

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5840 OF 2013
(Arising out of SLP(C) No. 7119 of 2010)

Brihanmumbai Mahanagarpalika and anotherAppellants

versus

Willingdon Sports Club and othersRespondents

J U D G M E N T

G.S. SINGHVI, J.

1. The question which arises for consideration in this appeal filed against order dated 29.9.2009 passed by the Division Bench of the Bombay High Court in Writ Petition No.2199/1999 is whether respondent No.1 is obliged to take licence under Section 394(1)(e) read with Part IV of Schedule ‘M’ of the Bombay Municipal Corporation Act, 1888 (now titled as ‘the Mumbai Municipal Corporation Act, 1888’ – for short, ‘the Act’) for the catering services provided by it to the members and their guests.

2. Respondent No.1 provides various sporting facilities, viz., golf, tennis, squash, billiards, badminton, etc., to its members. The Catering Department of

respondent No.1 provides catering services to the members and occasionally to their guests. By order dated 21.11.1990, appellant No.2 called upon respondent No.1 to make an application for grant of licence under Section 394 of the Act for the eating house. The latter submitted the application on 24.11.1990. Thereafter, Senior Sanitary Inspector of appellant No.1 sent communication dated 3.12.1990 to respondent No.2 requiring him to submit various documents including NOCs from Assistant Engineer (Buildings and Facilities) and Executive Engineer (Buildings Proposals). In compliance of that letter, respondent No.2 furnished some of the documents. However, nothing appears to have been done for the next two years.

3. In May 1993, respondent No.1 approached appellant No.2 for grant of No Objection Certificate for the eating house and permission to keep L.P. Gas Cylinders. Appellant No.2 gave 'No Objection' for carrying out the trade of eating house and for L.P. Gas as fuel subject to the following conditions:

- “(1) The internal roads, passages in the premises & complex of the Club shall be maintained free from obstructions.
- (2) Entrances, exists, passages in both the Restaurants shall be maintained free from obstructions.
- (3) The existing four cabins housing gas cylinders of i) 12 Nos. each of 50 kgs. ii) 18 Nos. each 19.2 kgs. iii) 15 Nos. each. & iv) 8 Nos. each of 19.2 kgs. shall be of brick masonry R.C.C. and as per the plan signed in token of approval.
- (4) The gas installation shall be maintained as per "Industrial & Commercial use of L.P. Gas Rules" and got tested once in year by the gas dealer or any competent authority of inventory to

that effect shall be maintained.

- (5) The Gas cabins shall be kept under lock and key.
- (6) Smoking, cooking, heating, use of naked light shall be prohibited near the gas cabins.
- (7) The gas pipes shall be supported, protected from physical damages, painted in red and taken at least 10 cms below the electric wirings/ cables.
- (8) Main shut of valves shall be provided to the gas pipes where pipes enter into the building for promptly closing the valves in case of emergency.
- (9) Tandoors in kitchen on ground floor permitted. However, any other fuel, any gas cylinders shall not be used.
- (10) Premises shall be kept well ventilated by providing Exhaust fans in the kitchens.
- (11) Metal hood covering the burners shall be provided. The ducting shall be taken to roof level or water wash system.
- (12) Fire extinguishers shall be kept as follows:
 - a) One dry chemical powder extinguisher each of 10 kgs. having I.S.I mark & two buckets of sand shall be kept at each of the 4 gas cabins.
 - b) Two dry chemical powder extinguishers each of 10 kgs. & two sand buckets shall be kept in the kitchen of Indian Food.
 - c) One dry chemical extinguisher of 10 kgs. shall be kept in Chinese kitchen.”

(reproduced from the appeal paper book)

4. After four months, appellant No.2 sent communication dated 4.11.1993 to respondent No.2 for compliance of the requirements communicated by Chief Fire Brigade Officer and also by his department. The relevant portions of that communication are extracted below:

“With reference to your above application, I have to inform you that

your request will be considered subject to satisfactory compliance of the following requirements communicated by Chief Fire Brigade Officer alongwith the requirements of this department within 14 (fourteen) days from the date of receipt of this letter. If you fail to carry out the same within specified time, necessary action under Sec. 394 of Bombay Municipal Corporation Act will be initiated against you which please note.

