

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.70 OF 2013

1 Manik Rama Toke
age: 52 years, occu: agriculture labour
R/o Hanegaon, Taluka Degloor
District; Nanded

2 Smt. Chabubai Baburao Pakale
age: 47 years, occu: house hold
R/o Hanegaon, Taluka : Degloor
District: Nanded.

Petitioners

Versus

1 The State of Maharashtra
(through: Excise Department,
Mantralaya, Mumbai)

2 Hon'ble Minister
State Excise Department,
Mantralaya, Mumbai

3 The Collector, Nanded

4 The Gram Panchayat
Hanegaon
through: Its Gram Sevak
Gram Panchayat, Hanegaon
Taluka Degloor, district: Nanded

5 Shri Ramesh Daulatrao Patil
age: major, occu: business
R/o Nawab Khadki, Pune

6 Shri Manoj Bhimrao Gaud
age: major, occu: business
R/o Nawab Khadki, Pune

Respondents

Mr.A.H. Kasliwal advocate for the petitioners

Mr.S.G. Karlekar, AGP for Respondent No.1 to 3

Mr. D.B. Sawant i/b Mr. A.V. Hon advocate for respondent Nos.4 & 5

**CORAM : R.M. BORDE &
P.R. BORA, JJ**

DATE: 22nd June, 2015.

JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioners have presented the instant public Interest Litigation, seeking directions against the respondent Nos.1 to 4, restraining them from allowing shifting of a country liquor shop operated by respondent No.5 and 6 at Khadki, District: Pune to village Hanegaon, tq. Deglur, Dist. Nanded.

4 The petitioners are the residents of aforesaid village and are genuinely concerned with the menace of alcoholism spread amongst the villagers in the village. It is pointed out that, in a small village having population of about 6122, as per the census figures of 2001, there are already four outlets selling liquor. It has been brought to notice that, one country liquor shop is already operating apart from one beer Shoppe and two permit-rooms, selling liquor in the village. The petitioners submit that the village Gramsabha took cognizance of the menace of alcoholism and adopted a resolution on 15.8.2011 in respect of closure of shops, already operating in the village and resolved to make appeal to

the appropriate authorities for closure of liquor shops.

5 Though respondent Nos.5 and 6 have disputed the contentions raised by the petitioners, in respect of resolution adopted by the Gramsabha on 15.8.2011 and have contended that such a resolution was never adopted, it appears, on perusal of the affidavit in reply presented by Gramsevak of the village that, such a resolution was, in fact, adopted in the Gramsabha meeting conducted on 15.8.2011.

6 The respondents No.5 and 6 tendered an application to the Collector, Pune on 18.12.2012, seeking permission to transfer country liquor shop, which was being operated at Khadki Bazar Pune to village Hanegaon in Deglur Taluka, District; Nanded. It is recited in the application that, the landlord of the premises, where the shop is being operated at Khadki Bazar has objected to running of a country liquor shop and as a result thereof license for operating the shop, has not been renewed, and as such the country liquor shop is not functional. Request was made to the Collector to permit shifting of shop from Pune district to Nanded district on granting renewal of license.

7 It appears from the record that, surprisingly the village panchayat granted no objection for operating liquor shop at village Hanegaon, by adopting a resolution on 29.10.2012. Since the authority to permit transfer of shifting from one district to another district rests with the State Government, application tendered by

the respondent Nos.5 and 6 was forwarded for consideration to the State Government.

8 On presentation of instant Public Interest Litigation, this Court directed issuance of notices to the respondents. On 5.8.2013, this Court expressed concern on account of grant of more than one licenses in the rural areas of the State. It is observed in the order that, revenue collection cannot only be the consideration over riding the larger public interest. It was made clear that, it would be open for the State Authorities to pass appropriate order on the proposal tendered by respondent Nos. 5 and 6, strictly in accordance with merits of the proposal.

9 On perusal of the order dated 2.9.2013, passed by the Division Bench of this Court, it appears that, the respondent Nos. 5 and 6 caused appearance in the matter through Advocate Shri N.S. Choudhary and the matter was directed to be placed on 30.9.2013. This Court, by order dated 18.3.2014 called upon the State Government to clarify whether, it was proposed to direct transfer of liquor shop to village Hanegaon, Tq. Deglur, District :Nanded, although there are other three outlets already operating in the said village. The Public Interest Litigation was directed to be placed for consideration on 8.4.2014. It was informed to this Court, during course of hearing on 7.7.2014 that, respondent Nos. 5 and 6 have moved writ petition bearing No. 4954 of 2014, at the principal seat at Mumbai, seeking directions to the State Government to take decision in the matter. It was

informed that, the matter has been presented to the principal seat in the month of January, 2014. As such respondent Nos. 5 & 6 were directed to place on record the copy of the petition and the copies of the orders passed at Mumbai from time to time.

