

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

WRIT PETITION NO. 4272 OF 2015

Sau. Kaushalya Ajinath Hange

.. PETITIONER

VERSUS

The Collector, Osmanabad
& another

.. RESPONDENTS

Mr. A.S. More, advocate for petitioner.
Mrs. M.A. Deshpande, AGP for the State.

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**CORAM : R.M. BORDE &
V. K. JADHAV JJ.**

DATE : 17th APRIL, 2015.

PER COURT :

1. Petitioner is challenging the order passed by the Collector on 01.04.2015 thereby directing closure of the liquor shops operating in the village, between the period from 15.04.2015 to 20.04.2015, in exercise of powers conferred under section 142(1) of the Bombay Prohibition Act. It is not a matter of dispute that during the relevant period there was a religious festival (Yatra of Lord Bhairavnath) conducted in the village and the special Women Gram Sabha was conducted on 30-3-2015 at village Sonari and the Gram Sabha unanimously recommended the Collector to direct closure of liquor shops functioning in the area since the village is a religious place and few of the villagers after consuming intoxication behave in an unruly manner and harass and intimidate the local ladies and devotees which creates law and order problems. Taking note of the resolution passed by the women Gram Sabha the Collector proceeded to exercise power under section 141(2) of the Act and directed closure of the liquor shops in the village

during the aforesaid period. Learned counsel for petitioner submits that the Collector is has to form opinion in a rational way and by adopting rational approach the order is to be issued for protecting the public peace. It is contended that there is no allegation that as a result of operating of the shops the public peace of the village is breached.

2. it is to be noted that the Collector after receiving resolution adopted by the Special women Gram Sabha on 30.03.2015, caused enquiry to be made in the matter through the Prohibition Officer and, on receipt of the report, issued order in exercise of powers under section 142(1) of the Act. Satisfaction of the Collector based upon the report of the concerned official cannot be said to be irrational. The Collector, infact, in issuing the order, has acted in the interest of protection of public peace and tranquility.

3. Reliance is placed on a judgment in the matter of Maharashtra Wine Merchants Association Vs. State of Maharashtra and others reported in **2007(3) Bom.C.R. 343**. In the aforesaid matter, circular dated 04.04.2006 issued by the Commissioner, State Excise, directing all Collectors in the State to pass order under section 142 of the Act directing closure of the licensed liquor shops selling foreign and Indian liquor was subjected to challenge. While considering the issue the learned Single Judge of this Court has observed in paragraph no. 6 of the judgment that the powers conferred on the authority concerned are to be exercised by the said authority alone. In the reported matter, direction was issued by the Commissioner and, acting upon such direction, the Collectors in the State

proceeded to exercise the jurisdiction under section 142 of the Act. It is observed by the learned Single Judge that the satisfaction of the authority who is invested with the powers is a pre-condition for passing an order and the authority invested with the powers shall not be directed by the superior authority to exercise the power and issue orders. The judgment cited is not relevant and does not apply to the facts and circumstances of the case.

4. In view of above, we are of the opinion that the petition is devoid of substance. It is however noticed that the Special Women Gram Sabha on 30.03.2015 resolved to close the liquor, wine and bear licensed shops operating in the area and forwarded the resolution to the Collector. If the resolution adopted by the Women Gram Sabha has recommended closure of the shops, it is the responsibility of the Collector to look into the resolution and take steps in accordance with the provisions of law. Petition as such, stands rejected.

(V.K. JADHAV)
JUDGE

(R. M. BORDE)
JUDGE

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