- 1) The internal roads, passages, in the premises and complex of club shall be maintained free from obstructions.
- 2) Entrances, Exits, passages in both the Restaurants shall be maintained free from obstructions.
- 3) The existing four cabins housing gas cylinders of (i) 12 Nos. each of 50 kgs., (ii) 18 Nos. each of 19.2 kgs., (iii) 15 Nos. each of 50 kgs., (iv) 8 Nos. each of 19.2 kgs., shall be of brick masonry / R.C.C. and as per the plan signed in taken of approval.
- 4) The Gas installation shall be maintained as per "Industrial & Commercial use of L.P. Gas Rules" and got tested once in year by gas dealer or any competent authority of Inventory to that effect shall be maintained.
- 5) The gas cabins shall be kept under lock and key.
- 6) Smoking, cooking, heating, use of naked light shall be prohibited near the gas cabins.
- 7) The gas pipe shall be supported, protected from physical damage, painted in red and taken at least 10 cms, below the electric wiring / cables.
- 8) Main shut of valves shall be provided to the gas pipes where pipes enter into the building for promptly closing the valves in case of emergency.
- 9) Tandoors in kitchen on ground floor permitted, however, any other fuel, any loose cylinders shall not be used.
- 10) Premises shall be kept well ventilated by providing exhaust fan in the Kitchens.
- 11) Metal hood covering the burners shall provided. The ducting shall be taken to roof level or water wash system.

12) Fire extinguishers shall be kept as follows:-

- a) One dry chemical powder extinguishers each of 10 kgs. having I.S.I. Mark and two buckets of sand shall be kept at each of 4 Gas cabins.
- b) Two dry chemical powder extinguisher each of 10 kgs. and two sand buckets shall be kept in the kitchen of Indian food.
- c) One dry chemical extinguisher of 10 kgs. shall be kept in Chinese kitchen.”

(emphasis supplied)

(reproduced from the appeal paper book)

5. On the same day, i.e., 4.11.1993, appellant No.2 sent another letter to respondent No.2 informing him that the application for grant of trade licence will be considered subject to fulfillment of the following conditions:

“(1) In the eating house

- (a) Where snacks are prepared and served, there shall be at least 3 rooms, one of which shall be used as a dining room, another as kitchen and the third as a store room. The rooms to be used as dining room and as kitchen shall not be less than 9.2903 sq.mt. (100 sq.ft.) each in floor area and not less than 2.440 mt.(8 ft) on any side. The third room to be used as a store room shall not be less than 1/3rd of the total area of the dining room and the kitchen upto the maximum of 9.2903 sq. mt.(100 sq. ft.). The height of all these rooms shall be as required under the Building Bye-Laws of the Bombay Municipal Corporation, i.e. 3.050 mt. (10 feet).
- (b) Where articles of food other than snacks are to be prepared and served, there shall be at least 3 rooms one of which shall be used as a dining room, another as a kitchen and the third as a store room. The room to be used for dining and kitchen shall not be less than 11.1484

sq. mt. (120 sq. ft.) each in floor area and not less than 2.440 mt (8 feet) on any side. The third room to be used as store room shall not be less than 1/3rd of the total area of the dining room and kitchen upto the maximum of 9.2903 sq. mt. (100 sq. ft.), the height of all these room shall be as required under the Building Bye-laws of the Bombay Municipal Corporation, i.e. 3.050 mt. (10 feet)

- (c) where only ready-made articles of food are served. There shall be at least two rooms, one of which shall be used for storing ready-made articles of food and the other as a service room. None of the rooms shall be less than 9.2903 sq. mt. (100 sq. ft.) each in floor area and no less than 2.440 mt. (8 ft.) on any side. The third room to be used as store room shall not be less than 1/3rd of the total area of the dining room and kitchen upto the 9.2903sq. mt. (100 sq. ft.). The height of all these rooms shall be as required under the Building Bye-laws of the Bombay Municipal Corporation i.e. 3.050 mt. (10 feet)

(2) All the rooms shall be well-lighted and well-ventilated naturally or with the aid of artificial means and the cook room and the dining room especially shall have "thorough ventilation."

(3) The walls of all the rooms of the Eating House shall either be oil-painted or otherwise rendered impervious to moisture and dirt upto a height of at least 1.83 mt. (6 feet) from the floor and the remaining upper portion above 1.83 mt. (6 feet), if not oil-painted or made impervious to moisture and dirt, shall be limewashed. All the wood-work in all the rooms shall be oil-painted.

(4) Water shall be stored for use during non-supply hours in a brass receptacle with a tight fitting cover and a tap. The receptacle shall be placed on a suitable stand at least 381 mt. (15 inches) height above the floor. It shall be tinned from inside whenever necessary and shall be cleaned twice daily and steps shall be taken to see that water is not contaminated in the process of storing or handling.

(5) Freely ventilated fly-proof safes and other means shall be provided and meat, milk and other eatables shall be kept in them so as to protect all artificial food from contamination by dust, flies and insects.

(6) Metal sanitary dust bin or bins of approved pattern with a close fitting lid for each shall be provided and maintained in good repairs

and used for the deposit of waste food and sweepings of the floor etc. and shall be emptied at least once a day at the Mahalaxmi Refuse Siding which is the place appointed by the Municipal Commissioner for the removal and deposit of trade refuse. In the alternate transport facilities provided by Corporation shall be availed of on payment of fixed charges.

