IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5550 OF 2017

Ratansing Triloksing Sethi & others   Petitioners

Versus

The State of Maharashtra and others   Respondents

Mr.V.B. Madan-Patil advocate for the petitioners
Mr.V.M. Kagne, AGP for Respondent State

WITH
WRIT PETITION NO.5706 OF 2017

Abhay Dattatray Shelke & others   Petitioners
Versus

The State of Maharashtra and others   Respondents

Mr. A. C. Dharandale advocate for the petitioners
Mr. A.R. Kale, AGP for Respondent State

WITH
WRIT PETITION NO.5430 OF 2017

Sanjay S/o Subhashrao Katkar   Petitioner

Versus

The State of Maharashtra and others   Respondents

Mr. V.A. Bagal advocate for the petitioners
Mr. S.B. Joshi, AGP for Respondent State

WITH
WRIT PETITION NO.5473 OF 2017

Suresh S/o Raghunath Sharma   Petitioner

Versus

The State of Maharashtra and others   Respondents

WITH

WRIT PETITION NO.5468 OF 2017

Gopi S/o Balaji Kalal ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

WITH

WRIT PETITION NO.5469 OF 2017

Krishna S/o Parshuram Kalal ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

WITH

WRIT PETITION NO.5474 OF 2017

Yadgiri S/o Hiraman Kalal ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. B.R. Waramma advocate for the petitioners
Mr. A.R. Kale, Mr. S.B. Joshi & Mr. A.S. Shinde AGPs for Respondent State

WITH

WRIT PETITION NO.5353 OF 2017

Purushottam S/o Pandharinath Kawtikar ... Petitioner

Versus

State of Maharashtra and others ... Respondents

WITH

WRIT PETITION NO.5560 of 2017

Gangadhar Parvatrao Patil ... Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. F.R. Tandale advocate for the petitioner
Mr. V.M. Kagne AGP for respondents

WITH
WRIT PETITION 5591 of 2017

Hotel Sangam Bar & others Petitioners

Versus

The State of Maharashtra and others Respondents

Mr. A.V. Hon advocate for the petitioners
Mr. V.M. Kagne, AGP for the respondents.

WITH
WRIT PETITION NO.5604 of 2017

Ramrao S/o Govindrao Dak and others Petitioners

Versus

The State of Maharashtra and others Respondents

Mr. V.D. Salunke advocate for the petitioners
Mr. V.M. Kagne, AGP for respondents

WITH
WRIT PETITION NO.5607 OF 2017

Smt. Kamalbai w/o Kishanrao Tiprale Petitioner

Versus

The State of Maharashtra and others Respondents

Mr. V.S. Panpatte Advocate for the petitioner
Mr. V.M Kagne AGP for Respondents

WITH
WRIT PETITION ST.NO.15040 OF 2017

Bhausaheb Balaji Doke Petitioner

Versus

The State of Maharashtra and others Respondents

Mr. S.K. Shinde Advocate for the petitioner
Mr. A.R. Kale AGP for Respondents

WITH
WRIT PETITION ST.NO.14619 OF 2017

Ganesh Chandrakant Rankhamb & others Petitioners

Versus

The State of Maharashtra and others Respondents

WITH
WRIT PETITION ST.NO.14618 OF 2017

Sau. Shobha Omprakash Kalda Petitioner

Versus

The State of Maharashtra and others Respondents

Mr. V.B. Madan-Patil Advocate for the petitioners
Mr. A.R. Kale AGP for Respondents

WITH
WRIT PETITION ST.NO.14988 OF 2017

Chand Rajjak Tamboli Petitioner

Versus

The State of Maharashtra and others Respondents

WITH
WRIT PETITION ST.NO.14985 OF 2017

Anil S/o Ramlal Pardeshi Petitioner

Versus

The State of Maharashtra and others Respondents

Mr. H.F. Pawar & Mr. V.P. Raje Advocates for the petitioner
Mr. A.R. Kale AGP for Respondents

WITH
WRIT PETITION NO.5333 OF 2017

Anand Harinarayan Jaiswal & others Petitioners

Versus

The State of Maharashtra and others Respondents

Mr. D.P. Palodkar advocate for petitioners
Mr. A.R. Kale, AGP for respondents

CORAM : **R.M. BORDE &**
K.L. WADANE, JJ

(Date : 26th APRIL, 2017.)

PER COURT :-

1 The petitioners are praying for issuing direction to respondents to permit them to operate liquor shops/bars, wine shops beyond 31.3.2017, since the licenses issued to them by the State Excise Department are valid beyond 31.3.2017 and for a duration of five years until 31.3.2021.

2 The petitioners contend that they come within the exception carved out by the Honourable Supreme Court in the order passed on 31.3.2017 in IA Nos.4-6, 7-9, 10-12, 13-15,16-18,19-21, 22-24, 25-27, 28-30, 31-33, 34-36, 37-39, 40-42 in Civil Appeal Nos.12164-12166 of 2016. The petitioners contend that they

have been issued licenses to operate foreign liquor shops, country liquor shops, bars under the relevant Rules for a duration till 31.3.2021. It is contended that since the licenses issued by the State Excise Department under the relevant Rules framed under the Maharashtra Prohibition Act, are valid till 2021, they are entitled to continue business of sale of liquor until the expiry of period of licenses or at least till 30.9.2017 on proper interpretation of the order passed by the Apex Court on 31.3.2017.

