

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

**Writ Petition No.435 of 2016
With
Civil Application No.1599 of 2016**

Vikas Kamalraj Jaiswal.

.. Petitioner.

Versus

The State of Maharashtra
And Others.

.. Respondents.

Shri. Anil Kasliwal (Jain), Advocate, for petitioner.

Shri. S.N. Kendre, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. A.D. Pawar, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 26 AUGUST 2016

ORDER:

1) The petition is filed under Article 227 of the Constitution of India to challenge the order made by the learned Collector on representation given by the villagers to close the country liquor shop. Both sides are heard.

2) The petitioner is having country liquor shop licence, CL III and it is for selling liquor in village Betawad (Bk), Tahsil Jamner, District Jalgaon. Respondent No.4 President of a N.G.O., "Daru Bandi Mahila Samiti" created for enforcing ban on sale of liquor in the village, gave representation dated 17-8-2015 to the Collector along with signatures of more than 25% female voters of the village. It was requested to the Collector that voting needs to be conducted for closing the country liquor shop of the petitioner as problems were created by the shop to the social life of the villagers. On the basis of the verification done by the officers of the Excise Department the Collector made order dated 28-12-2015 of holding election under challenge.

3) The order is made by the learned Collector on the basis of "The Bombay Prohibition (Closure of Licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008 as amended by the Order dated 12th February 2009. Relevant portions of the Order, 2008 and the Order, 2009 giving procedure for election, voting in this regard is as

under :-

3. Resolution by Gram Sabha for closing down liquor shop:-

(1) The Collector shall close down such liquor shop if not less than fifty per cent of the total voters or women voters present in the Gram Sabha pass the resolution by a simple majority for closing down the liquor shop. Any such resolution shall be passed in accordance with the Bombay Village Panchayats Act, 1958 (Bom.III of 1959) and rules made thereunder. The voters shall produce their photo identity before the Gram Sabha for verification as the voter is resident of the same village. If photo identity is not produced, under such circumstances the Secretary of Panchayat shall certify regarding the bonafide of voters. The voters, those produce such proofs, shall be allowed to participate in Gram Sabha.

(2) The verification of voters shall be done by the Block Development Officer along with the Inspector of State Excise of the area. The Gram Sabha shall be held in the presence of these two officers and representative of the liquor licence holder. There shall be video shooting of such Gram Sabha and said shooting shall be used as an evidence.

(3) The Collector shall not take into consideration the resolution passed by the Gram Sabha for reopening of shop at least one year from the date of passing resolution for closure of the shop. If the Gram Sabha fails to pass the resolution for closure of liquor shop then at least one year, Gram Sabha shall not pass any such resolution for closure of shop.

4.

5. Time for completion of action on resolution under clause (3) or representation under clause (4) received:- After receiving the resolution by Gram Sabha under clause (3) or representation from ward of Municipal Council or Corporation under clause (4) above for closing down

the liquor shop, the Collector shall complete the necessary final action within three months from the date of receipt of such resolution or representation. If for any reason action is not completed within a period of three months, the Collector shall obtain prior permission from the Commissioner of Prohibition and Excise as appointed under the Bombay Prohibition Act, 1949, for extending the period."

By Order dated 12th February 2009, following portion is inserted in the aforesaid Order, 2008 :-

(a) after clause 3, the following clause shall be inserted, namely:-

"**(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 genuineness, the Collector shall direct the concerned Tahsildar, 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.

(b) in clause 5, -

(i) in the title, for the words, brackets and figure "or representation under clause (4) received" the words, brackets and figure "or representation under clauses (3A and (4) received" shall be substituted;

(ii) for the words, brackets and figure "representation from ward of Municipal Council or Corporation under clause (4)", the words, brackets and figure "representation from Village or ward of Municipal Council or Corporation under clauses (3A) and (4)" shall be substituted;

(c) In clause 9, for the words "Name of the ward in case of Municipal Corporation/Municipal Council", the words "name of the Village or ward in the case of Municipal Corporation./Municipal Council", shall be substituted.

4) The record shows that the representation was given on 17-8-2015 and it was verified by the Inspector of the Excise Department on 24-11-2015. The order came to be made by the Collector on 28-12-2015.

5) As per the record, total female voters in the village as per the voters list prepared for general elections of 2014, were 942. On the representation there were either signatures or thumb impressions of 377 female voters of the village. When the officers of the Excise Department went for verification, 316 female voters came

forward for verification and as no record of identification was available in respect of 20 female voters and as some voters contended that by making false representation to them, their signatures or thumb impressions were obtained on the representation, these voters were ignored by the officers who verified the things. Thus, in all 284 female voters stood by the representation when the total strength of female voters in the village is 942 and so more than 25% female voters requested to go for election. As per the aforesaid Government Orders requisite number is 25% for taking voting. In view of these circumstances, the Collector made the order of election.