(7) A sufficient number of table shall be provided in the room used for eating and cooking. The top of each table shall be covered with marble, zinc or some other equally suitable material presenting a non-absorbent even surface. Only clean cloth or other dusters shall be used to clean tables etc.

(8) A proper washing place with tap from Municipal Main Measurement shall be provided in the kitchen. Such washing place shall be properly drained and shall discharge over a half channel gully at least 457 mt. (18 inches) away from the drain inlet and in the case of the trade located in Greater Bombay where drainage system does not exit, the arrangement for disposal waste water shall be such as to meet with the approval of Municipal Health Authorities. In the absence of Municipal Water mains in any area, arrangements shall be made to store such quantity of water and in such manner as will be directed by the Municipal Health Authorities.

(9) All copper and brass cooking utensils shall be tinned as often as necessary or at least once in two months.

(10) No person suffering from any contagious or infectious disease shall be employed on the premises in any capacity.

(11) The room used for cooking shall be adequately separated from the room used for eating. All cooking operations including the preparation of bhajias or similar artificial shall be carried out in cooking room only by using kerosene oil stoves, gas or electrical as fuel and fuel of any other kind shall never be used therein.

(12) No "Panshop" or other structure shall be put up or allowed to be put at the entrance in such manner so as to encroach on the space or to obstruct light and ventilation of the Eating House.

(13) The entire premises of Eating House and all appliance used therein shall at all times be kept in a scrupulously clean and sanitary condition and any practice which may lead to the food being contaminated shall not be employed or permitted to be employed in the storage, handling, preparation or serving of food.

(14) No broken, cracked or chipped articles of crockery or other utensils shall be used in the eating house either for preparation of food-stuffs or to serve them.

(15) Boards in English and in vernacular prohibiting spitting on the walls or the floor of the trade premises shall be exhibited.

(16) A certificate in the prescribed form that adequate water supply by meter measurement has been provided shall be obtained from the Hydraulic Engineer, Bombay Municipal Corporation.

(17) A wash-basin with a metered tap and a looking glass shall be provided in a suitable part of the service room of the Eating House and maintained at all times in a clean and sanitary state for use of the visitors.

(18) Waiters or other servants employed in the eating house shall always wear clean apparel while engaged in work in the eating house.

(19) No part of the eating house shall be used for stocking, storing or keeping unserviceable articles.

(20) The management shall take measures to have the premises occupied by Eating House treated with insecticides to rid it of any insect pest at least once in four months either through the Municipal agency or any firm recognised in this behalf.

(21) The floor of every room used for eating, cooking or the storage or preparation of food shall be paved with hard impervious material with a smooth and even surface.

(22) The eating house or any part of it shall not be used for dwelling purposes, except in the Eating Houses which have separate special arrangements for lodging the customers.

(23) No encroachment shall be made on any footpath adjoining the eating house by placing thereon chairs, benches, tables, soda water boxes or any other articles either for the use of applicant or his customers.

(24) The entire trade of conducting the eating house and all the operations connected therewith shall be strictly restricted to the area occupied by the concern.

(Para 25 is not given in the appeal paper book)

(26) No article of food which is adulterated, unwholesome or unfit for human consumption shall be kept, sold or exposed for sale on the trade premises.

(27) Requirements of Chief fire brigade officer's are out.

(28) The applicant produces an authority letter issued by said Club authorising him to hold the licence in his name.”

(reproduced from the appeal paper book)

6. While the issue relating to compliance of the conditions enumerated in the two letters dated 4.11.1993 was pending, appellant No.2 sent demand notice dated 14.1.1994 to respondent No.2 for payment of Rs.2,70,915 as licence fees. The respondents paid the amount, but after expiry of the period specified in notice dated 14.1.1994. This prompted appellant No.2 to send notice dated 23.6.1994 to respondent No.1 for payment of additional amount of Rs.1,04,756.25. Respondent No.2 sent reply dated 27.6.1994 citing the opinion of a law firm that the club is not required to obtain eating house licence under the Act because food and beverages are not served for any profit or gain. The appellant did not accept this assertion and demanded Rs.1,21,715.65 towards compounding fee.

7. Respondent No.1 and two of its office bearers challenged the demand notice before the Bombay High Court in Writ Petition No.2199/1999 primarily on the ground that catering facilities being provided to its members were incidental to their main activities and the same are exclusively meant for the members and not for the public.

8. In the written statement filed by the appellants, it was averred that food items were being prepared by the Catering Department on large scale and a licence was required to be obtained from the point of view of health and safety of the members coming to the club.

