

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

WRIT PETITION NO.6081 OF 2023

Ram S/o Baburao Haral
Age: 52 years, Occupation: Business,
R/o. S. T. Canteen Bus Stand
Beed

... **Petitioner**

Versus

- 1) The State of Maharashtra
Through: The Secretary,
Public Transport Department,
Mantralaya, Mumbai – 32
- 2) The Divisional Controller,
Maharashtra State Road Transport Corporation
at Beed, Taluka & District Beed
- 3) The District Collector Beed,
Taluka & District Beed
- 4) The Superintendent of Police, Beed
Tq & District Beed
- 5) A. G. Gurle,
Asstt. Police Inspector
Police Station Shivaji Nagar, Beed,
Tq. and Dist. Beed.

... **Respondents**

....

Mr. J. M. Murkute, Advocate for Petitioner
Mr. S. W. Munde, AGP for respondent – State
Mr. A. B. Dhongade, Advocate for respondent No.2

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 20.06.2023.

ORAL JUDGMENT (Per Ravindra V. Ghuge, J):-

1. Leave to correct the description of respondent No.5 as A.P.I. Amendment be carried out.
2. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
3. The petitioner is before us being aggrieved by the purported high handedness of the police department in prohibiting him from operating the S. T. canteen situated in the premises of the S.T. bus stand at Beed, during the night hours i.e. from 11.00 p.m. to 04.00 a.m.
4. We have considered the strenuous submissions of the learned Advocates for the respective sides, have gone through the record available, more particularly, the 11 pages compilation placed before us by the Assistant Police Inspector, Police Station Shivajinagar, Beed, with the covering letter dated 19.06.2023 addressed to the learned Government Pleader, which is marked as "X-1" collectively for identification and the earlier order of this Court dated 16.12.2014 passed in Writ Petition No.253/2014, filed by the Petitioner.

5. The undisputed factors are as under:
- (a) The Petitioner's canteen is registered under the Maharashtra Shops and Establishment Act.
 - (b) The Petitioner is a valid license holder.
 - (c) The M.S.R.T.C., which has appeared before us, submits that the Petitioner has been legally granted the license to operate the canteen.
 - (d) Section 4 of the Maharashtra Shops and Establishment Act provides for granting exemption to establishments mentioned in Column 2 and Entry No.13 of Schedule-II.
6. When the Petitioner was before this Court in Writ Petition No.253/2014, this Court has observed in its order dated 02.05.2014 that the restrictions of not operating the shop after 11.00 p.m., is not applicable to the Petitioner in view of the exemption clause and considering the exemption available even under the Bombay Police Act, 1951. It was, therefore, concluded in the said order that the Petitioner can operate the canteen which is situated within the S.T. bus stop premises, during 11.00 p.m to 4.00 a.m.
7. The entry at Sr.No.13 in Schedule II exempts the stalls, refreshment rooms and canteens at the railway stations, docks, wharves, airports and the State Transport Bus Stations, from Sections 19, 20 and 23. Section 19 pertains to opening and closing hours of

restaurants and eating houses. Section 20 pertains to restaurants and eating houses being restrained to sell goods of the kind sold in shops before the opening and after the closing hours of the shops and Section 23 is as regards the spread over of an employee in a residential hotel, restaurant or eating house which should not exceed twelve hours.

8. In the backdrop of the above admitted factors, the learned AGP has relied upon the communication dated 19.06.2023, addressed to him by the Assistant Police Inspector of the concerned Police Station. He has stated that as localities and gundas come to the canteen during the night hours in a drunken stage, harass ladies and cause thefts, the canteen should be shut down.

9. We find that the copies of the First Information Reports placed on record have absolutely nothing to do with the functioning of this canteen. In one F.I.R. filed by a lady, namely, Sonali Amol Chavan, the offence took place in some garden. The second F.I.R. filed by Dilip Balnath Gade, is with regard to a theft of Rs.75,000/- which he had kept in his pocket and the theft took place while he was boarding the bus in the afternoon at 12.50 p.m. The third F.I.R. is filed by Kapil Kisanrao Mune, whose motorcycle was stolen from the

parking of the bus stand around 3.00 p.m. The fourth F.I.R. is filed by Rajebhau Haribhau Labde, whose wallet was stolen while boarding the bus around 4.30 p.m. The last F.I.R. is filed by Kiran Parmeshwar Raut, who is a Bus Conductor, whose ticket tray was stolen around 6.30 p.m. from the bus stand.

10. The Petitioner contends that, because of the high handedness of respondent No.5 -Shri Amol Ganesh Gurle, his canteen has been forcibly shut down from 11.00 p.m. to 4.00 a.m. for the last more than 30 days.

11. It is quite apparent that Respondent No.5 has not acted judiciously. Rather than ensuring that a Patrolling vehicle being kept available for protecting the citizens who reach the bus stand in the late hours after reaching the destination, the said respondent appears to be blaming the petitioner for operating his canteen. If the Respondent No.5 is not able to curb thefts, robberies and ensure law and order, the deficiency lies with him. It is obvious to us that he has harassed the petitioner.

12. Considering the above and disobedience of our earlier order dated 02.05.2014, the conduct of Respondent No.5 cannot be countenanced. In fact, we could have recommended his case for

disciplinary action by following the due procedure laid down in law and by adhering to the principles of natural justice. Instead of initiating such steps, we are imposing cost of Rs.25,000/-, which he shall deposit in this Court within fifteen days, from his salary account through a demand draft, addressed to the Registrar, High Court of Bombay, Bench at Aurangabad. After the said amount is credited, the petitioner would be at liberty to withdraw the said amount without conditions.

13. We therefore direct that as long as the petitioner is exempted and duly registered under the Maharashtra Shops and Establishment Act and as long as he has the license - contract with the M.S.R.T.C. to operate the canteen, no authority would interfere in the functioning of his canteen, without following the due process of law.

14. The **writ petition is partly allowed**. Rule is made absolute in the above terms.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS