

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

WRIT PETITION NO. 1012 OF 2016
WITH
CIVIL APPLICATION NO. 3727 OF 2016

1. Shri Bhaga Baburao Lalge,
age: major, occup. Business,
CL-III Licence Holder, r/of
village Nighoj, Tq. Parner,
Dist. Ahmednagar
2. Shri Ramchandra Patilba Warad,
Age major, occup. Business,
Proprietor of Hotel Mulika,
FL-III License Holder at Nighoj,
R/of as above
3. Shri Vijay Popatrao Warad,
Age: major, occup. Business,
Proprietor of Hotel Vijay Palace,
FL-III License Holder at Nighoj,
R/of as above
4. Shri Raju Ramu Lalge,
Age: major, occup. Business,
Proprietor of Hotel Manthan,
FL-III License Holder at Nighoj,
R/of as above
5. Shri Sandeep Dnyandeo Lanke,
Age: major, occup. Business,
Proprietor of Hotel Sandeep,
FL-III License Holder at Nighoj,
R/of as above
6. Shri M/S S. G. Lalge,
through V. S. Lalge,
Age: major, occup. Business,
FL-III License Holder at Nighoj,
R/of as above
7. Shri Parshu Ram Agayya Bandiwa,
Age: major, occup. Business,
TD-I License Holder at Nighoj,
R/of as above

.. Petitioners

versus

1. The State of Maharashtra,
[Through Excise Department,
Mantralaya, Mumbai - 32]
2. The Collector, Ahmednagar,
Dist. Ahmednagar
3. The Superintendent, State Excise,
Parner, Tq. Parner, Dist. Ahmednagar
4. Nighoj Group Panchayat,
Through its Sarpanch at Nighoj,
Tq. Parner, Dist. Ahmednagar
5. Tahsildar Parner, Tq. Parner,
Tq. Parner, Dist. Ahmednagar .. Respondents

Mr. Anil H. Kasliwal, Advocate for petitioners
 Mr. S.K. Tambe, Asstt. Govt. Pleader for respondents no.1 to 3 and 5
 Mr. S. T. Shelke, Advocate for respondent no. 5

WITH

CIVIL APPLICATION NO. 3726 OF 2016

Kanta Navnath lanke and others .. Applicants

versus

The State of Maharashtra and others .. Respondents

Mr. P. R. Katneshwarkar, Advocate i/b Mr. A. G. Ambetkar, Advocate
 for applicants
 Mr. S.K. Tambe, Asstt. Govt. Pleader for respondent no.1 to 3 & 5
 Mr. S. T. Shelke, Advocate for respondent no. 4
 Mr. A. H. Kasliwal, Advocate for respondent no.6-orig. Petitioner

WITH

CIVIL APPLICATION NO. 4574 OF 2016

Priyanka Prashant Varal and others .. Petitioners

versus

The State of Maharashtra and others .. Respondents

Mr. P. R. Katneshwarkar, Advocate i/b Mr. N.B. Patekar, Advocate for applicants

Mr. S.K.Tambe, Asstt.Govt. Pleader for respondent no. 1 to 3 & 5

Mr. S. T. Shelke, Advocate for respondent no.4

Mr. A. H. Kasliwal, Advocate for respondent no.6-orig. petitioner

CORAM : SUNIL P. DESHMUKH, J.
DATE : 18TH APRIL, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Learned counsel for the parties have addressed themselves at quite some length.

3. The effort of the learned counsel for petitioner Mr. Kasliwal is that any further action closing down liquor shop of petitioners at village Nighoj with reference to the resolutions which are appended to writ petition at Exhibit - B-1 collectively, should be quashed and set aside and the communication dated 20-01-2016 issued by respondent no. 5 - Tahsildar holding election for said purpose be also quashed and set aside.

4. Learned counsel for petitioner submits that reference to the extracts of relevant clauses, to be precise, clauses 3 and 3A 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 with amendments, thereto of 2009 issued by Home Department annexed as Exhibit-A to writ petition at paperbook page 25 would be pertinent. Clause 3 of order dated 25-03-2008 and clause 3A added to the same by order dated 12-02-2009 respectively read 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 Panchayat 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 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.*

(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 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 Tahsildar, authorized 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. ”*

5. He submits, having regard to clause 3(3), since the resolutions are untenable they shall be deemed to have failed and accordingly no further resolution for about one year could be possible.

6. On the other hand, learned counsel appearing for respondents, particularly learned Assistant Government Pleader Mr. Tambe exerts himself to state that clause 3 in the present matter is of little consequence.

7. He submits that factually, the elections are relevant for the matter. Referring to clause 3A, it is submitted that requirement thereunder for passing resolution to close down liquor shop is that more than fifty per cent of the women voters or total voters should vote in favour of closure of such shop.

8. He submits that the contentions being advanced with reference to clause 3 are not tenable and tend to obfuscate the factual position. No regard should be given to any contention with respect to clause 3. As a matter of fact, proceedings are being prosecuted pursuant to clause 3A and that the election pursuant to the same were tried to be held.

9. The learned Assistant Government Pleader fairly points out that the prescribed procedure pursuant to aforestated clause

(3A) of government order dated 25-03-2008 and 12-02-2009 has not been followed and there is some lacunae in the election held on 27-01-2016.

10. He submits that the elections concerned could not be held in accordance with rules and there had been lot of deficiency, lacunae and irregularities in conduct of the same and the proceedings could not adhere to procedure as per clause 3A.

11. The learned Assistant Government Pleader submits that having regard to the prayers in writ petition, it can be said that writ petition has been rendered infructuous. He, therefore, requests to dismiss writ petition and requests for liberty to follow required procedure for election pursuant to clause 3A of aforesaid Orders of 2008 and 2009. Mr. Kasliwal, learned counsel for the petitioners, however, opposes such a request.

12. In the present case, apart from deficiencies, lacunae and irregularities as are emerging from the report submitted on 18-01-2016 by the Superintendent, State Excise Department, Ahmednagar to the Collector [page 193 of compilation of documents separately submitted], there appears to be non compliance of relevant criteria as is apparent from concluding part of said report.

13. The learned Assistant Government Pleader during the course of his arguments has referred to decision of division bench delivered at Nagpur in Writ Petition No. 1360 of 2015 [*Rajendrakumar s/o Shailendrakumar Dixit and others vs. The State of Maharashtra and others*] and companion writ petitions, and particularly emphasizes paragraph no. 37 of the same which states that if the occasion arises, it would be open for the authorities to follow the required procedure.

14. It has further been submitted that keeping in view the purport underlying the order dated 12-02-2009, respondents are of the view that fresh elections be held consistent with the procedure prescribed in the orders dated 25-03-2008 and 12-02-2009 and that no such specific order could possibly be passed due to pendency of writ petition.

15. In view of aforesaid, the position emerges that the substantial purpose underlying the petition gets worked out and as such, writ petition would not require any further prosecution.

16. It is for the respondents to decide upon the course of action to be followed, in accordance with and keeping in view the object and intent underlying the relevant clauses and to follow the procedure required therefor. In such a case, it would be

open for the petitioners to defend the same in accordance with facts and law.

17. With aforesaid, writ petition stands disposed of. Rule stands discharged.

18. In view of aforesaid, intervention applications have also been rendered unnecessary and accordingly stand disposed of.

SUNIL P. DESHMUKH,
JUDGE

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