
(1998) 11 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 1230 of 1998

A.G. Narvel

APPELLANT

Vs

Shri B.I. Nhinglavha and Others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Bombay Police Act, 1951 — Section 110, 117, 2

Citation : (1999) 101 BOMLR 196

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Judgement

F.I. Rebello, J.—Rule.

2. Respondent waives service. By consent, Rule made returnable and heard forthwith.

3. The Petitioner who is running a lodging home, having a licence granted to him under the Bombay Police Act, 1951 has approached this Court against the order of the Police Commissioner, Thane, whereby by order dated 22nd June, 1998 the licence granted to the Petitioner under the Police Act has been cancelled.

4. The short facts are as under:

A show cause notice came to be issued to the Petitioner on 19th January, 1998. In the show cause notice, the Petitioner was called upon to show cause as to why his licence should not be cancelled for the following reasons :

(1) That on 15th September, 1997 a watchman asked a servant to give hot water to a customer, whereupon the servant and another beat the complainant and the waiter Amush Ansari. A complaint to that effect has been lodged with the Police:

(2) That on 16th September, 1998 at 17.00 hours the Police had gone to the Lodge for investigation of the offence and found unfair practices going on in the Lodge. When the raid was conducted, 12 women and 11 men were found to have been indulging in indecent acts. Cases were registered under Sections 110 and

117 of the Bombay Police Act. The cases were tried and all Accused were fined Rs. 100/- each.

Based on the said two incidents, the Petitioner was called upon to show cause by the Respondent No. 1 in exercise of the powers delegated to the Additional Police Commissioner, Thane why the licence to run Sahyadri Lodge should not be cancelled. The Petitioner by his reply of 29th January, 1998 showed cause. In short it is his contention that there were no ground for cancelling the licence. By order dated 22nd June, 1998 the impugned order came to be passed.

5. At the hearing of the Petition, on behalf of the Petitioner, it is contended that there has been no violation of Rule 32 of the Rules framed under the Bombay Police Act. Rule 32 of the Act reads as under:

If any person keeping a place of public entertainment knowingly permits prostitutes for the purpose of their trade or persons of notoriously bad character to meet or remain in such place, the Commissioner of Police shall have the power in his discretion at any time to cancel a licence granted under these rules or to suspend it for such period as he may specify and direct such person to close the place either permanently or for such period as he may specify. The persons to whom such direction is issued by the Commissioner of Police shall forthwith comply with such direction.

It Is thus clear from the said rule that in the event a person keeps a place of public entertainment and knowingly permits prostitutes for the purpose of their trade or a person of notoriously bad character to meet or remain in such place the Commissioner of Police shall in the exercise of his powers cancel the licence granted under this Rule or to suspend it for such time as he may specify and direct such person to close the place either permanently or for such period as he may specify. The person to whom such direction is issued by the Commissioner of Police shall forthwith comply with such direction. In other words, the place must be used for public entertainment. Secondly, the person must knowingly permit prostitutes to operate from the said place for the purpose of their trade or allows persons of notoriously bad character to meet or remain in such place.

In the instant case, it is not the allegation that there were persons of notoriously bad character remaining in the place. The allegation seems to be that the place was being used by prostitutes for their trade. u/s 2(1) of the Bombay Police Act, place of public entertainment is defined and it includes a Lodging House. The question is whether prostitutes were permitted to carry on trade knowingly by the persons of the said Lodge.

6. The show cause notice was issued on the presumption that there has been violation of Section 110 of the Bombay Police Act. Section 110 of the Bombay Police Act provides that no person shall wilfully and indecently expose his person In any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly

manner in a street or place of public resort or in any office, station or station house.

In the first place the Petitioner herein was not charged for any offence u/s 110. Secondly, conviction was of the persons found on the premises u/s 110. The copies of the Judgments convicting such persons and on which the Petitioner was called upon to show cause why his licence should not be cancelled were not made available to him. Rule 32 provides that the person must knowingly permit prostitutes to carry on their trade. A conviction u/s 110 of the Bombay Police Act ipso facto does not mean that a person arrested is a prostitute. For the control of prostitution there is a separate Act known as the Prevention of Immoral Traffic in Women Act. Therefore whereas Rule 32 speaks about prostitution being carried on Section 110 of the Police Act speaks about indecent exposure in any street or public place. Section 110 further provides that a person must not wilfully and indecently exhibit his person. In the instant case, it is not alleged that the Petitioner exhibited his person. The contention was that he allowed prostitution to be carried on. Ex-facie therefore a conviction u/s 110 cannot be the basis to cancel a licence under Rule 32.

7. Alternatively even assuming that a conviction u/s 110 could be the basis for cancellation of licence under Rule 32, it was imperative upon the Authority who issued the show cause notice to make available to the Petitioner the orders of conviction or the materials on which the Authority wanted to cancel the licence. This was because the Petitioner was not a party to the proceedings and it is now well settled proposition of law that before you use material against a person which has the effect of affecting his civil rights such person must have an opportunity to meet the said material. Show cause notice does not show that this material was made available to the Petitioner herein. The order must, therefore, also be quashed on the ground of violation of principles of natural justice and fair play.

8. In the light of that Rule made absolute in terms of prayer Clause (b). In the circumstances of the case, each party to bear their own costs.