

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

Writ Petition No. 2595 of 2004

- 1) Shivkumar s/o Bansilal Modi,
Age 49 years, Occupation : Business,
R/o Plot No.17, N-2, CIDCO,
Near Kasliwal Corner, Aurangabad.
 - 2) Neeta Subhash Jaiswal,
Age 50 years, Occupation : Business,
R/o N-12, C-13, HUDCO,
Swami Vivekanand Nagar,
Aurangabad.
- .. Petitioners.**

Versus

- 1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
 - 2) The Collector, Aurangabad.
 - 3) The Superintendent of
State Excise, Aurangabad.
- .. Respondents.**

Shri. R.R. Mantri, Advocate, for petitioners.

Shri. S.B. Joshi, Assistant Government Pleader, for respondents.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Date : 7 AUGUST 2017

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :

1) By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari to quash and set aside condition No.3 contained in letter dated 6 March 2004 and condition No.1 contained in letter dated 11 March 2004 issued by respondent Nos.2 and 3 respectively. Some of the relevant facts are as under :-

2) It is the case of the petitioner that the petitioner is holding C.L.-III Licence under the Maharashtra Prohibition Act. When the said licence was held by the petitioner, business was being conducted in village Radi, Taluka Ambajogai, District Beed. It is the case of the petitioner that since the petitioner was suffering from serious illness, he requested respondent No.1 to shift his licence from village Radi to Aurangabad. By an order dated 20 January 2000 respondent No. 1 directed to give permission to the petitioner to shift the licence from village Radi to Aurangabad. By letter dated 6 February 2001 a report was called by respondent No.3

to ascertain whether problem of law and order would be caused at the spot which was located in House No.27 at Naregaon where the petitioner had proposed to shift his business. By letter dated 16 Mach 2001 the Commissioner of Police Aurangabad reported that there would be no such problem if the licence held by the petitioner is transferred at the premises at Naregaon. On 16 October 2001 the Municipal Corporation of Aurangabad also gave its no objection.

3) On 6 March 2004 respondent No.3 issued a letter to the petitioner asking him to deposit various amounts towards renewal of licence fees and also transfer fees. The petitioner deposited the amounts towards licence fees and also transfer charges on 10 March 2004.

4) It is the case of the petitioner that the Municipal Corporation Aurangabad thereafter started collecting taxes from the petitioner in respect of the said shop at Naregaon which fell within the jurisdiction of Municipal Corporation Aurangabad. Receipts of payment of such taxes are annexed to the petition.

5) On 6 March 2004 the office of the Superintendent of State Excise after referring to the order passed by the Government on the proposal sent by the Collector for transfer of licence from village Radi to Aurangabad imposed various conditions in the said letter. Condition No.3 of the said letter provides that the said permission was given to the petitioner on the condition that certificate from the Aurangabad Municipal Corporation was required to be submitted mentioning that the construction made on Plot Nos.27 and 45 from Gat No.14 at Naregaon was authorised. It was clarified in the said letter that unless such certificate was submitted by the petitioner, there would be no transfer under the said licence at the said shop situated at Naregaon. The said letter dated 6 March 2004 issued by the office of the Superintendent of State Excise, Aurangabad, is impugned and more particularly the condition No.3 mentioned in the said letter on various grounds.

6) Mr. R.R. Mantri, learned counsel for the petitioners invited our attention to some of the documents annexed to the writ petition. He submitted that when the

petitioner was granted licence under the provisions of the Maharashtra Prohibition Act, the premises from which the petitioner was carrying on his business was on the agricultural land. He submitted that because of the sickness of the petitioner, the petitioner had requested to transfer the said licence. The premises situated at Naregaon where the licence has been transferred has subsequently fallen within the jurisdiction of Aurangabad Municipal Corporation. He submitted that neither the Gram Panchayat at any time raised any objection in respect of the said construction in which the petitioner was carrying on his business in the earlier premises alleging that it was an unauthorised construction nor the Municipal Corporation of Aurangabad raised any such objection since last several years. He submitted that after such licence was transferred to the new premises within the jurisdiction of Aurangabad, the Municipal Corporation Aurangabad has collected taxes from the petitioner. He submitted the petitioner has not carried out any new construction in the said premises at Naregaon at any time after such licence was transferred by the authorities.

7) The learned counsel submitted that the Gram Panchayat within whose jurisdiction the earlier structure of the petitioner fell has been disbanded. He invited our attention to Maharashtra Country Liquor Rules 1973 and in particular Rule 24(4). He submitted that none of the conditions which are set out therein for grant of licence would permit the Superintendent of State Excise or the Collector to impose such condition as imposed in clause No.3 by the Superintendent of State Excise. He submitted that there is no question of obtaining any certificate from the Aurangabad Municipal Corporation in respect of the construction which was in existence prior to the date of transfer of such licence and prior to the said structure falling in the jurisdiction of the Municipal Corporation of Aurangabad. He submitted that as the Gram Panchayat which had jurisdiction to grant such permission, if any for making construction is already disbanded, the petitioner could not have produced any such permission from the Gram Panchayat also. It is submitted that since last about 20 years the petitioner has been carrying on business without any objection of any nature by the Municipal Corporation the said shop alleging any

unauthorised construction by the petitioner.

