IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5249 OF 2017

Shriram Piraji Garudkar
VERSUS
The State Of Maharashtra And Others

...
Mr. Panpatte V.S., Advocate for Petitioner.
Mr.A.B.Girase, Government Pleader a/w Shri A.R.Kale, A.G.P. for Respondent/State Authorities.
...

CORAM: S.C. DHARMADHIKARI
AND
MANGESH S. PATIL, JJ.

DATE :- 10th July, 2017

P.C.:

1 This Writ Petition challenges the act of prohibiting the Petitioner from operating his Country Liquor Shop. The Petitioner says that he is carrying on business under CL-III licence No.70 at Umerdari, Taluka Mukhed, District Nanded. The licence is granted for retail sale of country liquor to the various customers visiting the licenced premises for consumption of country liquor and holding licence for use, possess and consumption of alcoholic beverages.

2 The argument is that the judgment of the Honourable Supreme Court dated 15.12.2016 (*State of Tamil Nadu vs. K.Balu, (2017) 2 SCC 281, Civil Appeal Nos.12164-66/2016*), which has been referred to

in details in our order passed in Writ Petition No.5182/2017 (*Hotel Sonai Beer Bar and Permit Room vs. State of Maharashtra and others)* decided on 07.07.2017, would not apply. The Petitioner submits that the judgment and order applies only to such Beer Bars/ Permit Rooms/ Country Liquor Shops/ Wine Shops falling within the distance of 500 metres from the National/ State Highway. Though the Petitioner was informed on 22.12.2016 by Respondent No.3 that the Petitioner will not be allowed to operate his shop in view of the judgment of the Honourable Supreme Court, the argument is that the Petitioner's shop is situated on Mukhed-Bharali-Mukramabad Road. That was acquired originally in the year 1968. The road width is 24 metres and therefore, the land was acquired for the main "District Road" and not "Highway".

3 Thereafter, the information was sought by the Petitioner under the Right to Information Act, 2005 and the Petitioner was informed that the road, namely, Sima Jamb- Mukhed- Ratoli is the State Road No.250 and part of the scheme of roads to be laid in the plan of 2001-2021. Then, relying upon page 71 it is stated that the roads mentioned in the said communication are passing through the places/ cities/ towns/ villages. It may be that this is mentioned as State Road, but according to the Petitioner's Advocate, this has never been declared as a State Highway.

4 Pertinently, there is an affidavit of Respondent No.3, namely, the Superintendent of State Excise, Nanded. While dealing with the

contents of the petition, it is stated on running page 75 in paragraph 4 that the shop of the Petitioner is situated within the distance of 500 metres from the State Highway No.256. That is why the Collector addressed the communication to the Superintending Engineer, Public Works Department and called necessary clarifications about number of state roads. The Superintending Engineer, PWD communicated by his letter dated 27.02.2017 that "Pramukh Rajya Marg" and "Rajya Marg" both means the "State Highway". It is in these circumstances that the prohibition and ban is justified by the State.

5 We are of the opinion that such cases as are now highlighted were all considered by us in Writ Petition No.5182/2017. The State Government has not accepted the version of the Petitioner in any of these petitions. The State has stoutly defended it's action in all the petitions. Therefore, no amount of information and derived by making applications under the Right to Information Act, 2005 or obtaining any purported clarification from the lower rung officials in the Public Works Department, would enable the Petitioner to revive his business. The whole attempt being to get over the prohibition and ban in terms of the Honourable Supreme Court judgment.

6 We do not think that in writ jurisdiction we should assist the Petitioner, all the more when it is repeatedly clarified in our order passed in Writ Petition No.5182/2017 that the Honourable Supreme Court was

not impressed by the nomenclature attached to these highways by the liquor vendors and those in liquor business. The State Governments, which were appearing before the Honourable Supreme Court and sought clarifications, were also reminded of their obligations by the Honourable Supreme Court. They were reminded of their larger obligations and duties towards public and maintaining public health. Further, guarantee and protection of life and liberty under Article 21 of the Constitution of India and directive principles of the State Policy under Article 47 were all pressed into service time and again before the Honourable Supreme Court. The State Government before us has never any doubt with regard to the implementation of the Honourable Supreme Court's order and directions. We do not think that the understanding of the State of the said judgment and order and directions therein, can be termed as perverse or vitiated by any error of law apparent on the face of record warranting interference in writ jurisdiction. The Writ Petition is, therefore, dismissed.

kps **(MANGESH S. PATIL, J.)** (**S.C. DHARMADHIKARI, J.**)