

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.2958 OF 1992

Sanjay s/o Baburao Choudhari,
Age 32 years, Occu.Hotel
R/o Near Maroti Mandir,
Faizpur, Taluka Yawal,
District Jalgaon

..Petitioner

Versus

1. The State of Maharashtra,
(through its Secretary,
Home Department),
Mantralaya, Bombay 32
2. The Commissioner of State
Excise, M.S. Bombay
3. The Collector,
Jalgaon
4. The Superintendent of Police,
Jalgaon

..Respondents

Mr Ajinkya Kale, Advocate h/f Mr S.B. Talekar, Advocate for petitioner
Mr S.P. Daund, A.G.P. for respondents

CORAM : N.W. SAMBRE, J.

DATE : 23rd April 2015

ORAL JUDGMENT

1. The petitioner, seeking sanction/permission for operation of FL-III licence approached the Collector, Jalgaon, i.e. respondent No.3 vide application dated 9th January 1990, which prayer came to be rejected by an order dated 11th April 1990 on the ground of law and order problem.

2. In revision, the Commissioner, State Excise, upon perusal of original case papers remanded the matter back to the Collector with

certain observations, such as the permissible distance from the college, hotel, highway etc.

3. The remand suffered the same fate, as the Collector again rejected the request on 6th April 1991 without mentioning any reasons.

4. The appeal to the Commissioner again resulted into remand by an order dated 2nd January 1992 wherein the cause cited by the Collector was the question of law and order was already observed to be dealt with by the earlier order of Commissioner.

5. Upon remand, the Collector passed an order dated 31st March 1992 rejecting the request of the petitioner for third time. The revision to the State Government was returned on the ground that an appeal lies to the Commissioner, as is apparent from the communication dated 23rd September 1992, as such the present petition.

6. Learned Counsel for the petitioner made two fold submissions:-
(i) that in view of operation of other licences under the Bombay Prohibition Act, particularly in the light of pleadings in paragraph 19, which read thus :

“19. The petitioner submits that there are two foreign liquor shops and one country liquor shop at Faizpur town. However, there is no permit room having FL III licence at about Faizpur town. The petitioner submits that the Hotel

Gaurav run by him is about one and half kilo meters away from Faizpur town. The petitioner submits that the solitary incident of communal riot took place at Faizpur in 1987. The petitioner submits that there has been no problem of law and order ever since 1987 at Faizpur town. The petitioner further submits that the people at Faizpur are maintaining total communal harmony barring the incident of 1987."

(ii) If the cause for rejection of request for want of FL-III licence to the petitioner is due to likelihood of communal violence, same is applicable with equal force to other licencees. He would further urge that the provisions of Section 142 of the Bombay Prohibition Act (hereinafter referred to as 'the Act' for brevity) take care of law and order wherein the power is vested in Collector to suspend the licence.

7. In addition to above, he would urge that the causes cited in the order impugned are not germane to the case, as merely the authority feels that issuance of licence will create law and order problem, is without any foundation and there is no connection of the cause cited for rejection to the request of grant of licence.

8. So far as the respondents-authorities are concerned, no reply-in-affidavit on record is filed by them for last 23 years, however, learned A.G.P. strenuously opposed the prayer of the petitioner on the ground that the Collector, as such looking to the situation as was existing in the field at the relevant time, has passed order rejecting the permission. Learned A.G.P. further urged that the provisions of Section

142 of the Act are required to be exercised only for a restricted period and the Collector was alive to the fact that there is law and order problem at Faizpur being communally sensitive area. According to him, the licences which are already granted, as are alleged in paragraph 19 governed by the provisions of the Act whereas, the protection cannot be extended to the petitioner in absence of grant of licence. He would urge that Circular issued by Commissioner on 22nd November 1989 governs the case in hand and prayed for dismissal of petition.

9. Having considered the rival submissions made by the parties and upon analysing the debate, it is required to be noted that the petitioner, for the first time had applied on 11th April 1990 which prayer was rejected by the Collector on the ground of law and order problem. The appellate authority, by an order dated 12th October 1990 directed the Collector to consider the request of the petitioner afresh, as the cause cited for non-grant was the location of the premises between the peripheral area of college. The Collector again passed the non-speaking order on 6th April 1991 which was again upset in appeal by the Commissioner by an order dated 2nd January 1992. The Commissioner observed that the rejection of request by the Collector though based on the reason of law and order problem, however, the earlier order of the Commissioner takes care of said issue. According to the Commissioner, if the licence held do not fall within the prohibited area, the claim of allotment of issuance of licence should be granted.

10. The Collector, however, passed order on 31st March 1992 again on the same ground that the place where the licence is sought is communally sensitive.

11. Perusal of the order passed by the Collector reflects complete non-application of mind to the two aspects of the matter (i) that the licences which are operated in the said area are not creating any law and order problem which are issued under the same Statute i.e. Bombay Prohibition Act and (ii) in any eventuality of likelihood of law and order problem can be taken care of under the provisions of Section 142 of the Act.

12. Apart from above, except bare words that there is likelihood of law and order problem, no material is brought on record by the authorities to justify the said stand so as to establish direct link of FL-III licence of petitioner if granted to that of law and order problem. Merely because Police has objected, same cannot be ground for the Collector to reject the request, as it is expected of him to evaluate the circumstances and apply its mind.

13. In view thereof, in my opinion, it will be appropriate to quash and set aside the order dated 31st March 1992 passed by the Collector, Jalgaon.

14. As such, the order dated 31st March 1992 passed by the Collector, Jalgaon in Case No.FLR.III/1190/211/92 is hereby quashed

and set aside. The Collector, Jalgaon is directed to reconsider and decide the application of the present petitioner afresh in the light of the observations made herein above.

15. The Collector should take into account the subsequent circumstances/development i.e. from the date of application in 1990 till date while dealing with the request in question.

16. In view of the fact that the claim of the petitioner is pending/not decided in accordance with law since considerable time, the Collector, Jalgaon is directed to decide the same as early as possible and in any case within a period of three months from today.

17. Rule made absolute in above terms.

(N.W. SAMBRE, J.)

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