

(2011) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 8426 of 2011

Shri Appu M. Shetty

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Bombay Police Act, 1951 — Section 10(2), 110, 117, 131, 162
Constitution of India, 1950 — Article 19(1), 21, 226, 227
Keeping Places of Public Entertainment in Greater Bombay Rules, 1953 — Rule 10, 21A, 238, 24, 27

Citation : (2012) 4 BomCR 861 : (2012) 2 MhLj 629

Hon'ble Judges : Girish Godbole, J

Bench : Single Bench

Advocate : Bobby Malhotra Paul, for the Appellant; P.S. Cardozo, AGP, for the Respondent

Judgement

Girish Godbole, J

1. Rule. By consent, Rule made returnable forthwith and heard finally. I have extensively heard Ms. Bobby Malhotra, Advocate appearing for the Petitioner and Ms. Cardozo, learned AGP for Respondents.

2. The facts lie in a narrow compass. The Petitioner is running an eating house. Name is Hotel Sona. The Petitioner is aged 70 years. The hotel is situated at Goregaon. The Licencing Authority namely Assistant Commissioner of Police, Goregaon Division, Mumbai has issued a licence to keep a place of public entertainment bearing No. 37/Goregaon in favour of the Petitioner. The said licence empowers him to serve liquor in his eating house for which a special licence u/s 33(xa) is issued. The concerned police officer namely Senior Inspector of Police, Prevention of Immoral Business Desk, Social Service Branch, Mumbai inspected the establishment of Petitioner at 00.35 on 6/12/2009 and during the course of inspection, it was found that on the ground floor hall, with the beats of music being played on Orchestra, 5 lady waitresses were making

obscene gestures and were found to be in close contact with the customers and the customers were found to be showering Indian Currency notes on the said lady waitresses. The Petitioner was admittedly not present in the establishment. It is not the case of the Petitioner that the said lady waitresses were not employees of the Petitioner. One Rajesh Vishwanath Shetty was a person who was found to be conducting the entire business and one Dinesh Loku Poojari was found to be a person working as Manager in the establishment. In terms of Rule 8 of the Rules For Keeping The Places of Public Entertainment in Greater Bombay, 1953 framed by Commissioner of Police, Mumbai u/s 33 of the Bombay Police Act, 1951, the Petitioner had not obtained any prior permission of the Licencing Authority either to appoint the said Shri Shetty or said Shri Poojari as his agents. In view of this incident, a report was submitted to the Licencing Authority and, independent of this report, offences u/s 33(w) r/w section 131 bearing C.R. Nos. 2088/2009 and 2089/2009 were registered against the conductor Rajesh Shetty and the Manager Dinesh Loku Poojari. Similarly, offences bearing C.R. Nos. 2090/2009 to 2094/2009 were registered against 5 waitresses u/s 110 of the Bombay Police At, 1951. The Petitioner is not an accused in any of these officered .

3. Since criminal prosecution and administrative action under Rule 27 of the 1953 Rules are two different things and operate in different fields, the first being a penal action and second being an administrative action, the Licencing Authority issued a show cause notice to the Petitioner on 4/2/2010. There is no dispute about receipt of the show cause notice. Show cause notice clearly indicated violation of Rule 8(1), 8(2), 6, 21A and 24. Paragraph-7 of the show cause notice clearly shows that pending criminal cases were not the basis or foundation of the show cause notice and the proposed action of cancellation of licence. In paragraph-8, past history of the various administrative actions against the Petitioner were indicated which show that in 1997 police licence was suspended for 7 days, for 15 days in the year 2001, for 30 days in the year 2002, for 7 days in the year 2004, for 20 days in the year 2006, for 10 days and 15 days in the year 2007 and warning was issued in the year 2009. Thus the fact that the Petitioner is habitually violating provisions of the Rules was clearly indicated in the show cause notice which is at Exh. B to the Petition. The reply virtually admits that police had visited the establishment and also admits that lady waitresses who were employees of the Petitioner were found working in the establishment. The only dispute is about the timing of the visit of the police. The Petitioner has not indicated as to what is the time when the police visited the premises. A bald statement was made in the reply that the police came to the hotel before prescribed time limit and when the lady waitresses were returning from the work and were going to home. No time is indicated in the reply. Even in the appeal memo filed before the State Government no time has been indicated. There was mere denial of violation of rule 6 and 21. Reliance is placed on certain Judgments. Paragraphs 4 and 5 of the reply reads thus :

4) The person alleged as manager in the cases registered; is one of the staff

members and he was doing supervision work in my absence. Till date I have not appointed any one as a manager in my hotel. I always remain present in the hotel in the business hours except lunch time and at the time of some other important work. In my absence I told to one of the worker to handle the hotel business for the time being. Therefore, in respect of violation of rule 8(1) as well as 8(2) is not taken place.

