

(1996) 04 BOM CK 0063

Bombay High Court

Case No: Writ Petition No. 1639 of 1996

Kana Nagu Mhatre

APPELLANT

Vs

Assistant Commissioner of
Police, Panvel Division, Navi
Mumbai and another

RESPONDENT

Date of Decision: April 9, 1996

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 21

Citation: (1996) 3 BomCR 714 : (1996) 98 BOMLR 285 : (1996) CriLJ 3144 : (1996) 2 MhLj 1052

Hon'ble Judges: B.N. Srikrishna, J

Bench: Single Bench

Advocate: Smt. V.B. Thadani, for the Appellant; V.M. Parshurami, Assistant Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Rule returnable forthwith. Shri Parshurami, learned Assistant Government Pleader, waives service for the Respondents. By consent. Rule called out for hearing and heard.

2. The Petitioner is the owner of a restaurant run in the name and style of M/s. Hotel Gopika at Panvel in District Raigad. The Petitioner held licences for running an eating house under the Bombay Police Act, for serving liquor therein under the Bombay Prohibition Act and also for providing "entertainment" in the eating house.

3. The Petitioner was served with Show Cause Notice dated 16th January, 1996 in which it is alleged against him that there were at least 21 previous cases registered against him for different offences under the Prohibition Act during the period 18th May, 1994 to 11th September, 1995, out of which 16 cases were pending in the Court and in 5 cases, the accused concerned had pleaded guilty and were fined by

the Court in various sums of money. It was further alleged that on 15th January, 1996 at 0010 hours, when the Minister for State for Home Affairs, Shri Prabhakar Rao More, and his staff raided the hotel, they had noticed that lady waitresses and customers were doing "immoral and obscene acts" at the time of the raid. For this, a criminal complaint has been filed and an F.I.R. lodged under the applicable provisions of the criminal law. For these reasons, the Assistant Commissioner of Police Panvel Division, called upon the Petitioner to show cause as to why his Eating House Licence No. 14 of 1993 should not be cancelled.

4. By this reply dated 23rd January, 1996, the Petitioner contested the allegations made against him in the show cause notice and contended that all the cases were of a false and frivolous nature and that there was really no complaint made by any member of the public in that regard. Referring to the alleged facts noticed at the time of the Minister's raid along with his staff on 15th January, 1996. He denied them and pointed out that, since the matter was sub judice, no such conclusion could be drawn, unless the Courts trying the matter convicted the Petitioner.

5. By an Order dated 16th January, 1996, the Assistant Commissioner of Police, Panvel Division, Panvel, straightaway came to the conclusion that the Petitioner was guilty of breaches of the Bombay Police Act and the Rules as alleged against him and made an order cancelling Eating House Licence No. 14 of 1993 granted to the Petitioner. The Petitioner carried an Appeal to the State Government against the Order cancelling his licence. This Appeal was dismissed by the Order of the Secretary to the Government of Maharashtra, Home Department (Appeals & Security) on 16th February, 1996. Being aggrieved, the Petitioner is before this Court.

6. A reference to the Show Cause Notice dated 16th January, 1996 shows that the Petitioner is alleged to be committing serious breaches of the terms of the licence granted to him and of the provisions of the Bombay Police Act and the Rules made thereunder. Unfortunately, in the Order of the A.C.P., Panvel Division, Panvel, dated 29th January, 1996, there is no mention of the material on the basis of which he was satisfied that the Petitioner was guilty of the breaches of law alleged against him. The mere fact that on previous occasions there were some employees of his restaurant convicted does not bring home the crux of the charges. At least in 16 out of 21 cases, the cases were sub-judice and the criminal Court is yet to try the complaints and decide the guilt or otherwise. So far as allegations connected with the "raid" by the Minister on 15th January, 1996 is concerned, even that is the subject matter of a case pending in the criminal Court. The impugned Order of the A.C.P. seems to have proceeded on the assumption that all charges pending against the Petitioner in the criminal Court, including the last in the series, have been proved. There does not appear to be any attempt on the part of the A.C.P. to take on record any material from which he could have been satisfied that the licence of the Petitioner deserved to be cancelled. The Order of the A.C.P., Panvel Division, Panvel,

is, therefore, wholly erroneous and deserves to be quashed and set aside.

7. Then we turn to the Order of the Appellate Authority, viz., the Secretary to the Government of Maharashtra, Home Department (Appeals & Security). After having carefully perused the said order with the assistance of the learned Assistant Government Pleader, I am satisfied that the Order is totally perfunctory and the result of mechanical application of mind. Paragraph 7 of the Order deals with the contention as to breach of principles of natural justice urged by the Petitioner. This contention has been summarily rejected by saying that the Petitioner had not sought a personal hearing. It is time that the Authorities below become alive to the fact that any order which takes away the livelihood of a citizen infringes his fundamental rights guaranteed under Article 19(1)(g) and 21 of the Constitution of India. Such an order could only be upheld if it imposes reasonable restrictions on such fundamental rights. Such orders have to be passed with the utmost sense of responsibility. The orders of the two Authorities below are wholly perfunctory and not based on any material to support the conclusions drawn.

8. In these circumstances, I am constrained to quash and set aside both the Order of A.C.P., Panvel Division, Panvel, dated 29th January, 1996 and the Appellate Order of the Secretary to the Government of Maharashtra, Home Department (Appeals & Security) dated 16th February, 1996.

9. Though the Order of cancellation of Eating House Registration Certificate made against the Petitioner has been quashed and set aside, it shall be open to the authority to hold a fresh enquiry against the Petitioner pursuant to the Show Cause Notice dated 16th January, 1996. He shall hold enquiry in which he shall record evidence - both oral and documentary - in support of the allegations in the Show Cause notice, giving an opportunity to the Petitioner to meet such evidence by cross-examining persons deposing against him and leading evidence in defence. Considering the nature of the serious allegations made in the present Writ Petition, the A.C.P., Panvel Division, Panvel, would be well advised to permit the Petitioner to be represented by an advocate in such enquiry. After conducting such an enquiry, the A.C.P. may, on the basis of the evidence collected by him, pass an appropriate order in accordance with law.

10. Rule is accordingly made absolute. The Order of the A.C.P., Panvel Division, Panvel, dated 29th January, 1996 and the Appellate Order of the Secretary to the Government of Maharashtra, Home Department (Appeals & Security) dated 16th February, 1996 are hereby quashed and set aside. No order as to costs.

11. Certified copy expedited.

12. Order accordingly.