

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.515 OF 2022

Nagesh P. Suvarna] ... Petitioner

Vs.

The Commissioner of Police & Anr.] ... Respondents

...

Ms. Veena Thadhani i/b Mr. Vishal Thadhani for the petitioner.

Ms. M.S. Bane, A.G.P. for the respondent-State.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19TH JANUARY, 2022.

P.C. :-

1. Rule. Rule made returnable forthwith and, heard finally, by the consent of the parties.
2. The petitioner has put forth prayer clauses (b), (c), (d) and (e) as under:

“(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction of this Hon'ble Court, calling for the papers and proceedings relating to the impugned Order dated 9/11/2021 passed by the 1st Respondent and after inquiring into the validity and/or legality thereof to quash and set aside to the same;

(c) that pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to stay the impugned Order dated 9/11/2021 passed by the learned 1st Respondent;

(d) that ad-interim reliefs in terms of prayer clause (c) above be granted;

(e) that without prejudice to and in the alternative to the above, this Hon'ble Court be pleased to stay the impugned Order dated 9/11/2021, till such time as the Appeal filed by the Petitioner is finally decided by the 2nd Respondent and in case an Order adverse to the Petitioner is passed by the 2nd Respondent, this Hon'ble Court be pleased to stay the impugned Order for a further period of two weeks from the date of receipt of the Order.”

3. Considering that a substantive Appeal No.101 of 2021, is pending hearing before the Additional Chief Secretary, Home Department (Appeals & Security), State of Maharashtra, under Section 33 of the Maharashtra Police Act, 1951, and considering the order that I am passing, in the peculiar facts and circumstances of the case, I need not deal with the entire submissions of the learned counsel of the respective sides.

4. Suffice it to say that, an Order dated 09/11/2021 was passed against 'M/s. Hotel Sadguru', Tak Pada, Makwana Road, Andheri (E), Mumbai – 400 059, operated by the petitioner, vide which, the Licence for Entertainment (Orchestra), bearing No.515 of 2009, has been permanently cancelled. The petitioner has been granted 30 days' time, from the date of receipt of the order, for preferring an appeal under Section 33 of the Maharashtra Police Act, 1951. Such appeal has been filed, within the limitation period, on 29/11/2021 along with an application for interim relief, in the nature of a stay to the order of cancellation of licence. There is no dispute that, the impugned order was not implemented within the appeal period. The interim application of the petitioner has been kept pending by the appellate authority and, on 06/01/2022, the Establishment operated by the petitioner, under the Maharashtra Shops and Establishment Act, has been shut down.

5. Considering the peculiar factors as above, which indicate, that the appeal of the petitioner filed within the appeal period, on the one hand, is kept pending and, on the other hand, after about 38 days, the Establishment has been shut down, I called upon the learned A.G.P. to convey to the appellate authority that the hearing should be concluded within 10 days and, a decision should be delivered on the interim application on or before 04/02/2022. On the request of the learned A.G.P., the matter was adjourned overnight, and posted today. The learned A.G.P. submits, on

instructions, that the appellate authority has quarantined himself, on suspicion of being affected by Covid-19 and, as such, the hearing may be postponed for sometime.

6. The learned counsel for the petitioner has placed reliance upon the following judgments/orders:-

(a)	<u>Kana Nagu Mhatre v. Assistant Commissioner of Police, Navi Mumbai & Anr.</u> ¹
(b)	<u>Maruti Vitthal Gopale v. The State of Maharashtra & Anr.</u> ²
(c)	<u>Dilip J. Bhatia v. The Commissioner of Police, Thane</u> ³
(d)	<u>Padma N. Kokarne (M/s. Pooja Bar & Restaurant)</u> ⁴
(e)	<u>Shivraj Hotels and Resorts Pvt. Ltd. v. State of Maharashtra & Ors.</u> ⁵
(f)	<u>Bhaskar B. Bhosle v. State of Maharashtra & Ors.</u> ⁶
(g)	<u>Umesh Vasu Shetty v. The Commissioner of Police & Anr.</u> ⁷
(h)	<u>Ratnakar M. Shetty v. The Commissioner of Police & Anr.</u> ⁸
(i)	<u>Mohanshyam Omprakash Mangla v. The Commissioner of Police, Thane & Ors.</u> ⁹