5) I hereby submitting that as compared to the cases, the proposed punishment is so harsh. Therefore, kindly take lenient view in this matter.

Thus, the allegations in the show cause notice were not seriously disputed. The fact that Mr. Shetty was found to be conducting the business and Dinesh Poojari was found to be kept as Manager was also not disputed. It is not the case of the Petitioner that there is any authority in favour of these 2 persons as contemplated by Rule 8 of the 1953 Rules.

4. Hearing was fixed. At the time of hearing, the Petitioner did not remain personally present. No application for adjournment was submitted and in fact a person named Harish Shetty appeared before the Licensing Authority at the time of hearing and contended that he has been conducting the entire business. When he was asked about his authority, he replied to the Licensing Authority that the Petitioner had gone to Manglore and that the Petitioner was not well and therefore could not attend the hearing in Mumbai and that he requested that the hearing should be proceeded and that he was entirely responsible. This is a statement of fact appearing in the order passed by the Licensing Authority and neither in the memo of Appeal filed before the State Government nor in the Memo of Writ Petition this statement of fact is assailed. It is well established that if the statement of fact appears in the impugned Judgment and Order of any judicial or quasi judicial authority, in the absence of any specific challenge to the said statement, the Superior forum will proceed on the basis that such a statement of fact recorded by the Authority concerned is factually correct. In view of the past history where the licence of the Petitioner had been suspended on several occasions, from year 1997 onwards, the Licensing Authority came to the conclusion that the violation of rules 6, 8, 21 and 24 has been established. This conclusion was reached by the Authority dehorn of the pending criminal cases in which the Petitioner is admittedly not an accused. Licensing Authority thereafter passed the impugned Order dated 4/3/2011 and the Police Licence No. 37/Goregaon issued in favour of the Petitioner has been cancelled.

5. Aggrieved by this Order of cancellation of licence, Appeal under Rule 28 of the 1953 Rules is filed before the State Government. By the impugned Judgment and Order dated 6/9/2011, the Principal Secretary of the Home Department of Government of Maharashtra has dismissed the Appeal by giving cogent reasons. The Appellate Authority and Licensing Authority seem to be conscious of the fact that mere pendency of criminal complaints cannot be made foundation of any such action. With this consciousness, the facts of the case have been considered independently which will have no bearing on the criminal cases which are

pending. In fact violation of the rule 8(1), 8(2) had been independently established and this finding has been reached by the Licencing Authority, as also by the Appellate Authority.

6. I have carefully perused the photocopy of the licence. The Photo copy of the licence clearly shows that the licence which has been cancelled is only of licence to keep place of public entertainment and there is nothing to indicate that there is composite licence to keep place of public entertainment and licence to run eating house. An eating house is defined u/s 2(5A) of the 1951 Act whereas the place of public entertainment has been defined u/s 2(10) of the said Act. If the owner of the establishment does not wish to serve liquor or any other intoxicating substance containing alcohol, he does not need licence to keep a place of public entertainment. These are two different licences and eating house licence is referable to section 33(xa) whereas a licence to keep a place of public entertainment is referable to section 33(w) of the 1951 Act.

7. Smt. Malhotra has taken me through the various provisions of 1953 Act. It will be advantageous to reproduce the said provisions before dealing with the submissions of Smt. Malhotra. Section 2(5A) defines the term "eating house". Section 2(10) defines the term "Place of public entertainment" and Section 2(13) defines the term "public place". Section 33 (w), (xa) and (y) read thus :

33. Power to make rules or regulation of traffic and for presentation of order in public place, etc. [The Commissioner with respect to any of the matters specified in this sub-section, the District Magistrate with respect to any of the said matters (except those falling under Cls. 4 [(a), (b), (d), (db), (e), (g), (r), (t) and (u)]) thereof and the Superintendent of Police with respect to the matters falling under the clauses aforementioned read with CI. (y) to this sub-section], in areas under their respective charges or any part thereof, may make, alter or rescind rules or orders not inconsistent with this Act for-

