
(2013) 02 BOM CK 0103

In the Bombay High Court

Case No : Criminal Writ Petition No. 843 of 2009 and 601 of 2012

Renuka Kala Kendra

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Banking Regulation Act, 1949 — Section 6(1)
Bombay Police Act, 1951 — Section 110, 117
Criminal Procedure Code, 1973 (CrPC) — Section 372
Immoral Traffic (Prevention) Act, 1956 — Section 15, 3, 4, 5, 6
Income Tax Act, 1961 — Section 6(1), 80P, 80P(2)(a)(i), 81
Penal Code, 1860 (IPC) — Section 188

Citation : (2013) ALLMR(Cri) 2165

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : P.R. Katneshwar, for the Appellant; R.K. Ladda, APP for State in Cri. Writ Petition Nos. 843 of 2009 and 601 of 2012, Mr. S.J. Salgare, assisting , Assistant Public Prosecutor in Cri. Writ Petition No. 601 of 2012 and Mr. S.K. Chavan, in Cri. Writ Petition No. 843 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.—Petitioners have requested to quash and set aside the order dated 15th November, 2008 passed by Tahsildar/Taluka Executive Magistrate (Tahsildar), Purna, District Parbhani and confirmed by learned Minister for State (Home/Rural) dated 21st August, 2009. The activity of the petitioner is performance of Tamasha shows (folk dance). The petitioner had applied for performance license to the Tahsildar under the Rules for Licensing and Controlling Places of Public Amusement (other than Cinemas) and Performances for Public Amusement, including Melas and Tamashas, 1960 (herein referred as "Rules"). Permission - performance license dated 10th October, 2001 for a year which was discontinued due to adverse orders passed by the learned Tahsildar.

2. In the past, on 31st December, 2007, the Tahsildar/Taluka Executive

Magistrate cancelled the license of the petitioner by order dated 1st August, 2008 confirming the order dated 31st December, 2007. This order has traveled beyond show cause notice and this Court recorded "An order based on the grounds and the material which are not mentioned in the show cause notice would be in utter disregard to the principles of natural justice. Admittedly, the final order, so also, the order dated 1st August, 2008, have been passed by the Authority on the basis of material of which the petitioner had no notice." Consequently, the orders were set aside in Criminal Writ Petition No. 34 of 2008 on 23rd September, 2008, the matter was remanded to the learned Tahsildar, he was directed to give fresh show cause notice to the petitioner stating therein the grounds on which the action is proposed and the material in support of the purported actions. It was expected, after giving reasonable opportunity of hearing, necessary orders in accordance with observations be passed. It was in this scenario, on 7th October, 2008, a notice was served upon the petitioner highlighting seven aspects of infringement of Rules, law and order problem in the area. One of the grounds was, the Sarpanch of Grampanchayat, Erandeshwar and 23 + 28 villagers have objected the performance license for folk dance. Grampanchayats, Aherwadi and Mategaon have also passed resolutions on 29th July, 2008 and 26th July, 2008 and urged the Tahsildar not to approve any such license. On 31st July, 2008, 58 ladies appeared before the Tahsildar and made individual statements, not to entertain issuing performance license to the petitioner. It was pointed that under the garb of art, at the said place, brothel is conducted where, liquor is served freely in abundance till late night. The villagers spent their hardened money in such brothel and drinking, resultantly, few villagers have even suffered HIV positive.

3. In the reply, petitioner has disputed the allegations. Sarpanch of one of the villages had adverse interest and enmity with him. The persons who approached the Tahsildar are interested persons. The petitioner had also doubted about representation made by 58 females of village Erandeshwar.

4. Ultimately, the learned Tahsildar, by order dated 15th November, 2008, after giving exhaustive hearing to the petitioner, terminated the performance license in terms of the Rules.

5. Mr. Katneshwarkar, learned counsel submits that the activities of the petitioner are for development of art without breach of rules. He accepted that few cases are initiated by police after raid, however, according to him, they are false. Even if the cases are filed, the license could not be cancelled, as there was no breach of licensing conditions. Clauses 1 and 2 in the notice are vague as report of Special Divisional Police Officer dated 23rd July, 2008 and Police Inspector Police Station, Purna dated 24th July, 2008 are loosely considered.

