

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 157 OF 2014**

Smt. Sujata S. Desai and anr.
V/s.

.. Petitioners

The Chief Secretary, State of
Maharashtra and ors.

.. Respondents.

Mr. Pandit Kasar i/b Tejas Hilage for the Petitioner.

Mr. A.B. Vagyani, Govt. Pleader a/w. M.M. Pabale, AGP for the
Respondent – State.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 07 DECEMBER 2016.

P.C.

1] The petitioners have instituted the present public interest litigation (PIL) seeking the following reliefs:

“(a) The Public Interest Litigation may kindly be allowed by This Hon'ble Court;

(b) This Hon'ble Court may be pleased to issue Rule;

(c) This Hon'ble Court may be pleased to declare that the impugned order dated 25.03.2008 (Exh B) and Order dated 12.02.2009 (Exh C) issued by Respondent no 2 is illegal, unreasonable, irrational, arbitrary, unconstitutional, ultra-virus to the extent of “If in such election more than fifty percent of the women voters or total voters of that ward village vote for closing down the liquor shop, the Collector shall pass as order for

closing down such liquor shop” as appearing in clause 4 and 3(A) of the Orders dated 25.03.2008 and 12.02.2009 respectively;

(d) That this Hon'ble Court may be pleased to issue appropriate directions thereby directing the respondents to forthwith modify the clause (4) in the concerned Order dated 25.03.2008 and clause 3(A) dated 12.02.2009 to the extent of relaxing the 50% mandatory requirement by simple majority of women voters present and voting on the concerned voting day of the Bombay Prohibition (Closure of license on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/ Corporation) Order, 2008;

(e) That pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to stay the effect, operation, implementation and execution of the impugned Order dated 25.03.2008 (Exh A) and 12.02.2009 (Exh B) issued by Respondent no 2 to the extent of “If in such election more than fifty percent of the women voters or total voters of that ward/village vote for closing down the liquor shop, the Collector shall pass an order for closing down such liquor shop” as appearing in clause 4 and 3(A) of the Orders dated 25.03.2008 and 12.02.2009 respectively and thereby allowing simple majority of women voters present and voting on the concerned voting day of the Bombay Prohibition (Closure of license on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order 2008;

(f) That this Hon'ble Court may be pleased to give directions to the respondents to incorporate similar voting procedure as contemplated in the Bombay Prohibition (Closure of license on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008 with the modification of relaxation of 50% mandatory

requirement to that of simple majority of women voters present and voting on the concerned voting day in the clause 4 of the Order dated 25.03.2008 and clause 3A of the Order dated 12.02.2009 before opening any liquor shop in any village for true and correct implementation of the object of the Bombay Prohibition (Closure of license on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008.

(g) That this Hon'ble Court may be pleased to grant interim/ad-interim relief in terms of prayer clauses above;

(h) That this Hon'ble Court may be pleased to pass such other orders and to grant reliefs in favour of the Petitioner as this Hon'ble Court may deem just, legal and proper.”

2] Initially, from the perusal of the reliefs in the petition and the submissions made by learned counsel for the petitioners, we were under impression that the petitioners, by way of this PIL are questioning the constitutional validity of the two statutory orders issued by the State Government in exercise of powers conferred by section 139 of the Maharashtra Prohibition Act, 1949 (formerly Bombay Prohibition Act, 1949) (for short “said Act”). We were disinclined to entertain such a PIL, since the constitutional validity of section 139 of the said Act had already been upheld by the Division Bench of this Court in Writ Petition No. 1360 of 2015 (***Rajendrakumar s/o. Shailendrakumar Dixit & ors Vs. The State of Maharashtra and ors.***) and connected matters decided on 7 January 2016. In fact, the Division Bench in

the said judgment and order has observed that the constitutional validity of sections 56 and 139 of the said Act had already been upheld by the Supreme Court in *State of Bombay v. F.N. Balsara - AIR 1951 Supreme Court 318*.

3] Upon perusal of the PIL and documents accompanying the same, we now realise that the grievance of the petitioners is basically to the manner in which the majority is being determined under the two orders dated 25 March 2008 and 12 February 2009 for the purposes of enabling the women voters to pass a resolution, seeking closure of liquor shops. The petitioners contend that there are severe social problems in the villages on account of rampant increase in number of liquor shops. The two orders as interpreted by the authorities, insist that majority has to be determined by taking consideration the total number of women voters or total number of voters in the ward. The petitioners contend that majority in such matters must be computed on the basis of women present and voting on the appointed date of election as is position in certain similar legislations.

4] In Writ Petition No. 1360 of 2015 and connected matters decided on 7 January 2016, it is recorded that the State Government had itself filed an affidavit acknowledging the severe social problems on account of rampant increase in number of liquor shops in various parts of the State of Maharashtra. The affidavit, it appears, had even highlighted baneful effects of rampant trade in liquor in various parts of the State of

Maharashtra. The State Government had even placed on record statistics to make good this position. The State Government had also relied upon the provisions contained in Articles 47 of the Constitution of India in support of its decision to declare the district of Chandrapur as “*dry district*”.

5] If, the State Government, is alive to the baneful situation arising of rampant liquor trade in various part of the State of Maharashtra, then we expect that the State Government gives a serious consideration to the issue now raised by the petitioners in this PIL. The orders dated 25 March 2008 and 12 February 2009 referred to in the petition, no doubt, promote a regime whereby, the women of the village have a voice in deciding whether the liquor shops within the village limits should continue to operate or not. If however, the experience as highlighted by the petitioners in the present case is correct and this provision is being frustrated by the liquor lobby by ensuring that majority of the women voters cannot remain present on the date of election, then, at least *prima facie*, the laudable objective behind issuing orders dated 25 March 2008 and 12 February 2009 will not be achieved and rather, the same would be frustrated.

6] Since, the State Government, in its submissions in Writ Petition No. 1360 of 2015 and connected matters, has itself relied upon the provisions contained in Article 47 of the Constitution of India, we expect the State Government to address the issue raised by the petitioners in this petition having regard to the provisions

contained in Article 47 of the Constitution of India. No doubt, Article 37 of the Constitution of India provides that the provisions contained in Part-IV (directive principles of State Government) shall not be enforceable by any Court, but at the same time, the Article affirms that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 47 of the Constitution of India, which is one of the directive principles of the State provides that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health.

7] For the aforesaid reasons, we direct the State Government to address the concerns raised by the petitioners in the present petition and to take a call as to whether any modification or clarification is warranted in the orders dated 25 March 2008 and 12 February 2009. The State Government/respondents are accordingly directed to treat this petition as a representation and to take an appropriate decision within a period of four months from today, if necessary by taking into consideration the view points of other stakeholders, who may be concerned with such issues. The entire exercise, including, communication of the decision to the petitioners is to be completed within a period of four months from today.

8] In case, the petitioners' grievance is not redressed by the decision, the petitioners shall have liberty to institute a fresh PIL in the matter, including by way of raising all the grounds now raised in the present PIL. Such PIL, if and when instituted, would be considered on its own merits and in accordance with law.

9] We dispose of this PIL with the aforesaid observations and directions.

10] Learned Government Pleader is requested to forward a copy of this order alongwith memo of the PIL to the concerned respondents, who have to take a decision in the matter.

11] All concerned to act on the basis of authenticated copy of this order.

(CHIEF JUSTICE)

(M.S.SONAK, J.)