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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1387 OF 2025

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Jagannath Nagnath Bhosale, Prop. of
M/s. Hotel Vijayraj and Orchestra Bar ... Petitioner

V/s.

The Collector and District Magistrate
of Solapur & Ors. ... Respondents

Ms. Veena Thadani for the petitioner.

Mr. J.P. Patil, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner has invoked the extraordinary jurisdiction of this Court seeking to assail the Judgment and Order dated 3rd January 2025 passed by the respondent No.2 – Appellate Authority, as also the Order dated 8th April 2024 passed by respondent No.1 – Licensing Authority, whereby the petitioner's application for renewal of orchestra license has been refused.
3. The factual matrix, as set out in the petition, is summarized as under: The petitioner is the proprietor of a restaurant wherein, since the year 2014, orchestra performances have been conducted

pursuant to valid licenses obtained under the applicable statutory provisions. The petitioner was issued licenses including premises license in Form B, performance license in Form E, and ticket selling license in Form H. It is the case of the petitioner that he has been diligently applying for renewal of the said orchestra license from time to time, by making requisite applications and paying necessary fees as prescribed. However, despite the applications being filed, no formal communication either rejecting or granting renewal was made to the petitioner by the concerned authorities. Relying upon the settled position of law that renewal of a license is ordinarily a matter of course unless there exist grave and weighty reasons to the contrary, the petitioner asserts that, by operation of law and the doctrine of deemed renewal recognized by judicial pronouncements, his license must be treated as renewed.

4. It appears that upon receipt of the petitioner's application for renewal of the orchestra license on 23rd August 2022, respondent No.1 sought a report from the Superintendent of Police regarding the law and order situation pertaining to the petitioner's establishment. The Superintendent of Police submitted his report dated 8th June 2023 to respondent No.1. In the said report, it was noted that although the petitioner's orchestra license had been granted on 7th August 2014 and was valid till 31st March 2015, and that the petitioner had consistently filed applications for renewal, no orders were passed on those applications. The report further adverted to Criminal Case No.865 of 2009 lodged against the petitioner and his staff under Sections 294 and 34 of the Indian Penal Code and Section 33 of the Maharashtra Police Act,

1951, culminating in conviction, against which appeal is stated to be pending.

5. It is the petitioner's grievance that reliance is also placed upon Criminal Case No.393 of 2022, which according to the petitioner, is a false and motivated prosecution initiated under Sections 293 and 34 of the Indian Penal Code and Section 33 of the Maharashtra Police Act, 1951, presently pending trial. Notably, the report of the Superintendent of Police records several favorable factors pertaining to the petitioner, including the availability of parking facilities, absence of objections from neighboring residents, installation of CCTV cameras, and the grant of NOC from the Gram Panchayat. Despite these positive findings, curiously, the Superintendent of Police did not recommend renewal of the license, citing the pendency of criminal cases.

6. Pursuant to the said report, the petitioner was issued a notice of hearing dated 20th September 2023 by respondent No.1, directing his personal appearance. The petitioner accordingly appeared and submitted written submissions. Thereafter, by the impugned order dated 8th April 2024, respondent No.1 rejected the petitioner's application for renewal, inter alia, on the ground of the adverse remarks in the report of the Superintendent of Police and the pendency of Criminal Cases Nos.393 of 2022 and 865 of 2009.

7. Being aggrieved thereby, the petitioner preferred an appeal under Section 33 of the Maharashtra Police Act, 1951, along with an application for interim stay. Although the application for stay

was heard on 6th August 2024, no order was passed thereon, compelling the petitioner to approach this Court by way of Writ Petition No.14386 of 2024. Pursuant to directions issued by this Court in the said petition, the Appellate Authority finally adjudicated the appeal and by Judgment and Order dated 3rd January 2025, dismissed the petitioner's appeal. Consequently, the petitioner has instituted the present Writ Petition seeking redress against the orders of respondent Nos.1 and 2.

8. Learned Advocate appearing for the petitioner vehemently assailed the impugned orders passed by respondent Nos.1 and 2. She submitted that the impugned order passed by respondent No.2 – Appellate Authority, cannot be sustained in the eyes of law, particularly in light of the report submitted by the Sub-Divisional Officer recommending renewal of the petitioner's orchestra license. Drawing attention of this Court to various judicial pronouncements, learned Advocate for the petitioner contended that mere pendency of criminal cases cannot constitute a valid ground to deny renewal of a license. She submitted that the law is well settled that until conviction is recorded and attained finality, a person cannot be presumed guilty merely because of pendency of criminal proceedings.

9. Learned Advocate for the petitioner further submitted that respondent authorities have abdicated their quasi-judicial function by mechanically relying upon the adverse opinion expressed by the Superintendent of Police. It was submitted that it was incumbent upon the Licensing Authority and the Appellate Authority to exercise independent judgment and discretion, treating the report

of the Superintendent of Police as one piece of material amongst others, and not as conclusive or binding upon them.

10. It was further submitted that the report of the Superintendent of Police is self-contradictory inasmuch as while recording various positive factors such as availability of parking space, installation of CCTV cameras, no objection from local residents, and compliance with norms, the Superintendent of Police still chose to recommend denial of renewal solely based on speculative apprehension of future law and order problems. It was contended that the conclusion drawn by the Superintendent of Police is hypothetical, imaginary, and based on no substantive material. Learned Advocate for the petitioner further argued that there is no independent, cogent, or credible evidence on record to establish that the petitioner has committed any breach of rules or engaged in any activity prejudicial to public order. She, therefore, submitted that the impugned orders suffer from non-application of mind, perversity, and violation of principles of natural justice, and deserve to be quashed and set aside.

