

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**913 CRIMINAL WRIT PETITION NO.193 OF 2020
WITH APPLN/234/2022 IN WP/193/2020**

**DILIP S/O. KHANDERAO ANDHARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.V.M. Chate, Advocate for the petitioner.
Mr.Y.G. Gujarati, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 30.11.2022**

PC :-

01. Heard learned Advocate for the petitioner and learned APP for the respondent.

02. By way of this petition, the petitioner has challenged impugned order dated 20.01.2020 passed by the Executive Magistrate, Gangakhed, Dist. Parbhani, cancelling the license standing in the name of petitioner's wife. The license was for running Jaibhavani Loknatya Kalakendra at Shivaji Nagar, Gangakhed. It was issued under section 163/1 of the Rules called "Rules for Licensing and Controlling Places of Public Amusements (Other Than Cinemas) And Performances for Public Amusement, including Cabaret Performances,

Discotheque, Games, Pool, Game Parlours, Amusement Parlours Providing Computer Games, Virtual Reality Games, Cyber Cafes, Games with Net Connectivity, Bowling Alleys, Card Rooms, Social Clubs, Sports Clubs, Meals and Tamashas Rules, 1960” [hereinafter referred to as “the Rules”]. It is case of the petitioner that after death of his wife he had applied for transfer of said license in his name. However that is still pending. Last time the license was renewed in the name of wife of the petitioner for a period from 31.12.2018 till 31.12.2021. The license suddenly came to be cancelled giving reference of a circular dated 22.12.2015 issued by the State of Maharashtra, Home Department, Transit Office, Hyderabad House, Nagpur, stating that licence for hotel and hospitality industry have become unnecessary and therefore such licenses are cancelled. Only by assigning this reason this license is cancelled. It is submission of the petitioner that this order is passed without issuing any notice and without affording any opportunity of hearing to the petitioner and therefore submits that it is liable to be quashed and set aside.

03. The respondent-State has filed affidavit-in-reply. Learned APP submitted that in view of Rule 245 of the Rules, there is alternative remedy. It is the main ground that alternative remedy is available to the petitioner, as the

petitioner can very well approach the District Magistrate and avail alternative remedy. This Court by order dated 31.01.2020 was pleased to issue notice. The respondent has also appeared and filed affidavit in reply and since then almost for three years after issuing notice the matter is pending in this Court and now it would not be proper to reject the petition on that ground. In reply it is further submitted that there were complaints received by the authorities that in the Kalakendra certain anti-social activities are going on, which has resulted into creating law and order situation, in which deaths have occurred. People have also opposed this Kala Kendra for illegal activities. However, no specific instances are quoted. It is seen that one complaint was received by the Tahsildar. However, it is seen from Exh. R-6 in the affidavit-in-reply that police had submitted a report to Tahsildar by conducting a surprise visit on 17.01.2020, just three days prior to passing of the order, wherein it was found that no objectionable thing was noticed by the police.

04. It is further submission of learned APP that on 15.01.2020 a notice was issued to the petitioner. However, by looking at this notice it is seen that the petitioner was only asked to produce the license. Though it is stated that some anti-social activities were going on in the said Kalakendra, no

specific circumstances are given in the notice. Looking at the wording of this so called notice it can be hardly be gathered that it was notice asking the petitioner why license should not be cancelled or why any action should not be taken against it. It is clear that no proper notice was issued to the petitioner before cancelling license.

05. The petitioner, therefore, has rightly relied upon judgment reported in **2013(2) All M.R.73 in the case of Phulchand Uttamrao Andhare Vs. State of Maharashtra & Ors.**, wherein similar action was taken without any notice. This Court in the said case had quashed and set aside the order of cancelling the license.

06. Considering the submissions, this Court finds that the action was taken without giving proper opportunity and notice to the petitioner. However, license was to come to an end by 31.12.2021. Thus, in any case the petitioner has to apply a fresh. The petitioner further submits that because of pendency of this petition, the respondents have not renewed the license assigning this reason, which is reflected from communication dated 22.12.2021. He thus submits that, therefore, it is necessary to quash and set aside the impugned

order/communication. In his submission, if that order is not set aside, the authority will not consider fresh application.

07. In view of this following order is passed :-

- i) Criminal Writ Petition is allowed.
- ii) Impugned order dated 20.01.2020 (Exh."B") is quashed and set aside.
- iii) The respondents to consider the application filed by the petitioner by applying its mind afresh.
- iv) Pending criminal application stands disposed of.

[KISHORE C. SANT, J.]