
(2008) 01 BOM CK 0145
In the Bombay High Court
Case No : Writ Petition No. 347 of 2008

Rajendra P. Singh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Bombay Police Act, 1951 — Section 33, 33(1)(WY)
Constitution of India, 1950 — Article 19(1)
Keeping Place for Public Entertainment Rules, 1953 — Rule 13, 7A, 8(1)

Citation : (2008) 4 BomCR 868 : (2008) 3 MhLj 860

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : Kansara, for the Appellant; V.S. Mhaispurkar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—I had dismissed this petition and the order dated 23-1-2008 reads thus:

For the reasons separately recorded the petition is dismissed.

2. The reasons for dismissing the Writ Petition are these:

The Writ Petition is directed against an order dated 18-12-2007 which has been passed by the Appellate Authority namely Minister of Home, Government of Maharashtra. By the order delivered on 18-12-2007, the Appellate Authority has dismissed the petitioners' Appeal and confirmed the order passed by the Deputy Commissioner of Police, Greater Bombay dated 10-9-2007.

3. The petitioner contends that he is running a Restaurant as a Proprietor. The proprietary business is conducted in the name and style of M/s Jay Hotels at Ram Mandir Road, Goregaon (West), Mumbai-400 062. The case of the petitioner is that he commenced this business in 1993-1994 after obtaining requisite licenses under the Bombay Police Act, Bombay Prohibition Act, so also, other applicable Acts. Insofar as, police licence is concerned, the same was issued on 30-3-1994

permitting the petitioner to serve Food and Liquor in the Restaurant. It is his case that the license is renewed upto 31-3-2005. The petitioner contends that he had applied for renewal of the licence for a further period. It is his case that by virtue of Rule 13(a) of the Entertainment Rules, 1953, the licence is deemed to be renewed.

4. He contends that on 31-3-2007 a Show Cause Notice bearing No. 54 of 2007 was issued calling upon the petitioner to show cause as to why the police licence cannot be cancelled. A copy of the Show Cause Notice is annexed as Annexure-A. The petitioner replied to the said Show Cause Notice on 9-4-2007 and denied all the allegations made against him.

5. The petitioner was called for a personal hearing on 25-8-2007, but, as he was not in town, he deputed his employee Shamrao Korade to attend the office of respondent No. 3 and requested him to adjourn the matter. Respondent No. 3 instead of adjourning the matter questioned the said employee. The employee being unable to answer the questions, the matter was treated as closed after the hearing was concluded.

6. On 13-9-2007, the petitioner received a copy of the order dated 10-9-2007 under which his licence was cancelled. The petitioner being aggrieved and dissatisfied with this order filed an Appeal u/s 33 of the Bombay Police Act, before the State Government.

7. Initially, neither the said Application nor the Appeal was being heard and therefore the petitioner moved this Court and sought a direction to the Authorities to dispose off the pending proceedings. The pending proceedings were directed to be disposed off and that is how the Appellate Authority heard the petitioner.

8. The petitioner was served with an order passed by the Appellate Authority dated 18-12-2007 dismissing his Appeal. Aggrieved by these orders, the present petition has been filed.

9. Mr. Kansara, appearing for the petitioner would urge that both the orders are ex-facie bad in law being vitiated for breach of principles of natural justice. He submits that respondent No. 3 is the authority before whom the Show Cause Notice was being heard. He did not give enough opportunity to the petitioner to make good his case. The petitioner was handicapped, inasmuch as, he was not in town. The employee deputed by the petitioner was not conversant with the facts and law. Therefore, no effective hearing could be held. The request was for adjournment but such reasonable request is also rejected. The Appellate Authority should have quashed and set aside the impugned order cancelling his licence on this ground alone.

10. That apart, the Authorities could have accepted the explanation of the petitioner and closed the proceedings. This is not a case where the petitioner should have been penalised by cancellation of his license. The breach, if any, of

the terms and conditions of the license does not warrant extreme penalty of cancellation. For all these reasons, the impugned order be quashed and set aside.

11. With the assistance of Mr. Kansara, I have perused the petition and the Annexures thereto including the impugned orders.

12. The license issued to the petitioner is under the Rules for Keeping Place for Public Entertainment, 1953 which are framed u/s 33(1)(WY) of Bombay Police Act, 1951. The license clearly stipulated certain terms and conditions. The petitioner during the course of the business and operation of the license had been subjected to several actions. The Schedule-A to the Show Cause Notice enlists the breach and violations committed of the terms and conditions, so also, the details of the offences committed and proceedings lodged against the petitioner. The Show Cause Notice enlists that the said proceedings have culminated and ended in imposition of fine and forfeiture.

