

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.5666/2016
(Avinash Maroti Jenekar and others .vs. The State of Maharashtra and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. B.P. Dhakray Advocate with Mr. Shakti Singh Dhakray and Mr.
Mahesh Rai, Advocates for Petitioners
Mr. Ambarish Joshi, AGP for Respondent Nos. 1 to 4.

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CORAM : B.R. Gavai & V.M. Deshpande, JJ.
DATED : September 30, 2016.

1. The petitioner has approached this Court challenging the order issued by the State Government under the provisions of Section 139(1)(a) of the Maharashtra Prohibition Act (hereinafter referred to as the "said Act") thereby declaring the entire area of the Chandrapur district of the State, as a dry district by enforcing prohibition in that district with effect from the 1st day of April, 2015.

2. Heard Mr. B.P. Dhakray, learned counsel assisted by Mr. Shakti Singh Dhakray and Mr. Mahesh Rai, Advocates for the petitioners.

3. It is the contention of the petitioners that the impugned notification is in derogation to the rights which are available to the petitioners who are the Sarpanchas of the Gram Panchayats of the scheduled areas. The learned counsel submits that the impugned order is in violation of the Articles 12, 13, 40 and 47 of

the Constitution of India. The learned counsel further submits that the said is also in violation of the Articles 243(b) and 243(d) and of the Constitution of India and Article 244 (1) of the Constitution of India. The learned counsel submits that insofar as the administration of scheduled areas falling under the jurisdiction of the Gram Sabhas are concerned, no decision can be taken by the State Government without consulting the Gram Sabhas. The learned counsel submits that in addition to that the impugned order also is in violation of the provisions of Section 11-A of the said Act read with Section 54-A (e) and 45(3) of the Maharashtra Village Panchayats Act, 1959 read with Rules framed by the notification dated 4.3.2015. The learned counsel submits that the State Government having framed the rules thereby vesting certain powers in the Gram Sabhas, the impugned notification could not have been issued unless the rules were repealed.

4. The learned counsel submits that insofar as the judgment of this Court in the case of **Rajendrakumar Shailendrakumar Dixit .v. State of Maharashtra** reported in **2016 (3) Bombay Cases Reporter 60** is concerned, the same would not be applicable to the facts of the present case inasmuch as the issues raised in the present writ petition did not fall for consideration before the Division Bench of this Court. The learned counsel submits that the said judgment only considers the principle of *res extra commercium* and, therefore, merely because the impugned notification has been upheld by the said judgment

cannot a ground to non-suit the present petitioners.

5. The perusal of the judgment delivered by this Court in the case of **Rajendrakumar Dixit** (supra) would reveal that the Court had decided the validity of the notification relying on the various judgments of the Apex Court right from the first judgment in the case of **State of Bombay .v. F.N. Balsara (AIR 1951 SC. 318)** till date. No doubt that the grounds raised in the present petition did not fall for consideration before the learned Judges of the Division Bench to which one of us (Shri V.M. Deshpande, J.) was a party.

6. By now it is a settled principle of law that no one has a fundamental right to carry out the trade in the matter of intoxicants. The law is settled right from the pronouncement of the Apex Court in the case of **F.N. Balsara** till date.

7. The impugned notification is issued by exercising the powers which enables the State Government to do so in view of the provisions of Section 139(1)(a) of the said Act. In the light of these factual position, we will have to consider the submissions made at the bar.

8. Insofar as the reference to Article 12 is concerned, no doubt that the learned counsel is right in contending that the Gram Panchayat would be the State within the meaning of Article 12 of the Constitution of India. However, it is difficult to appreciate as to how the

Article 13, would be applicable to the facts of the present case. Assuming for a moment that the learned counsel is right in contending that there is a conflict in certain provisions of law, Article 13 makes it clear that no law which is inconsistent with or in derogation of the fundamental rights would be violated. As already discussed hereinabove, there can not be a fundamental right to carry out the trade in the matter of intoxicants. In that view of the matter, Article 13 would not at all be applicable to the facts of the present case.

