

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3157 OF 1994

Shri Udaykumar Girdharilal Jaiswal,
Age. 45 yrs., Occ. Business,
Resident of Faizpur, at present,
Residing at Maskawad SIM,
Tq. Raver, Dist. Jalgaon. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The Collector,
Jalgaon District,
Jalgaon 425 001. ...Respondents.

Advocate for Petitioner : Shri N.K. Kakade.
AGP for Respondent No. 1 & 2 : Shri S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 03rd August, 2017

ORAL JUDGEMENT :

1. The petitioner is aggrieved by the order of the District Collector, Jalgaon, dated 10/08/1994, by which, the CL.III license of the petitioner was cancelled and he was prohibited from vending liquor from his shop. The learned counsel for the petitioner has strenuously criticized the impugned order. Contention is that he was granted the CL.III license after

following due procedure. He was operating the said license from 24/04/1985, at village Maskawad. There is no offence registered against the petitioner and the CL.III license was renewed from time to time up to 31/03/1994.

2. He, further, submits that the Collector relied on a ground that the villagers get drunk and hence the license be cancelled. When liquor is for consumption, there can be no argument about any consumer getting drunk because, liquor is meant to be consumed. The petitioner cannot be blamed for encouraging people to consume liquor. He is only performing his business as a shop owner and hence the impugned order needs to be quashed and set aside.

3. Learned AGP has defended the order. He point out that the consumption of country liquor in villagers had become a menace. Generations were getting spoilt. People started suffering from various ailments as a side effect of consumption of liquor. The Gram Panchayat has unanimously passed a resolution on 25/01/1994, and hence no interference in the

impugned order is called for. He, further, states that the Hon'ble Apex Court in a recent judgment in the matter of State of Tamil Nadu Versus K. Balu and another [(2017) 2 SCC 281], where by certain restrictions have now been imposed for vending liquor in the interest of public health and safety.

4. Having considered the submissions of the learned advocates, I have gone through the impugned order. A show cause notice dated 28/03/1994, was issued to the petitioner intimating him that the Gram Panchayat of the village had passed a unanimous resolution opposing the continuance of the CL.III license of the petitioner. The petitioner has replied to the notice on 04/04/1994. The District Collector has considered the law laid down by this Court in the matter of S.M. Malleshwar Versus State of Maharashtra [AIR 1993 Bombay 327], where in this Court has concluded that the authorities can cancel the CL.III license under Section 56 (1) of the Bombay Prohibition Act, 1949, after considering the effect of Section 54.

5. The enforcement of the policy of prohibition in the light of

Article 47 of the Constitution has been rightly implemented by the State authorities. Exceptions carved out are with regard to the medicinal value and medicinal purpose of intoxicating drinks. It was, further, concluded that any cause other than those specified in Section 54 stated under Section 56 (1) would necessarily mean that a cause having nexus with the enforcement policy of prohibition would inter-alia provide for cancellation of a license for a cause which is considered to be the reasonable.

6. The Hon'ble Apex Court (Constitution Bench) in the matter of Har Shankar Versus Deputy Excise and Taxation Commissioner **[AIR 1975 SC 1121]**, has concluded that engaging in trade or business of selling or vending intoxicants cannot be termed to be a fundamental right.

7. Considering the above, I do not find any merit in this petition. Same, is therefore, dismissed.

8. Notwithstanding the above, since this Court (Coram : S.G.

Mutalik, J.) by order dated 17/04/1996 in Civil Application No. 1489/1996 had granted leave to the petitioner to apply for seeking a fresh license, I deem it proper to maintain the said liberty subject to the Rules and policies of the State Government. Needless to state, any such application filed by the petitioner can be considered by the State authorities on it's own merits and by keeping in view that there would not be any objectors to the vending of liquor by the petitioner on the basis of the resolution passed by the Gram Panchayat of village Maskawad.

9. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

S.P.C.