

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

WRIT PETITION NO. 6203 OF 2015

Kedar Bhile Singh Girase .. Petitioner
Age. Major, Occ. Business,
FL/Beer II licence Holder,
Town, Aslod, Tq. Shahada,
Dist. Nandurbar.

Versus

1. The State of Maharashtra .. Respondents
Through State Excise Department,
Mantralaya, Mumbai – 32.
2. The Collector, Nandurbar,
Dist. Nandurbar.
3. The Superintendent,
State Excise, Nandurbar,
Dist. Nandurbar.

Mr. Anil H. Kasliwal, Advocate for the petitioner.
Mr. A.G. Magare, A.G.P. for respondent/State.

**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.
DATED : 25.04.2016**

ORAL JUDGMENT : [PER : A.V. NIRGUDE, J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsel for the parties.

2. This petition challenges order dated 26.05.2015 passed by the Superintendent, State Excise Department, Nandurbar, directing the petitioner not to continue his business of Beer Bar. Admittedly, for the petitioner's business of Beer Bar, a licence was issued to him by the Collector i.e. respondent No.2. During subsistence of such licence, the impugned order is passed due to which the petitioner's running business came to halt.

3. It is an admitted fact that the petitioner was given FL-Beer-II licence for Beer Bar since many years. Every year the licence is renewed. It is also admitted fact that the licence was issued in the year 2011 and same was renewed thereafter in every year till 31.05.2015. So, also there is no dispute that the petitioner has made application in prescribed form for renewal of licence for the year 2015-16 and deposited requisite amount.

4. The impugned letter makes a reference to the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. In this Act, there is provision for declaring a particular area as scheduled area. Such scheduled area is generally a tribal area, where the locals have peculiar traditions and customs. Their cultural identity is a little different. The Act was made to protect such traditions, customs and cultural identity of residents of such scheduled area. Pursuant to the provisions of the Act, the Government of Maharashtra issued notification on 4th March, 2015 and introduced Rules that are called the Maharashtra Panchayat Extension to Scheduled Area (Prohibition and Regulation of Licensing) Rules, 2015. Rule No.4 of said Rules of 2015 provides that before the expiry of licence granted earlier, the Gram Sabha resolution shall be necessary for renewal. Rule-4 of said Rules reads as under :-

"4. Before the expiry of the licence so granted, the Gram Sabha resolution shall be required for its renewal. The proposal for renewal of the licence shall required to be presented by the licensing authority, if the licence-holder so applies, to the Gram Sabha, thirty days prior to the date of expiry of the licence. The Gram Sabha shall convey its opinion in the form of a resolution on the said application prior to the date of expiry of the licence."

5. We are told that the petitioner's licence was renewed prior to 26th May, 2015. But the licensing authority did not obtain opinion of local Gram Sabha. Such step was required to be taken as per the provisions of the Rules. It seems that as the rules were notified on 4th March, 2015 and later on brought to notice of Superintendent, he felt that he should enforce the provisions of the Rules by sending communication dated 01.04.2015 and in the meanwhile renewed licence upto 31.05.2015. In order to seek the compliance of rule, the respondent No.3 issued impugned communication dated 26.05.2015. In our view before issuance of renewal, the Superintendent ought to have obtained opinion of Gram

Sabha. If this was not done and once the licence was issued then the effect of licence cannot be curtailed by sending the impugned order when the licence was renewed up to 31.05.2015. In our view, the impugned order is, therefore, not lawful.

6. In the facts and circumstances of the case, till the licence issued to the petitioner remains in force and not cancelled then at-least for the year 2015-16, the petitioner cannot be abruptly prevented to carry business till the period the licence is renewed. Certainly, Superintendent would obtain opinion of Gram Sabha before renewing this licence for next year i.e. 2016-2017.

7. Learned Counsel for the petitioner asserted that in-case of old licences i.e. the licence issued prior to 04.03.2015, Rules of 2015 will not apply. In this context he placed emphasis on certain words used in Rule-3 & 4. We are not inclined to accept this contention for sole reason that the language used in Rule-3 & 4 is clear and

unambiguous and calls for no interpretation. Rule-3 provides that before issuing new licence, opinion should be obtained while Rule-4 provides that before renewal of such licence, opinion of Gram Sabha must be obtained. Learned Counsel wishfully thought that Rule-4 would apply to licences issued after passing of the Rules in 2015, but we do not accept this contention. Rule-4 refers to obtaining opinion in the form of resolution before the expiry of licence granted earlier and due for renewal after the said Rules brought in to force. The submission made, that words "so granted" in Rule-4 to be interpreted in the sense that it is applicable to those cases in which licences issued after the rules brought in to force, cannot be accepted as, Rule-3 provides for obtaining opinion of Gram Sabha before granting licence. Whereas Rule-4 provides for obtaining opinion of Gram Sabha before renewal of licences, due for renewal after the Rules are brought in force.

8. In view of this, we pass the following order :-

(a) The impugned order dated 26th May, 2015, shall remain in abeyance till expiry of licence issued to the petitioner for the year 2015-16.

9. The writ petition is allowed in above terms.

Rule made absolute accordingly. No costs.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]