

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

WRIT PETITION NO. 4454 OF 2015

M/s Anjali Wines,
through its Partners

1. Ramesh Vyankataiyya Kotagiri
age 52 years, occup. Business,
2. Ramanna Ramchandra Gaud,
age 35 years, occup. Business,
Both r/o of Ward No.1, Gut No.3,
Property No.1-3-90, Beed. .. Petitioners

versus

1. The State of Maharashtra,
Through Secretary,
State Excise, Mantralaya, Mumbai
2. The Collector, Beed.
3. The Superintendent of State Excise,
Beed Respondents

Mrs. Anjali Bajpai (Dube), Advocate for petitioners
Mr. V. G. Shelke, Assistant Govt. Pleader for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 29TH APRIL, 2015

Oral Judgment

1. Rule. Rule made returnable forthwith and heard the parties by consent finally.
2. Petitioners-partners of firm M/s Anjali Wines in this petition impugn order dated 30-03-2015 bearing No.

FLR/112015/151/ Supdt. passed by Respondent No.2-Collector, Beed purportedly staying shifting of business run by petitioners under licence bearing no. FL-II/CL/FL/TOD-3.

3. Petitioners hold aforesaid licence and have been running business under partnership firm in the name and style, M/s Anjali Wines at Nagar road, Beed. Petitioners submit that they were carrying on business at Beed in the premises belonging to one Mr. Sanap. Since Mr. Sanap had been insisting on to vacate the premises, the petitioners had applied to authorities for permitting them to shift their licenced business to another place in Beed itself, namely, in the premises bearing no. 1-3-2609, a part of property bearing no. 1-3-90 in gut no. 3, ward no. 1 on the same road i.e. Nagar road. Their application appears to have been processed and accepted by the office of the Collector, Beed and on 10-3-2015, the authorities directed the petitioners to deposit amounts of ₹ 6,93,010/- and ₹ 2,41,810/-. Petitioners have duly paid said amounts under challans in government treasury.

4. Thereafter, under letter dated 11-03-2015, the petitioners were permitted to run their business in aforesaid new premises. Accordingly, petitioners have started running their business in said premises.

5. However, all of a sudden, they received an order dated 30-03-2015 issued by respondent no.2-Collector, Beed, purportedly exercising powers under section 142 (1) of the Bombay Prohibition Act, 1949 (hereinafter for brevity, referred to as "the Act"), staying operation and effect of the order under which petitioners were permitted to shift the business at the new place and further directing them to stop transactions until further orders. The narration in said order dated 30-03-2015 makes reference to a request, under representation dated 19-03-2015 made by a few citizens, not to permit the petitioners to run business in the new premises which, according to said persons, is close to *Siddhi Hanuman* temple as well as *Datta* temple and further threatening of agitation by citizens, including woman and children. Thereupon, the Collector had passed impugned order dated 30-03-2015.

6. Learned counsel for petitioners Mrs. Dube-Bajpai vehemently submits, apprehension being entertained as appearing under impugned order dated 30-03-2015 is without any basis. The impugned order was passed only on complaints which were not made known to the petitioners and directly the action impugned had been taken. She further contends that in any case, business cannot be affected perpetually under

impugned order purportedly passed in exercise of powers under section 142 (1) of the Act which are ephemeral in nature. She further submits, the impugned order directing stay to shifting and stoppage of running of business is absolutely arbitrary, against the provisions of law as well as against the principles of justice, equity and good conscience. It is contended that said order, in fact, tantamounts to review of the order granting permission to shift and run the business at the new place. Impugned order has been passed in stark breach of noble principles of natural justice. She further contends that the order has been passed without application of mind and without giving consideration to the factual aspects and without analysis of the same and as such, the order is bad in law.

7. Learned counsel further goes on to submit that there is nothing on record to show that before passing the impugned order, due process as envisaged under government orders dated 25-03-2008 and 12-02-2009 had ever been followed and the apprehension about law and order situation is being expressed merely on purported representation without having any basis. She refers to the report dated 23-03-2015 annexed as exhibit R-1 to the affidavit in reply filed by respondents no. 2 and 3. She submits, the report makes a reference to existence of a hotel having a licence under Bombay Prohibition Act just about 70 ft.

away from the place of business permitted to the petitioners. She further points out that the report makes reference to that there are about three permit rooms and one country liquor licence running in the proximate areas. The report further makes a reference to that the licence of the petitioners is not for letting people drink liquor at the business place. It is also being referred to in the report that the premises, where shifting has been allowed to petitioners and they are running business, is free from any restrictions about distance under rule 25 (2) (3) of the Bombay Foreign Liquor Rules, 1953. She submits that simply on the basis of representations in ignorance of said report, apprehension expressed is misplaced and impugned action is capricious.

8. Learned counsel further contends that having regard to ephemeral nature of powers under section 142 of the Act, impugned order directing the petitioners to stop business until further order has to be considered as without authority of law.

