



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.96 OF 2025

Maya Bansi Andhare,
Age 55 yrs., Occ. Household,
R/o Kumbhephal,
Tq. & Dist. Chhatrapati Sambhajnagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through the Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2 The District Magistrate and
District Collector, Aurangabad.
- 3 The Residential Deputy Collector,
Chhatrapati Sambhajnagar.
- 4 The District Superintendent of Police,
Chhatrapati Sambhajnagar.
- 5 The Tahsildar,
Tahsil Office, Chhatrapati Sambhajnagar.
- 6 Police Inspector,
Police Station, Karmad,
Tq. & Dist. Chhatrapati Sambhajnagar.
- 7 Gajanan Arjun Shelke,
R/o Kumbhephal,
Tq. & Dist. Chhatrapati Sambhajnagar.

... Respondents

...

Mr. P.R. Katneshwarkar, Senior Counsel i/b Mr. S.R. Andhale, Advocate for
petitioner

Mrs. R.P. Gour, APP for respondent Nos.1 to 6

Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R. Sapkal, Advocate for respondent
No.7 and for applicant in Appln/1564/2025

...

WITH

CRIMINAL APPLICATION NO.1564 OF 2025

IN

CRIMINAL WRIT PETITION NO.96 OF 2025

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 01st JULY, 2025

PRONOUNCED ON : 14th AUGUST, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed for following prayer -

“(B) By issuing appropriate writ or order or direction, the notice dated 20.01.2025 issued by the District Collector, Aurangabad and order dated 21.01.2025 issued by learned Tahsildar directing to close down the “Sai Loknatya Kala Mandir” during the enquiry may kindly be quashed and set aside.”

2 Heard learned Senior Counsel Mr. P.R. Katneshwarkar instructed

by learned Advocate Mr. S.R. Andhale for petitioner, learned APP Mrs. R.P. Gour for respondent Nos.1 to 6 and learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. S.R. Sapkal for respondent No.7 as well as for applicant in Criminal Application No.1564 of 2025.

3 Learned Senior Counsel Mr. P.R. Katneshwarkar instructed by learned Advocate Mr. S.R. Andhale appearing for petitioner submits that one Babasaheb Goje had submitted an application to respondent No.2 for grant of performance licence for running Sai Loknatya Kala Mandir at Kumbhephal under the Rules of Licencing and Controlling Places of Public Amusement (other than cinemas) and Performances for Public Amusement, including Melas and Tamashas Rules, 1960. All the necessary documents were submitted i.e. No Objection Certificates for grant of licence along with application. The Licencing Authority had issued a public notice on 11.02.2023, thereby inviting objections for grant of licence to Babasaheb Goje. No objection was received. Accordingly, respondent No.2 has granted licence in the name of Babasaheb Goje on 25.01.2025. Babasaheb Goje has renewed the said licence from time to time. Lastly it was renewed for a period between 31.12.2017 to 30.12.2020. Unfortunately, Babasaheb Goje expired on 01.09.2019 and thereafter the application for renewal of licence was not given. In the meantime, there was Covid-19 Pandemic situation.

Therefore, for about two years there was no renewal to the said licence. Petitioner is the wife of late Babasaheb Goje. She submitted an application along with No Objection of the family members for renewal of licence in her favour on 16.03.2024 along with necessary documents. Respondent No.2 gave an impression that there is no necessity to renew licence on 11.01.2018 if the licence was granted by following procedure, however, that application was submitted. Respondent No.2 sought report from Superintendent of Police by letter dated 20.03.2024 for renewal of licence. It was then submitted in the report that a case under the provisions of Sections 3, 4, 5, 6 and 8 of the Prevention of Illegal Traffic Act is pending. However, said Babasaheb Goje and others were acquitted by the Court on 26.10.2017. Therefore, said report was not based on true facts. Petitioner, therefore, during the pendency of said case approached this Court by filing Writ Petition No.330 of 2017 and this Court had directed that the decision in the renewal of licence should be taken on its own merits by order dated 16.03.2023. Once again petitioner had approached this Court by filing Writ Petition No.5411 of 2024, whereupon directions to decide application of petitioner was given by order dated 11.06.2024. Respondent No.2 granted the renewal of licence and then petitioner started the actual working of Kala Kendra by investing huge amount. The renewal was granted by District Collector on 18.09.2024. Thereafter, respondent No.7, who is resident of Kumbhephal

unnecessarily gave complaint to the office of Collector against Kala Kendra. The intention of respondent No.7 was to extract money from petitioner. A preliminary inquiry was conducted as per directions of respondent No.3 by Talathi and Circle Officer and they submitted the report. Show cause notice was issued by respondent No.2 as to why the licence should not be cancelled. Respondent No.5 passed an order directing Kala Kendra to be closed down on 21.01.2025 considering the possibility of law and order problem.

