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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1714/2016

Suresh S/o Vishwanath Lade,
Age: 40 Years, Occu: Business,
R/o Nanand, Tq. Nilanga,
Dist. Latur. ... Petitioner..

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Excise Department,
Mantralaya, Mumbai 400 032.
- 2) The Commissioner of States Excise,
Maharashtra States, Fort, Mumbai.
- 3) The District Collector,
Excise Department, Latur,
Tq. & Dist. Latur.
- 4) Shrikant S/o Nandkishor Ranjankar,
Age: Major ; Occu: Nil,
R/o: Latur, Tq. & Dist. Latur.
... Respondents...

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Shri V.B. Dhage, Advocate for petitioner.

Shri S.R. Yadav, AGP for respondent nos.1 to 3.

Shri U.R. Awate, Advocate h/f Shri S.B Talekar, Advocate
for respondent no.4.

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CORAM: T.V.NALAWADE, J.

DATE: 14.09.2016

ORAL JUDGMENT :

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1] The petition is filed to challenge the order made by the Hon'ble Minister of Maharashtra State Government (Excise Department) in Revision No.0915/RA-177/EXE. By the order dated 9.12.2015, the Hon'ble Minister has set aside the order made by the learned Collector, by which he had allowed the shifting of the business of sale of country liquor, which was being carried out by the petitioner under CL-III licence. The transfer was in the same District.

2] Both the sides are heard.

3] The application was made by the present petitioner – the licence holder for granting permission to shift his business from More Nagar locality, Latur, to Kanheri locality of Latur. The ground was informed that Machindra Shelke – owner of the premises where the shop was run at More Nagar had asked the petitioner to vacate the premises and so he wanted to shift the business to other place belonging to Smt.Shakuntala Adhe. In support of the case, the record in respect of permission granted to Smt.Shakuntala Adhe to make the construction was produced.

4] The application was given on 9.12.2014 and as

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per the procedure, reports of the Superintendent, Excise Department and District Superintendent of Police, Latur District, were called. By the report dated 18.3.2015, the District Superintendent of Police informed that the enquiry revealed that the persons of the locality where the business was to be shifted, had strong objection as the new place was situated in thickly populated area and at the point where four roads were meeting and even persons of various parties and organizations had objection to start the shop at that place. It was also reported that there was possibility of increase in the incidents of accidents if the shop was allowed to be started at the new place. Prior to that, report was submitted by the District Superintendent of Excise, in which he had also informed that various organizations had taken objection for starting the shop at this place. Atleast 14 organizations had taken the objection and written complaints were collected. The Superintendent of Excise Department had requested to take into consideration the Police report also. In view of these circumstances, the Collector had rejected the application. This decision was challenged before the

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Commissioner of State Excise. The Commissioner remanded the matter by making the order u/s 137(2) of the Maharashtra Prohibition Act, 1949. After remand of the matter, the Collector directly asked the petitioner to deposit necessary fees for transfer and the fees was paid. This order was then challenged directly before the Hon'ble Minister. The Hon'ble Minister has considered the circumstance like the Police report of aforesaid nature and the objections of the residents of the locality where the business is to be shifted and then canceled the order made by the learned Collector.

5] The learned counsel for the petitioner submitted that the order of the Hon'ble Minister shows that he considered the criterion, which are required to be considered if it is a case of transfer from one District to other District. He took this Court to Rule 25 of the Rules framed under the Prohibition Act. It is true that in some portion of the order, such criterion are mentioned, but the reasoning shows that the Police report and objections formed the base for the order of the Hon'ble Minister.

6] The learned counsel for the petitioner placed

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reliance on some observations made by this Court in Writ Petition No.2758/2014 decided on 11.8.2014 by Nagpur Bench of Bombay High Court as well as in *Nebha and Company v. State of Gujarat* reported at **1986 (2) SCC 319**. In the first case, this Court has considered the procedure, which is required to be ordinarily followed. In view of the facts of that case, it was held that the party ought to have approached the appellate authority first and only after the decision of the Commissioner, the party ought to have gone to Hon'ble Minister. The facts of the present matter are altogether different. Further, the provisions of Section 138 of the Maharashtra Prohibition Act reads as under:-

"138. Revision :

The State Government may call for and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a licence, permit or authorization under this Act for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of, any such proceeding and may when calling for such record, direct that

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the order be not given effect to pending the examination of the record. On examining the record, it may either annul, reverse, modify or confirm such order, or pass such other order as it may deem fit."

7] The aforesaid provision shows that the Hon'ble Minister has revisional power and by exercising that power, the record of any proceeding decided by any Prohibition Officer can be called and the error can be corrected by Hon'ble Minister. For exercising that power, it is not necessary that the matter needs to be first referred to the Commissioner or person aggrieved must first approach the Commissioner. The other cited case of the Hon'ble Apex Court is totally on different point and so the observations made by the Hon'ble Apex Court need not be referred in the present matter.

8] The object behind the Prohibition Act is to see that restrictions are put on the business of manufacture and sale of liquor. The provisions of Section 56 of the Act are self-explanatory and they show that even without giving any reason, the licence can be canceled. On this point, the learned counsel for the respondent no.4 placed reliance on the decision given by this Court at Nagpur

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Bench in Writ Petition No.3440/2011 decided on 5.2.2012 and 27.6.2012. In this case, by referring the case of the Supreme Court, this Court has made it clear that trading liquor is neither the Constitutional right nor a fundamental right. It is also made clear that the revisional power u/s 138 of the Prohibition Act can be exercised *suo motu* and the question of *locus standi* cannot be raised in such a case. Thus, when decision is taken by the Hon'ble Minister by exercising the power of revision and that has the base of aforesaid reports, which involve the grievances of the people, this Court is not expected to interfere lightly in such decision. It is clear that the Collector committed grave error and probably, he felt that there was no alternative before him than to allow the application as the appellate authority had set aside his order. The order of the Collector was not a reasoned order and the said order did not show that he had considered the reports of the Superintendent of Excise and the District Superintendent of Police.

9] In the result, the petition is dismissed. Liberty is granted to the petitioner to apply to the

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Collector for transfer at other place. If transfer charges are already paid and the Collector finds that such a permission needs to be granted, the amount already deposited by the petitioner can be considered for new transfer.

(T.V.NALAWADE, J)