10 It must be noted at this stage that, the conduct of respondent Nos. 5 and 6 is not fair and they secured orders in the writ petition presented at Mumbai, without disclosing to the Division Bench of this Court at Mumbai that, the instant Public Interest Litigation, objecting to the transfer of liquor shop from Pune district to Nanded district, is pending and the notices have already been issued and the concerned respondents have also caused their appearance in the matter. It appears that the writ petition was presented at Mumbai by respondent Nos. 5 and 6 on 22.1.2014. Although respondent Nos. 5 & 6 were aware and had caused their appearance in the instant Public Interest Litigation, the factum of pendency of the instant matter was not disclosed in the petition presented at Mumbai. After this Court adjourned hearing of the PIL to 22.7.2014, the respondent Nos.5 & 6 moved the writ petition presented at Mumbai for hearing on 11.8.2014. Although the writ petition was not listed on the board, same was taken up at the request of the respondent Nos.5 & 6 herein for hearing on 11.8.2014 and direction was issued to the State Government for consideration of the proposal in respect of transfer of liquor shop, within a period of one month from the date of the order. It was also directed by the Division Bench of this

Court at Mumbai to the State Government, to immediately communicate to the Collector, the decision that would be taken by the State Government and the Collector was further directed to pass final order, within a period of two weeks from the date of communication of the decision by the State Government. It, thus, appears that, in pursuance of the directions issued by the Division Bench at Mumbai, the State Government took a decision to permit transfer of liquor shop from Nawabazar, Khadki, Pune to Hanegaon Tq. Deglur, District: Nanded. In the order issued by the State Government, it is noted that the order is being passed in pursuance to the directions issued by the High Court at Mumbai in Writ Petition No.4954 of 2014. It must be observed that the respondent Nos.5 & 6 are guilty of suppression of material facts from the High Court at Mumbai. The respondent Nos.5 & 6 though presented petition in the month of January, 2014 at Mumbai, requesting for issuance of directions to the State Government, they did not intentionally mention about the pendency of the instant PIL and secured directions to the State Government for consideration of their application by suppressing material facts.

11 Apart from this, the order passed by the State Government permitting transfer of liquor shop from Pune district to Nanded district is in violation of relevant rules.

Rule 25 of the Maharashtra Country Liquor Rules 1973 prescribes shifting of licensed shop from one place to another. Clause 'C' of Rule 25 provides that licensed shop shall not be

shifted by retail licensee to any place from one district to another district, without prior approval by the State Government. Rule 25 of the Maharashtra Country Liquor Rules 1973 is relevant for consideration of the instant matter and as such, is recorded below:-

“25. Prohibition to shift licensed shop to any other place:-

(a) a licensed shop shall not be shifted by a retail licensee to any other within a taluka without prior approval of the Collector;

(b) a licensed shop shall not be shifted by retail licensee to any place from one taluka to another taluka of the district without prior approval of the Commissioner:

Provided that, the number of licensed shop for such shifting shall not exceed 15% of the total existing licensed shops in any district excluding Mumbai City and Mumbai Suburban District, which would be inclusive of the licensed shops already shifted with prior approval of the Government or the Commissioner before the date of publication of these rules;

“ Provided further that, any licensed shop shall not be shifted within the Mumbai City and Mumbai Suburban District, without prior approval of the Government “

(c) a licensed shop shall not be shifted by retail licensee to any place from one district to another district without prior approval of the Government;

(d) the shifting of licenses under clauses (a), (b) and (c); shall be subject to the fulfillment of the following conditions, namely:-

(i) *Considering the sale of liquor of past five years, the sale of liquor of any two years of last four years shall be less than the sale of first year of this block of five years or considering the sale of liquor of past five years, the sale of liquor of any three years shall be less than that of the annual average sale of the liquor for the same five years;*

(ii) *that there is no inconvenience of drinking of liquor to the people residing in that area;*

(iii) *that the Grampanchayat in whose area licensed shop is proposed to be shifted, has given no objection by passing a resolution of the Gramsabha; and if the shop is proposed to be shifted to any area other than Grampanahayat area, no objection of the Municipal Council concerned has been obtained;*

(iv) *that the proposed premises are free from distance restriction as provided under sub-rules (4) and (5) of Rule 24;*

(v) *that the construction of the premises in which shop is proposed to be shifted is an authorized construction and a certificate of the competent local authority is submitted;*

Provided that, the proviso to clause (b) and sub-clauses (i) and (ii) of clause (d) shall not apply in respect of shifting of licensed ship which has been closed down or required to be closed down as per the provisions of the Bombay Prohibition (Closer of License on Resolution by the Village Panchayat or Gramsabha or Women/Social Organization or representation by Voters in the Village or Ward of Municipal Council) Order 2003.