9. The Division Bench of the High Court relied upon order dated 18.9.1992 passed by a co-ordinate Bench in Writ Petition No.4765 of 1984 titled Sohrab Vakil (Lt.Col.) and another v. B.G. Pimple and another and held that respondent No.1 is not required to take licence under Section 394 of the Act because the catering facilities provided to its members are ancillary to the main activity, i.e., the sporting facilities. The relevant portion of the High Court's order is reproduced below:

“The question whether a Club which as ancillary activities provides catering services exclusively to its members can be said to be running an eating house within the meaning of the Act, fell for consideration before a Division Bench of this Court in the case Sohrab Vakil (Lt.Col.) and another Vs. B.G.Pimple and another referred to above. Perusal of that judgment shows that the Division Bench has in categorical terms held that a club which maintains a facility of catering for its members exclusively as ancillary activity cannot be said to be running an eating house. In our opinion, therefore, the question that arises for consideration in this petition is no more res integra in view of the judgment of the Division Bench in the case Sohrab Vakil (Lt.Col.) and another Vs. B.G.Pimple and another referred to above. So far as the judgment of the learned Single Judge of this Court in the case 1.W.I.A.A.Club Ltd & Anr. Vs. 1.Municipal Corporation of Gr.Bombay & others referred to above, which was relied on by the learned Counsel appearing for respondents is concerned, perusal of that judgment shows that that judgment does not decide any controversy. It appears that initially the WIAA Club had filed a petition claiming that it is not required to take out eating house licence for providing catering services to its members. But when the

petition came up for final hearing, it was stated on behalf of the petitioner-Club that now they have decided to engage a contractor for running Canteen and therefore, they are not pressing their contention that they are not required to take out a licence for maintaining the catering services for its members. The learned Single Judge, therefore, did not decide that question in that petition. In our opinion, therefore, the submission made on behalf of the Corporation that the question that arises for consideration in this petition is already decided by the judgment of the learned Single Judge in Writ petition no.1413 of 1982 which was disposed of by order dated 20.1.1986, cannot be accepted. In our opinion, in view of the law laid down by the Division Bench in the case Sohrab Vakil (Lt.Col.) and another Vs. B.G.Pimple and another referred to above, this petition has to succeed.”

10. We have heard Shri Atul Y. Chitale, learned senior counsel for the appellants and Shri T.R. Andhyarujina, learned senior counsel for respondent Nos. 1 to 3. The Act is divided into 25 Chapters. Chapters IX to XV except Chapter XII contain provisions which are regulatory in nature and are meant for the benefit of public at large. Chapter IX contains provisions for construction of drains and cleaning thereof, connection of the drains of private streets with municipal drains, disposal of sewage, construction of water-closets, privies, urinals, etc. and inspection thereof. Chapter X contains provisions for regulating water supply, inspection of water works, prohibition of building and other acts which may injure sources of water. Chapter XI contains provisions for regulation of streets, public as well as private and lighting thereof. Chapter XII contains provisions for regulating construction of buildings, removal of dangerous structures, etc. Chapter XIII speaks of grant of licences of surveyors and plumbers and making of regulations for guidance of licensed surveyors and

plumbers and fees, etc., to be charged by them. Chapter XIV contains the provisions relating to municipal fire brigade. Chapter XV contains provisions of scavenging and cleaning of streets and removal of refuse, inspection and sanitation of buildings, etc. This chapter also contains provisions for regulation of public bathing, washing, etc., regulation of factories, trades, etc., maintenance and regulation of markets and slaughter houses, prohibition against sale and supply of articles of food outside the markets, licensing of butchers, etc., inspection of places of sales, etc., prevention of dangerous diseases, etc. Section 394, which finds place in Chapter XV is couched in negative form and lays down that the activities specified therein shall not be carried out by any person except under and in accordance with the terms and conditions of licence granted by the Commissioner.

11. Section 394(1)(e) and relevant extracts of Schedule 'M', which have bearing on this case read as under:

“394. Certain articles or animals not to be kept, and certain trades, processes and operations not to be carried on without a license; and things liable to be seized destroyed, etc., to prevent danger or nuisance.

(1) Except under and in accordance with the terms and conditions of the licence granted by the Commissioner, no person shall—

(e) carry on or allow or suffer to be carried on, in or upon any premises.—

(i) any of the trades specified in Part IV of Schedule M, or any process or operation connected with any such trade;

(ii) any trade, process or operation, which in the opinion of, the Commissioner, is dangerous to life, health or property, or likely to create a nuisance either from its nature or by reason of the manner in which, or the conditions under which, the, same is, or is proposed to be carried on;”

“Schedule M

Articles which shall not be kept without a licence in or upon any premises

Part IV

Trades or processes or operations connected with trades which shall not be carried on or allowed to be carried on upon any premises without a licence.

