

(1997) 12 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 1205 of 1997

Mukesh R. Chheda

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Bombay Police Act, 1951 — Section 33(1)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (1998) 2 ALLMR 19 : (1998) 4 BomCR 14 : (1998) BomCR(Cri) 714

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : S.P. Kanuga, for the Appellant; D.S. Mhaispurkar, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Parkar, J.—Rule. By consent rule is made returnable forthwith. Mr. Mhaispurkar A.P.P. waives service on behalf of the respondents.

2. Heard Mr. Kanuga on behalf of the petitioner and Mr. Mhaispurkar, A.P.P. for State.

3. The petitioner had applied to the respondent No. 2 on 11-11-1997 for grant of licence for video games under the provisions of section 33(1)(w)(i) of the Bombay Police Act, 1951. The said application not having been disposed of by the Commissioner of Police, this petition has been filed under Article 227 of the Constitution of India seeking direction against the said authority to dispose of the application.

4. There should be no difficulty in granting such petition and issuing directions to the Commissioner of Police to consider and dispose of the application made by the petitioner within a reasonable time. Mr. Mhaispurkar, A.P.P. appearing on behalf of the respondents seeks time of four weeks on behalf of the authorities for disposal of the said application. The Counsel for the petitioner however insists on grant of further relief in the matter not to prosecute the petitioner for want of

licence pending the application for grant of licence. He cites in support of his contention previous orders of this Court and mainly relies on the judgment of the Supreme Court in the case of Murarilal Jhunjhunwala Vs. State of Bihar and others, . Relying on the said judgment it is argued by Mr. Kanuga on behalf of the petitioner that the petitioner cannot be prosecuted by the Authorities for carrying on business of entertainment pending his application for grant of licence. The proposition which is canvassed by Mr. Kanuga is far fetched and is not the ratio of the decision of the Supreme Court.

5. The Supreme Court in the aforesaid case was concerned with the case of a citizen who was previously granted licence and was even renewed from year to year and he was paying licence fee also which was accepted by the Authorities but his application for renewal of the licence was not disposed of and the Authorities prosecuted him for continuing his business without renewal of the licence. It was in that context that the Supreme Court held that the action of the Authority was arbitrary and unjustified in prosecuting the appellant in that case when on his part he had done everything he had to do for renewal of the licence. The ratio of the said case cannot apply to the facts of the present case. In this case the application was made for the first time for issue of licence and not for renewal of licence as in the case before Supreme Court.

6. Mr. Kanuga next relied on the licence granted to the petitioner on 7-11-1997 by the Collector under the provisions of the Bombay Entertainments Duty Act, 1923. According to Mr. Kanuga, since licence was granted by the Collector, the Commissioner of Police was bound to grant him licence and that there was no question of rejecting the application which had been made for grant of licence under Bombay Police Act. He also points out across the Bar that the Collector has issued letter to the Commissioner of Police to grant licence in view of the fact that the Collector had issued entertainment licence and fixed the licence fee for entertainment.

7. In my opinion, the Collector cannot issue such direction to the Commissioner of Police. The two authorities are different and are acting under different enactments. Their powers are different. In my view, if at all one authority has to depend on the other, it is the Collector who has to wait until the issue of requisite licence by the Commissioner of Police because the Commissioner of Police is concerned with the law and order situation and that is why the licence under Bombay Police Act is required to be obtained. Section 33 of the Bombay Police Act gives power to the Commissioner of Police to make rules for grant of licence with a view to or for the purpose of preservation of order in public places. Rule 108 of the Rules framed u/s 33 of the Act lays down the conditions to be fulfilled for grant of licence. Unless and until the public order is taken care of under Bombay Police Act, the other authority i.e. Collector cannot consider the question about the payment of entertainment duty. In my view even if the Collector has fixed the amount of entertainment duty payable by the applicant, fixation of duty should be subject to the issue of licence under the provisions of the Bombay

Police Act. In view of the above, the other reliefs sought for by the petitioners restraining the respondents from prosecuting the petitioner from carrying on business without licence cannot be granted simply because the Collector has issued licence and fixed the duty.

8. Mr. Kanuga also contended that unless directions not to prosecute the petitioner are given the citizen becomes helpless. First of all, no citizen can be permitted or allowed to carry on business without complying with the conditions like obtaining of the requisite licence for the said purpose and if the application for issue of such licence is not considered for unreasonable period of time, it is not without remedy as the petitioner can knock the door of the Court by resorting to remedy available under the basic law of our land i.e. the Constitution of India, as has been done in this case. As the facts disclose, though the application is made on 11-11-1997, the same does not seem to have been attended to nor any affidavit has been filed to justify the delay in disposing of the application. The citizen cannot be made to wait and suffer indefinitely till the authority takes its own sweet time to dispose of such application.

9. In the circumstances, the petition is allowed to the extent that the respondent No. 2 is directed to consider and dispose of the application made by the petitioner on 11-11-1997 Exhibit "C" to this petition by 10-1-1998.

10. Rule is made absolute accordingly.

11. Petition allowed