

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

WRIT PETITION NO. 4606 OF 2015

1. Anand Vitthal Zambre,
Age: 41 years, occu: Business

2. Bramhanand Manik Kalure,
Age: 32 yrs, Occu.: Business,
Both R/o Chakur, Tq. Chakur,
Dist. Latur.

...PETITIONERS

versus

1. The State of Maharashtra,
Through: The Secretary, State
Excise Department, Mantralaya, M.S.
Mumbai.

2. The Collector, Latur,
Authority Constituted under
The Bombay Prohibition Act, 1949

3. The Superintendent of State Excise,
Latur, Dist. Latur.

...RESPONDENTS

.....
Smt. Anjali Dube - Bajpai, Advocate for Petitioners
Mr. S.K. Tambe, A.G.P. for respondents No. 1 to 3
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 29th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, by consent.

2. The petitioners are before this court, challenging propriety and legality of order dated 31-03-2015 passed by respondent no. 2-Collector, *inter-alia*, on the ground that order is in excess of and in colourable exercise of powers, transgressing authority vested under

section 142(2) of the Maharashtra Prohibition Act, 1949 [hereinafter " the Prohibition Act"]. The petitioners also take exception to the order on the ground that the same has been passed merely on apprehension without there being objective satisfaction of the circumstances.

3. Smt. Anjali Dube - Bajpai, learned counsel for the petitioners refers to that petitioners are CL-III licence holders since 1973-74. Said licence has been renewed under order of Hon'ble Minister of State Excise, Mumbai. After the death of original licence holder, now the licence has been recorded in the name of his legal representatives. The request of petitioners for shifting the place of business from District Kolhapur to District Latur has been allowed under order dated 24-02-2014. Learned counsel further refers to that shifting has been allowed pursuant to relevant rules and on examination and satisfaction of fulfillment all conditions required therefor. The shop is located at Udgir in the property owned by Satyanarayan Kashinath Biradar. She points out that the Superintendent of Police, Latur while had submitted report had given favourable indication for shifting of licence to said premises. Law and order situation in the vicinity and its eventuality in negative had been considered.

4. Learned counsel goes on to submit, out of the writ petition, referring to that, in the vicinity of the shop, earlier from 1988 to 2014 business similar to the one which is allowed to run by the petitioners was being run by one Smt. Waghmare. Basis for submission is the information elicited under Right to Information Act, 2005. She states that from 1988 there had been no law and order situation. According to learned counsel, it is only when the petitioners had started their business at aforesaid place,

only a few of persons purported to complain. She submits that complaints were devoid of any substance and were moved with oblique motive. Since the petitioners did not yield to the demands all these purported complaints have arisen. She submits that even otherwise if at all complainants want to have present business shifted to some other place they would have to make an approach pursuant to required procedure. In stead of doing that, they are resorting to extra legal measures and have been harassing petitioners and trying to create confusion and nuisance.

5. Learned counsel further refers to letter dated 10-03-2015 issued by the Superintendent, State Excise, to one Amol Marotirao Talwadkar who purported to oppose running business in the present premises, stating that he shall adopt measures pursuant to government notification dated 25-03-2008 and 12-02-2009. She submits that whole confusion is created by a clutch of a few people who are interested in resorting to extra legal measures for extraneous considerations. She submits that people in the vicinity or from the ward have not sought and have not adopted any measure for closure or shifting of business. Unlike in other countries, in our country people oftenly adopt such method under the garb of them having freedom and right to meddle with avocation, occupation of others for self-serving purpose. She submits that the collector is taking action without checking up and without taking into account that there is lack of *bona fides*. He has also not considered that in the past when such business was indeed being run there had been no law and order situation till and even after business had been started by the petitioners. Similar business had been hitherto being run from 1988 to 2014, and there was no complaint whatsoever nor any situation of law and order had ever arisen. Under the circumstances, the collector without having attributable

cause and without objective satisfaction of the circumstances only with reference to threatening by disgruntled elements has committed an error in acting upon the same.

6. The learned counsel for petitioners draws attention to following observations of this court in writ petition No. 4485 of 2015 which she submits have been made in a case which is very close to present case on facts and submits that these observations would squarely hold present scenario, which read thus-

“ 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 contends 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 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 *Amrish 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.

13. Order does not make no 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. ”

7. Learned Assistant Government Pleader purportedly justifies the impugned order referring to that report has been submitted that there is likelihood of creation of law and order situation since Shivaji statue is in the close area where business is being run. He, therefore, purports to support the order.

8. It appears that the collector had entertained an apprehension that business being run at shifted place it may lead to law and order situation having regard to the complainants and representations of few organization.

9. It is not the case that Shivaji statue has come up recently. It is also not the case that the shop of the petitioners has not been shifted in accordance with rules. There does not appear to be a dispute that petitioners' shop complies with distance, rules and regulations and is free of restrictions. Earlier shop in the vicinity was being run while Shivaji statue was there.

10. It has to be considered while licence had been shifted from earlier place to Udgir, all required conditions had been taken into account. As a matter of fact, initially licence was disallowed by the collector, however, appeal therefrom the order has been set aside requiring the petitioners to give affidavit that in case of law and order situation they shall close the

business. Beyond representations and complaints by a few persons, the Collector's order does not make reference to any complaint made by person residing in the vicinity or, for that matter, in the ward or that situation is tense. The order does depict that the collector has exceeded his power while passing order, which is seemingly permanent in nature and has thus committed an error and or the order has become vulnerable on various grounds. This court in writ petition No. 4454 of 2015 had passed order taking into account similar circumstances as referred to hereinabove.

11. In the circumstances, action appears to have been taken on the basis of complaint made by some persons entertaining apprehension 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 the 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 rendered untenable.

12. As has been observed *in writ petition No. 4454 of 2015 4454 of 2015 (M/s Anjali Wines and others Vs. The State of Maharashtra and others)* and in view of the same and in the light of decisions referred to earlier, 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, that the exercise of powers

under section 142 of the Prohibition Act is unsustainable in law and deserves to be set aside.

13. The writ petition, as such, stands allowed. The impugned order dated 31-03-2015 bearing No CLR/112014/2517 passed by respondent No. 2 – Collector, Latur is quashed and set aside. Rule is made absolute accordingly.

14. Needless to refer to that this order would not be an embargo on powers of the authority to exercise powers under the Prohibition Act by concerned officer in the event/occasion and circumstances so require.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