8) It is submitted that the Collector who has purportedly issued the impugned order dated 6 March 2004 does not have jurisdiction to impose any such condition. Such action could have been taken only by the Superintendent of State Excise.

9) It is submitted that recently an action was initiated against the petitioner upon a complaint made by some of the persons from the locality and based on such complaint, by the authorities which culminated into an order passed under section 142 (2) of the Maharashtra Prohibition Act, 1949. He submitted that by an order dated 14 June 2017 passed by Division Bench of his Court in Writ Petition No.6697/2017 the said action of the authority came to be quashed by this Court. He submitted that, apart from the said action initiated recently, the Municipal Corporation or the respondents have not initiated any other action against the petitioner.

10) Mr. Joshi, the learned Assistant Government Pleader, on the other hand, submitted that petitioners ought to have obtained appropriate permission from the Municipal Corporation or at least a certificate showing that the construction in question was authorised construction and he ought to have complied with condition No.3 which was imposed by the respondent in the impugned letter.

11) The learned Assistant Government Pleader invited our attention to the guidelines issued by the Government to be considered for issuance of liquor licence. He submitted that the said guidelines specifically provide for seeking permission of the Municipal Corporation even in respect of existing structure. The next submission of the learned AGP is that the Municipal Corporation Aurangabad has not been impleaded as party respondent to this petition and on this ground the petition deserves to be dismissed. He submitted that the petitioner ought to have applied to the Municipal Corporation for issuing any such certificate requisitioned by the authorities under the impugned letter and particularly

the condition No.3. He further submitted that, there are several complaints received by the authority against the petitioner alleging nuisance to the residents of same locality. The learned AGP, however, fairly submitted that the complaint, if any made by the members of the locality, is not the subject matter of this petition and if any action is required to be taken by the authority against the petitioners, the same would be taken in accordance with law.

12) The learned counsel for the petitioners in his rejoinder submitted that complaints, if any, made by the members of the locality is not the subject matter of this petition and thus no cognizance thereof can be taken by this Court in this petition. He submitted that the complaint filed by the residents was the subject matter of Writ Petition No.6697/2017 and the action initiated based on such complaint has been quashed by this Court by order dated 14 June 2017. It is submitted by the learned counsel for the petitioners, that in the event of any unauthorised construction alleged to have been carried out by the petitioners in future, the Municipal Corporation

would be entitled to take action in accordance with law.
The submission is accepted.

13) It is not disputed that the petitioner was granted licence by the authority when the petitioner was carrying on the business from the premises which was falling in the jurisdiction of the Gram Panchayat. The petitioner had thereafter applied for transfer of the said licence. The Municipal Corporation had issued no objection. The new premises in which the petitioner proposed to carry on the said business has fallen within the jurisdiction of Municipal Corporation Aurangabad.

14) In our view the learned counsel for the petitioners is right in his submission that the condition No.3 directing the petitioners to obtain no objection certificate from the Municipal Corporation could not have been imposed by the respondents in respect of the existing structure which had earlier fallen within the jurisdiction of the Gram Panchayat from the Municipal Corporation Aurangabad subsequently. Learned Assistant Government Pleader does not dispute that the Gram

Panchayat, which was having jurisdiction over the structure of the petitioner prior to the transfer of licence, has been disbanded. In view of these circumstances, in our view the conditions imposed by the respondents and more particularly condition No.3 to obtain "no objection certificate" from the Municipal Corporation was totally unreasonable, arbitrary and without authority of law.

15) Reliance placed by the learned Assistant Government Pleader on the guidelines dated 6 July 1989 and condition No.9 of Scheduled "A" in our view would not assist the case of the respondents. The petitioner, in view of the peculiar facts and circumstances, could not have obtained any permission from the Gram Panchayat in view of the fact that the Gram Panchayat has been disbanded and at the same time the Municipal Corporation could not have verified the position and issued any certificate about the authorised construction in respect of the structure which was constructed prior to the date of such structure falling within the jurisdiction of the Municipal Corporation.

16) So far as the argument of the learned AGP that the Municipal Corporation is not made party respondent and thus the writ petition deserves to be dismissed on that ground is concerned, a perusal of the prayers in the petition clearly indicates that no relief is claimed against the Municipal Corporation. In our view the Municipal Corporation was thus not a necessary party to this petition.

17) In so far as the complaints received by the respondents from 172 persons alleging nuisance due to the liquor shop of the petitioners is concerned, since the said complaint is not the subject matter of this petition, we are not inclined to express any view on such complaints alleged to have been made by the residents of the same locality.

18) In our view the condition No.3 in the letter dated 6-3-2004 and condition No.1 mentioned in letter dated 11-3-2004 being unreasonable, harsh and arbitrary deserve to be quashed and set aside. We therefore pass the following order.

19) Rule is made absolute in terms of prayer clause (B). It is however made clear that this Court has not expressed any views on the issue whether the construction in question in which the petitioner has been carrying on business is authorised structure or not. It is also made clear that if any new construction is proposed to be carried out by the petitioner, the same shall be carried out after obtaining requisite permission from the Municipal Corporation and the other authorities, if any such permission is required. If the Municipal Corporation proposes to take any action against the petitioners in respect of any alleged unauthorised construction in respect of the existing structure, the Municipal Corporation would be at liberty to initiate such action in accordance with law. The petition is disposed of in above terms. No order as to cost.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(R.D. DHANUKA, J.)