

(2000) 07 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 7271 of 1999

Dilip J. Bhatia

APPELLANT

Vs

The Commissioner of Police and Another

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Bombay Police Act, 1951 — Section 110, 117, 162(2)

Citation : (2001) 1 BomCR 448

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Veena B. Thadhani, for the Appellant; C.R. Sonawane, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—Rule.

2. By consent rule returnable forthwith.

3. This writ petition, under Articles 226 and 227 of Constitution of India, takes exception to the order passed by the State Minister (Home), Government of Maharashtra dated 15-5-1999.

4. Briefly stated, the petitioner was running a hotel in the name and style of M/s. Satyam Lodging and Boarding at Satyam Industrial Estate No. 2, Pokharan No. 1, Thane for which he had obtained Eating Registration Certificate No. 42 of 1981 and Lodging Licence No. 77 of 1981. It is stated that on 5-3-1997 the local police forcibly entered the hotel rooms occupied by decent persons and booked 2 cases against them. According to the petitioner some of the persons were so humiliated that they did not contest the cases booked against them under sections 110 and 117 of the Bombay Police Act, 1951 and preferred to pay fine. It is further stated that certain cases filed against the employees/staff of the petitioner hotel under provisions of the Prevention of Immoral Traffic Act, 1956, are still pending.

5. Nevertheless, the Commissioner of Police, Thane by a show cause notice dated 2-5-1995 called upon the petitioner to explain as to why the licence granted for hotel and eating house should not be cancelled for the reasons mentioned therein. The only reason indicated in the said show cause notice was that employees of the hotel were booked by Vartak Nagar Police under the provisions of sections 2, 4, 5, 6 and 7 of the Prevention of Immoral Traffic Act. The other grounds mentioned was that the cases booked u/s 110 and 117 of the Bombay Police Act against the occupants of the rooms in the hotel arrested on 5-3-1997 have ended in conviction. Reply was sent to the said show cause notice by the petitioner.

6. The Commissioner of Police, Thane by order dated 1-7-1997 did not accept the explanation given by the petitioner and instead ordered cancellation of the eating house registration certificate and the lodging licence granted to the petitioner in respect of M/s. Hotel Satyam Lodging and Boarding.

7. This decision was challenged by the petitioner before the State Government by way of statutory appeal. The Minister, by order dated 27-5-1998, dismissed the appeal.

8. Against the said decision, the petitioner had filed writ petition before this Court being Writ Petition No. 2801 of 1998. This Court, by order dated 25-6-1998, was pleased to set aside the order passed by the State Minister for Home dated 27-5-1998 and directed the Minister to decide the appeal afresh in accordance with the law after giving an opportunity to the petitioner.

9. Accordingly, the matter once again went back before the Minister, who in turn, by order dated 15-5-1999, once again reiterated the reasons which were subject matter of challenge in the previous writ petition filed by the petitioner. It was specifically urged before the Minister that pendency of any proceedings cannot be a ground for cancellation of licence, which view has been consistently taken by this Court, yet the Minister chose to negative the stand taken by the petitioner for no valid reason. Even with regard to the second point urged on behalf of the petitioner that conviction of the occupants arrested from the hotel rooms under sections 110 and 117 of the Bombay Police Act cannot be a ground for cancellation of Hotel and Lodging Licence, the Minister rejected the said contention without noticing the decision of this Court A.G. Narvel Vs. Shri B.I. Nhinglavha and Others, .

10. Although respondents have filed affidavit before this Court in response in the present writ petition against the aforesaid decision, however, the said affidavit does not deal with the issue which has been specifically raised. The petitioner rightly points out that the issue is conclusively decided by this Court in previous decision, which form part of this writ petition compilation.

11. With regard to the first point raised on behalf of the petitioner that pendency of the cases under the Prevention of Immoral Traffic Act, 1956 against the employees of the hotel cannot be a ground for cancellation of licence of a hotel

and at any rate eating house run by the petitioner in the name and style of Satyam Lodging and Boarding is concerned, the same need not detain us as it is squarely covered by the unreported decision of the Division Bench of this Court in Writ Petition No. 1041 of 1985 decided on 16th August, 1985 *Kimatram Harpaldas Aswani v. The State of Maharashtra and others*. This Court has held that pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the said business. Principle underlying the said decision is that even if a criminal case is pending, that by itself cannot be a ground so long as the licence holder himself or his agent or servant is convicted of the said offence. Our criminal jurisprudence recognises that until a person is tried and held guilty, he should be treated as innocent. Other decisions have also dealt with the same subject matter which have been included in the writ petition compilation. I do not think that it is necessary for me to refer to each of the said decision as the consistent view of this Court has been that pendency of the criminal proceedings cannot be a ground for cancellation of licence. Accordingly, petition should succeed on this issue.

12. Coming to the second point that conviction of the occupants in the hotel room for offences punishable under sections 110 and 117 of the Bombay Police Act cannot be used as a ground for cancellation of an hoteliers or eating place licence is concerned, even the said issue is no more *res integra*. This Court in judgment reported in (1999) 101Bom ILR 196 has already answered the said point in favour of the petitioner. It is relevant to point out that only ground indicated for cancellation of the licence in this case is violation of Rule 28 of the licence holder. Rule 28 as applicable to this case reads thus: "Rule 28. If the Commissioner of Police is satisfied that the keeper of any place of public entertainment knowingly permit prostitutes for the purpose of their trade or persons of notoriously bad character to meet or remain in such place the Commissioner of Police may cancel the licence granted to such person under these rules or suspend it for such period as he may specify and direct such person to close such place either permanent or for such period as he may specify and such person shall there upon forthwith comply with such direction." Licence can be revoked u/s 162(2) of Bombay Police Act. It would be therefore relevant to reproduce the said provisions which reads as under:

"162(2) Any licence or written permission granted under this Act may at any time be suspended or revoked by the competent authority, if any of its conditions or restrictions is infringed or evaded by the person to whom it has been granted, or if such person is convicted of any offence in any manner to which such licence or permission relates."

On plain reading of the aforesaid provisions it is ample clear that licence can be suspended or revoked by the competent authority if any of the conditions or restrictions is infringed or evaded by the licence holder himself or he has been convicted of any offence in any manner to which such licence or permission relates. In no other situation the said power of cancellation of licence can be

exercised in law. No doubt explanation to section 162 envisages that any such infringement or evasion by, or conviction of, a servant or other agent acting on behalf of the person to whom the licence or written permission has been granted shall be deemed to be infringement or evasion by, or as the case may be, conviction of, the person to whom such licence or written permission has been granted. Nevertheless, in the present case, it cannot be said that there is infringement or evasion of Rule 28 by the petitioner, who is the licence holder or by any of his employees of the hotel. The occupants who have been convicted of sections 110 and 117 of the Bombay Police Act are not convicted for engaging themselves in permitting prostitution or that they were notoriously bad character and yet were allowed to remain in the hotel precincts. Moreover, no such case was made out against the petitioner at any point of time. In that sense, Rule 28 has no application at all to the present case and as such it was wholly impermissible for the authorities to cancel the licence in exercise of powers under the said Act.

For the aforesaid reasons, the writ petition should succeed and the impugned orders deserve to be quashed and set aside.

Writ petition is therefore allowed with costs.

Rule made absolute.

Certified copy expedited.

Parties to act on the copy of this order duly authenticated by Sheristedar of the Court.