6) Much was argued by the learned counsel for the petitioner on the basis of clause 5 of the Order dated 25th March 2008, quoted above. It was submitted that action against the shop on the basis of representation needs to be completed within 3 months from the date of the representation and as the voting was ordered on 28-12-2015 the order made by the Collector is not in accordance with the aforesaid Government Order. This submission is not at all acceptable. Clause 3A already

quoted shows that the representation comes to the Collector only after verification is done by the officers of the Excise Department. The verification was done on 24-11-2015 and after that the representation must have been placed before the Collector for making further orders. Thus the order was made within prescribed period. Further, such limit is in the interest of public at large who have made representation as action needs to be taken immediately and this limit is not for the benefit of the licence holder. The provision itself shows that extension of this period is possible and so the interpretation needs to be made accordingly.

7) The record shows that the petitioner knew about the representation and the petitioner had taken steps like collecting signatures or thumb impressions of at least 9 female voters. These voters informed to the Inspector of Excise that by making false representation either their signatures or thumb impressions were obtained on the representation. The petitioner had given notice also to the Collector through his Advocate dated 18-9-2015 and he had requested to supply copies of the

representation and the verification report. Present proceeding came to be filed on 8-1-2016 and the purpose behind it is to prevent the voting as ordered by the Collector. Thus, the petitioner has done everything to stall the voting.

8) It was submitted for the petitioner that in view of provisions of the Act no adverse action can be ordered with regard to the licence unless sufficient opportunity is given to such petitioner to have his say. On this point other side has placed reliance on an order made in Writ Petition No.11256/2015 by this Court (Division Bench) (Gajanan v. State of Maharashtra). In this case this Court has held that unless adverse action is proposed opportunity of hearing need not be given to such licence holder. This Court has no hesitation to hold that the voting which needs to be taken as per the aforesaid Government Order cannot be treated as adverse action against the petitioner. Such action is only to ascertain the desire of the villagers and that is in accordance with the right given to the people. If at all further order is made on the basis of the voting then it can be said that such order is

against the licence holder. In that case also it needs to be shown that licence holder has any right as such to continue the shop when the people of that locality desire that the shop needs to be closed.

9) The object behind the Prohibition law is to promote and enforce the policy of prohibition. In the case reported as **(1996) 3 SCC 709 = AIR 1996 SC 1627 (State of AP v. McDowell & Co)** it is laid down by the Apex Court that the ban on manufacture, production of intoxicating substance like liquor within the State is not in violation of Article 14 or Article 19(1)(g) of the Constitution of India. So there is no right like constitutional right to persons like the petitioner to say that during licence period they are entitled to do such business without interference of anybody. Provisions of Section 54 and 56 of the Maharashtra Prohibition Act 1949 show that there is power given to the authority/State to cancel the licence. It can be said that the provisions of section 56 show absolute power of the authority / State to cancel the licence without giving any reason. This Court has no hesitation to observe that this provision is in consonance

with Article 47 of Constitution of India, the expectation from the State shown in the Constitution and the aforesaid Government Order and further action of the Government are as per directions given in the Constitution.

10) The procedure given in the aforesaid two Government Orders shows that there is transparency in the procedure. The Courts are not expected to interfere when the State takes action on the basis of such policy. The licence holder cannot have grievance if people want prohibition to be enforced totally in their locality. In view of this position of law, there is no force in the contention of the petitioner that petitioner was not given opportunity to have his say on the representation. Such say or right to the licence holder is possible when action is taken under the provision of section 54 of the Act but not when the action is taken in cases like the present one which falls under section 56 of the Act. The scheme given in the aforesaid two Government Orders has not left any scope to the licence holders to have his say.

11) Learned counsel for the petitioner placed reliance on the case reported as **1975 Mh.L.J. 515 (SC) (Ramchandra v. Govind)**. On the basis of the observations made in this case by the Apex Court learned counsel submitted that the procedure was not followed and so the order cannot sustain in law. He submitted that when Superintendent of Excise Department ought to have verified the authenticity of the signatures, thumb impressions appearing on the representation, verification was done by the Inspector of the Excise Department. He submitted that due to this circumstance the verification record cannot be used by the Collector for further action. There is no force in this submission made by the learned counsel. As per the provisions of the Maharashtra Prohibition Act 1949 the officers like Collectors and Superintendents are assisted by the staff created under the Act and the order of the Collector shows that the officers and the staff of the Excise Department has done the exercise of the verification and the report is accepted by the Collector. The details of the verification are quoted already by this Court and it can be said that the signatures and thumb impressions of few female voters

who were not supporting the representation are ignored. Further it is a procedural aspect. The subjective satisfaction of the concerned officer is involved in the exercise of verification. When subjective satisfaction of the officer or the authority is involved in the matter Courts are not expected to interfere lightly in the decision taken by the authority. When there is the material to show that necessary verification was done by the officers of the Excise Department, the Court is not expected to interfere in the order. This Court holds that there is no illegality committed by the officers of the Excise Department in both making the verification and making further order of election. The aforesaid provisions of the two Government Orders show that if after verification it is found that necessary number of voters want election, there is no other option before the Collector than to order the election. In view of this position of law and the facts of the present case this Court holds that there is no possibility of interference in the order made by the Collector.

12) In the result, the petition stands dismissed. Civil Application stands disposed of. Result of the voting is to be declared forthwith. The learned Assistant Government Pleader to inform the authority.

Sd/-
(T.V. NALAWADE, J.)

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