

Ajay

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

WRIT PETITION NO. 5380 OF 2024

Rakesh Hansraj Jain

.. Petitioner

Versus

The Commissioner of Police, Thane and Anr.

.. Respondents

-
- Ms. Veena Thadani a/w. Ms. Rutuja Gaikwad and Ms. Bharti Nyaynirgune, Advocates for Petitioner.
 - Mr. P.G. Sawant, AGP for the State.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024.

P.C.:

1. I have heard Ms. Thadani, learned Advocate for Petitioner and Mr. Sawant, learned AGP for the State for some time.

2. Perused the order dated 23.04.2024.

3. It is an admitted position that in the present Writ Petition, the impugned order dated 14.09.2023 was infact served on the Petitioner in the Month of April, 2024. Pursuant to which, Petitioner has shut down his business of Orchestra carried in the restaurant in view of suspension of license. It is also an admitted position agreed upon by the learned AGP that the power of the Competent Authority i.e. Principal Secretary who has passed the impugned order dated 14.09.2023 has now been revoked by Notification dated 14.02.2024

and the said power is now relegated to the Divisional Commissioner.

4. Without delineating any further on the merits of the matter so as not to affect the case of either of the parties, I am of the opinion that the present Writ Petition can be disposed by setting aside the impugned order dated 14.09.2023 and remanding the matter back to the Competent Authority i.e. the Divisional Commissioner now for the purpose of considering the statutory Appeal filed by the Writ Petitioner afresh in respect of suspension / closure of the Orchestra Licence No.TC/LB/7/Orchestra/59/2013 which was granted by the first Respondent to the Petitioner for conducting business since the year 2013.

5. Needless to state that all contentions of both the sides are expressly kept open and this Court has not given its imprimatur on any case of the grievances advanced by both the parties. Though I have heard Mr. Sawant, learned AGP on various issues which have been raised as also issues relating to non payment of license fees during the covid pandemic, I am informed by Ms. Thadani that a substantive Writ Petition being Writ Petition No.14895 of 2022 is also filed in this Court in that regard.

6. In view of the fact that admittedly the State Government has now delegated the power of hearing the statutory Appeals under Section 33 of the Maharashtra Police Act, 1951 to the Divisional

Commissioner from 14.02.2024 and in view of the fact that admittedly there being a substantial delay of not conveying the impugned order to the Writ Petitioner, without expressing any opinion on the merits of the matter, the impugned order dated 14.09.2023 is quashed and set aside.

7. All contentions of the parties are expressly kept open. It is clarified and directed that the Competent Authority i.e. the Divisional Commissioner shall hear the statutory Appeal filed by the Writ Petitioner on 05.01.2023 strictly in accordance with law after giving a reasonable and fair opportunity of hearing to the Writ Petitioner. The statutory Appeal shall be disposed of by the Divisional Commissioner within a period of six months from today.

8. In view of the above, interim order dated 17.01.2023 shall continue in operation till the final decision of the Appeal by the Divisional Commissioner. This Court while disposing of the previous Writ Petition being Writ Petition No.1597 of 2023 on 14.06.2023 has taken cognizance of the same. That order is at page No.63 of the Writ Petition.

9. Needless to state that by virtue of the impugned order dated 14.09.2023, the penalty imposed upon the Writ Petitioner was suspension and closure of the business for 120 days and in view of the delayed intimation of the impugned order to the Writ Petitioner, the

Writ Petitioner has already suffered closure of business for 46 days. The concerned Competent Authority while deciding the statutory Appeal shall keep the aforesaid fact in mind and give his reasonable consideration to the same while disposing of the statutory Appeal strictly in accordance with law.

10. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date:
2024.04.26
17:57:53 +0530