1 1996(2) Mh.L.J. 1052

2 Order dated 12/10/2006 in Civil Writ Petition No.5675 of 2006

3 2001 (1) Bom.C.R. 448

4 Order dated 17/06/2004 in O.S. Writ Petition No.1181 of 2004

5 Order dated 23/08/2011 in OS Writ Petition (L) No.1752 of 2011

6 2003 (6) Bom.C.R. 592

7 Order dated 14/12/2021 in Civil Writ Petition No.8718 of 2021

8 Order dated 09/12/2021 in Civil Writ Petition No.8719 of 2021

9 Order dated 03/12/2010 in Civil Writ Petition No.7704 of 2010

(j)	<u>Dinesh J. Thakur (M/s. Natraj Bar & Restaurant) v. The Commissioner of Police, Greater Mumbai & Anr.</u> ¹⁰
(k)	<u>B. Kevalchand Jain (M/s. Retro Bar & Restaurant) v. The Commissioner of Police, Greater Mumbai & Anr.</u> ¹¹

7. By relying on the above judgments/orders, she submits that the authorities cannot keep the appeal pending and, initiate coercive steps to shut down a business Establishment, completely.

8. The facts of this case are quite peculiar and glaring. An offence is registered against the customers and some of the staff members of the petitioner-Establishment, for having violated the conditions of the licence to operate the entertainment activity (Orchestra). Independently, a proceeding is initiated against the petitioner under the Maharashtra Police Act and an order is passed on 09/11/2021. Thirty days' time is granted to the petitioner to prefer an appeal. Such appeal is filed, within the appeal period, on 29/11/2021. The appellate authority sits over the appeal and, suddenly, on 06/01/2022, the Industrial Establishment is shut down. When called upon by the court to mention the in-charge appellate authority, who could decide the appeal, during the absence of the concerned Secretary, the learned A.G.P. is

10 Order dated 27/09/2019 in OS Writ Petition (L) No.2769 of 2019

11 Order dated 04/10/2019 in OS Writ Petition (L) No.2807 of 2019

instructed to submit that there is no in-charge officer and the hearing will have to be postponed. Such attitude of the authorities is deprecable and, it is on account of the same, that I am required to grant relief to the petitioner, considering the orders cited before me, which are reproduced hereinabove.

9. The learned Division Bench as well as the learned Single Judge Bench of this court, have consistently granted interim protection to the Establishments, during the pendency of the application for stay in an appeal.

10. In view of the above, this petition is partly allowed with the following directions:

- (a) Akin to the orders passed by this court, in the cases of **Bhaskar B. Bhosle (supra)**, **Umesh Vasu Shetty (supra)**, **Ratnakar M. Shetty (supra)**, **Mohanshyam Omprakash Mangla (supra)**, **Dinesh J. Thakur (supra)** and **B. Kevalchand Jain (supra)**, the impugned order dated 09/11/2021, shall be kept in abeyance, and the petitioner would be at liberty to operate it's business, strictly as per the terms and conditions of the Licence No.515 of 2009 dated 18/12/2009, till the decision in the pending appeal.

- (b) Appeal No.101 of 2021 will be listed for final hearing on 07/02/2022 at 02.00 p.m. before the appellate authority.
- (c) The petitioner shall tender, written notes of submissions along with case-laws, if any, on the said date, before the appellate authority, through an advocate or in person.
- (d) No adjournment would be granted to the petitioner and, in the event of an adjournment sought on 07/02/2022, the interim protection granted by this court, shall stand vacated with effect from 08/02/2022.
- (e) The appellate authority shall decide the appeal finally, by passing an order on 21/02/2022 at 03.00 p.m.
- (f) The petitioner shall remain present on the said date of pronouncement and, a copy of the final order shall be made available to the petitioner by following the procedure, as is applicable.
- (g) The appellate authority shall note that the interim protection has been granted by this court, in the

peculiar facts and circumstances of the case, and, has not dealt with the merits of the appeal, which are to be considered by the appellate authority, independently.

11. Rule is made partly absolute in the above terms.

[RAVINDRA V. GHUGE, J.]