

(1982) 08 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 2646 of 1981

Harish Mahadeo Pimpalkhute

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 19-08-1982

Acts Referred:

Bombay Prohibition Act, 1949 — Section 52, 53, 54, 54(1)(d), 60

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 419, 468, 471, 482, 483

Citation : (1983) MhLj 30

Hon'ble Judges : V. Mohta, J; A.A. Ginwala, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; A.A. Desai, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.A. Ginwala, J.—It is for the fifth time that the petitioner is knocking at the doors of this Court merely for obtaining a licence for sale of mhowra flowers. It is not necessary to recite the whole history of this litigation which, though the relevant facts are few, spreads over broader canvas.

2. The petitioner held licence for selling mhowra flowers from 1965 to 1968 which was duly renewed every year. He did not get it renewed after 31-3-1968. On 17-11-1971 a complaint was made against him for offences punishable under sections 419 and 471 read with 468 of the Indian Penal Code. The trial Court convicted him of these offences on 4-11-1974 and sentenced him to imprisonment for three months and fine of Rs. 300. His appeal was dismissed by the Sessions Court on 7-7-1975. In revision this Court on 2-3-1976 modified the sentence by setting aside the sentence of imprisonment but maintaining the conviction and sentence of fine. The State Government moved the Supreme Court against this reduction in sentence. On 16-4-1979 it allowed the appeal and restored the sentence imposed by the trial Court, with the result that the

petitioner had to undergo imprisonment for three months besides paying fine for the said offence.

3. In the meanwhile the petitioner applied for and obtained licence which was valid from 5-5-1977 to 31-3-1978. It was renewed on the petitioners' application for the period from 1-4-1978 to 31-3-1979, 1-4-1979 to 31-3-1980 and 1-4-1980 to 30-6-1980. It is said that the last renewal was for a period of three months only as a matter of general policy of the State Government. On 5-7-1980 the petitioner applied for renewal of his licence and along with his application he is said to have filed an affidavit narrating the events in the criminal case culminating in the order of the Supreme Court. On 2-8-1980 the Collector (respondent No. 3), the licensing authority, informed the petitioner that the licence could not be renewed because of the conviction as provided by section 54 (1) (d) of the Bombay Prohibition Act, 1949. The Commissioner of Prohibition and Excise (respondent No. 2), the appellate authority, rejected the petitioner's appeal against the said order on 30-12-1980. The Commissioner was of the view that section 54 (1) (d) was available even at the stage of renewal of licence since "refusal to renew licence amounts to cancellation". In the meanwhile the petitioner had filed two writ petitions in this Court being Writ Petition No. 1923 and 2317 of 1980, but the same were withdrawn for one reason or the other. After the appellate order was passed the petitioner moved this Court in Writ Petition No. 155 of 1981 wherein he challenged the said orders of the Collector and Commissioner on the ground amongst others that section 54 (1)(d) was not available to the Collector for refusing to renew the licence as it did not amount to cancellation with which alone the said provision deals. This contention found favour with the Division Bench (to which one of us, Mohta, J., was party) which disposed of the said petition on 24-3-1981, with the following observations:

It appears that the object of the Act is that during the currency of the licence, if certain circumstance are brought to the notice of the authorities which are covered by section 54 (1), then the authority has the power either to cancel or suspend the licence. Once the period of licence is over, the authorities cannot resort to section 54 to refuse to renew the licence. We also do not agree with the authorities that cancellation of licence is the same thing as the refusal to renew the licence. In our opinion, these two are entirely different expressions. Cancellation presupposes a valid licence in favour of the holder which is current. After the expiry of the period of licence, when a person applies, he applies for the renewal of the licence the period of which has expired. The two expressions are not annonyms (sic) of each other and the authorities were not right in equating them. We, therefore, hold that the authorities cannot resort to section 54 to refuse to renew the licence. In this view of the matter, the orders of both the authorities cannot be sustained. We, therefore set aside those orders." Instead of remanding the matter to the Collector for disposing of the application for renewal as the year of licence was coming to an end on 31st March, this Court left it to the petitioner to apply "for renewal of his licence or a fresh grant of licence.

