

(1988) 01 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 2230 of 1986

Datwani Hotels Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-01-1988

Acts Referred:

Bombay Police Act, 1951 — Section 33(1)

Citation : (1988) 2 BomCR 95

Hon'ble Judges : S.P. Kurdukar, J

Bench : Single Bench

Advocate : N.H. Gursahani and A.A. Irani, for the Appellant; C.U. Bora, for the Respondent

Judgement

S.P. Kurdukar. J.

1. The petitioners by this writ petition under Article 226 of the Constitution of India seek to challenge the two orders (i) dated 9-4-1985 (Ex. D) and dated 24-6-1986 (Ex. N.). Both these orders are passed by the third Respondent the Commissioner of Police, Bombay.

2. It is needless to set out the averments in the petition in detail since this writ petition can be disposed of only on the short ground that the impugned orders suffer from non-observance of principles of natural justice being arbitrary and in total disregard to the procedure prescribed by law. In order to appreciate the rival contentions, I may mention few facts which are necessary for disposal of this writ petition.

3. It is no more in dispute that the petitioners are purchasers of a running business from one Ghanashyam Sevakramani and Vijay Sevakramani under the consent terms filed in a suit pending in this Court sometime in the year 1982. On 11th February, 1984 the 2nd petitioner wrote a letter (Ex. A) to the Assistant Commissioner of Police, Vile Parle, Bombay, stating therein that till this date, police licence u/s 33(1)(w)(i) of the Bombay Police Act was standing in the name

of the previous owner and since they have purchased the said Hotel, the licence be transferred and renewed in their name. It appears that this application was sent to the Inspector of Police, Vile Parle Police Station for necessary investigation. The Inspector of Police, accordingly on 3rd April, 1984 wrote to the petitioners to remain present on 4th April, 1984 in his office. The petitioner No. 2 did attend the office of the Inspector of Police, Vile Parle Police Station on that day. However, after expiry of one year on or about 9th April, 1985, the petitioners received a letter from the Commissioner of Police informing them :

"Reference to your latter dated 17-2-1984 on the subject noted above. Your request for grant of police licence is refused."

On 6th May, 1985, the petitioners' Advocate wrote to the Commissioner of Police, Bombay, requesting him to explain the circumstances under which the licence was refused. The Commissioner of Police vide his letter dated 25th July, 1985 (Ex. E) informed the petitioners Advocate that since one of the partners of the petitioner, Chandiram V. Datwani, was detained under MISA on 2-9-1975, their application for renewal of the licence has been rejected. On 3rd September, 1985, the petitioner's Advocate wrote to the Commissioner of Police stating therein that the order of refusal is illegal inasmuch as there are in all three Directors of the petitioner No. 1 Company and assuming that one of the Directors was detained under MISA that cannot be a ground to refuse renewal of the licence. The other two Directors have got clean record and in fact petitioner No. 2 has been issued a licence for running Hotel Oscar at Khar. The order therefore, be reviewed. The Commissioner of Police by his letter dated 23rd October, 1985 informed the petitioners that their request was rejected. On 28-10-1985 the petitioner vide their letter (Ex. H) again wrote to the Commissioner of Police informing him that Chairman Datwani, who was detained under MISA has retired from the Board of Directors of the first petitioner and, therefore, request for renewal of licence be reconsidered. It was also stated in the said letter that thought they are the sons of Chandiram Datwani, be not punished for the alleged detention of their father under MISA. It was also further stated that petitioner No. 2 has been given licence to run Hotel Oscar and, therefore, there is nothing against petitioner No. 2 and other Directors on the basis of which request for renewal of licence could be rejected. At the end, it was requested that their application be considered on merits. Since nothing was heard for nearly 11 months, the 2nd petitioner again on December 10, 1985 (Ex. K) wrote to the Commissioner of Police requesting him go grant the licence. He had also mentioned in the said letter that Chandiram Datwani had already retired from the Board of Directors and his resignation was approved by the Board of Directors vide their resolution dated 6th December, 1985. The petitioner No. 2 also forwarded application along with necessary copies of the documents to the Inspector of Police Station, Vile Parle for necessary investigation if so desired. On 15th January, 1986, the Commissioner of Police wrote to the 2nd petitioner to furnish necessary information as regards constitution of the Board of Directors. On 24th June, 1986, the Commissioner of Police rejected the application for

renewal of the licence made by the petitioner. It was stated in the said letter that :

"I have to inform you that your request to issue a Police licence to carry on your business at the above place is refused as the case registered by Vigilance Br. C.I.D. vide CR. No. 598/81/u/s 7(i)(ii) of S.I.T. Act, 1956 against you is not yet decided by the Court."