(w) (i) licensing or controlling places of public amusement or entertainment;

(ii) prohibiting the keeping. of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;

(iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly, and providing for the maintenance of public safety and the prevention of disturbance thereat;

[(xa) registration of eating- houses, included granting a certificate of registration in each case, which shall be deemed to be written permission required and obtained under this Act for keeping the eating-house, and annual renewal of such registration within prescribed period;]

(y) prescribing the procedure in accordance with which any license or permission sought to be obtained or required under this Act should be applied for and fixing the fees to be charged for any such license or permission:

Section 110 reads thus :-

110. Behaving indecently in public. - No person shall willfully and indecently expose his person in any street or public place or within sight of, and in such manner as to be seen from any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house.

Section 131 provides for penalty for contravention of rules u/s 33 and the relevant section 131(b)(v) reads thus :

131. Penalty for contravening rules. etc., under Sec. 33.- 6 [7 [Save as provided in Sec. 131-A, whoever]-

(a) contravenes any rules or order made u/s 33 or any of the conditions of a licence issued under such rule or order, or

(b) abets the commission of any offence under Cl. (a) shall, on conviction be punished]-

.....

(v) if the rule or order contravened or the rule or order under which the said licence was issued 8[was made under any clause of sub-section (1) of Sec. 33 and for the contravention of which no penalty is provided under this section], with fine which may extend to five hundred rupees.

Section 151, 151A read thus :

151. Prosecution for certain offences against the Act to be in the discretion of the Police. It will not except in obedience to a rule or order made by the State Government or by the competent authority, be incumbent on the Police to prosecute for an offence punishable under Sec. 117, 119, 131, 134, 137, 139, 140 or 144 when such offence has not occasioned serious mischief and has been promptly desisted from on warning given.

[151-A. Summary disposal of certain cases. (1) [A Court taking cognizance of an offence punishable under Sec. 117, or under [subclauses] (iii), (iv) or (v) of Sec. 131, may state upon the summons to be served on the accused person that he may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum, not exceeding twenty-five rupees, as the Court may specify.

(2) Where an accused person pleads guilty and remits the sum specified no further proceeding in respect of to offence shall be taken against him).

Section 117 reads thus :

117. Penalties for offenders under Secs. 99 to 116. Any person who contravenes any of the provisions of Sections 99 to 116 (both inclusive) shall, on conviction,

be punished with fine which may extend to [twelve hundred rupees]

Section 162 reads thus :

162: Licences and written permissions to specify conditions, etc., and to be signed. (1) Any licence or written permission granted under the provisions of this Act shall specify the period and locality for which and the conditions and restrictions subject to which, the same is granted, and shall be given under the signature of the competent authority and such fee than be charged therefore as is prescribed by any rule under this Act in that behalf.

Revocation of licences, etc. (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 it 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 matter to which such licence or permission relates.

When licence revoked, etc., grantee to be deemed without licence. (3) When any such licence or written permission is suspended or revoked, or when the period for which the same was granted has expired, the person to whom the same was granted shall for all purposes of this Act, be deemed to be without a licence or written permission until the order for suspending or revoking the same is cancelled, or until the same is renewed, as the case may be.

Guarantee to produce licence, etc., when required.(4) Every person to whom any such licence or written permission has been granted, shall, while the same remains in force, at all reasonable time, produce the same, if so required by a Police officer.

Explanation- For the purpose of this section 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 license or written permission has been granted.

8. In exercise of powers conferred by section 33 of the 1951 Act the Commissioner of Police Greater Mumbai has framed rules known as "Rules For Keeping Place Of Public Entertainment In Greater Bombay, 1953 (referred to as 1953 Rules). Rule 6 reads thus :

6: No license under these rules shall be issued unless the person keeping the place of public entertainment satisfies the Commissioner of Police that he shall comply with the provisions of the Bombay Shops and Establishments Act, 1948, and the rules made thereunder.

Rule 8 reads thus :

8: 1) Unless a person permitted to act under Sub Rule (2) (in this rule referred to as "the agent") is present no person keeping a place of public entertainment shall absent himself therefrom during the time it is open without obtaining the

previous permission of the licensing authority, to be endorsed on the license.

