

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7991 OF 2022

Manish Anand Trivedi
 Proprietor of Long Drive Restaurant,
 Aged about 47 yrs., Occ.: Business,
 R/o. Plot No. 424, Hanuman Nagar,
 Nagpur-440009.

..... **PETITIONER**

...V E R S U S...

(1) State of Maharashtra through
 Assistant Commissioner,
 Food and drug Authority Maharashtra,
 5th Floor, B Wing, Administrative
 Building No. 2, Nagpur – 440001

Respondent
 Nos. 2 and 3
 added as per
 Court's order
 dated
 19-1-2023

(2) Pramod S/o Kedarnath Gandhi,
 Aged Major, Occ.: Private,
 (3) Renu W/o Pramod Gandhi,
 Aged Major, Occ.: Private,
 Respondents 2 & 3 R/o. C/o. Gandhi
 Sales, Ground Floor, Bhiwapurkar
 Chambers, Opp. Yashwant Stadium,
 Nagpur.

..... **RESPONDENTS**

 Mr. P. D. Sharma, Advocate for the petitioner
 Mr. N. S. Rao, AGP for respondent 1
 Mr. H. I. Kothari, Advocate for respondents 2 and 3

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 02-03-2023

JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The challenge in the petition is to the communication dated 23-9-2022 issued by the Assistant Commissioner, Food and Drug Authority, Maharashtra ('Authority' for short) whereby the petitioner is informed that since his establishment is not licensed under the provisions of the Food Safety and Standards Act, 2006 (Act), the Authority proposes to take punitive action and in the interregnum, the business of Hotel Long Drive (establishment) be immediately closed. Reference is made in the said communication dated 23-9-2022 to Rule 2.1.14 of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

3. The petitioner is further assailing the communications dated 11-11-2022 and 8-12-2022 issued by the police purportedly relying on the communication dated 23-9-2022 (Annexure G).

4. In the context of the order which we propose to make, it would suffice if few facts, which are broadly undisputed, are noted.

5. The petitioner, one Mr. Prakash Athawale and one Mr. Pratik Lohkare entered into a partnership agreement to run restaurant business under the name and style “Long Drive Garden and Restaurant”.

6. We need not delve deeper in the dispute, which is apparently in existence touching the ownership of the land on which the business was set-up.

7. It is by now not in dispute that by deed of dissolution dated 30-6-2022, the partners decided to determine the partnership. The deed of dissolution is placed on record by the Authority. It is apparent from the deed of dissolution that the entire responsibility of managing the business, after the dissolution, is that of the petitioner and the other two partners agreed not to be involved in the management of the business in any manner.

8. Notwithstanding the deed of dissolution and which deed, respondent 1 has placed on record, and for reasons best known to the Authority, an application for surrender of licence was entertained by the Authority at the behest of Mr. Prakash Athawale. The petitioner was not put on notice that such an application was preferred by his former partner who ceased to have any interest in the business in view

of the terms and conditions of the deed of dissolution. The Authority entertained Mr. Prakash Athawale, in circumstances which raise more questions than provide answers, and purported to treat the licence as surrendered. Pertinently, the tenure of the licence was to expire on 30-4-2023.

9. The Authority not only entertained an application for surrender at the behest of a person who had no authority to represent the business firm, the authority went a step ahead and refused to entertain the request of the petitioner who sought a fresh licence. In the interest of maintaining restraint, we are not making any further observation.

10. Be that as it may, the authority has expressed willingness to hear the petitioner and the other stakeholders including respondents 2 and 3 who claim to be the owners of the land on which the business is set-up and who are opposing the prayer of the petitioner for grant of licence. We are inclined to provide an opportunity to the Authority to act in accordance with law and to pass a reasoned order after hearing all the stakeholders.

11. The communications impugned are quashed and we hold that till the decision is taken by the Authority, and if the decision is

adverse to the petitioner, for a period of six weeks after the decision is communicated, the licence shall continue to be in force and the petitioner shall be entitled to commence and continue with the business of “Long Drive Garden and Restaurant” on the land in question.

12. We clarify that all contentions raised in the petition, either by the petitioner or by the respondents, are kept open.

13. The petition is disposed of in the aforesaid terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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