4. Accordingly on an application made by the petitioner, the Collector on 2-5-1981 granted him a licence not for the full term of one year but only upto 30-6-1981. Simultaneously a notice was also issued to the petitioner to show cause why his licence should not be cancelled as provided in section 54 (1) (d) of the Act, because of the conviction for the aforesaid offences. The petitioner sent his reply on 11-5-1981 inter alia alleging that in April 1977 when he had applied for a fresh licence he had brought to the notice of the licensing authority the fact about his conviction and it was after due enquiry that the said licence was granted to him. He further averred that an Inspector who had visited his shop on 4-7-1978 had also noted this fact in the visit book. In short it was contended by the petitioner that the licence was granted in 1977 with full knowledge of the conviction. Personal hearing was given to the petitioner wherein he further contended that action u/s 54 (1) (d) can be taken only if conviction is during currency of licence and since he was convicted much prior to currency of present licence (from 1-4-1981 to 30-6-1981) this fact would not empower the Collector to cancel that licence. By his order passed on 2-6-1981 the Collector rejected this contention holding that "a convict of a cognizable and non-bailable offence cannot be treated as a suitable person to hold the licence and that the conviction need not be during currency of the licence period alone", and cancelled the licence. The petitioner appealed to the Commissioner who by his order made on 7-11-1981 confirmed the order of the Collector. The petitioner has now come up to this Court for the 5th time challenging these orders. The fourth occasion was when he filed Writ Petition No. 1644 of 1981 in connection with the undisposed of stock of mhowra flowers on the day the licence was cancelled. He withdrew it on 6-7-1981 when certain assurance was given by the Collector. In the present petition apart from seeking relief to quash the said orders of Collector and Commissioner the petitioner further seeks a direction to the Collector to consider his application, in case he makes one for grant of licence, on merits without taking into consideration the fact of his conviction.

5. In support of the petition Mr. C. G. Madkholkar, learned counsel for the petitioner, has advanced threefold argument. He firstly contended that the petitioner had made a clean breast regarding his conviction before the licence was granted in April 1977 and it was granted by the authorities concerned with full knowledge of the conviction. It would not, therefore, be now open to them to cancel it on that ground at this belated stage particularly when in the meanwhile the petitioner had not done anything which would amount to breach of any of the conditions of the licence and had kept a clean record. For this he relied on the copy of the application made on 30-4-1977 (Annexure C) and copy of note made by an Inspector in the visit book on 4-7-1978 (Annexure D). His second contention is that the language of section 54 (1) (d) postulates conviction for cognizable and non-bailable offences during the currency of the licence sought to be cancelled and not any such conviction prior to its grant. Thirdly he submits that in view of the provisions contained in sections 52 and 53 of the Act read with Rule 5 of the Bombay Mhowra Flowers Rules, 1950 (hereinafter referred to

as "the Rules") licence cannot be refused merely because the applicant is convicted of a cognizable and non-bailable offence. In other words he submitted that such a conviction does not ipso facto disqualify a person from obtaining a licence.

6. On the other hand Mr. Desai, the learned Assistant Government Pleader, submitted that the petition was infructuous inasmuch as the period for which the cancelled licence was granted had already expired on 30-6-1981 and no useful purpose would be served by now quashing the two impugned orders. With regard to the direction which petitioner is seeking in connection with application for licence in future. Mr. Desai submitted that it was open to the licensing authority to consider the antecedents and past conduct of an applicant in order to judge his suitability and a blanket ban cannot be imposed on it from considering the conviction as sought by the petitioner. As regards applicability of section 54 (1) (d) Mr. Desai submitted that the word "holder" occurring therein does not necessarily mean that the conviction should be recorded when the person is actually holding a licence. According to him, even a past conviction is good enough to cancel the licence. With regard to the allegation of disclosure of the conviction at the time of obtaining the licence in 1977 Mr. Desai disputed it. He submitted that the Collector came to know about it for the first time on 5-7-1980 when the petitioner applied for licence and it was not brought to his notice earlier. Mr. Desai submitted that on the facts and circumstances of the case no interference was called for in exercise of the extraordinary powers of this Court under Article 226 of the Constitution.