2) No person keeping a place of public Entertainment at any time permit an agent to act for him in the management of such place without the like permission similarly endorsed. Provided that permission to act as agent shall not ordinarily be refused if the person is a member of the licensee's family or his paid servant.

Provided that no such permission shall be endorsed on the license unless, the agent affixes his signature or if he is illiterate, his left thumb impressing on the license in the presence of the commissioner of Police duly countersigned by the Commissioner and furnishes to the Commissioner three additional specimen signatures or as the case may be, three left thumb impressions duly countersigned by the Commissioner of Police.

Provided further that in case of licenses issued before the date of this notification, the agent shall comply with the provisions of the preceding proviso within two months from that date

Rule 21 reads thus :

21-A : Without prejudice to the provisions of rule 21, no person keeping a place of public entertainment shall permit during any performance or exhibition of any programme of entertainment at such place.

(a) any profanity or any obscene or indecent language; or

(b) any indecency of dress, dance or gesture

Rule 27 reads thus

27: The Commissioner of Police shall have the power in his discretion at any time to cancel a license granted under these rules or to suspend it for such period as he may specify to direct the keeper of any place of public entertainment to close such place either permanently or temporarily or otherwise act with reference thereto, if the Commissioner of Police is satisfied after such enquiry as he deems fit that the Licensee is not a suitable person for continuing to hold the licence or in order to prevent any obstruction, inconvenience, annoyance, risk, danger or damage to residents or passengers in the vicinity or to prevent nuisance in such place and every person keeping a place of public entertainment shall forthwith comply with such direction.

9. Mrs. Malhotra submitted that though the incident of inspection is not denied, incident did not take place at the time which is indicated. She submitted that the Petitioner is not an accused in any of the criminal cases. Relying on the Section 33 of the Act, it was submitted that the power is to make rules for regulation of Traffic and for preservation of order in public places and hence, every action under the rules must be construed by keeping in mind the purpose of making rules. It was further submitted that the relevant words were to be found in subclause (w) and only in case where there was any obstruction, inconvenience, annoyance, risk, danger or damages to the residents or passengers in the vicinity

it could be construed that there is violation of the rules. It was next submitted that since sections 110 and 117 were penal sections, these sections must be read together with section 131 and with section 162 and only in case where the Magistrate tries the particular offender in summary proceedings and imposes fine which cannot exceed Rs. 1200 and Rs. 500/- for different offences, can the Licencing Authority proceed to take action. In other words, it was submitted that unless and until prosecution has ended in conviction, no action whatsoever can be taken by the Licencing authority either for suspension or for revocation of the licence.

10. Relying on Section 162 it was submitted that the revocation of licence can be done by the Competent Authority and can be done only if the licensee is convicted by any offence in any matter to which such licence or permission relates.

11. Relying on section 151A it was submitted that the case u/s 9 can be tried in a summary manner and, hence, when the maximum punishment is fine of Rs. 2000/- u/s 151A even if the accused admitted guilt, action of cancellation of licence is completely without jurisdiction and without authority of law.

12. It was alternatively submitted that Licencing Authority has discriminated against the Petitioner only on the ground of one solitary incident. A very harsh punishment of cancellation of licence has been imposed and it was therefore submitted that the punishment is shockingly disproportionate and shocks conscience of the a common man.

13. Smt. Malhotra relied upon the following Judgments in support of her submissions.

(1) Judgment of B.N. Shrikrishna, J W.P. No. 1639 of 1996 in Kana Nagu Mhatre (Gopika) v/s. State of Maharashtra and relied on paragraph-6 of the said Judgment which reads thus :

6. A reference to the Show cause Notice dated 16th January, 1996 shows that the petitioner is alleged to be committing serious breaches of the terms of the licence granted to him and of the provisions of the Bombay Police Act and the Rules made thereunder. Unfortunately, in the Order of the A.C.P. Panvel Division, Panvel, dated 29th January, 1996, there is no mention of the material on the basis of which he was satisfied that the petitioner was guilty of the breaches of the law alleged against him. The mere fact that on previous occasions there were some employees of his restaurant convicted does not bring home the crux of the charges. At least in 16 out of 11 cases, the cases were sub judice and criminal court is yet to try the complaints and decide the guilt or otherwise. So far as allegations connected with the "raid" by the Minister on 15th January, 1996 is concerned, even that is the subject matter of a case pending in the criminal court. The impugned Order of the A.C.P. Seems to have proceeded on the assumption that all charges pending against the petitioner in the criminal court, including the list in the series, have been proved. There does not appear to be

any attempt on the part of the A.C.P. To take on record any material from which he could have been satisfied that the licence of the petitioner deserved to be cancelled. The Order of the A.C.P., Panvel Division, Panvel, is, therefore, wholly erroneous and deserves to be quashed and set aside.