11. Per contra, learned Assistant Government Pleader (AGP) appearing for the respondent authorities opposed the petition and supported the impugned orders. She submitted that the petitioner's application for renewal of the orchestra license has been filed after a substantial lapse of time, i.e., nearly seven years after the expiry of the earlier license on 31st March 2015. She contended that during the intervening period, as many as three criminal offences bearing Nos.865 of 2019, 393 of 2022, and 706 of 2023 have been registered against the petitioner under Sections

294 and 34 of the Indian Penal Code and Section 33 of the Maharashtra Police Act, 1951. Learned AGP submitted that even though the license had expired in 2015, the first criminal case was registered against the petitioner in the year 2019, which shows a pattern of conduct on the part of the petitioner which is incompatible with the requirement of maintaining public order and decorum necessary for a licensed establishment. She contended that while the report of the Superintendent of Police does record certain favorable aspects, taking an overall view of the matter, and bearing in mind the pendency of multiple criminal cases, the Appellate Authority has rightly exercised its discretion to refuse renewal of the license. Learned AGP further submitted that under Rule 221 and Rule 224 of the Maharashtra Police Rules, 1951, the Licensing Authority and the Appellate Authority are empowered to consider the antecedents and character of the applicant while exercising discretion in matters of grant or renewal of license. She submitted that the authorities, after considering the totality of circumstances and keeping in view public interest, have passed reasoned orders which do not call for any interference by this Court under Article 226 of the Constitution of India.

12. Rival contentions fall for consideration.

13. Upon careful perusal of the record, it is evident that the show cause notice issued to the petitioner on 7th February 2024 called upon him to furnish his explanation only on two grounds, namely (i) the adverse report submitted by the Superintendent of Police, and (ii) the pendency of Criminal Case bearing Register No. 393/2022 under Sections 294 and 34 of the Indian Penal Code.

Thus, the scope of inquiry contemplated by the said show cause notice was confined to these two aspects alone.

14. In response to the said show cause notice, the petitioner submitted his reply asserting that he had complied with all procedural requirements necessary for renewal of the orchestra license. It was further specifically stated by the petitioner that the local police station had recommended renewal and that he had no concern with the offence registered against him. Thus, the petitioner had placed on record his defence by contending that there existed no justifiable ground for refusal of renewal.

15. A perusal of the order passed by the Collector reveals that the only reason assigned for refusal of renewal was the alleged breach of Condition No.1,7 and 9, which was solely based on the facts alleged in the First Information Report relating to Criminal Case No.393/2022. There is no independent material or finding recorded by the Collector apart from mere reproduction of the allegations contained in the said First Information Report.

16. It is well settled that pendency of a criminal case, without culmination into conviction or without any independent adjudication, cannot be treated as sufficient ground for denial of statutory rights. Mere registration of a criminal case does not create any presumption of guilt. Until and unless allegations are substantiated and proved, they remain allegations.

17. Executive authorities exercising quasi-judicial functions must base their conclusions on cogent and independent material, and not merely upon unproven allegations. In the absence of such

material, the action taken would be violative of the principles of natural justice and fair play.

18. In the present case, the Collector has failed to record any independent satisfaction based on substantive evidence. The reliance solely on the pendency of the criminal case to reject the renewal application is impermissible in law and vitiates the order.

19. Insofar as the order passed by the Appellate Authority is concerned, it is noted that while confirming the Collector's order, the Appellate Authority has, for the first time, introduced an additional ground, namely, the absence of renewal of license from 2015 till the date of the filing of the renewal application.

20. It is trite that an appellate authority cannot travel beyond the scope of the original show cause notice or the grounds considered by the original authority while deciding an appeal. An order must stand or fall on the reasons contained therein, and new grounds cannot be supplemented subsequently to justify an administrative action.

21. In the present case, the ground pertaining to non-renewal since 2015 was neither mentioned in the show cause notice dated 7th February 2024, nor formed the basis of the Collector's order dated 8th April 2024. Therefore, the Appellate Authority could not have for the first time introduced a new ground to sustain the refusal of renewal. The same is clearly impermissible and renders the appellate order unsustainable in law.

22. It is further material to note that even the Appellate Authority has not recorded any finding to the effect that the

petitioner is ineligible for grant of a fresh license. In the absence of such a categorical finding, I am of the opinion the petitioner continues to satisfy the eligibility criteria for obtaining a license.

23. If the authorities under the Act were of the opinion that the petitioner was carrying on the business after 2015 without a valid license, it was open to them to state such ground in the show cause notice, affording the petitioner an opportunity to explain the factual allegations.

24. In the absence of any such specific notice or proceeding, the petitioner could not have been denied renewal of license based on alleged factual grounds that were never put to him for explanation.

25. Therefore, in my opinion, the Authorities under the Act ought to have renewed the license of the petitioner. Consequently, this Court holds that the impugned orders suffer from grave procedural irregularity, violation of natural justice, and lack of independent application of mind, and are therefore liable to be quashed and set aside.

26. Accordingly, rule is made absolute in terms of prayer clause (b). No costs.

(AMIT BORKAR, J.)