4 Learned Senior Counsel submits that when the entire procedure has been adhered to for renewal of licence, it could not have been cancelled on the basis of some complaint. He relies on the decision of Single Judge of this Court in **Renuka Sanskritik Kala Kendra vs. The State of Maharashtra and others** in Criminal Writ Petition No.2029 of 2019 with companion matter decided on 09.02.2019, wherein all the rules have been considered by this Court. It has been observed that once the licence has been renewed, it presumes that the concerned authority had adhered to all the procedure as contemplated under the Rules or Act. Any subsequent derivation unless it comes under the breach of condition cannot give an authority to the licencing authority to suspend or cancel the licence. Rules of 1960 were considered, wherein specifically Rule 238 is in respect of suspension and cancellation of the licence. As per the said rules, unless there is breach of terms or

stipulations in the event such renewed licence cannot be cancelled. Here, in the show cause notice also it was not stated, as to whether there was any breach of terms of licence. Further, the order that has been passed dated 21.01.2025 i.e. the impugned order is by the Tahsildar, who has no authority to cancel it or direct the petitioner to close down the Kala Kendra. A show cause notice was issued by Additional Collector and closing down cannot be by Tahsildar. Therefore, the impugned order is without jurisdiction and by a wrong authority, therefore, it deserves to be set aside.

5 Learned APP for respondent Nos.1 to 6 strongly opposed the petition and submits that though renewal appears to have been granted by order of Collector on 18.09.2024, in fact it was for the period of 01.01.2018 to 31.03.2025. The said period is now over. When the complaint given by respondent No.7 was received, preliminary inquiry has been conducted, show cause notice was given, petitioner was heard, the said preliminary inquiry was made over to Tahsildar and, therefore, the impugned order has been passed by Tahsildar. Importance will have to be given to law and order situation. No doubt, earlier there was a case against Babasaheb Goje and others and thereafter they were acquitted. He had approached this Court in the writ petition and time and again the orders have been passed. Now, since the period of renewal of licence is over, this Court should not exercise its

powers.

6 Learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. S.R. Sapkal for respondent No.7 and also for applicant in Criminal Application No.1564 of 2025, which is for intervention, submitted that it would be an academic question now since the period of licence is over. When the licence was granted, it appears that Grampanchayat was not heard. It was then stated in the complaint that under the name of 'Kala Kendra' illegal activities and prostitution is going on. People addicted to vices, visit the places and they pick up quarrels. There is residential area around the Kala Kendra and, therefore, continuation of Kala Kendra at the said place was not in the interest of society. In fact, the No Objection Certificate, which was attached by petitioner along with application stated to be issued by Grampanchayat, was the forged one. No such No Objection Certificate was issued by Grampanchayat. Therefore, the Grampanchayat had filed representation before respondent No.3 on 29.01.2025 stating that no such No Objection was given by Grampanchayat on 05.01.2020. There was a Gramsabha called by Grampanchayat on 01.01.2025, whereupon the complaints from several villagers in respect of Kala Kendra were discussed. The true picture at the site was not before learned Collector, when he issued the renewal. In the preliminary inquiry thereafter conducted the real

situation has come and, therefore, the authority has given directions to close down the business, which requires no interference.

7 Here, it is to be noted that we may not go much into details as to what happened prior to Covid-19 situation or prior to the application dated 16.03.2023. Those facts are now undisputed, though Grampanchayat is taking objection for the No Objection Certificate, which is stated to have been issued in 2020. It is challenged by filing representation only on 29.01.2025 and not prior to that. The delay has not been explained in the intervention application. The fact, therefore, now remains is that on 16.03.2023 the present petitioner filed application for renewal of licence, which was earlier standing in the name of Babasaheb @ Babaji Goje since 25.01.2005. In the said application dated 16.03.2023 it is stated that after the demise of Babasaheb Goje, his son Shailendra gave an application on 26.09.2019 for transfer of licence in his name. It is then stated that on 21.11.2019 the Collector's office told Shailendra that licence cannot be transferred in the name of Shailendra and, therefore, that application was disposed of. It appears that then Shailendra gave no objection to present petitioner for getting the renewal of licence in her name and then vide Gift Deed dated 28.02.2022 he gave the land, on which the Kala Kendra was standing, in the name of present petitioner. Along with said application it appears that said