Keeping an eating house or catering establishment"

The expression ‘eating-house’ has been defined in Section 3(ff) in the following words:

“3(ff) - eating-house means any "premises to which the public are admitted and where any kind of food is prepared or supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such premises.”

12. The provisions contained in various chapters of the Act referred to hereinabove are meant for maintaining public hygiene, health and safety and also for preventing dangers to life, health and property. Schedule ‘M’, which is part of Section 394, specifies the articles which cannot be kept in or upon any premises without a licence. Part IV of the schedule specifies trades or processes or operations connected with trades, which cannot be carried on or allowed to be carried on any premises without a licence. These include keeping of an eating house or catering establishment. The object of incorporating the requirement of a

licence for an 'eating house' or 'catering establishment' is to ensure that public hygiene is maintained at the place/premises where the food is prepared and/or supplied for consumption. It is also intended to ensure safety of the people engaged in the preparation of food articles and supply thereof as well as all those who consume the articles at the particular place/premises. The No Objection Certificate dated 25.6.1993 issued by appellant No.2 shows that the municipal authorities are very much concerned about the safety and health of the people coming to the premises and complex of the club. The first requirement incorporated in that letter is free access in and exit from the premises of the club and the restaurants. The gas installations are required to be maintained as per industrial and commercial use of Liquid Petroleum Gas Rules. The person having overall control of the premises is duty bound to ensure that the gas cylinders and other equipments are tested once in a year by the gas dealer or any competent authority. The gas cabins are required to be kept under lock and key. Smoking, cooking, heating and use of naked light is prohibited near the gas cabins. The gas pipes are required to be protected from physical damage and main shut valves are required to be provided to the gas pipes where the pipes enter into the building. While permitting tandoors in the kitchen on the ground floor, the use of gas cylinders is prohibited. The premises where the food is cooked are required to be kept well-ventilated by providing exhaust fans in the kitchen. The burners are required to be covered with metal hood. The fire extinguishers are also required to be provided. The length, width and height of the dining rooms has to be as per

the building bye-laws framed by appellant No.1. It is the duty of the management to keep all the rooms well-lighted and well-ventilated. The cooking room and dining room should have thorough ventilation. It is also the duty of the management to keep water in brass receptacle with a tight fitting cover and a tap and they are to be placed 15 inches above the ground. Freely ventilated and fly-proof safes are required for keeping the items, like, meat, milk and other eatables so as to protect them from contamination by dust, flies and insects. Sanitary bins or dustbins are also required to be provided and sweeping of floors has to be done. There is a prohibition against employment of any person suffering from contagious or infectious disease. The premises of eating house have to be regularly cleaned to avoid contamination and any practice which may lead to contamination shall not be employed or permitted to be employed in the storage, handling, preparation or serving of food. Broken, cracked or chipped articles of crockery and utensils cannot be used in the eating house either for preparation of foodstuffs or for serving them. The management is duty bound to take all measures to have the premises of eating house treated for insecticides. No article of food which is adulterated, unwholesome or unfit for human consumption can be kept or sold or exposed for sale in the eating house. These conditions are meant for ensuring that the premises where the food is prepared and supplied are kept clean, adequately ventilated and appropriate measures are taken by those in control of the premises and quality of food is maintained to ensure that there is no compromise with the health and safety of the people.

13. In its publication titled 'Safe Food for Better Health' (2002 Edn.), the World Health Organisation (WHO) has recognized that the availability of safe food is a basic human right because it contributes to health and productivity. Many countries including USA, Australia, Germany, France, Canada, United Kingdom and India have adopted a food safety regulation mechanism, either through sui generis legislation or through the adoption of global codes prescribed by the WHO and other UN agencies. However, the implementation of these regulations cannot be guaranteed if there is no monitoring system. It is essential for the success of these regulations and policies that adequate steps are taken to ensure the compliance to standards by those in the industry. In order to ensure compliance, a strong licensing system has been developed by these countries. The purpose of such a system is to ensure that the food supplied to customers in a food establishment is certified to be of high quality and standard by a recognised authority. Although licensing alone cannot be a foolproof mechanism for ensuring food safety but it is certainly one of the most effective methods of ensuring that quality food is prepared in most hygienic conditions and is made available to the consumers. The licensing system prevents the opening of establishments that pose a threat to the health of the people. The licensing mechanism also provides for penalties in case of non-compliance with licensing conditions, which could lead to cancelling or suspension of the licence. Such a fear created in the minds of the licensees also ensures that they comply with licensing conditions in order to continue enjoying the benefits of the licence. Thus, it can be said that a licensing

system goes a long way in ensuring food safety thereby guaranteeing the supply of fresh and safe food and preventing the spread of foodborne diseases.

