

(2025) 04 BOM CK 0224
In the Bombay High Court
Case No : Writ Petition No. 1169 Of 2025

Accelerate Productx Ventures Pvt Ltd	APPELLANT
Vs	
State Of Maharashtra Through Secretary And Ors	RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 — Section 2, 2(2), 11, 12

Citation : (2025) 04 BOM CK 0224

Hon'ble Judges : G. S. Kulkarni, J; Advait M. Sethna, J

Bench : Division Bench

Advocate : Kaustubh R. Gidh, Tejas J. Kapre

Final Decision : Allowed

Judgement

G.S. Kulkarni, J

1. Rule, made returnable forthwith. Learned AGP for the respondents waives service. By consent of the parties, heard finally.

2. A new concept of 24 x 7 shopping for daily needs introduced by the petitioner under its brand "The New Shop" situated at Hadapsar, Pune, being illegally hindered by the police is the grievance of the petitioner.

3. The petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India has prayed for the following substantive reliefs:

"b) This Hon'ble Court be pleased to issue writ in the nature of mandamus directing Respondent no. 2 and 3 not to coerce and force the petitioner to shut its convenience store namely "the New Shop" situated at Shop no. 7, Kumar Prism, Mundhwa Road, Opposite Maruti Showroom, Amanora Park Town, Hadapsar, Pune, Maharashtra – 411 028 and its operations after 10.00 – 11.00 p.m."

4. The petitioner is inter alia engaged in the business of operating, franchising and licensing Pan India, a highly specialized network of 24x7 convenience retail stores under the said brand name "The New Shop" is stated to be catering to the common needs, of the public at large. It is the petitioner's case that the petitioner is also a recognized startup by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (DPIIT) and a certified and registered Micro, Small and Medium Enterprises (MSME). The petitioner has stated that it is also the owner of brand name "The New Shop". A copy of certificate of registration of its trademark is annexed to the petition. The petitioner contends that the 'convenience store', run by it falls within the definition of "Shop & Establishment", under Section 2 of the "The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017" (for short "2017 Act").

5. It is the petitioner's case that the petitioner's convenience store situated at Pune is located within the jurisdiction of respondent no. 3, namely, the Police Station, Hadapsar. According to the petitioner, the police officers from the said police station are arbitrarily imposing a closing hours condition on the petitioner, thereby preventing the petitioner from running its stores beyond 10.00-11.00 p.m. This despite the fact that no such restrictions are imposed under any law, as also no such conditions are imposed by respondent no. 1, which is the competent authority to regulate opening and closing hours of various establishments under the 2017 Act. It is thus the petitioner's contention that the actions of respondent no. 3 are arbitrary and illegal, as the police has no jurisdiction to regulate the said timings in relation to the petitioner's store.

6. It is also the petitioner's case that the 2017 Act confers powers on respondent no. 1 to regulate the opening and closing hours of the different classes of establishments in the State of Maharashtra, which nowhere provides or imposes any restrictions on such closing hours (beyond 10.00 – 11.00 p.m./night hours) qua such convenience stores. Hence, it is deemed that a convenience store is allowed to operate 24 x 7. The petitioner has next contended that respondent no. 1 exercising its power under Section 11 of the 2017 Act has issued a notification dated 19 December, 2017, thereby restricting operating hours in respect of only "three classes" of establishments, firstly, permit rooms, beer bars, dance bars, hookah parlours, discotheques and all other establishments where liquor of any kind is served; secondly, wine and all kinds of liquor shops; and thirdly, theatres and cinema exhibition houses.

7. The petitioner has further contended that on 31 January, 2020, respondent no.1 exercising its power under Section 11 of the 2017 Act lifted the previous operating hours restrictions imposed on 'theatres and cinema exhibition houses' and allowed these establishments to operate 24 hours as seen from entry no. 3, which was in respect of theaters and cinema exhibition by deleting such establishments, from the purview of the earlier notification dated 19 December, 2017.

8. It is the petitioner's case that at Pune, the petitioner after duly complying with the relevant guidelines and regulations, obtained a registration of its shop under the provisions of 2017 Act for running a "convenience store" for the benefit of public, located within a commercial complex situated at Shop no. 7, Kumar Prism, Mundhwa Road, Opposite Maruti Showroom, Amanora Park Town, Hadapsar, Pune. It is contended that as no operating hours restrictions are provided under the Act, the petitioner under the concept of 24x7 stores, was free to operate its store 24x7 on receiving the registration under the 2017 Act.