13. The incidents with all details have been set out in the Show Cause Notice. Further, the petitioner was charged with violation of Rule 7A of the Rules, so also, Rule 8(1) thereof. It was pointed out that during the raid conducted on the Establishment it was found that the petitioner was absent and several persons were found to be running the Establishment. None of the persons have been authorised nor any person was designated as Manager nor his details were forwarded as required by the Rules. Further, the petitioner has deliberately engaged Female Waitress who have been permitted to engage in indecent and immoral activities. The charge is that the petitioner has allowed the same to be conducted at the Establishment, rather he facilitates the same. Lastly, it was alleged, that the petitioner has without the permission of the Licensing Authority changed the name of his Establishment from "Jay Hotels" to "Golden Park".

14. It was also pointed out to the petitioner that in the past also several breaches and violations of the terms and conditions of the license had been committed and the police license was suspended in 1997 for 5 days, for 15 days in 2002, for 30 days in 2003 and for 6 days in 2007. In view of this and the petitioner defaulting in payment of Rs. 5,25,500/- towards the entertainment programmes, he was called upon to show cause as to why his license should not be cancelled.

15. The petitioner replied to the Show Cause Notice and denied the contents thereof. He places reliance upon a Government Circular dated 24-9- 2001 enabling the Establishment to serve Food and liquor and have Dance and Entertainment programmes upto 1,30 a.m. Further, he denied that he had employed several persons, who as alleged, have to function as Managers. He has denied the other allegations.

16. The Licensing Authority after considering the allegations and the reply of the petitioner thereto so also, taking into account the oral explanation of the person deputed by the petitioner, held that it is not possible to accede to the plea that lesser penalty or punishment be imposed. The Licensing Authority referred to the

record and held that for all offences, the petitioner has been fined by the appropriate Court. The Establishment was kept open beyond permitted hours which resulted in breach of peace and nuisance and annoyance to the neighbouring residential buildings. Further, the license conditions have also been violated.

17. In the above circumstances, I am of the view that the conclusion of the authorities below that the petitioner has repeatedly violated the terms and conditions of the License and the cancellation therefore is justified, cannot be said to be vitiated by any error apparent or perversity so as to call for interference in writ jurisdiction. The petitioner was afforded full opportunity. Further, the conclusion of the Minister of Home that such tendencies are increasing and therefore to curb them, the action of cancellation of the license needs to be resorted, is justified in the peculiar facts of this case. Ultimately, the Authorities are in-charge of maintaining peace and law and order.

18. The petitioners right under Article 19(1)(g) of the Constitution of India is subject to Reasonable Restrictions enshrined in the said Article itself. There is no absolute right to run a Liquor bar and serve Intoxicating Drinks. Such a trade is subjected to reasonable restrictions which serve public Interest. Such a Trade or activity or business therefore, can be carried on or conducted only after obtaining a valid licence. Further, the Establishment must comply with the terms and conditions thereof. Thus, inherent in all this, that the Business will be carried on in accordance with Law. The Law is not challenged nor is the Power conferred thereby. Therefore, the action taken is justified. There is no dispute that the restriction imposed in this case is reasonable. Further, there is no challenge to the requirement of obtaining Police Licence and conditions imposed or the power to impose them.

19. The Authorities are the best judges of the situations of the present nature. The Hon"ble Supreme Court has long time back referred to these aspects and the extent to which the Court can interfere in such type of cases. A Constitution Bench Decision of the Hon"ble Supreme Court reported in *The State of Uttar Pradesh Vs. Kaushaliya and Others*, observes thus:

11....Whether a restriction is reasonable in the interest of the general public cannot be answered on a priori reasoning; it depends upon the peculiar circumstances of each case. Mahajan J., as he then was, speaking for the Court in *Chintaman Rao Vs. The State of Madhya Pradesh*, succinctly defined the expression "reasonable restrictions" thus:

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates.

A fairly exhaustive test to ascertain the reasonableness of a provision is given by

Patanjali Sastri C.J. in *State of Madras Vs. V.G. Row*, . Therein the learned Chief Justice observed thus:

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict.

If we may say so, with respect, this passage summarized the law on the subject fully and precisely. The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others. If in a particular locality and the vice of prostitution is endemic degrading those who live by prostitution and demoralising others who come into contact with them, the Legislature may have to impose severe restrictions on-the right of the prostitutes to move about and to live in a house of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedies.

19. For the reasons aforesaid, it is not possible to uphold the contentions of the petitioner. There is no merit in this Writ Petition and it is accordingly dismissed. No costs.