14. At this stage, we may also take notice of the Food Safety and Standards Act, 2006 (for short, ‘the 2006 Act’). This Act provides for establishment of the Food Safety and Standards Authority of India which is mandated to lay down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. In exercise of the powers vested in it under the 2006 Act, the Food Safety and Standards Authority of India made multiple regulations including the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 (for short, ‘the Regulations’). Regulation 2.1 and 2.2 makes the obtaining of licence mandatory for commencement of any food business. Part II of Schedule IV of the Regulations prescribes general requirements of hygienic and sanitary practices to be followed by all food business operators applying for licence. Part V of Schedule IV of the Regulations prescribes the specific hygienic and sanitary practices to be followed by food business operators engaged in catering / food service establishments. Relevant portions of these two parts are extracted below:

“SCHEDULE IV

PART-II

GENERAL REQUIREMENTS ON HYGIENIC AND SANITARY PRACTICES TO BE FOLLOWED BY ALL FOOD BUSINESS OPERATORS APPLYING FOR LICENSE.

The establishment in which food is being handled, processed, manufactured, packed, stored, and distributed by the food business operator and the persons handling them should conform to the sanitary and hygienic requirement, food safety measures and other standards as specified below. It shall also be deemed to be the responsibility of the food business operator to ensure adherence to necessary requirements.

In addition to the requirements specified below, the food business operator shall identify steps in the activities of food business, which are critical to ensure food safety, and ensure that safety procedures are identified, implemented, maintained and reviewed periodically.

PART - V

SPECIFIC HYGIENIC AND SANITARY PRACTICES TO BE FOLLOWED BY FOOD BUSINESS OPERATORS ENGAGED IN CATERING / FOOD SERVICE ESTABLISHMENTS.

In addition to Part-II the Catering/ food Service establishment in which food is being handled, processed, manufactured, stored, distributed and ultimately sold to the customers and the persons handling them should conform to the sanitary and hygienic requirement, food safety measures and other standard as specified below.

It includes premises where public is admitted for repose or for consumption of any food or drink or any place where cooked food is sold or prepared for sale. It includes:

- (a) Eating Houses
- (b) Restaurants & Hotels
- (c) Snack Bars,
- (d) Canteens (Schools, Colleges, Office, Institutions)
- (e) Food Service at religious places
- (f) Neighbourhood Tiffin Services / dabba walas
- (g) Rail and airline catering

(h) Hospital catering”

15. The definition of the term ‘food business’ contained in Section 3(1)(n) of the 2006 Act reads thus:

“Section 3(1)(n) Food business means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients.”

16. These provisions reinforce the determination of the legislature and the executive to ensure safety of food articles manufactured and supplied by the food business operators and others engaged in catering / food service establishments. Part V of Schedule IV of the Regulations is inclusive and covers eating houses, restaurants and hotels, snack bars, canteens, food service at religious places, hospital catering, etc.

17. In the light of the above, we shall now consider whether the High Court was right in taking the view that the expression ‘eating house’ is not applicable to a club. The main reason which prompted the High Court to take that view is that predominant activity of the club is to provide sporting facilities to the members and the catering facilities are ancillary. The other reason given by the High Court is that the food articles are supplied to the members and not to outsiders except when they come to the club as guests of the members and that the catering services are not made available to the members with the object of making profit or

gain.

18. In our view, both the aforesaid reasons are incorrect. A cursory reading of the definition of the expression 'eating house' may support the conclusion of the High Court because general public is not allowed entry in the premises of the club and, in the first blush, it appears that food is not supplied for consumption on the premises for profit or gain. However, if we apply purposive interpretation, then it becomes clear that the catering department of the club which prepares and serves/supplies food to members of the club is covered by the definition of the expression 'eating house'. It cannot be denied that members of club also fall within the ambit of the term 'public'. No doubt, the primary activity of the club is to provide sporting facilities to the members, but the supply of food is an integral part of such activity and the catering department of the club satisfies an essential component of the facilities provided by the club. One can take judicial notice of the fact that many members who avail sporting facilities remain on the premises for a very long period. Therefore, the articles of food become integral part of their activities. Not only this, many join the club in the name of availing sporting facilities only for the purpose of spending their time in leisure and for enjoying the facilities provided by the Catering Department of the club. Thus, even though profit may not be the motto of catering facilities provided by respondent No.1, it certainly gains by these facilities.

19. As per Merriam Webster Dictionary, the word 'gain' means something

wanted or valued that is gotten; something that is gained; especially: money gotten through some activity or process, something that is helpful: advantage or benefit; an increase in amount, size, or number. In Words and Phrases, Permanent Edition, Volume 18, the word 'gain' has been given the following meanings:

"Gain" means that which is acquired or comes as a benefit. *Thorn v Dc Breteuil*, 83 N.Y.S 849, 856, 86 App.Div. 405.