And further referred to observation in paragraph-7 of the said Judgment which reads thus :

7..... It is time that the Authorities below become alive to the fact that any order which takes away the livelihood of a citizen infringes his fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. Such an order could only be upheld if it imposes reasonable restrictions on such fundamental rights. Such orders have to be passed with the utmost sense of responsibility. The orders of the two Authorities below are wholly perfunctory and not based on any material to support the conclusions drawn.

14. Reliance was also placed on the Judgment of Justice B.N. Shrikrishna in the case of Girija Timappa Shetty v/s. The Assistant Commissioner of Police & anr. in Writ Petition No. 2291 of 1996 dated 10th April, 1996 and the observations in paragraphs - 5 and 6 thereof were pressed into service which read thus :

5. Both the authorities below have missed one vital factor, namely, that an accused is presumed to be innocent till found guilty by a competent Court. Merely because an offence has been registered or a complaint is pending before the Court, it is not possible to say that the accused would necessarily be found guilty. Perhaps, that may be the view point of the Police Department, but that is not the law. The manner in which the previous 15 cases and the present 56 cases have been launched against the Petitioner is also strange. The police raided the establishment on a particular day, picked up 56 different employees and charged them separately under the same Sections for the same incident and chalk up 56 separate offences. Unless statistics was being used for an oblique purpose, I see no point in the manner in which the prosecutions were launched. To call them separate offences registered against the establishment, is nothing but a face.

6. The reasoning adopted by both the authorities below for concluding that the Petitioner's Eating House was liable to be cancelled, is wholly erroneous and untenable. The authorities below must take into consideration that the Petitioner has a guaranteed fundamental right under Article 19(1)(g) and Article 21 of the Constitution of India which permits her to carry on any trade, business or vocation in life for the purpose of livelihood. Any restriction on or interference therewith is permissible only to the extent it is reasonable.

15. The Judgment of Division Bench (H.S.Bedi, C.J. & V.M. Kanade, J) in the case of Maruti Vitthal Gopale v/s. The State of Maharashtra & Anr. was also relied in support of the submission that pending criminal case cannot form the basis of an action for cancellation or suspension of licence.

16. The Judgment of R.M.S. Khandeparker, J in Allahbaksh Ismail Ebrahim Vs. Commissioner of Police and Others, was also relied upon with particular reference to paragraph-8 which reads thus:

8. Bare reading of the Section 162 of the said Act discloses that the licensing authority is empowered to suspend a licence if the conditions and restriction imposed upon the licensee under the license are violated or infringed. At the same time, the Rule 238 of the said Rules discloses that action for suspension of a licence can also be taken in cases where the same is necessary to maintain the public safety and prevention of disturbances in a premises, as also to prevent any obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passers by in the vicinity of the premises in relation to which the licence has been issued. In other words, the maintenance of public safety, prevention of disturbance in the premises, or inconvenience, or annoyance, or risk or danger of damage to the passers-by in the vicinity of the premises and violation of the conditions of the licence can all be taken together as well as any one of them be the ground/grounds for suspension of a licence. However, mere non compliance of the conditions of the licence cannot by itself be a ground for suspension of a licence and non-compliance of the conditions of licence has to be accompanied by one of the possibilities which are contemplated under the Rules 238 to enable the authorities to suspend a licence granted to a licensee.

It was submitted that Rule 238 referred therein is *pari materia* Rule 27 of the 1953 Rules.

17. Judgment of V.C. Daga, J in the case of Shri Sayad Kadir Amir Jan v/s. The State of Maharashtra & ors.(W.P. No. 6133 of 2008 dated 28th August, 2008) was also relied upon by pointing out the observations made in paragraph-7 of the said Judgment. Certain other judgments have also been annexed in the compilation but they were not relied upon.

