

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10420 OF 2024

M/s. Hotel Express Inn
Nee Shelar Properties Pvt. Ltd.

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

.....

Mr. Ashutosh Kulkarni i/b. Mr. Manoj A. Patil a/w. Mr. Akash Murudkar,
Advocate for the Petitioner.

Mr. Y.D.Patil, AGP for Respondent Nos. 1 to 3.

Mr. M. M. Sanap, Assistant Commissioner (Food), Food & Drugs
Administration), Nashik present.

Mr. D.S.Mahale, Assistant Commissioner (Food), Food & Drugs
Administration), Mumbai present.

Mr. Jage, Sr. Law Officer of FDA present.

CORAM : R. M. JOSHI, J.

DATED : 6th AUGUST, 2024.

P.C. :

1. This petition takes exception to the order dated 26.06.2024 passed by the Designated Officer-2 @ Assistant Commissioner (Food), Food and Drugs Administration Department, Maharashtra State, Nashik.
2. Petitioner is a hotel holding licence in Form-C bearing Licence Number 11523072000302 under the provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulation, 2011 (for short "**the Act**") issued by the licensing authority.
3. It is the case of the petitioner that the Food Safety Officer

inspected the premises of the petitioner on 03.05.2024. Relying upon the said report submitted by the Food Safety Officer, respondent No.3 Authority had issued improvement notice under Section 31(1) of the Rules of the Food Safety and Standards Act, 2006 Rules and Regulations, 2011 (Act of 2006) on 26 counts. The said compliance was called upon to be made within 15 days, failing which further action was to be initiated against the petitioner. Petitioner claimed to have submitted the improvements and compliance of improvement notice on 31.05.2024.

4. On 26.06.2024, Food Safety Officer once again conducted inspection and recorded that there is non compliance on seven counts. Petitioner did not agree to the said inspection report. It is claimed by the petitioner that respondent No.3 was statutorily required to issue show cause notice to the petitioner and called upon explanation for the same. It is alleged that in contravention with the provisions of the Act of 2006 and Regulations, 2011 issued order of suspension on 26.06.2024. The licence of the petitioner was suspended for the period of 25 days w.e.f. 05.08.2024 to 29.08.2024.

5. Petitioner filed appeal bearing Appeal No. 26 of 2024 before respondent No.2 Appellate Authority on 10.07.2024. On that day the Appellate Authority stayed the order of suspension dated 26.06.2024. It was informed to the petitioner by said Authority that the next date of

hearing of the appeal shall be informed later on. To utter surprise of the petitioner, without affording any opportunity of hearing to the petitioner, Appellate Authority dismissed the appeal. Hence, this petition.

6. Learned counsel for the petitioner submits that the order impugned passed by the Appellate Authority in utter disregards of principles of natural justice as the opportunity of hearing has not been accorded to the petitioner while dismissing the appeal against him. On merit it is submitted that there are guidelines issued by Appropriate Government for the purpose of giving rating to the hotels on the basis of requisite check list and rating given to the petitioner is 61%, which only requires improvement. It is submitted that out of 29 counts except for 7 counts as per the say of Food Safety Officer there was a compliance made by the petitioner. It is his submission that the Inspection Report of 26.06.2024 is not acceptable to the petitioner and hence appeal came to be filed. According to him *prima facie* case was made out by the petitioner for grant of stay and hence stay is granted to the impugned order of suspension dated 26.06.2024 by Appellate Authority as the petitioner has good case on merit. He has grievance that in absence of giving opportunity of hearing of the petitioner he could not put forth his case before the Appellate Authority.

7. Learned counsel appearing on behalf of respondent Nos. 1 to 3 sought to support the impugned order. However, he was not able to point out any intimation, written or otherwise being given to petitioner in respect of the hearing before the Appellate Authority. According to him once the report of the Food Safety Officer dated 26.06.2024 indicates that there was non compliance on 7 counts, the respondent No.3 was justified in suspending the activities of the petitioner and consequently there was no reason for Appellate Authority to interfere in such order.

8. There is no dispute made with regard to the fact that the petitioner had filed appeal before the Appellate Authority. After hearing the petitioner and being *prima facie* satisfied with the case made out, the order of suspension of activities passed by the respondent No.3 was stayed on 10.07.2024 during the pendency of the appeal. The communication addressed to the petitioner clearly indicates that the next date of hearing was to be intimated in future. There is absolutely no material on record to show that any such intimation was given to the petitioner before dismissal of the appeal by the Appellate Authority. Thus, there is non compliance of principles of natural justice and owing to the same the order impugned cannot sustain. As a result of this, the impugned order stands set aside. The appeal bearing No. 26 of 2024 is relegated back to the Appellate Authority for decision afresh in

accordance with law. It is expected that the Appellate Authority before passing any order shall accord an opportunity of hearing to both the sides and order shall be passed in accordance with law. The Appellate Authority is directed to dispose of the appeal within a period of one month from today. Needless to say that interim stay granted by the Appellate Authority in favour of the petitioner shall continued till disposal of the appeal.

9. Before parting with the order, this Court finds it appropriate to record that this Court by order dated 02.08.2024 has flagged concern in respect of the procedure adopted by the authorities while passing order of suspension of license of eateries. It was found that without there being any provisions in the law for deferring effect of the suspension of the licence, as a routine course suspension of licence is not brought into effect immediately. It was also found that there is no justification or support of law for such practice of deferring the suspension to a future date. This Court therefore had called upon the respondents to file an affidavit in this regard.

10. In response to the said direction affidavit came to be filed by Mr. M. M. Sanap, Designated Officer and Assistant Commissioner (Food), Food and Drugs Administration, Nashik. Along with the affidavit he has placed on record a Circular issued by Commissioner, Food Safety, FDA,

Maharashtra instructing to all the concerned authorities that in case of suspension of licence of any hotels / eatery, the same shall be given immediate effect and its implementation not to be postponed to the future date.

11. The issue flagged by this Court is being taken care by issuance of Circular by the concerned Authority. No further order therefore is necessary to be passed in that regard. Having regard to this fact, this Court finds no reason to pass any further order in this regard.

12. Writ Petition, therefore, stands disposed of in the above terms.

(R. M. JOSHI, J.)

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SATISH
KILAJE

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by SONALI
SATISH KILAJE
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