6. Learned counsel, indeed, could not dispute about seizure of illicit liquor of Rs. 22,334/- from the petitioner-Kalakendra, but he had another answer for the same. The chart of cases against the petitioner shows that 10 crimes are registered at Purna Police Station bearing Crime No. 3005/2007, P.N.C. No.

42/2007, P.N.C. Nos. 43/2007, 44/2007, 25/2007, P.N.C. Nos. 68/2007 to 127/2007, 36/2007, 3039/2007, 163/2007 u/s 188 of Indian Penal Code and Sections 190 and 117 of Bombay Police Act. Crime No. 3097 is for offence under Sections 3, 4, 5, 6, of Immoral Traffic Prevention Act. It is pointed that a girl -- Jyoti was 12-13 years who was engaged in prostitution by the petitioner. It has been medically established that she was sexually abused. In N.C. No. 16/2004, the petitioner was found guilty and fined Rs. 1,500/-, in N.C. Nos. 44 of 2006, 42 of 2007, 43 of 2007, he was found guilty and punished with fine of Rs. 800/-. In one of the raids, 68 persons i.e. 48 women and 20 men were found indulging in prostitution. They pleaded guilty and fine of Rs. 500/- each was imposed by learned J.M.F.C. for infraction of Sections 110 and 117 of Bombay Police Act.

7. Mr. Katneshwarkar submits that in Crime No. 3039 of 2007, the petitioner has been acquitted on 6th January, 2011 by learned Addl. Sessions Judge-3, Parbhani. Even if there is acquittal, perusal of order illustrates that it is not an honorable acquittal. The minor girls who were found in the brothel were not examined. The evidence was scanty in respect of petitioner hiring girls below 18 years, as contemplated u/s 372 of Indian Penal Code. The procedure under sub-section 2 of Section 15 of Immoral Traffic Prevention Act for carrying search in presence of two respectable inhabitants in the locality, was not followed. The Investigating Officer P.I. Patil did not turn to Court and not produced the customers who were sent for verification.

8. Learned counsel also questions competence of learned Tahsildar to terminate the license. Chapter XVI of Rules deals with "licensing authority". Rule 193(1) and (2) of the Rules read as under:-

(1) at the district headquarters, the District Magistrate,

(2) at all other places, the District Magistrate, or the Mamlatdar or the Mahalkari, as the case may be, within his jurisdiction.

In the light of above Rules, the licensing authority being Tahsildar/Taluka Executive Magistrate, he has also authority for suspension and cancellation of license.

Chapter XIX of the Rules deals with suspension and cancellation of license. Rule 222(1) contemplates that the licensing authority may suspend or cancel any license granted under these rules for contravention of any of these rules provided that the Licensing Authority shall give the licensee an opportunity to show cause before taking any action under this sub-rule. Sub-rule (3) contemplates, "notwithstanding the provisions of sub-rules (1) and (2), the Licensing Authority may, in its absolute discretion at any time cancel or suspend any license granted under these rules and may direct the licensee to close the premises either permanently or temporarily, or direct him to comply with the directions and instructions that he may issue in order to prevent any obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passers-by in the vicinity or for the maintenance of public safety and the prevention of

disturbance in the premises....."

9. In the light of this situation, show cause notice demonstrates that the villagers, the Grampanchayats have objected for continuation of license to the petitioner as it has created disturbance to public peace and residents are tortured, all sort of illegal activities of prostitution were brazenly carried. Available record shows 72 cases registered against the petitioner, hence it is difficult to infer that his constitutional rights are infringed and termination of license was without just cause. While safeguarding petitioner's right, public outcry, hazards, ill-consequences can not be ignored. These facts have been verified by Tahsildar. The action of learned Tahsildar confirmed by learned Minister, therefore, does not call for interference in writ jurisdiction. Criminal Writ Petition No. 601 of 2012 is dependent on the fate of Criminal Writ Petition No. 843 of 2009. I do not find any merit in Criminal Writ Petition No. 843 of 2009 and consequently, Criminal Writ Petition No. 601 of 2012 also stands dismissed with costs. Rule discharged.