It is this order dated 29th July, 1985 (Ex. E) and order dated 24th June, 1986 (Ex. N) which are the subject matter of challenge in this writ petition .

4. Mr. Gursahani, the learned Counsel appearing in support of this petitioner attacked both these orders firstly on the ground that the Commissioner of Police has passed these orders in violation of principles of natural justice. Neither any show cause notice was issued nor hearing was given to the petitioners. He urged that no reasonable opportunity whatsoever was given to the petitioner of being heard on both these occasions. He also submitted that it is a case where petitioners were asking for renewal of the existing licence and since the existing license is considered as property, the petitioner ought to have been given reasonable opportunity of being heard before their application was rejected. Mr. Gursahani then submitted that the grounds mentioned in both these orders are wholly irrelevant and cannot be relied upon by the Commissioner while rejecting their application for renewal of the licence.

5. None of the respondents have chosen to file return in this writ petition, Mr. Bora, learned Counsel for the respondents supported the orders and submitted that having regard to the pendency of the criminal proceedings against the petitioners under S.I.T. Act, 1956, no interference is called for in this writ petition.

6. In support of his first submission Mr. Gursahani drew my attention to various unreported judgements of this Court but I may only refer to two judgements (1) Write Petition No. 1041 of 1985, Kimatram Harpaldas Aswani v. State of Maharashtra, decided on 16th August, 1985 by Reddy C.J. and Daud, J., and (2) Writ Petition No. 749 of 1984, T. Joseph Jose v. State of Maharashtra, decided on September 4, 1984 by Pendse, J.

7. In my opinion, the first submission of Mr. Gursahani must be accepted for more than one reasons. At the outset, it must be stated that both the impugned orders were passed by the Commissioner of Police without giving any reasonable opportunity to the petitioners of being heard. It is needless to emphasise that the existing licence is the property and the petitioners have got right to carry on their business under the said valid licence unless it is revoked or cancelled on the grounds stated in the Act, after giving a show cause notice and after giving reasonable of being heard. The petitioners have averred in the Writ petition that no show cause notice nor any opportunity was given to them before passing the impugned orders. In the absence of any return on behalf of the respondents, I see no difficulty in accepting the averments contained in the writ petition. Since the petitioners were denied an opportunity, in my opinion, both the impugned

orders were passed in violation of principles of natural justice and consequently rendered illegal. Accordingly, both the impugned orders are quashed and set aside. Mr. Gursahani was right in relying upon the ratio laid down by the Division Bench of this Court in *Kimatram Harpaldas Aswani v. State of Maharashtra*, (Write Petition No. 1041 of 1985) referred to hereinabove. Ratio of this judgement clearly applies to the facts of the present case.

8. Mr. Gursahani then urged that ground of detention of one of the partners under MISA in the year 1975 could not be a ground for rejecting the renewal application of the petitioners. In my opinion, detention of one of the directors in the year 1975 could not be considered even remotely while considering the application for renewal made in the year 1987. This ground therefore, has to be left out of consideration while considering the application of the petitioner for renewal of the licence made on 10th December, 1985 (Ex. K). In my opinion, the impugned orders suffer from patent illegality and were passed in violation of natural justice and, therefore, must be quashed and set aside.

9. In the result, the impugned orders dated 9-4-1985 at Ex. "D" and dated 24-6-1986 at Ex. "N" are quashed and set aside and the proceedings are remitted back to the Commissioner of Police, Bombay, for disposal in accordance with law. The Commissioner of Police, Bombay, is directed to consider the application made by the petitioners on 10th December, 1985 on merits and if he comes to the conclusion that the said application could not be granted, the Commissioner of Police shall issue show cause notice to the petitioner and after giving them reasonable opportunity of being heard, he shall dispose of the application in accordance with law.

10. It is no more in dispute that the petitioners have been carrying on business under interim orders in terms of prayer (c) granted on 17-9-1986. The same interim order will continue till disposal of the renewal application dated 10th December, 1985 made by the petitioners to the Commissioner of Police. In the event if the order is adverse to the petitioners, the same shall not be implemented for a period of two weeks from the date of its service on the petitioners.

Rule is accordingly made absolute in terms of prayers (a) and (b). There shall be no order as to costs.