9. Insofar as reference to Article 14 is concerned, again we find it difficult to appreciate as to how it will be applicable to the facts of the present case. By the impugned order, the prohibition is imposed in the entire district of Chandrapur. As a matter of fact if we accept the contention of the petitioners, the same would violate the mandate of Article 14. If the contention of the petitioner is accepted that the scheduled villages are entitled to take their own decision as to whether there would be a prohibition in the local area or not, in our view it will be meeting out discriminatory treatment to the other villages against the villages which are before us.

10. Insofar as Article 40 is concerned, it deals with organization of village panchayats. It provides that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. We fail to understand as to how the power

to decide as to whether there would be prohibition or not in the Village Panchayats would adversely affect the provisions of Article 40.

11. Again the reference to Article 47 in our considered view is totally misplaced. The said article provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. It appears that it is the view of the petitioners before us that addiction to alcohol and putting the families of the persons who are addicted to liquor in distress is conducive to the raising of the level of nutrition and the standard of living of people and the improvement of public health. With the limited common sense knowledge that we have, we are of the view that such an argument cannot be permitted.

12. On the contrary, the said Article itself provides that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. We, therefore, find that the argument is self defeating.

13. Insofar as the reference to Article 243 of the Constitution of India is concerned, again we find that there is no violation of the said provision.

14. That leaves us with the argument that in view of the provisions contained in Section 11A of the said

Act read with Section 45 and Section 54A of the Maharashtra Village Panchayats Act, it is the sole prerogative of the Gram Sabha to decide as to whether there has to be prohibition or to regulate or restrict the sale and consumption of any intoxicant in the Gram Panchayat or not. The perusal of the provisions of Section 11A of the said Act would reveal that in respect of any Scheduled Area falling within the jurisdiction of a Gram Sabha and a Panchayat or a Panchayat Samiti or a Zilla Parishad, it shall be competent for such Gram Sabha or a Panchayat and or the Panchayatt Samiti or the Zilla Parishad to enforce prohibition or to regulate or restrict the sale and consumption of intoxicants in Scheduled areas within its jurisdiction. The said decision has to be taken by majority of the Gram Sabhas concerned by passing a resolution in the said matter. We find that the said power is in addition to the powers vested under the State under Section 139(1)(a) of the said Act. We are of the considered view that even if the State Government does not exercise the powers under Section 139(1)(a) of the said Act, in respect of any Scheduled area falling within the jurisdiction of the Gram Sabha, the Gram Sabha and a Panchayat or a Panchayat Samiti or a Zilla Parishad, it shall be competent to take a decision to enforce prohibition or to regulate or restrict the sale and consumption of intoxicants in respective areas of the operation. The said powers cannot be considered to enable the Gram Sabha or Panchayat etc. to permit the sale of intoxicants in derogation to the powers exercised by the State under Section 139(1)(a) of the said Act.

15. For the same reason we find that Section 54-A of the Maharashtra Village Panchayats Act would permit the prohibition or regulation or restriction of the sale and consumption of intoxicants through the Panchayat. It cannot be considered to permit the Gram Panchayat to permit the sale of the intoxicants in derogation to the powers of the State under Section 139(1)(a) of the said Act.

16. Insofar as the reference to the Rules is concerned, the rules prescribe that while granting licence regarding establishment of a unit for manufacturing any intoxicant, as per the prevalent policy of the State Government, the Licensing Authority should inform the Gram Sabha and the Panchayat shall convene Gram Sabha and should take the opinion of the Gram Sabha in the form of a resolution with regard to the application made before the Licensing Authority. It mandates the Licensing Authority to follow the mandate of the resolution of the Gram Sabha in the matter of grant of licence. The rules are to be considered to mean that wherever the Gram Sabha opposes the grant of any licence, the Licensing Authority would be prohibited from granting the licence. The rules cannot be construed to permit the Gram Sabha to take the policy decision to permit the sale of intoxicants within its area, contrary to the powers exercised by the State under Section 139(1)(a) of the said Act.

17. We find no merit in the petition. The petition

is dismissed summarily.

JUDGE

JUDGE

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