Provided further that, the conditions as laid down in sub-clauses (i), (ii) and (iii) of Clause (d) shall not apply in respect of the following situation, however, under such situation shifting shall be allowed within the area of same Gram Panchayat or

same 'C' Class Municipal Council or in 'A' and 'B' Class Municipal Council or Municipal Corporation, as the case may be,

(a) licensee whose premises are affected by the implementation of Development scheme such as road widening, and the like

(b) In the case where the licensee is running his licensed shop shall, at the place under the rental deed and the land lord or owner of the place does not agree to extent the rental deed or

(c) in the case where the shifting is essential due to Hon'ble High Court's Order. "

12 In the matter of shifting of retail license shop to any place from one district to another, such shifting shall be with prior approval of the State Government. Clause '(d)' of Rule 25 provides that shifting of license under clauses (a), (b) and (c) shall be subject to fulfillment of the conditions laid down under sub-clauses (i), (ii) & (iii) of clause (d) of Rule 25.

The second proviso to clause 'd' mandates that the conditions laid down in subclauses (i), (ii) & (iii) of clause (d) of Rule 25 shall not apply :-

(a) in case of licensee whose premises are affected by the implementation of the Development Scheme such as road widening and the like

(b) in case, where licensee is running, his licensed shop at the place under rental deed and Landlord or owner of the place does not agree to extend the rental deed or

(c) In case, shifting is essential due to Honourable High Court's order.

However in above referred circumstances, if shifting of shop is requested, such request shall be allowed within the area of such Grampanchayat or same 'C' class Municipal Council or 'A' or 'B' class Municipal Council or Municipal Corporation as the case may be.

13 In the instant matter, reason quoted by the respondent Nos. 5 & 6 for shifting of liquor shop from Pune to Nanded district is that, the landlord of the premises at Pune district, has raised an objection for continuation of the business in the said premises. The reason quoted in the application does not come within the ambit of sub clause (i), (ii), (iii) of clause 'd' of Rule 25 and therefore, there does not arise any question for according permission to shift a liquor shop from one district to another district. The reason quoted by the respondent Nos.5 & 6 in the application, tendered to the State Government, is within the purview of second proviso to clause 'b' of Rule 25(d) i.e. the landlord or the owner of the place did not agree to extend the rental deed. In this view of the matter, as provided in second proviso of Rule 25(d), the application must be considered for shifting of the shop, within the same Grampanchayat or Municipal Council or Corporation area. The reason quoted by the respondent Nos.5 & 6 for shifting of the liquor shop from one district to another district permits shifting of liquor shop, within the same Grampanchayat or Municipal area.

14 In the instant matter, in accordance with Rule 25 of the Rules, while granting permission to shift the shop from one district to another district, the State Government has not considered Rule 25 of the Rules and the order issued, is, in violation of the aforesaid rules and as such, the permission accorded by the State Government, for shifting of liquor shop deserves to be quashed and set aside.

15 This Court had directed the State Government to disclose as to whether there is any policy in place, in respect of permitting opening or shifting of liquor shops in a village or a town having nexus with the population of the said village or town, by order dated 5.8.2013. In reply to the query, it has been informed that, the State Government does not have any policy in place in respect of grant of permission to open liquor shops on consideration of the ratio of population of particular village or town. It must be noted that, the directive principles of the State Policy i.e. article 47 imposes obligation on the State Government to make endeavor to bring about restriction on consumption except for medicinal purpose of intoxicating drinks, drugs which are injurious to health. It is a matter of common knowledge that, consumption of alcohol is injurious to health. In the instant matter, it is observed that, a village, having population of about 6,000, is already being served with the liquor through one country liquor outlet, one beer Shoppe and two permit-rooms. There is an endeavor to shift one more country liquor shop in the village. The availability of liquor, either

country or foreign liquor, in abundance disproportionate with the population ratio in rural areas spreads menace of alcoholism amongst the masses which leads to moral and financial degradation of the rural population. We are of the view that the State Government needs to take a serious view of this and it would be appropriate to lay down a Policy guidelines in respect of permitting operation of liquor shops or shifting of shops or licensed permit rooms, having nexus with the population of village or town. We expect that, the State Government would surely frame a Policy keeping in view larger public interest. Copy of this Judgment be transmitted to the Chief Secretary of the State of Maharashtra for appropriate consideration.

16 The public interest litigation is thus allowed. The order passed by the State Government on 17.9.2014 permitting shifting of liquor shop from Nawabazar, Khadki, Pune to village Hanegaon, Tq. Deglur, District; Nanded, is quashed and set aside. Respondent Nos.1 to 4 are directed not to permit shifting of country liquor shop operated by respondent Nos.5 & 6 to village Hanegaon, Tq. Deglur, District:Nanded.

17 Rule is accordingly made absolute. There shall be no order as to costs.

(P.R. BORA, J)

(R.M.BORDE, J)

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