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Kiran D. Jani Vs State of Maharashtra and Others

Writ Petition No. 9632 of 2003

Court: Bombay High Court

Date of Decision: Jan. 19, 2004

Acts Referred:
Keeping of Places of Public Entertainment Licence (Amendment) Rules, 1999 â€" Rule 16A

Citation: (2004) 5 BomCR 791 : (2004) CriLJ 3174 : (2004) 2 MhLj 890

Hon'ble Judges: D.Y. Chandrachud, J

Bench: Single Bench

Advocate: W.N. Yande and Bobby Malhotra, for the Appellant; P.I. Khemani, A.G.P., for the Respondent

Judgement

1. Rule, returnable forthwith. The A.G.P. waives service. By consent taken up for earning and final disposal.

2. The petitioner has a restaurant and bar known as "Memsaab Restaurant and Bar" situated at Novelty Silk Compound. Western Express

Highway, Dahisar (East), Mumbai. The petitioner has been granted a Police licence for keeping a place of public entertainment under the Bombay

Police Act, 1951 and the Rules framed thereunder. The petitioner applied for a Performance Licence to introduce a dance performance in the

background of recorded music during the evenings. The application has not been disposed of. The Learned Vacation Judge passed an order on

29th December 2003, directing the second respondent to dispose of the application within a period of eight weeks. The aforesaid order is hereby

confirmed and shall operate as an order in the Writ Petition.

3. Counsel appearing on behalf of the petitioner has however, submitted that in the meantime even until the application for the grant of a

Performance Licence is taken up, the petitioner should be allowed to stage performances as desired. In my view, no such relief can be granted until

the application for the grant of a performance licence is heard and disposed of. The attention of the Court has been drawn by the A.G.P. to the

Keeping of Places of Public Entertainment Licence (Amendment) Rules, 1999. By the aforesaid rules, the principal Rules of 1953 came to be

amended. As a result, in Rule 16A of the principal Rules, it has been provided that no amusement in any form like a dance, play, performance,

recorded dance or mimicry whether on fee or free of cost shall be allowed to be performed without a licence.

4. These provisions were interpreted in an order dated 16th March 2002 passed by Rebello, J. in Sudhakar Shetty v. State of Maharashtra, Writ

Petition No. 1075 of 2002. A submission was made before the learned Single Judge that in several orders which have been passed by this Court

while disposing of petitions, permission has been granted to petitioners to continue with performances until the application is disposed of. Rebello,

J. answered that submission holding that in none of the previous orders of the Court were the provisions of Rule 16A considered. In view of the

provisions of Rule 16A, Rebello, J. declined to grant the relief which was prayed to the effect that the petitioner be allowed to continue with

performances even before the application for the grant of a performance licence is disposed of.

5. I am in respectful agreement with the judgment of my Learned Brother, Rebello, J. which has been rendered after due consideration of the

relevant provisions of Rule 16A as amended. My attention has been drawn to an order dated 7th January 2004 passed by me in Writ Petition No.

9838 of 2003, Shri Pritam G. Soni v. State of Maharashtra, In that case during the vacation, an ad-interim order had been passed by the Learned

Single Judge on 31st December 2003 and that was continued in operation until the application was disposed of. Now that the provisions of Rule

16A have been placed before the Court, I am of the view that the approach which has been adopted by F. I. Rebello, J. with respect, is the

correct approach to be adopted by the Court. The Court cannot permit such performances in the absence of a licence which is mandated by rules

which have statutory force. To do so would be to encourage defiance of law, a consequence which the Court cannot countenance. Absent a

licence there can be no performance.

6. In the circumstances, this Writ Petition is disposed of by directing respondent No. 2 to dispose of the application filed by the petitioner for the

grant of a performance licence. The second respondent shall do so within a period of six weeks.

7. Parties be given copies of this order duly authenticated by the Sheristedar/Personal Secretary of this Court.