

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3110 OF 2014

(Ashok Kumar s/o Rampadarathji Jaiswal & Anr. vs. The State of Maharashtra thr. its Secretary,
Department of Excise & Ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
AUGUST 17, 2015.**

Heard Shri Abhay Sambre, learned counsel for the petitioners and Mrs. Deshpande, learned AGP for respondent Nos. 1 to 3.

The petitioners have two separate shops i.e. one CL-III and one FL-III in the area of Gram Panchayat, Jodmoha. It is not in dispute that said Gram Panchayat consists of two villages viz., Jodmoha and Khateshwar. It appears that some residents of Gram Panchayat area are trying to close down these shops. A requisition for that purpose has been submitted on 08.01.2014. After that requisition was verified, the concerned authority reported that it was not in accordance with the policy decision. After this report, the office of the Superintendent of State Excise, Yavatmal, has on 17.04.2014 directed the authorities to undertake calculation as per voters list as on 31.01.2014.

Shri Sambre, learned counsel has raised two contentions. The first one is, as the requisition is prior to 31.01.2014, voters list which has been finalized thereafter, cannot be looked into. He further submits

that the requisition is signed by the residents of village – Khateshwar as also village – Jodmoha. For the purposes of requisite 25% women voters, only village – Jodmoha needs to be looked into and the signatories on requisition from village – Khateshwar needs to be ignored. Those signatories are 27. Thus, if 27 signatories are subtracted from total 288 on requisition dated 08.01.2014, the number left is only 261 and as approved voters at Jodmoha are 1089, the said figure is less than 25% and hence it does not meet the requirement of policy decision dated 12.02.2009.

The learned AGP is relying upon the reply affidavit. She submits that voters list as on 31.01.2014 necessarily implies that it has been prepared after considering the position prevailing prior thereto and hence the position as prevailing on 08.01.2014. It is further pointed out that mathematical calculations have also been undertaken to demonstrate that number of voters are in excess of 25%.

During hearing, we find that this Court has on 02.07.2014 issued notice in the matter and granted ad interim relief. The petitioners shops are, therefore, working even today. The first question is whether voters list is dated 31.01.2014 or then it is prepared as on 31.01.2014. The reply and documents placed on record need to be looked into for that purpose. The communication dated 22.05.2014 sent by the Chief Inspector, State Excise, Yavatmal, to the Superintendent of State Excise, Yavatmal, mentions voters list published on 31.01.2014. In reply affidavit

filed on 19.09.2014 before this Court by Respondent No. 2 – Collector, it is mentioned that new voters list was published on 31.01.2014. However, the challenge by the petitioners that it is subsequent to 08.01.2014 has not been specifically dealt with. It needs to be noted that second affidavit has been filed by Respondent No. 2 on 08.04.2015 and the third affidavit has been filed on 07.08.2015. Even in these later affidavits, this aspect has not been dealt with. If voters list is published on 31.01.2014, process for its preparation and finalization might have been undertaken quite earlier i.e. may be prior to 08.01.2014. The earlier voters list was published on 16.09.2013. The exact date in respect of which the application of mind has been done while finalizing voters list is not on record. Hence, we are not in a position to conclude the controversy either way at this stage.

Insofar as later challenge is concerned, the reply filed by the State Government shows that there were 1385 voters of village – Jodmoha and as 288 women voters have voted (signed requisition) therefore, 25% of total women voters have joined in it. It is not clear whether 1385 is the figure of only women voters. 288 is less than 25% of 1385. What is the exact approved women voters of village – Jodmoha is not clear from said reply. In later paragraph, it has been mentioned that shop of the petitioner is located at Gram Panchayat, Jodmoha and there are 1089 women voters at Jodmoha out of total 1383 as stated in report

dated 22.05.2014. In paragraph 6, this figure has been given as 1385. It has been further observed that as 288 women voters have joined in signing the requisition, it is more than 25% when compared with said figure of 1089. The submission of Shri Sambre, learned counsel that in this figure of 288, 27 women residing in the area of village – Khateshwar are also included and, if they are reduced, the figure of 261 women voters from village – Jodmoha needs to be taken into consideration. Thus, this figure is less than 25% of 1089. Again, data placed on record by the respondents is not sufficient to conclude the controversy either way. However, one thing is certain and it is, if voters only in village – Jodmoha is to be looked into, signatories from said village – Jodmoha should only be considered.

In this situation, as we find that the matter is pending before this Court since last more than one year and interim relief is operating, we are not inclined to keep this matter pending. We continue the interim relief which is in force and direct the respondent No. 2 – Collector to examine all these aspects and for that purpose to give an opportunity to the petitioners as also to the representatives of requisitionists in accordance with law. The necessary decision in this respect shall be taken within a period of eight weeks from today and if thereafter the requisition survives, it shall be processed in accordance with law.

Writ Petition is thus partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE

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