7. In so far as the objection to the maintainability of the petition on the ground of its having becoming infructuous is concerned, we do not see much substance in it. If the order cancelling the licence is clearly illegal it requires to be quashed irrespective of the fact that doing so would not revive the licence, its period having elapsed, as allowing such an order to stand may come in the way of the petitioner in applying for renewal of the licence or for grant of a fresh licence. If he applies for renewal it could be said that he was not entitled to it as there was no licence which could be renewed since the existing licence had been cancelled. If he applied for a fresh licence, the cancellation of earlier licence may be taken as a circumstance for refusing it. We, therefore, asked Mr. Desai if the Collector could say that he would not take the cancellation into account at all if the petitioner applied for renewal or fresh licence. Obviously Mr. Desai was not in a position to say either way. Leaving the controversy regarding the power of cancellation u/s 54 (1) (d) in this nebulous state may drive the petitioner to this Court again and face a sixth round. We would, therefore proceed to resolve this controversy particularly when it appears that there is no pronouncement of this Court on this issue.

8. We may at the outset take a note of the relevant provisions of law. Section 60 of the Act deals with mhowra flowers. Sub-section (2) thereof provides that no person shall in the aggregate collect, transport, sell, buy or have in his

possession mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the conditions of a licence, permit or pass granted by the Collector or an officer authorised in this behalf. We are not concerned here with the two provisos to this sub-section. Section 53 inter alia lays down that all licences, permits, passes or authorizations granted under the Act shall be in such form and be subject to such conditions as may be prescribed. The proviso to this section runs thus:

Provided that every licence, permit, pass or authorization shall be granted only on the condition that the person applying undertakes, and in the opinion of the officer authorised to grant the licence, permit, pass or authorization is likely to abide by all the conditions of the licence, permit, pass or authorization and the provisions of this Act.

Section 54 deals with power to cancel or suspend licences etc. The portion relevant for our purposes is as follows:

"54. (1) The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or suspend it,

(a) ...

(b) ...

(c) ...

(d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or if the holder of the licence, permit, pass or authorisation is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930 or under the Drugs Act, 1940 or under the Bombay Drugs (Control) Act, 1952, or under the Indian Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, or of any offence punishable under Article 8 of the Schedule to section 167 of the Sea Customs Act, 1878 :

(e) ...

In exercise of the powers conferred by section 143 of the Act, the State Government has made rules called the Bombay Mhowra Flowers Rules, 1950. Rules 3 to 5 relate to grant of licence for possession or sale of mhowra flowers. Rule 3 states that such licence may be granted to a person who is eligible for it under Government Order in Revenue Department No. 5735/49 dated 27-6-1950. This order was not made available for our perusal. Rule 4 lays down the mode of applying for a licence to possess or sale mhowra flowers. Sub-rule (3) prescribes the particulars which an application for grant of licence to sell must contain. It is pertinent to note that this sub-rule does not require the applicant to disclose his antecedents much less the fact of his being a previous convict. Rule 5(1) which deals with grant of licence is in the following terms:

5(1). On receipt of an application under rule 4, the Collector or the authorised officer shall make inquiries for verification of the particulars given in the application and such other inquiries as he deems necessary. If he is satisfied that there is no objection to grant the licence applied for he may grant the applicant the licence on payment of the fee prescribed under sub-rule (2). The licence for the possession of mhowra flowers shall be in form M. F. I and the licence for the sale thereof shall be in Form M. F. II.

Rule 7 states that every licence shall be granted for one year commencing on 1st day of April and ending on 31st day of March next following and may be renewed for a period of one year on each occasion.

9. We may at the outset take up the second contention of Mr. Madkholkar for consideration, because if we uphold it, it may not be necessary to examine his first contention. The words from section 54(1)(d) which are material for the present case are "if the holder of the licence, permit, pass or authorization is convicted of any cognizable or non-bailable offence." The question is whether the conviction contemplated therein is a conviction recorded during the currency of the licence or it can be a conviction which has been suffered even prior to the grant of such licence. In our view the words "holder" and "is convicted" yield a clue to this riddle. What is needed to acquire the power of cancelling a licence etc. is that "the holder of the license.....is convicted". It has to be noted that present tense is used in relation to conviction and not words like "was" or "had been". In other words, the conviction must be a present fact and not a past event. This read in the context of the word "holder" clears all doubts if there be any. The conviction must be of the holder which clearly means conviction of a person at a time when he is holding a licence. In other words conviction at a time when the person convicted was not a "holder" is not contemplated. It is needless to say that while interpreting a statutory provision each word must be given its due meaning and if the language is clear the Court cannot improve upon it by supplying what it thinks are omissions.

