

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12188 OF 2022

Geeta Lunch Home (Permit Room)]
Through its Proprietress]
Smt.Sita Gopal Shetty]Petitioner.

V/s.

State of Maharashtra & Ors.]Respondents.

Mr.R.D. Soni, Advocate a/w Advocate Sujay Gawade i/b Shree & Company.

Mr.P P Pujari, AGP for the State-Respondent.

CORAM : SANDEEP K. SHINDE, J.

TUESDAY, 18TH OCTOBER, 2022.

PC. :

1. The petitioner was granted performance License No.342/2004 by the Commissioner of Police under the Rules called "*Rules for Licensing and Controlling Places of Public Amusement (other than Cinemas) and Performances for Public Amusement including Melas, Tamashas, 1960*". The Respondent No.4 Deputy Commissioner of Police, H.Q.-1, the licensing authority by Show Cause Notice dated

15.7.2016 required the petitioner to show cause as to why performance license should not be cancelled for alleged violation of license conditions. Though, the petitioner was duly served, he did not respond to the show cause notice. Resultantly, on 20.12.2016, the performance license was cancelled. That order was challenged in the Appeal before the Principal Home Secretary (Appeal And Security) Maharashtra State Mantralaya at Mumbai. Pending the appeal, operation of the order passed by the Deputy Commissioner of Police cancelling performance license was stayed. Yet the appeal was decided ex-parte on 22.3.2018 by which order passed by the Deputy Commissioner was confirmed. It appears, mistakenly, another show cause notice was issued by the Deputy Commissioner on 27.9.2017 after cancelling the performance license. No matter what, the petitioner sought review of the order dated 22.3.2018 passed in appeal. The review was dismissed for want of jurisdiction, therefore, the petitioners have filed this petition.

2. Mr. Soni, learned Counsel for the petitioners, on instructions, submits that, since after order dated 22.3.2018 passed in appeal, the petitioner is not playing musical instruments, Orchestra at his establishment situated at Shop No.1, Umashankar Mishra Chawl,

Are road, Goregaon(E), Mumbai. Mr.Soni, the learned Counsel submitted that license has been cancelled by the authority principally, relying on the crimes registered against the establishment or its owner or servants. One of such crimes was registered on 26.6.2017 under Section 294 r/w 34 of the Penal Code and under Sections 3, 8(1) of the Indecent Representation of Women (Prohibition) Act 1986 and another on 17.8.2017 by Social Service Unit, Crime Branch, under Section 294, 114 r/w 34 of the Indian Penal Code.

3. Mr.Soni submitted that in terms of Government G.R. dated 23.1.2019, mere pendency of prosecution itself could not be a ground for cancelling the license so, long as the license-holder himself or his agent or servant is convicted of the said offence. To fortify this submission, Mr. Soni, the learned Counsel for the petitioners relied on the Judgments/orders passed in, Dilip Bhatia in Writ Petition No.7271/1999; Ganpat Patil in Writ Petition No.2491/2013; Maruti Gopale in Writ Petition no.5675/2006 and Shivraj Hotels in Writ Petition (L) no.1752/2011.

4. Moreover, Mr. Soni, the learned Counsel for the petitioner submitted that since the impugned order has been passed without hearing the petitioner, in all fairness, the petitioners may be granted an opportunity to file the reply to show, cause notice dated 13.7.2016 issued by the Deputy Commissioner. Mr.Soni submitted that the petitioner shall appear before the respondent no.3 and file reply to show cause notice. Whereafter, the respondent no.3 may pass appropriate order in accordance with law. Mr.Soni, therefore, submitted that the impugned order may kindly be quashed and set aside.
5. The petition is opposed by the learned A.G.P. He relied on the affidavit of the Assistant Commissioner. I have perused it, however, affidavit does not point out, whether offences registered against the licensee, have been culminated into conviction or not. It is settled law that until held guilty, a person should be treated as innocent, and therefore, mere registration of crime would not furnish ground to cancel license.
6. Thus, in consideration of above facts, it is evident that the licensing authority while cancelling the license, in-principal relied on the crimes registered against the licensee or its servant, which

he could not have, in view of the Government Resolution dated 23.01.2019 and the law laid down in above decisions. That apart, the performance license has been cancelled by the ex-parte order passed by the respondent no.2. Thus, for the reasons stated above, I deem it appropriate to set aside the impugned order and direct the respondent no.3 to pass the order in accordance with law pursuant to show cause notice dated 13.07.2016. For that, the petitioner shall appear before respondent no.3 on 25.11.2022 and file reply to the subject show cause notice. Thereafter, the respondent no.3 shall pass appropriate order in accordance with law.

7. The petition is allowed in aforesaid terms and disposed of, accordingly.

(SANDEEP K. SHINDE, J.)