18. On the other hand Ms. Cardozo, learned AGP submitted that the incident of inspection by police on 6/12/2009 is admitted, the presence of Rajesh Shetty and Dinesh Poojari in the licence premises at the relevant time is admitted, presence of 5 waitresses in the premises is admitted and the Petitioner has also admitted that he was absent at the time of inspection. Ms. Cardozo further submitted that considering the past history of repeated suspensions of the licence, licensing authority on the conscious consideration of the entire track record of the Petitioner was justified in coming to the conclusion that the Petitioner was not a suitable person for conducting a place of public entertainment and hence, the authority has taken a possible view. It was submitted that the impugned order of the Authority is within the jurisdiction conferred on the authority and the authority has not even remotely considered the pending criminal cases.

19. I have considered the submissions. The first submission to the effect that unless and until there is conviction for an offence u/s 110 read with section 117 r/

w section 33 and section 131 of the 1951 Act, is merely required to be stated to be rejected. If the 1953 Rules have been framed in exercise of powers conferred by section 33 of the 1951 Act, these Rules are statutory rules and have a statutory flavour. Validity of rules is not under challenge. Section 162 clearly provides that any licence or written permission granted under the 1951 Act may at any time be suspended or revoked by the competent authority, if any of its conditions or restrictions are infringed or evaded by the person to whom it has been granted or if such person is convicted of any offence in any matter to which such licence or permission relates. It is therefore clear that conviction of the licensee is not a prerequisite condition for an action for suspension or cancellation of licence. Even if a person is not convicted or even if a person is not even prosecuted, the Competent Authority is empowered to cancel or suspend the licence if it is satisfied that any of its condition or restrictions are breached or infringed or evaded by the licensee. In view of this, the first submission of Smt. Malhotra that only conviction can be made the foundation of cancellation of licence does not have any merit and the same is rejected. In this regard, Ms. Cardozo is justified in relying upon the observations in the Judgment of the learned Single Judge (K.U. Chandiwal, J) in Criminal Writ Petition No. 72 of 2008(Aurangabad Bench) in the case of Sanjay s/o Jugallal Jaiswal v/s. State of Maharashtra & ors. Paragraphs 2 and 3 of the said Judgment read thus :

2. Learned Counsel for the petitioner repeatedly harped that, 16 cases, under the Bombay Police Act, 1951, to which basically reference is given, for cancellation of the licence, revolved not around him but, around his employees, who were working at the hotel, at the Dance Bar, at the material time and, according to the learned Counsel, in view of Rule 10 promulgated under the Bombay Police Act, 1951, by notification dt.30th May, 1996, the prosecution should have been necessarily against owner or the licensee and then only the authorities should have invoked their jurisdiction for taking action. According to the learned Counsel, the employees are not authorised persons to work in the hotel and, consequently, the prosecution, by itself, will not be detrimental to the business activities or, to the terms of the licence issued in favour of the petitioner.

3. The petitioner/applicant cannot dispute that he is governed by the procedure as prescribed under the Bombay Police Act and Rules framed thereunder, he is bound to comply the terms of the licence, of conducting the business of eating house or conducting a hotel. The 16 cases, to which he gave reference and the Department also referred, though I find, are under the provisions of Section 33(W), 131, 110, 117 of Bombay Police Act and, they are mostly revolving around the employees of the petitioner, however, the fact remains that the applicant cannot dispute or deny as, whatsoever prosecution has been initiated against the employees is, in relation to infraction and violations of the prescribed rules; that too, in the hotel premises owned by the accused and, the hotel premises, being a "public place" within the definition of the said Act, it was the vicarious liability of the petitioner to meet the consequences thereof. The petitioner cannot be said to be oblivious to whatever activities his employees

were undertaking in the hotel at the relevant time, when the hotel is and was under his exclusive control and domain. The authorities, in exercise of the powers conferred upon respondent no.2, u/s 33 of the Bombay Police Act and the Rules framed thereunder, have framed the rules named as Public Entertainment Places (Aurangabad) Rules, 1995, which were made applicable to all the permit rooms, beer bars, country liquor shops, toddy shops in the jurisdiction of Police Commissionerate at Aurangabad and, have followed the said procedure and sufficient opportunity was given to the petitioner before taking any action against him. The authorities, apparently, have invoked provisions of Section 33, Section 10(2) of the Bombay Police Act which authorise them, in the capacity as licencing authority, to take action, if there is any contravention of the statutory provisions.