No Objection Certificate from Grampanchayat dated 05.01.2020 was annexed. By order dated 18.09.2024 learned Collector-cum-District Magistrate, Chhatrapati Sambhajnagar allowed the said application dated 16.03.2023 and transferred the licence standing in the name of Babasaheb Goje to petitioner in her capacity as heir and renewal period was from 01.01.2018 to 31.03.2025. If we consider the said order passed by learned District Collector, he has taken into consideration the objections, if any, which were received, order passed by this Court in Writ Petition No.5411 of 2024 and the certificates those were issued. As has been observed in Criminal Writ Petition No.2029 of 2019 (supra), there is a presumption that all the statutory procedure or the procedure, that is, contemplated under the enactment has been followed. Even it is stated that by public notice objections were invited. Why none from the Grampanchayat, Kumbhephal including respondent No.7 had raised the objection, would be a question of fact and we do not find any answer to the same in the application for intervention. Now, further fact is that respondent No.7 including Grampanchayat gave complaint application on 18.12.2024 to Collector and thereupon then Additional Collector by letter dated 20.01.2025 issued show cause notice to petitioner and gave seven days time to give reply. No document has been produced on behalf of respondent Nos.1 to 6 to show that Additional Collector, who has given the show cause notice had given

powers to Tahsildar to make inquiry. The outward number of show cause notice and reference in the impugned order or communication dated 21.01.2025 is same. When there was no delegation of powers by Additional Collector to Tahsildar, Tahsildar had no powers to issue order of closing down the Kala Kendra. Communication dated 21.01.2025 is by Tahsildar to Circle Officer, Karmad directing him to close down the Kala Kendra and copy of said order has been given by stating that she should close down the Kala Kendra and see that the order of Collector is not breached. This communication dated 21.01.2025 by Tahsildar appears to be high handed act and when in the show cause notice dated 20.01.2025 period of seven days was granted to petitioner to submit reply, then how on the next day itself Tahsildar could have taken the high handed act issuing directions to close down the Kala Kendra ?

8 Rule 238 of Rules of 1960 runs thus -

“(1) The Licensing Authority may suspend or cancel any licence 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 licence 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 licence 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 licence 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 Licence granted under these rules for contravention of any condition of the Licence or of any of these rules or for failure to comply with any reasonable order or direction issued by the Licensing Authority in his regard.”

This Court, therefore, observed that perusal of the above provision would show that upon the evidence for those breach of terms or stipulations in the event, the said licencing authority would get power to

suspend or cancel the licence. When conditions were imposed even in the present case and so far the petitioner was adhering to those conditions, there could not have been cancellation or such order of closing down the business. The Kala Kendra was on the premises of property owned by petitioner and, therefore, she had the constitutional right to carry out the business of her choice. No doubt, it was the unfettered right, it comes with restrictions. Those restrictions in the nature of obtaining licences as per the enactment and in view of that she had applied to the competent authority for the renewal of licence. The Gramsabha cannot have unfettered right to ask for closure of any businesses within the jurisdiction of Grampanchayat. They can take the objection before appropriate authority, but there should be a positive evidence for the breach of conditions. The Grampanchayat never approached this Court challenging the grant of licence or renewal of licence by Collector on 18.09.2024.

9 One more factor is involved in the present matter, in respect of which, of course at the cost of repetition, we would like to say that there was no delegation of powers to Tahsildar by Collector to take any action. He was only asked to get the show cause notice served upon petitioner but by exceeding his jurisdiction and authority the Tahsildar has passed the impugned order dated 21.01.2025. Closure, suspension or cancellation of

licence can be by only the same authority who grants the licence and, therefore, though it may appear to be academic at this stage; yet the illegal orders should go and, therefore, the present petition deserves to be allowed. Hence, following order.

ORDER

- i) Criminal Application No.1564 of 2025 for intervention stands allowed.
- ii) Criminal Writ Petition stands allowed.
- iii) The show cause notice dated 20.01.2025 issued by Additional District Collector, Aurangabad and order dated 21.01.2025 issued by Tahsildar, Aurangabad directing to close down of “Sai Loknatya Kala Mandir” are hereby quashed and set aside.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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