"Gain" means increase or addition to what one has of that which is of profit, advantage, or benefit; resources or advantage acquired, profit; opposed to laws; act of gaining something; specially, the obtaining or amassing of profit or valuable possessions; acquisition; accumulation. In *Re Breuer's Income Tax*, 190 S.W.2d 248, 249, 354 Mo. 578.

GAIN, BENEFIT OR ADVANTAGE:

Under the Retail Sales Tax Act, defining "retailer" as every person engaged in business of making sales at retail, and defining "business" as any activity engaged in with the object of "gain, benefit or advantage", social club which furnished, without profit food and drink to its members and their guests was subject to tax, since, although club realized no "profit" from furnishing of food and drink, it did realize "gain, benefit or advantage". Gen.Laws 1937, Act 8493, Section 2(c-e). "Profit" may be said to be "gain, benefit or advantage", but "gain, benefit or advantage" does not necessarily mean only "profit". *Union League Club v Jhonson*, 115 P.2d 425, 426, 18 Cal.2d 275.

A "vendor engaged in the business of selling tangible personal property", so as to be liable for sales tax, is one who commences, conducts or commences, conducts, or continues in the activity of selling tangible personal property, with the object of gain, benefit, or advantage, either direct or indirect, irrespective of whether sales are made for "profit", since one may engage in a business activity with an object of "gain, benefit, or advantage" and not necessarily for "profit".

Gen.Code, section 5546-1 et seq., 116 Ohio Laws, Pt. 2, p. 323. "Profit" may be "gain, benefit, or advantage", but "gain, benefit, or advantage" does not necessarily mean only "profit". State ex rel. City Loan & Savings Co. of Wapakoneta v. Zellner, 13 N.E.2d 235, 238, 133 Ohio St. 263."

20. In Re: Arthur Average Association for British Foreign and Colonia Ships, ex p Hargrove and Company (1875) LR 10 Ch App 545 n at 546, 547, Jessel MR held that "Gain" is not restricted to pecuniary or commercial profits, it includes other considerations of value obtained.

21. From the above dictionary meanings and judgment of 1875, it becomes clear that the word 'gain' is not synonymous with the word 'profit'. It is not restricted to pecuniary or commercial profits and includes other considerations of value gained. Any advantage or benefit acquired or value addition made by some activities would amount to 'gain'. Therefore, even though profit is not the motto of the club but the advantage derived by it by supplying food to its members and their guests is certainly covered by the word 'gain' appearing in the definition of 'eating house'.

22. The issue deserves to be examined from another angle. While the expression 'eating house' has been defined in Section 3(ff) of the Act, the expression 'catering establishment' has not been defined. The scope of that expression is certainly wider than the expression 'eating house'.

23. The expression 'catering establishment' came up for interpretation before

the Bombay High Court in Criminal Appeal No.593/1972. After advertng to dictionary meaning of the word 'cater', V.D. Tulzapurkar, J. (as he then was) held:

“In this view of the matter, it is clear to me that the expression 'a catering establishment' will have to be understood in its normal dictionary meaning. The word 'cater' as a verb means, according to the Oxford Dictionary, "To act as caterer, or purveyor of provisions; to provide a supply of food". It also means "To occupy oneself in procuring or providing (requisites, things desired, etc.) and 'cater is understood to mean "Purvey food and other requisites." A catering establishment would, therefore, be an establishment where purveying of food and other requisites takes place. It is therefore, not necessary, according to the dictionary meaning of the expression, that the members of the public should have an access to such an establishment before it could become 'a catering establishment' within the meaning of the relevant entry in Part IV of Schedule M. It cannot be disputed that in the canteen in question articles of food and other requisites are being purveyed to the students and the members of the Institute and, therefore, the canteen in question clearly falls within the expression 'a catering establishment' occurring in the relevant entry in Part IV of Schedule.”

