

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

CRIMINAL WRIT PETITION NO. 292 OF 2021

Swararaj Sanskrutik Kala Kendre
Through its Proprietor
Rajashri Dhondabai Jadhav

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. P.R. Katneshwarkar, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent nos. 1 to 3
Mr. S.R. Andhale, Advocate for respondent no.4

....

**CORAM : R.G. AVACHAT, J.
DATED : 23rd FEBRUARY, 2022**

PER COURT :

1. Heard.
2. The challenge in this petition is to an order dated 29th November, 2019 passed by Respondent No.2 - District Magistrate, Ahmednagar cancelling performance license of Swararaj Sanskrutik Kala Kendra ('Kala Kendra').
3. The petitioner is the proprietor of the said Kala Kendra. The Tahsildar *cum* Taluka Magistrate, Jamkhed had granted her a license to operate Kala Kendra at village Moha. Said license had been renewed time to

time. Some of the residents of the village Moha held Gram Sabha on 09th September, 2019 and passed resolution to request the District Magistrate to cancel the license of the various Kala Kendras, including the present one, since the same caused inconvenience, disturbance and even law and order problem to the residents of village Moha. The District Magistrate, Ahmednagar after having heard the petitioner and the representatives of Village Panchayat, Moha, cancelled the licenses of some Kala Kendras including that of the petitioner vide order dated 29th November, 2019. The reasons for cancellation of the license of Kala Kendra are – various crimes were committed in the close by of the Kala Kendra, the Gram Sabha of village Moha had an objection to allow the Kala Kendra to be run, school and college are there in the vicinity, under the guise of the Kala Kendra, brothel was being run, illicit liquor was being sold, etc.

4. Learned counsel for the petitioner would submit that license to run the Kala Kendra had been granted with no objection given by the Village Panchayat, Moha way back in 2005. The license has been continued for over thirteen years. The crimes which have been taken into consideration for cancellation of the license, took place in the years 2009, 2013, 2015 and 2016. Post registration of those crimes the license has been renewed. No crime was registered against the proprietor of the Kala Kendra. Nor did any offence take place on the Kala Kendra premises. It is a source of livelihood of

the proprietor of the Kala Kendra. She has a fundamental right to do a legitimate profession to earn her living. This Court, time and again, held that mere registration of the crime for the offences under the provisions of the Prevention of Immoral Traffic Act, 1956 cannot be a reason for cancellation of such a license. According to the learned counsel, two of such orders passed by the District Magistrate cancelling the licenses on the same day i.e. 29th November, 2019, have been set aside by this Court vide judgment and order dated 09th February, 2021 passed in Criminal Writ Petition Nos. 2029 of 2019 and 102 of 2020. According to him, the case of the present petitioner is at par with the petitioners in the petitions mentioned hereinabove. He, therefore, urged for grant of similar treatment.

5. Learned A.P.P. and learned counsel for Respondent No.4 – Village Panchayat, Moha would, on the other hand, submit that the District Magistrate has a power to suspend or cancel the license in view of Rule 238(3) of the 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 ('the Rules of 1960'). According to them, the facts of the present case are quite

distinguishable from the facts in above referred petitions, since crimes took place in the close by of the Kala Kendra in question. According to them, the villagers do have a say in such matters because of the activities at the Kala Kendra causing inconvenience, obstruction, annoyance, risk, danger and damage to the residents and passers-by in the vicinity. Learned counsel ultimately urged for dismissal of the petition.

6. Considered the submissions advanced. Perused the documents relied on. Chapter XIX of the Rules of 1960 speaks of power to suspend or cancel the license. Rule 238(3) of the said chapter reads thus :-

“(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 the licensee to close the premises either permanently or temporarily, or direct him to comply with such directions 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.”

7. Admittedly, the petitioner was granted the license to run Kala Kendra way back in 2005. The license had been renewed time to time. It is

only on objection raised by the villagers in Gram Sabha the District Magistrate on 29th November, 2019 cancelled the license of some Kala Kendras including that of the petitioner. Before the order of cancellation of license was passed, a report from the District Superintendent of Police was called for. The Additional Superintendent of Police, in turn, gave his report stating therein that the villagers, women, children, Kalika Potdar Learn School did not have any disturbance of the Kala Kendra. Some of the villagers had raised an objection out of a political dispute and only with a view to win *grampanchayat* election. In short, the Additional Superintendent of Police had no objection for continuation of Kala Kendra. The Additional Superintendent of Police's report undoubtedly suggest that there was no law and order problem due to functioning of the Kala Kendra. So far as regards taking into consideration some of the criminal cases mentioned in the order impugned herein, it is to be stated that all those crimes dates back to the years 2009, 2013, 2015 and 2016. Post registration of those crimes, the license of the Kala Kendra had been renewed. It appears that the District Magistrate did not go through the police papers of those crimes. Admittedly, none of those crimes was registered against the petitioner herein nor there is anything to suggest that any of those crimes was committed on the premises of the Kala Kendra. There is also nothing to suggest that either the petitioner or any of the artist/dancer of the Kala Kendra are facing prosecution for the offences punishable under the Prevention of Immoral Traffic Act, 1956.

8. In case of *Dilip J. Bhatia Vs. The Commissioner of Police, Thane and Another* reported in *2001(1) Bom.C.R. 448* it has been observed thus :-

“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.”

9. Furthermore, this Court vide judgment and order dated 09th February, 2021 passed in Criminal Writ Petition Nos. 2029 of 2019 and 102 of 2020 has set aside the order cancelling the licenses of some Kala Kendras. The case of the present petitioner is found to be at par with the case of the petitioners therein. On the ground of parity as well the petition succeeds. Criminal writ petition is, therefore, allowed in terms of prayer clause (A).

(R.G. AVACHAT, J.)

SSD