of the respective learned Counsel, passed an order *inter alia* directing the petitioner to deposit 50% of the amount which was directed to be deposited by imposing certain conditions.

9. In view of the decisions of this Court (supra), the following order is expedient :-

ORDER

(a) The petitioners to deposit 50% of the amount demanded, in the name of Commissioner of Police, Navi Mumbai with the Treasury within two weeks and inform the respondents along with the documents.

(b) Once the amount is deposited, the petitioners to file representation with respondent no.1 for the same cause of action as in the present Writ Petition within two weeks from the date of deposit.

(c) If the amount is deposited in time and application is made within two weeks from today, the respondent No.1 to decide the same on merits, if necessary, after hearing both sides and pass a reasoned order and communicate the same to the petitioners, in writing.

(d) It is made clear that the amount deposited by the petitioners shall be subject to the outcome of the representation.

(e) The effect, operation and implementation of the Notification dated 25th June, 2019 (Exh.D) stands stayed.

(f) If amount is not deposited within two week, writ

petition shall stand dismissed without reference to the Court and respondents are entitled to take action as per law.

(g) All contentions of the parties are kept open.

(h) Till decision of the representation that would be filed by the petitioners and for two weeks from the date of order, if goes against the petitioners, no steps shall be taken for cancellation of the license issued to the petitioners.

(i) The Writ Petition stands disposed of accordingly.

(j) No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K. TATED, J.)