

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 411 OF 2023

Natraj Sanskrutik Kala Kendra through
its proprietor Vishal Nandkishor
Gangawane ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Shrirang Katneshwarkar, Adv. for the Petitioner.

Mr. A. R. Patil, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 15, 2023

P.C. :

Heard.

2. This writ petition has been filed for the following relief :-

“A] By issuing Writ of Certiorary or any other Writ, Order or Direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 25/10/2020 passed by Ld. Dist. Collector Nashik (Respondent No. 2) and order dated 09/12/2022 passed by Ld. Chief Secretary, Home Department, Mantralaya (Respondent No. 1) whereby the performance license of Natraj Kalakendra bearing no. 1 of 2017 came to be cancelled and further be pleased to direct respondent no. 2 to renew the performance license of the petitioner.”

3. The petitioner is a proprietor of “Natraj Sanskrutik Kala Kendra”. He was granted a license to run the said Kala Kendra for a period from 16/06/2017 to 31/03/2018. He filed an application

to the District Collector, Nashik for renewal of his license. Pending his application before the District Collector, the petitioner approached the Tahsildar, Sinnar, District-Nashik, who in turn renewed the license for a period from 01/04/2018 to 31/03/2021.

4. The petitioner was served with the show-cause notices dated 07/07/2020 & 18/09/2020 as to why his license to run the Kala Kendra shall not be cancelled. The petitioner gave his reply to the said notices on 24/09/2020.

5. It is the case of petitioner that the District Collector without taking into consideration his reply to the notices, cancelled the license on 25/10/2020. The petitioner therefore preferred an appeal thereagainst to the State of Maharashtra in Home Department. His appeal too came to be dismissed. The petitioner is therefore before this Court.

6. The ground on which the license has been cancelled, was registration of a crime vide C.R. No. 206/2017 against the petitioner for the offences punishable under Sections 366(b), 368, 372, 373(2)(n), 376(d) read with 34 of the Indian Penal Code, 1860 and under Section 5 & 6 of Immoral Traffic (Prevention) Act, 1956 and under Section 3(1), 4, 8, 16 & 17 of the Protection of Children from Sexual Offences Act, 2012 .

7. Learned Advocate for the petitioner would submit that the petitioner has been acquitted of the case registered pursuant to C. R. No. 206/2017. The said crime was noway related to the Kala

Kendra. According to him, Kala Kendra License could only be cancelled for breach of the conditions of licence or Rules, 1960. He therefore urged for allowing the writ petition in terms of prayer clause (A).

8. Learned APP would on the other hand supports the impugned order.

9. Considered the submissions advanced. Perused the orders impugned herein.

10. Admittedly, the petitioner was granted license to run Kala Kendra for a period from 16/06/2017 to 31/03/2018. The Tahsildar, Sinnar, District-Nashik even renewed the said license for a period from 01/04/2018 to 31/03/2021. Meanwhile the petitioner was served with the show-cause notices. The said notices were issued pursuant to the police report suggesting the crime C.R. No. 206/2017 to have been registered against the petitioner. He was called upon to explain as to why did he approach the Tahsildar, Sinnar, District-Nashik for renewal of license, when he had already moved before the District Collector. He was also called upon to explain that while Gut No. 128/1A/1 was standing in the name of petitioner and Rohit Nandkishor Gangawane, whether he has authorized Rohit Nandkishor Gangawane to enter into an agreement. The report given by the Superintendent of Police, Nashik was also brought to the notice of petitioner, so as to show-cause as to why the license shall not be cancelled permanently. The petitioner filed his reply to the said

notice.

11. The impugned order dated 28/10/2020 indicate the license has primarily been cancelled on the ground of registration of a crime vide C. R. No. 206/2017 (*supra*). There is on record a copy of the judgment in Sessions Case No. 76/2018 indicating the petitioner to have been acquitted of the said crime.

12. In the case of **Dilip J. Bhatia vs. The Commissioner of Police, Thane and Another** reported in **2001(1) Bom.C.R. 448**, this Court has observed that a license of eating house or a lodge can not be cancelled merely on the ground that the cases under Immoral Traffic (Prevention) Act, 1956 were pending against them unless licensee or his agent is convicted of such offences.

13. True, it was a case under Bombay Police Act, 1951. Moreover, Rule 238 of the Licensing and Controlling Places of Public Amusement (Other Than Cinemas) and Performances for Public Amusement including Melas and Tamashas Rules, 1960 speaks of “Powers to suspend or cancel license”. The same is reproduced hereinbelow for better appreciation :-

“(1) The Licensing Authority may suspend or cancel any license granted under these rules for contravention of any of these Rules or of failure of the licensee to comply with any reasonable directions which the Licensing Authority may issue in order to prevent any obstruction, inconvenience, annoyance, risk or danger to the member of the audience in the theatre provided that the Licensing Authority shall give the licensee an opportunity to show

cause before taking any action under this sub-rule.

(2) Notwithstanding the provisions of sub-rule (1) the license shall be liable to immediate suspension or cancellation by the Licensing Authority if in the opinion of the Licensing Authority, the appliances in the premises for protection against and for extinguishing fire are inadequate or in any way insufficient or in unsatisfactory condition.

(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 license granted under these Rules and may direct and may direct the licensee to close the premises either permanently or temporarily, or direct him to comply with such direction 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.

(4) Notwithstanding the provisions of sub-rules (1), (2) and (3) the Licensing Authority may cancel or suspend any license granted under these rules and may direct the licensee to close the premises permanently or temporarily if the licensee fails to carry out any reasonable directions given to him by the Licensing Authority on receipt of a complaint about inconvenience caused to the spectators.

(5) Notwithstanding the provisions of sub-rules (1), (2), (3) and (4), the Licensing Authority may cancel or suspend any license granted under these rules for contravention of any condition of the license or of any of these rules or for failure to comply with any reasonable order or direction issued by the Licensing Authority in

this regard.”

14. The show-cause notice and the impugned order of cancellation of license indicate the license has not been cancelled for breach of any of its conditions. The petitioner has been acquitted of the crime registered against him.

15. It is not the case of authorities that the said offence was committed on the premises of Kala Kendra. Since the ground, on which the petitioner’s license came to be cancelled no longer exists and the license could not have been cancelled on the said ground, the orders impugned herein are liable to be set aside.

16. So far as regards the prayers for direction to the District Collector, Nashik to grant renewal of the license is concerned, it is to be stated that the license period has already been over. It is therefore directed that if the petitioner files an application for renewal of his license, the District Magistrate would consider it in accordance with the relevant rules in that regard and shall not refuse renewal on the ground, on which the license of petitioner was revoked vide impugned order.

17. The writ petitioner thus stands disposed of in the aforesaid terms.

(R. G. AVACHAT, J.)