9. It is, however, the case of the petitioner that after the stores commenced its operations, respondent no. 3-Sub Inspector of Hadapsar Police Station started visiting the petitioner's store and orally imposed arbitrary conditions to shut operations by 10.00 – 11.00 p.m., although no such closing hours restrictions were provided under the 2017 Act and in the absence of such restrictions, the convenience store of the petitioner was allowed to operate 24x7.

10. In the aforesaid circumstances, the petitioner filed an application under the Right to Information (RTI) dated 12 June, 2024 seeking a clarification from respondent no. 1 and respondent no. 2, whether any other permission from the local police was required to be obtained to operate the store beyond 10.00 – 11.00 p.m. (night hours) or for its 24x7 operations. A reply to such application was received by the petitioner, wherein nowhere it was stated that the petitioner cannot operate its shop 24x7 or any other permission was necessary to operate the petitioner's shop or for that matter any special permission was required to be granted by the local police authorities. Similar application was made by the petitioner to the State Authorities at Mantralaya, however, it was never replied. The petitioner has contended that respondent no. 3, despite such clear position in law, persisted with his arbitrary actions to forcefully shut down the petitioner's stores after 10.00–11.00 p.m.

11. In these circumstances, the petitioner being aggrieved by such coercive actions of respondent no. 3 addressed another representation dated 27 June, 2024 to respondent nos. 2 and 3 as also a representation was addressed to the Deputy Commissioner of Police. Even these representations were not answered by either of the authorities. Also the personal visits as made by the petitioner's representatives for redressal of its grievances were rendered fruitless. It is in these circumstances, the petitioner has filed the present petition being aggrieved by the breach of its statutory and constitutional rights.

12. This Court issued notices on this Writ Petition in pursuance of which, two reply affidavits are filed. Respondent no. 1 has filed an affidavit of Smt. Roshani Dinesh Kadam-Patil, Deputy Secretary, Industries, Energy, Labour and Mining Department inter alia contending that Section 2(2) of the 2017 Act categorically defines "day" to mean a period of 24 hours beginning at midnight. It is stated that Section 11 of the 2017 Act is an enabling provision to impose reasonable restrictions on the operation, i.e., opening and closing hours for different classes of establishments, shopping complexes or malls or for different areas and for

different period. It is stated that accordingly, in public interest, by notification dated 19 December, 2017 the State specified opening and closing hours for permit rooms, beer bars, dance bars, hookah parlour, discotheques and all such other establishments where liquor and wine was served and in respect of all kinds of liquor shops, theatres and Cinema Exhibition houses. It is next stated that another notification dated 31 January, 2020 was issued in public interest, to grant permissions to cinema houses and theatres to operate 24 hours, by excluding such establishments from the purview of notification dated 19 December, 2017 which placed restrictions on cinema houses and theatres, which stood accordingly amended. It is categorically stated in the reply affidavit that apart from these two notifications, there is no other restrictive/prohibitory enactment, notification, circular or corrigendum so as to restrict the 24x7 working of the petitioner's shop. The affidavit also makes a reference to Section 12 which is in regard to the daily and weekly hours of work in establishment and interval for rest for the workers and their holidays. However, this is not an issue, in the context of the grievance as made by the petitioner. The reply affidavit on behalf of the State clearly indicates that there is no embargo on the petitioner to operate its stores 24x7 and more particularly after 10.00 – 11.00 p.m.

13. There is also an affidavit filed on behalf of the Police Department of Shri Sanjay Mogle, Senior Police Inspector, Hadapsar Police Station, Pune. As the primary grievance of the petitioner is in regard to the action of respondent nos. 2 and 3, the relevant contents of this affidavit are required to be noted, which reads thus:

"1. I say that I have read a copy of the above captioned Writ Petition along with the annexures thereto and I have understood the contents of the same. I have also perused the records with respect to subject matter of the Petition as maintained by my Police Station from time to time till date and on the basis of the available record and existing documents I am deposing in the present affidavit in reply.

2. I say that I am filing this affidavit as per the order of Hon'ble Court dtd 10.03.2025 to appraise this Hon'ble Court as to existing state of affairs with respect to working of late operating hours of different types of establishments. I hereby reserve my right to file detailed affidavit in reply if so required and advised.

3. I say that, a short controversy involved in the present case revolves around existence of any particular notification restraining citizens/ businesses from undertaking business of running 24/7 convenience store thereby curtailing operating hours during a specified time especially post 10-11 pm as urged by the Petitioner.