10. The view which we take is further strengthened if we consider a few more circumstances. Neither section 60 nor any other provision in the Act or Rules provide that a person who is convicted of a cognizable and non-bailable offence shall not be eligible for the grant of a licence merely on that count. In other words there is no provision empowering a licensing authority to refuse a licence to an applicant solely because he had been convicted in the past of such an offence. Such a refusal in the absence of any such provision would be vulnerable. Now if in this position section 54(1)(d) is construed to mean that a licence can be cancelled even for conviction suffered prior to grant of such a licence, it would result in an anomalous situation. It would come to this that even though the licensing authority cannot refuse to grant a licence solely on the ground of previous conviction of the applicant (apart from it being one of the circumstances to judge the suitability of the applicant) it can cancel the licence so granted on that count alone. This means that the authority must first grant a licence even

though it is aware of such a conviction and then cancel it in the next breath on that count alone. This is exactly what has happened in this case. The Collector granted the licence on 2-5-1981 and simultaneously issued a show cause notice for its cancellation and in fact cancelled it within a month. Could the Legislature have intended such a circuitous way of dealing with such a simple situation when it could have easily made a specific provision for refusal of licence to a convict as a measure of legislative policy? The answer must clearly be in the negative.

11. We, therefore, hold that the licensing authority can exercise the power of cancellation or suspension of licence u/s 54(1)(d) on the ground of the licensee being convicted of a cognizable and non-bailable offence only if such conviction is sustained during the currency of the licence sought to be cancelled. The Collector was, therefore, in error, in passing the order dated 2-6-1981 and the Commissioner in confirming it by his appellate order dated 7-11-1981. These orders deserve to be quashed. In this view of the matter we need not examine the first contention of Mr. Madkholkar.

12. Now coming to the direction which the petitioner seeks in respect of the grant of a fresh licence or renewal of the expired licence, we have already noted above that the licensing authority is not invested with the power of refusing a licence merely and solely on the ground that the applicant is a convict, as there is no provision to this effect either in the Act or the Rules. Now as seen above, the proviso to section 53 lays down that a licensing authority shall grant the licence only if in its opinion the person applying for the licence is likely to abide by all the conditions of the licence. This is a condition precedent to the grant of the licence. Of course, the authority has to form this opinion on proper material and the antecedents of the applicant could in a given set of circumstances be relevant for arriving at such an opinion. Rule 5(1) requires the licensing authority to "make inquiries for verification of the particulars given in the application and such other inquiries as he deems necessary". This rule further states that "if the said authority "is satisfied that there is no objection to grant the licence applied for it may grant it on payment of the prescribed fee". The "other inquiries" contemplated by this rule are meant to enable the authority to reach the opinion spoken of in the proviso to section 53 of the Act. Such an enquiry has to be guided by the requirement of the said proviso. It is not possible to say that the object of the enquiry could go beyond the limits laid down by the said proviso. The necessity of such an enquiry can be traced to the said proviso. It follows that the scope of the satisfaction of the authority contemplated in Rule 5(1) is the same as of the opinion referred to in the proviso to section 53. In other words, reading section 53 and Rule 5(1) together it is clear that the licensing authority has to make such inquiry as it deems necessary for finding out if the person applying for the licence is likely to abide by all the conditions of the licence and if it is satisfied that he would, it has to grant the licence, otherwise refuse it.

13. Now if the licensing authority comes to know that the applicant has been convicted previously of some offence it may be open to it to take this fact into

consideration for reaching the aforesaid satisfaction along with other material which may come before it. But it can take such conviction into account only for this purpose and cannot refuse the licence merely on this ground if there are other circumstances to the credit of the applicant. The nature of the offence, the circumstances in which it was committed, its proximity, the character of the applicant, his background will all have to be given a thought. In short the licensing authority will not be justified in refusing the licence solely because the applicant had been convicted in the past of a cognizable and non-bailable offence. The Collector will have to bear this in mind while disposing of an application which the petitioner may make for grant of licence.

14. In the result the petition is allowed and the orders passed by the Collector (respondent No. 3) and the Commissioner (respondent No. 2) on 2-6-1981 and 7-11-1981 respectively are hereby quashed and the Collector is directed to dispose of application which the petitioner may make for grant of licence in the light of the principles stated in this judgment. In the circumstances of the case there shall be no order as to costs.