

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.732/2019

Ishwar s/o Lalji Somkunwar and another

...Versus...

The Municipal Council, Ballarpur, Through its Chief Officer, Ballarpur, District
Chandrapur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Khajanchi, Advocate for petitioners
Shri M.I. Dhatrak, Advocate for respondents

CORAM : MRS. SWAPNA JOSHI AND
AVINASH G. GHAROTE, JJ.

DATE : 18/08/2021

1. Heard Shri Khajanchi, learned Counsel for the petitioners and Shri Dhatrak, learned Counsel for the respondents.

2. The petition challenges two communications, first, the notice dated 23/7/2019, whereby the petitioners have been asked to shutdown their business carried in Gokul Nagar Ward, on account of absence of permission thereto, contending that the same is required in view of the provisions of Section 2 (5A) of the Maharashtra Police Act (for short "the M.P Act", hereinafter). The next

communication is dated 1/8/2019, issued by the respondent no.1- Chief Officer, Municipal Council, Ballarpur under the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, contending that there are no fire safety measures in the premises of the petitioners and therefore the material in the premises should be removed within seven days.

3. Shri Khajanchi, learned Counsel for the petitioners, by inviting our attention to the license granted on 5/6/2018 submits, that the license under the Food Safety and Standards Act, 2006 under the Category – 16 – Prepared Foods, has been granted to the petitioners, under which license, the petitioners are preparing food in the premises, which is being supplied elsewhere. He further submits that in so far as the communication dated 23/7/2019 is concerned, there is nothing annexed thereto to state as to which of the articles or products stored, are inflammable.

4. Shri Dhattrak, learned Counsel for the respondents, submits, that since the production and storage is there in the premises, the provisions of Section 2 (5A) of the M.P Act would be applicable.

5. A perusal of Section 2 (5A) of the Maharashtra Police Act, would demonstrate that an 'eating house' means any place to which the public are admitted and where any

kind of food or drink is supplied for consumption in the premises. It is an admitted position that the activity done in the premises, is only of preparing food articles and there is no public consumption permitted there. This is also indicated from the impugned notice dated 23/7/2019. This being the position, the provision of Section 2 (5A) of the M.P. Act clearly is not attracted, in view of which, the impugned communication dated 23/7/2019 cannot be sustained. In so far as the communication dated 1/8/2019 is concerned, admittedly, there is no notification, as is required by Section 4 (1) of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006. That apart, the communication dated 1/8/2019 does not describe which are those consumables, which would be considered to be inflammatory articles, so as to cause fire hazards, in absence of which the communication dated 1/8/2019 is also not sustainable.

6. In view of above, both the communications are therefore quashed and set aside. The criminal writ petition is allowed in the above terms. No costs.

(AVINASH G. GHAROTE, J.)

(MRS. SWAPNA JOSHI, J.)