24. In *Narayan Gopal Karadkar v. Hanumant Ramrao Palkar* (1969) Maharashtra Law Journal 728, a learned Single Judge of the Bombay High Court considered the question whether running of a canteen by Railwaymen's Cooperative Society at Lonawala without a licence constituted an offence. Initially, the Society had obtained a licence for conducting the canteen but the same was not renewed for a number of years. Therefore, the Borough Municipality sanctioned prosecution of the Manager of the Canteen under Sections 172 read with Section 61(1)(b)(ii) of the Bombay Municipal Boroughs

Act, 1925. Judicial Magistrate, First Class, Vadgaon (Mawal) acquitted the accused. The appeal filed by the appellant was allowed by the learned Single Judge of the High Court. After noticing the relevant provisions, the learned Judge observed:

“It is in pursuance of these provisions that the Borough Municipality of Lonavala has framed its rules and by-laws for licensing and regulating the places for use of hotels, eating houses, tea or coffee shops and restaurants within the Municipal Borough and in Part I, which contains definitions, "catering establishment" has been defined as meaning any place used for the business of sale of any article of food or drink for consumption on the premises and including hotel, eating house, tea or coffee shop or restaurant, pan bidi shops and sugarcane juice shop. This definition would clearly show that a catering establishment means any place used for the business of sale of articles of food or drink and as pointed out by the Supreme Court in *State of Bombay v. Hospital Mazdoor* (1960) 62 Bom. L.R. 558:

... 'trade' according to Halsbury, in its primary meaning, is 'exchange of goods for goods or goods for money', and in its secondary meaning it is 'any business carried on -with a view to profit whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture'; whereas 'business' is a wider term not synonymous with trade and means practically anything which is an occupation as distinguished from a pleasure.

It would thus be seen that the concept of earning profits is not a necessary appurtenant of the expression "business" and looked at from this point of view, a place used for the business of sale of any article of food or drink does not cease to be so merely because it is not being conducted with a view to earn profits. Anyway, the definition contained in the rules and by-laws of the Borough Municipality is an inclusive definition. After saying that a catering establishment means any place used for the business of sale of any article of food or drink for consumption, it further goes on to say that it includes a hotel or an eating house, etc. and in the same Supreme Court decision, to which a reference has already been made, it has been pointed out that the words used in an inclusive definition denote extension and cannot be

treated as restricted in any sense. Where the Courts are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation. Therefore, having regard to the inclusive definition in this case, it is clear that the definition of "catering establishment" does mean and include a cooperative canteen conducted without any motive of earning profits.

If the object and scope of the rules and by-laws framed by the Borough Municipality are examined, there can be no difficulty in holding that a catering establishment does include any canteen, whether conducted for the purpose of earning profits or not. If we examine the rules and by-laws, it is clear that the object with which they have been framed is to promote and preserve sanitation and public health and to prevent the spread of disease within the municipal limits and if that was the object, it is difficult to see how canteens conducted on no loss and no profit basis could be excluded from the definition of a "catering establishment". It is as much necessary to preserve cleanliness, and public health in commercial establishments as in the establishments conducted by co-operative societies like the one in this case. In this connection, the following passage appearing at pages 58 and 59 of Maxwell on the Interpretation of Statutes, 1962 edn., may be quoted with advantage:

It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the legislature intended, they frequently express more in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used with reference to the subject-matter in the mind of the legislature, and limited to it."

(emphasis supplied)

25. In *Balkrishna Karkera v. K.J. Mishra and another* AIR 1979 (Bombay) 198, learned Single Judge interpreted Section 394(1)(e)(i) read with Section 471 of the Act and observed:

“Now it is pertinent to note that although the expression "eating house" has been defined under the Bombay Municipal Corporation Act, the expression "catering establishment" has not been defined. It is true that the staff canteen run by Accused No. 2 was not open to the members of the public at large and the admission was restricted solely to the employees of the said Company. To that extent Mr. Shrikrishna would be justified in his submission that the staff canteen could not be termed as an "eating house." However, what is significant is the fact that Accused No. 2 has not been charged with carrying on an "eating house" but he has been charged for carrying on a catering establishment. "Catering establishment" is an expression which is wider in its connotation than the expression "eating house" and whether a staff canteen was open to the public or restricted only to a section of the public, it would still fall within the definition of a "catering establishment".

26. In our view, the aforesaid judgments of the Bombay High Court lay down correct law and ratio thereof deserves to be applied for interpreting Section 394 (1) (e) read with Part IV of Schedule ‘M’ of the Act.

27. As a sequel to the above discussion, we hold that the Bombay High Court was not right in relieving the respondents of the obligation to take licence under Section 394(1)(e) of the Act.

28. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondents is dismissed with cost of Rs.50,000. The amount of cost shall be deposited by respondent No.1 with Maharashtra State

Legal Services Authority within a period of four weeks from today.

29. Within four weeks from today, the respondent shall file an application for grant of licence under Section 394(1)(e) of the Act and produce the necessary documents. The application shall be processed and decided by the competent Authority within next four weeks.

30. It is made clear that appellant No.1 shall be free to initiate proceedings for imposition of penalty on respondent No.1 for its failure to take licence and pass appropriate order in accordance with law.

.....J.
[G.S. SINGHVI]

New Delhi,
November 18, 2013.

.....J.
[V. GOPALA GOWDA]

JUDGMENT