

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1130 OF 2015

Irappa Channamalla Jeur .. Petitioner
VS.
The Collector of Sangli & Anr. .. Respondents

Mrs. Veena Thadhani for Petitioner.
Ms Aparna Vhatkar – AGP for Respondents – State.

CORAM : M. S. SONAK, J.
DATE : 03 FEBRUARY, 2015

P.C. :-

1] In this petition, the petitioner has prayed for the following reliefs :

- (a) *Rule may kindly be issued in the present Writ Petition;*
- (b) *for a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, Order or Direction of this Hon'ble Court calling for the papers and proceedings relating to the impugned Order dated 22nd of January, 2015 and after inquiring into the legality or validity thereof, to quash and set aside the same;*
- (c) *for a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, Order or Direction of this Hon'ble Court, directing the 1st Respondent to provide the Petitioner with a copy of the representation for closing down the Petitioner's establishment and after giving the Petitioner a fair opportunity of dealing with the same, and providing the Petitioner with an opportunity of personal hearing to take*

further action in the matter;

- (d) that pending the hearing and final disposal of this Writ Petition, an Order and Injunction be issued by this Hon'ble Court staying the effect and operation of the impugned Order dated 22nd January, 2015 and also restraining the 1st Respondent from taking any coercive action against the Petitioner's business;*
- (e) that without prejudice to, and in the alternative to the above, pending the hearing and final disposal of the Appeal filed by the Petitioner before the 2nd Respondent, the effect and operation of the impugned Order dated 22nd January, 2015 be stayed and in the event of any adverse Order being passed in the Appeal, the same to remain stayed for a further period of two weeks from the date of receipt of the said Order;*
- (f) that ad-interim reliefs in terms of prayer clause (d) or (e) above be granted;*
- (g) that the costs of this Writ Petition be provided for;*
- (h) that such further and other reliefs as may be necessary in the interests of justice be granted.*

2] Today, at the stage of production, the learned counsel for the petitioner submitted that the petitioner would be satisfied with relief in terms of prayer clause (e). This is because the petitioner has already preferred an appeal under Section 137(2) of the Bombay Prohibition Act, 1949 before the Commissioner as against the order dated 22 January 2015 made by the Collector of Sangli.

3] The learned counsel for the petitioner has pointed out that there is breach of the provisions contained in Clause 3A of the Bombay Prohibition (Closure of licence on Resolution by Gram Sabha or representation of Voters in the Ward of Municipal Council / Corporation) Order, 2008. Clause 3A reads thus:

“(3A) If, not less than Twenty-five per cent of the women voters or total voters in any village give a representation in writing to the concerned Superintendent of State Excise and demand to close down the liquor shop in a village, such application shall be verified by the Superintendent of State Excise. After verification of authenticity of signature on the representation and its genuinity, the Collector shall direct the concerned Tahasildar, to take secret poll fearlessly by utilizing a specimen ballot paper appended herewith. Thereafter, the concerned Tahsildar shall declare place, date and time of election at least seven days in advance. The latest list of voters shall be used for such election. The election process of voters of that concerned village shall be completed by secret ballot under the supervision of the concerned Tahsildar or an Officer not below the rank of Naib Tahasildar, authorised by him. The representative of Superintendent not below the rank of Inspector of State Excise and the liquor licensee shall be allowed to remain present during the poll. If, in such election more than fifty per cent of the women voters or total voters of the concerned village vote for closing down the liquor shop, the Collector shall pass an order for closing down such liquor shop.”

4] The learned counsel for the petitioner pointed out that by the order dated 22 January 2015, the Collector on basis of representation of not less than 25 per cent of the women voters or total voters in any village has set into motion the procedure for conduct of a poll to determine as to whether or not the petitioner's licence which has been in operation since 1976 should be revoked and his liquor shop closed down or not.

5] The learned counsel for the petitioner contends that there are several infirmities in so far as an order dated 22 January 2015 is concerned. She points out that in the first place the verification which is required to be carried out by the Superintendent of State Excise, is in the present case, carried out by the Sub Inspector of State Excise. Secondly, the latest list of voters has not been used. Thirdly, there are signatures of some dead persons. Fourthly several names appear multiple times in the voters list. Fifthly, the petitioner has produced affidavits of persons who are alleged to have signed on the representation, to the effect that they have never signed. Sixthly, almost 100 names on the representation do not tally with the names in the voters list. Seventhly, names of almost 276 women find no place in the voters list at all. The learned counsel submitted that these infirmities are only illustrative and apart from these, there are several other infirmities in the making of order dated 22 January 2015.

6] If the scheme of clause 3A is considered, then where not less than 25 per cent of the women voters or total voters in any village give a representation in writing to the concerned Superintendent of State Excise demand the closure of a liquor shop in the village, then subject to various checks and compliances, a poll has to be undertaken in order to ascertain the wishes of the voters in the matter of continuance of the liquor shop. If in such a poll more than 50 per cent of the women vote or total or total voters of the concerned village vote for closing of the liquor shop, only then can the Collector pass an order for closing down of the liquor shop. Once such an order is made for closure of a liquor shop, it is also permissible for the party affected to prefer an appeal under Section 137(3) of the Bombay Prohibition Act, 1949. In such an appeal, it is always open for the party concerned to point out the infirmities both in the matter of conduct of the poll as also compliances with preconditions, if any, for the very holding of the poll.

7] The order in the matter of holding of the poll was made on 22 January 2015. Soon thereafter, the petitioner has chosen to prefer an appeal before the Commissioner by invoking the provisions of Section 137(3) of the said Act. At this stage, this Court is neither called upon nor does it consider it appropriate to go into the issue of

very maintainability of the appeal. However, since this Court is called upon, at this stage, to grant a stay upon the order dated 22 January 2015 pending the appeal, it is necessary to record that no case has been made out for grant of any such stay order. The issue as to whether or not the correct list of voters has been employed and whether some of the voters are dead or whether some of the names of the voters are missing, are not issues which can ordinarily be gone into, at this stage. Similarly, no cognizance can be taken of affidavits which have been produced, particularly for deciding whether or not the poll should proceed. This is not a case where the jurisdictional parameters prescribed in the conduct of the poll can be said to have been *ex facie* not satisfied.

8] Apart from the issue as to whether appeal under such circumstances is maintainable or not and further, if maintainable, whether the appellate powers should be exercised or not, it must be noted that the order impugned merely directs further proceedings as contemplated by clause 3A. The order impugned does not close down the petitioner's liquor shop. There is accordingly, no necessity to make any interim order during pendency of the appeal. Grant of any interim relief, would result in the stalling of the poll, which may not be appropriate in the facts and circumstances of the present case. The issues raised by the petitioner are disputed questions of

fact and it is only proper that reasonable opportunity is afforded to the respondents to meet with the same. If ultimately the result of the poll is against the petitioner's liquor shop, and based thereon order of closure is made, it is always open to the petitioner to agitate all issues, including the issue that such poll ought not to have been held in the first place.

9] Accordingly, no case is made out either to entertain the present petition or for grant of any relief in terms of prayer clause (e). Petition is accordingly dismissed.

10] However, the appellate authority, before whom the petitioner has preferred an appeal is directed to hear and decide the appeal as expeditiously as possible and in any case within a period of four weeks from today. However, it is made clear that there shall be no interim relief pending the appeal.

11] It is further clarified that the observations in this order are only *prima facie* and in the context of relief in terms of prayer clause (e). As such, the appellate authority shall decide the matter in accordance with law and on its own merits.

(M. S. SONAK, J.)