

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1579 OF 2017

Ganesh s/o Ramesh Joshi,
age: 50 years, Occ: Hotel Business,
R/o R-27, Pratapgarh Nagar,
N-9, CIDCO, Aurangabad.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary,
Home Department,
Mantralaya, Mumbai.

02 The Collector,
Aurangabad.

03 The Superintendent,
State Excise, Aurangabad.

Respondents

Mr.C.V.Thombre, advocate for the petitioner
Mr.A.P.Baraskar, A.G.P. for Respondents.

CORAM : S.B.SHUKRE, J.

DATE : 02nd February, 2017

ORAL JUDGMENT :

1 Not on board. On the request of learned Counsel for the petitioner, taken on board.

2 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 By this petition, effect of the order dated 18.01.2017, issued by Respondent No.2 – Collector, Aurangabad, imposing ban

upon sale of liquor on the dates and at the places mentioned in the order, has been sought to be undone.

4 This order dated 18.01.2017 has been issued by the learned Collector in exercise of powers under Section 142 (1) of the Bombay Prohibition Act, 1949. This power does not confine the Collector for imposing ban upon sale of liquor for any particular day or date. The only requirement is that the Collector must be satisfied that imposition of such ban is necessary in the interest of public peace. Thus, satisfaction of the Collector is subjective, though it is based upon objective criteria.

5 The close perusal of the order dated 18.01.2017 would show that it fulfills requirements of Section 142 (1) of the Bombay Prohibition Act, 1949, which has been explained in the earlier paragraph. The objective criteria, resorted to by the Collector in reaching his satisfaction, is that elections are to be held on the dates mentioned in the order. It is a matter of common knowledge that on any polling day, possibility of breach of public peace and order is very much there and if the authority i.e. the Collector concerned, in the instant case, by way of precautionary measures, resorts to exercise of powers under Section 142(1) of the said Act, it cannot be said that the exercise of the power is without any application of mind and is against the interest of public peace. It is said that prevention is better than cure and the order impugned in the petition only follows this policy.

6 Learned Counsel for the petitioner has invited my attention to the observations of the learned Single Judge of this

Court in the case of **Maharashtra Wine Merchants Association Vs. State of Maharashtra & others**, reported in 2007 (3) Bom.C.R. 343, wherein the learned Single Judge has noted that for exercising power under Section 142 of the Bombay Prohibition Act, it is necessary for the Collector to apply his mind to the facts of the case and form an opinion that imposition of ban upon liquor on a particular date is necessary for maintaining public peace. Same is the view expressed by another learned Single Judge of this Court in the case of **Maharashtra Wine Merchants Association and others, etc. Vs. The State of Maharashtra and another**, reported in AIR 1992 Bombay 3.

7 There is no dispute about the above proposition. This very principle has been followed by the concerned authority in this case and so, I find that the impugned order has been rightly passed by Respondent No.2-Collector. I find that there is no patent illegality or arbitrariness in the impugned order. Petition deserves to be dismissed.

8 In the result, writ petition is dismissed with costs. Rule discharged.

S.B.SHUKRE
JUDGE

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