



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

WRIT PETITION NO.8472 OF 2022

Kailash s/o Ratanlal Kabra
Aged : Major, Occupation : Business,
Having it's Place of Business at
Bazar Ward, Chandrapur.
District Chandrapur.

..... **PETITIONER**

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

1. The Collector/District Magistrate,
Chandrapur.
2. The Principal Secretary and
Appellate Authority,
Ministry of Home, 2nd Floor,
Mantralaya, Mumbai-32.
3. Superintendent of Police,
Chandrapur.
4. Chief Executive Officer,
Ballarpur, District : Chandrapur.

..... **RESPONDENTS**

Mr. Y. B. Kullarwar, Advocate for Petitioner.
Mrs. Mrunal S. Naik, AGP for Respondent Nos.1 to 3/State.
Mr. S. A. Sahu, Advocate holding for Mr. M. I. Dhatrak,
Advocate for Respondent No.4.

CORAM: **BHARAT P. DESHPANDE, J.**

DATE: **22nd MARCH, 2024.**

ORAL JUDGMENT:

Heard.

2. Rule. Rule is made returnable forthwith.

3. Heard finally with the consent of the learned counsels for the respective parties.

4. The order impugned in this matter is in connection with cancellation of license issued in favour of the petitioner under the Bombay Police Act and Rules of Licensing and Controlling Places of Public Amusement for operating Video Parlours, only on the ground that there is no proper parking space and there is likelihood of traffic congestion due to the vehicles/customers coming to such places.

5. The learned counsel for the petitioner while relying in the case of *Iyandurai Chinappa Kaukar v. Commissioner of Police and another* 2015(2) Mh.L.J. 459 and *Jagdish N. Shetty v. Commissioner of Police, Navi Mumbai and others* 2013(6) Mh.L.J. 791, would submit that this Court while dealing with similar circumstance quash and set aside such order on the ground that there is no condition for issuance of license with regard to providing of parking spaces.

6. The learned AGP appearing for the State would

submit that because of existence of such Video Game Parlour in the market premises, there is serious obstruction to the movement of the traffic due to parking of vehicles as the petitioner failed to provide separate parking space for the customers who are attending such video parlours.

7. In the case of *Iyandurai Chinappa Kaukar (supra)* the learned Single Judge of this Court while dealing with similar issue of cancellation of license on the ground that there is no separate parking space provided, referred to earlier decision in the case of ***Harmesh Singh Chadha v. The Commissioner of Police and another*** decided in ***Writ Petition No.253/2014*** and reproduce para 13 therein:

“13. As regards the issue of parking is concerned, the learned counsel for the petitioner has placed on record the compilation of orders passed by the Court in Writ Petition No. 2075 of 2004 in the case of Krishna A. Poojari vs. State of Maharashtra and Ors., Writ Petition Lodging No. 29985 of 2012 – Manohar G. Bhavanishankar vs. State of Maharashtra and Ors. and in the case of Jagdish N. Shetty vs. Commissioner of Police and Ors. 2013 6 MhLJ 791. There is no serious dispute on behalf of the State as regards the contention that availability of parking cannot be made as a ground for rejection of the Police license. In view of this decision, the objection based on parking will not survive. A statement is made by the learned counsel for the Petitioner

that valet parking will be provided to the customers of the said establishment and valet parking will be organised in such a manner not to obstruct free-flow of traffic and cause other traffic problems. This statement on instructions is accepted. If this statement is breached it will be open to the authorities to take suitable action.”

On this basis it is observed in para 12 that in series of judgment passed by this Court, it was held that non-availability of the parking spaces cannot be a ground for rejection of public entertainment license.

8. In the case of *Jagdish N. Shetty (supra)*, the learned Single Judge of this Court while dealing with the same aspect and relying upon earlier decisions as found recorded in para No.24, observed that the license can be cancelled only on the ground that there is no parking space provided.

9. Facts in the present matter are identical to the above decisions.

10. The order issued by the Competent Authority dated 03.04.2019 would go to show that the license is cancelled only on one ground i.e. no separate parking space provided for the customers attending the parlour. Thus, it is clear from the record

that license is cancelled only on the ground of want of parking space provided by the petitioner.

11. The ratio laid down in the above decision would clearly reveal that such ground is not available with the concerned authorities for cancellation of license. On this ground alone, the petition needs to be allowed. Accordingly, the impugned order is quashed and set aside.

12. The learned counsel for the petitioner submits that by common affidavit filed, the petitioners are ready and willing to give undertaking to the concerned authority that they will provide separate parking space for the customers attending the said parlour. Statement is accepted. The petitioner to furnish such undertaking before the Competent Authority.

13. The learned counsel for the petitioner submits that the license could be cancelled only upon breach of conditions imposed in it and not on any other ground as held in the case of *Renuka Sanskritik Kala Kendra; Natraj Sanskrutik Kala Kendra v. State of Maharashtra; Collector; Superintendent of Police; Tahsildar and Executive Magistrate; Grampanchayat Moha; Additional District Magistrate 2021 ALL MR (Cri) 1554*. There is

no dispute about above proposition. FIR cannot be a ground to cancel license.

14. Rule is made absolute in the above terms.

15. The parties shall act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

NSN