20. In view of the provisions of section 162 and the fact that Rule 27 of the 1953 Rules does not provide for the conviction of a licensee in criminal trial as an essential prerequisite for an action for cancellation or suspension of the licence, it is clear that the Licencing Authority was conscious of the fact that pending prosecution cannot be made foundation of an action for cancellation which is a punitive action. The reading of the Order passed by the Licencing Authority as also the Appellate Authority clearly shows an appropriate application of mind, and rules of natural justice have been duly complied with. The show cause notice is elaborate and exhaustive and also indicates appropriate reasons as to why the licence should not be cancelled. The past conduct of the Petitioner is relevant factor and as indicated by me herein above at on numerous occasions in recent past the licence of the Petitioner had been suspended and, in such situation, the licencing authority was justified in coming to the conclusion that no purpose would be served by suspending licence again. Considering the past conduct of the Petitioner, it was not a case for taking any lenient view or taking moderate action of suspension of licence.

21. I have already observed above that the fact that the Petitioner was not in the establishment is admitted, visit of the police officer is admitted, presence of Shri Shetty and Shri Poojari is admitted. The fact that none of these persons were authorised agent of the Petitioner in terms of the Rule 8 of the 1953 Rules is admitted. Thus, this was a case where all the allegations in the show cause notice had been completely admitted. With such a background of facts, the Licencing Authority had the power and jurisdiction either to cancel the licence or to suspend the licence. Due to the reasons as borne out from the record, it is clear as to why only suspension could not have served any purpose. Thus, after valid exercise of discretion the licencing authority has reached the conclusion that the licence was required to be cancelled. The Petitioner did not appear for personal hearing though an opportunity to that effect was given. Even there, a person named Harish Shetty appeared before the Authority on 25/2/2011. Smt. Malhotra contended that the Petitioner was unwell and an application for adjournment was sought to be given which adjournment is not granted. However, there is no factual foundation in support of this submission either in the memo of appeal or Writ Petition. Therefore, this argument is after thought and cannot be

sustained. The Authority has exercised its discretion and the order impugned does not suffer from perversity.

22. In the end it is necessary to consider the submissions of Smt. Malhotra that the punishment is disproportionate. Rules provide for two types of punishment. One is suspension and the other is cancellation of licence. Rule 27 does not provide for any particular period of suspension. Suspension of licence is obviously a temporary phenomenon whereas cancellation of licence is a permanent phenomenon. In the facts of this case, in view of the past history of the Petitioner, where on several occasions licence was required to be suspended, if the licencing Authority has reached a conscious conclusion that the Petitioner was not a person fit to carry on business of running place of public entertainment (which is to be distinguished from running an eating house as is clear from the respective definitions referred above) it cannot be held that there is any perversity in the discretion exercised by the licencing authority or that the punishment is shockingly disproportionate. Reliance placed by Smt. Malhotra on various orders of the learned Single Judges of this Court wherein lineancy has been shown by the learned Single Judges by curtailing the punishment is of no avail since every case turns on the fact of the case and none of these judgments can be held to be a binding precedent which I must follow as a Single Judge. If the Licencing Authority had used its discretion and had merely imposed a punishment of suspension of licence for specified period; some discretion could have been used by this court by reducing the period of suspension. However, since, the Licencing Authority has consciously decided to cancel the licence that discretion of the licencing authority cannot be interfered with by this Court in its extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India.

23. As a result of the aforesaid reasoning it is clear that no case for interference is made out. Rule is discharged.

24. At this stage, Smt. Malhotra makes an oral prayer for continuation of the ad-interim relief granted in terms of prayer clause (b). It is seen from the prayer clause (b) that stay of operation of the Orders dated 4/3/11 and 6/9/2011 is prayed, whereas prayer clause (c) seeks an injunction against the Respondent not to prosecute and prevent the Petitioner from carrying on the hotel business of Hotel Sona. Interestingly, the relief in terms of the prayer clause (c) has not been granted to the Petitioner. I have perused the photo copy of the licence which shows that the licence is valid till 31st March, 2010. Since there is no valid licence in existence to keep a place of public entertainment, in the facts of this case by an interim order Petitioner cannot be permitted to run place of public entertainment. It is clear that the Petitioner would be free to run an eating house if the Petitioner has a valid licence which is operating in favour of the Petitioner. Hence prayer for continuation of interim order is rejected.