4. I say that a notification dtd 01.08.2016 was issued by Home Department of Government of Maharashtra as a directory Principles thereby regulating timing of hotel establishments where food and alcohol is served Hereto annexed and

marked as Exhibit- R-1 is a copy the said notification dtd 01.08.2016.

5. I say that thereafter the Commissioner of Police Pune city vide it's office order dtd 19.02.2024 further directed to allow operation and working of hotels upto 1.30 pm where food and alcohole is served. Hereto annexed and marked as Exhibit- R-2 is a copy the said notification dtd 12.08.2016.

6. I say that the Petitioner is willing to operate a convenience store which contains food items amongst many other things. I say that due to subject similarity and due to incorrect appreciation of the outer reach of the subject matter and lack of clarity leading to unintentional misinterpretation it was orally informed to the Petitioner to operate upto 11 pm.

7. I say that, such measures are only taken with a view to avoid any law and order situation at late night and also to ensure public safety. I say that there is no intention to restrict lawful activity and or infringe any of the fundamental right of any of the citizens.

8. I say that I am fully aware that the state being a welfare state is a custodian and must preserve all the fundamental rights and also advance the best interest of its citizens and facilitate all lawful activities including business, profession, vocation and commercial activities to enable them to grow and prosper, however without disturbing larger public good and peace in the society.

9. I say that there is no reason or intention to prohibit the Petitioner to operate it's lawful activity however due to sheer misunderstanding in view of prima-facie commonalities of the subject matter, it was informed by way of abundant caution, in a larger public good.

10. I say that in this view of the existing provisions of law and notification Hon'ble Court may pass appropriate orders."

(emphasis supplied)

Analysis

14. It is on the aforesaid backdrop, we have heard learned counsel for the parties. We have perused the record.

15. It clearly appears from the reply affidavit as filed on behalf of respondent no. 1 that under the provisions of 2017 Act, there is no embargo for the establishments like that of the petitioner to conduct its shops 24 x 7 and/or post 10.00 – 11.00 p.m., as objected by respondent no. 3. Such objection appears to have been taken by inadvertence or a mistake as stated by respondent no. 3. It is also clear that the restriction on the opening and closing hours are prescribed only for the specific establishments like Permit Rooms, Beer Bars, Dance Bars, Hookah Parlour, Discotheques and the establishments in which liquor of any kind is served as also liquor shops, theatres and cinema exhibition houses. This does not include the petitioner's shop. Further by subsequent notification dated 31 January, 2020 issued in public interest, cinema exhibition houses and theatres

are now permitted to operate 24 hours. Thus, clearly there is no justification whatsoever for respondent no. 3 to impose any restrictions on the petitioner to conduct its shop.

16. Also in the reply affidavit as filed on behalf of respondent no. 3 (Senior Police Inspector), it has been clearly stated that there was some confusion due to the petitioner also selling food items and a presumption that the embargo as applicable to the eating house may apply to the petitioner's case. However, it has been clarified, as seen from the clear statements as made in the reply affidavit, that the 24x7shop, which is conducted by the petitioner is not of the nature to which any restriction of time limits would apply. It is also stated that there were no orders passed in writing and the petitioner was orally called upon not to operate after 11.00 p.m. It is also clarified in paragraph 9 of the reply affidavit filed by respondent no. 3, that there is no reason or intention to prohibit the petitioner to operate its lawful activity and due to sheer misunderstanding in view of the prima facie commonalities of the subject matter, the petitioner was informed to restrict its timings by way of abundant caution, hence such oral insistence on the part of respondent no. 3 was not in accordance with law. Thus, respondent no. 3 has also clearly admitted in the reply affidavit that no restriction can be imposed on the petitioner's operating its New Shop 24x7 and more particularly after 10.00 – 11.00 p.m.

17. Before parting, we may observe that in the contemporary times, the concept of 24x7 shops of such nature is a popular concept worldwide. It brings convenience, ease and flexibility to the consumers to make purchases, more particularly for the persons with non-standard working hours. It is also believed to boost the economy by increased consumer spending, as also by creating additional employment opportunities, which is crucial for a large country like ours, where unemployment is a major challenge. It appears that recognizing such advantages and to achieve progress commensurate with the global standards, no restriction has been imposed by the State on the timings of such stores.

18. In light of the above discussion, the petition would be required to be allowed. It is accordingly allowed in terms of prayer clause (b).

19. Rule made absolute in the aforesaid terms. No costs.