9. The petitioners rely on order in writ petition no. 2734 of 2014 [*Premlal s/o Bhaulal jaiswal vs. The State of Maharashtra and others*] dated 16th July, 2014 wherein this court has referred to decisions in *Amresh s/o Suresh Jaiswal vs. State of Maharashtra* and others in writ petition no.1128 of 2007 and writ petition no. 2416 of

1994 [*Satish Damodhar Kasar vs. State of Maharashtra*] reported in 2012 (6) Bom.C.R. 575 and contend that though petitioners' arguments questioning exercise of powers under section 142 (1) of the Act were tried to be countered by making reference to objections by various social organizations, corporators, it is to be considered that the powers to be exercised by the authority are for limited period and are not to operate perpetually. Mrs. Dube particularly relied on paragraphs no. 15, 16 and 17 of judgment in the case of *Satish vs. State (supra)* reproduced in judgment in writ petition no.2734 of 2014 which read ;

"15. In the present case, the petitioner's father and after his death the petitioner had been running the licenced business for over a period of 20 years smoothly and without any complaints. It appears that apprehension has been expressed and entertained by the authorities concerned on the so called complaints of women organizations and the alleged resolution by Gram Sabha about which no record has been available and as such, the impugned order had been issued without any basis therefor.

16. The exercise of powers under Sections 54 and 56, or for that matter, Section 142 of the Prohibition Act, is regulated by the provisions thereunder. It would be apparent that none of the circumstances referred to under clauses (i) (a) to (e) of Section 54 had been subsisting while show cause notice had been issued, nor the reasons referred to under the show cause notice appear to be based on any material. The show cause notice has been vague and appears to have been issued on presumption of there being resolution by Gram Sabha and complaints by Women organizations.

17. Thus, it appears that there had been no attributable cause for intended cancellation of the licence issued to petitioner as could be considered under Section 56 of the Prohibition Act. While show cause notice called for explanation against cancellation of licence, the impugned order dated 22.7.1994 refers to a different demand of shifting of shop to some other place.”

and also observations in paragraph no. 8 of judgment in the case of *Amrishi vs State of Maharashtra*, which read;

“8. It is clear from reading of the clause that a police officer who is present when a riot or unlawful assembly is imminent he could direct that the place where intoxicant are sold be closed and kept closed for such a period as he thinks fit. Bare reading of the aforesaid clause would make it clear that such closure is obviously for the period during which the riot or unlawful assembly is felt to be imminent. Therefore, clause (2) of Section 142 does not empower the Police Officer to direct the holder of a valid liquor vending licence to close his business for an indefinite period. Objections of the citizens to location of the shop can be dealt with appropriately by Excise Authorities while granting vendor's licence under Section 34 of the Bombay Prohibition Act.”

10. It is thus being emphasized that there is no basis for passing the impugned order. On mere apprehension being entertained on a representation without being supported by any material, impugned order has been passed. There can hardly be any law and order situation in the area and the report dated 23-03-2015 makes it amply clear that there are already quite a few

licenced businesses running around the premises of the petitioners and that there are no antecedents of law and order disturbance.

11. Learned Assistant Government Pleader for the respondents, however, justifies the order impugned referring to that peace in the vicinity is likely to be disturbed because of the business run by petitioners and since it is being said that there are two temples nearby, the area may not be accessible to women and children due to the drunken persons and considering the protests and representations by citizens, the order impugned came to be passed as the area is sensitive.

12. It appears that the Collector had entertained an apprehension that the objection to the shifting of business may give rise to a law and order situation and thus he had passed the impugned order. However, situation shows that the contents of the report and those of the reply are not compatible. The report makes it clear that the premises where the petitioners are allowed to shift and run their business is free from distance restrictions under the Foreign Liquor Rules, 1953 and quite a few licenced businesses are being run in the vicinity. The licence is not meant for letting people drink in the premises. There had been no problem of law and order hitherto.

13. Order does not make reference to any specific period for stoppage of business otherwise allowed to be run by petitioners. Section 142 of the Prohibition Act refers to powers of respondent no. 2 for closing of a place for a specified period and sub-section (2) of the same also speaks of the powers of Executive Magistrate or Police Officer to close the place also for a specified period in the order.

14. In the present case, the action has been mooted and taken on the basis of complaints by some persons and apprehension has been expressed that it may create law and order situation. Thus, apprehension is based on representation by a few citizens, without being supported by any other material. The order appears to be based only on apprehension without objective satisfaction of the circumstances warranting exercise of powers. In the face of situation, it being not a case of shifting of licence not being in accordance with relevant rules, the order impugned being without any reference to time limit, is vulnerable on facts and in law and as such is rendered untenable.

15. In view of the same and in the light of decisions referred to earlier hereinbefore, I deem it appropriate to consider, as there is no attributable cause supported by any material worth

consideration and merely on apprehension entertained with reference to representation and threatening, when there is no allegation of shifting being not in accordance with rules, exercise of powers under section 142(1) of the Act is unsustainable in law and deserves to be set aside.

16. Writ petition as such stands allowed in terms of prayer clause (B) and disposed of. Rule made absolute accordingly.

SUNIL P. DESHMUKH, J.

pnd