

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4718/2015

(Shri Praveen Anandrao Gaidhane and two others vs. The State of Maharashtra and others)

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

Court's or Judge's order

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Mr. S.G.Jagtap, Advocate for the petitioner
Miss T. Khan, Asst. Government Pleader for respondents 1 to 4

**CORAM : SMT. VASANTI A. NAIK &
A.I.S.CHEEMA, JJ.**

DATED : 9th September, 2015.

Heard.

By this petition, the petitioners seeks a direction to the Collector, State Excise Nagpur to implement the order of the Commissioner, State Excise dated 7.4.2015 and allow the petitioners to run their business in FLBR.II licence.

It is brought to the notice of this Court by the learned counsel for the petitioners that by an order dated 7th April, 2015, the Appeal filed by the petitioner against the order of the Collector suspending the FLBR.II licence was allowed by the Commissioner of State Excise and the Collector, State Excise, Nagpur was directed to permit the petitioners to operate the FLBR.II licence, immediately. According to the petitioners despite the order dated 7th April, 2015, the Collector, State Excise, Nagpur has not permitted the petitioners to operate the FLBR. II licence.

Ms.T.Khan, the learned Assistant Government Pleader appearing on behalf of the respondents, states that after the order of the Commissioner was passed, the respondent no.4 had forwarded the case of the petitioner to the respondent no.3-Collector with the recommendation to permit the petitioner to open the FLBR. II licence. However, the Collector has directed the respondent no. 4 to file a Revision before the State Government under Section 138 of the Maharashtra Prohibition Act against the order of the Commissioner, dated 7.4.2015. It is stated that the respondent no.4 has submitted the revision report to the respondent no.1-State of Maharashtra,

We find that the conduct of the respondent no.3-Collector in directing the respondent no.4 to file a Revision before the State Government under Section 138 of the Maharashtra Prohibition Act against the order of the Commissioner in Appeal, is improper. The order of the Collector was challenged by the petitioner before the Commissioner in an Appeal. By the order of the Commissioner, the Collector was directed to permit the petitioners to run FLBR.II licence. Instead of obeying the order of the Commissioner which is a superior authority, the respondent no.3 directed the respondent no.4 to submit a revision report to the respondent no.1-State of Maharashtra, despite the recommendation of the respondent no.4 to the respondent no.3 to open the shop of the petitioners immediately. We find that the Collector is bent upon ensuring that his order of suspending the licence is maintained, despite the order of the Commissioner, in

Appeal. It would be open for the State Government to *suo motu* exercise the powers of Revision under Section 138 of the Maharashtra Prohibition Act. The Collector, however, should not have directed the respondent no.4 to send the Revision report to the State Government for revising the order of the Commissioner, with a view to ensure that his order of cancellation of the licence is confirmed. The Respondent no.3-Collector, being an interested party in the proceedings, could not have submitted the revision report to the respondent no.1 through the respondent no.4. In any case, it is not informed as to what is the status of the revision report and admittedly there is no stay in the revision, even if it is assumed that the State has entertained the Revision.

In the circumstances of the case, we allow the Petition with costs and direct the respondent no.3 to immediately implement the order of the Commissioner, State Excise, Mumbai. The order should be implemented within a period of one week. Order accordingly.

JUDGE

JUDGE

sahare