3 The Honourable Supreme Court, while disposing of Civil Appeal No.12164-12166/2016 issued certain directions in respect of closure of liquor shops, bars situated on the State and National High ways. The relevant directions are recorded in para No.24 of the Judgment dated 15.12.2016 which reads thus:-

> " 24 We accordingly hereby direct and order as follows:-
>
> (i) All States and union territories shall forthwith cease and desist from granting licenses for the sale of liquor along national and state highways;
> (ii) The prohibition contained in (i) above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;
> (iii) The existing licenses which have already been

renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1 April, 2017;

(iv) All signages and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on national and state highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or state highway, (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 meters of the outer edge of the national or state highway or of a service lane along with the highway

(vi) All States and Union territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the state revenue and home departments. Responsibility shall be assigned *interalia* to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution. ”

4 In view of the directions issued by the Honourable Supreme Court, the existing licenses which have already been renewed prior to the date of order, are entitled to continue until the expiry of term of the licenses but not beyond 1.4.2017. Later-on it was

pointed out to the honourable Apex Court in IA Nos.4-6, 7-9, 10-12, 13-15,16-18,19-21, 22-24, 25-27, 28-30, 31-33, 34-36, 37-39, 40-42 and another petitions that in certain States, the excise year continues beyond 1.4.2017 and as such until the completion of the period, the licenses issued during the previous year shall continue and the shops or liquor bars operated under the licenses shall be permitted to continue beyond 1.4.2017. On consideration of the arguments advanced before the Supreme Court, a relaxation for limited period for continuation of the terms of license was permitted by the honourable Supreme Court up to 31.9.2017. However, such continuation is conditional. It is only in those cases, wherein, the excise year of the particular State extends beyond 1.4.2017. The license holders are permitted to continue to operate business up to 30.9.2017. In para No.23 of the Judgment dated 31.3.2017, the Honourable Apex Court has observed as below:-

> " 23. The second area upon which we propose to issue a relaxation is in respect of direction (iii) contained in paragraph 24 of the Judgment of this Court. This Court has directed that existing licences which have been renewed prior to the date of the order shall continue only until the terms of the licence expires but not later than 1 April 2017. This was on the basis that the excise year ends on 31st March with

the end of the financial year. This Court has been apprised during the course of hearing that different states have different periods of operation for their excise years. Shri P.P. Rao, learned senior counsel, urged that the implementation of the directions should be carried out so as to inflict 'minimum pain' on the trade, which is not illegal. For instance, our attention has been drawn to the fact that the excise year in Telengana commences on 1 October and ends on 30 September of the following year. In the State of Andhra Pradesh, the excise year is stated to end on 30th June. Licencees to whom licences have been allotted prior to the date of the judgment would have made their investments. The cut-off date of 1 April, 2017 was intended to protect such individuals. However, some modification is warranted due to prevalence of varying excise years. In our view, the ends of justice would be met by issuing the following direction in continuation of direction (iii) in paragraph 2 of the Judgment of this Court.

" In the case of those licences for the sale of liquor which have been renewed prior to 15 December, 2016 and the excise year of the concerned state is to end on a date falling on or after 1 April, 2017, the existing licence shall continue until the term of the licence expires but in any event not later than 30th September 2017" "

5 The petitioners, in the instant petitions contend that since they have been grated licenses and have deposited license fees

for a period of five years which period is likely to expire in 2021, they are entitled to operate their business under the licenses issued by the Excise Department of the State till the year 2021. In the alternative, it is contended that in any case under the orders of Honourable Supreme court dated 31.3.2017, they are entitled to operate and continue business under the existing license at least up to 30.9.2017.

6 The contention raised by the petitioners is not liable to accepted for the reasons that the excise year in the State of Maharashtra does not extend beyond 1.4.2017. Foreign liquor shops and bars are granted licenses under the provisions of The Bombay Foreign Liquor Rules, 1953. The Rules are framed under section 143 of the Maharashtra Prohibition Act, 1949. Rule 24 provides for vendor's licence for sale of foreign liquor. Rule 25 of the Rules provides for grant of vendor's licence and payment of fees. Rule 25-C provides that no licence under rule 25-B shall be granted for a period beyond the 31st March next following the date of the commencement of the licence. Duration of licence is prescribed under Rule 26 which provides that no licence under Rule 25 shall be granted for a period beyond the 31st March next following the date of the commencement of the licence. Licenses to hotels are covered by part III of the Rules; whereas the club

licences are covered by part IV. So far as the country liquor shops are concerned, the licencing procedure is regulated under the Maharashtra Country Liquor Rules, 1973 framed in exercise of powers conferred under section 143 of the Maharashtra Prohibition Act. Licence for sale of country liquor is prescribed under Chapter IV and Rule 23 prescribes for application for licence. Sub rule 2 of Rule 24 provides that no licence under sub-rule (1A) shall be granted for a period beyond 31st March next following the date of commencement of the licence. The State has also framed the Maharashtra Potable Liquor (Periodicity & Fees for Grant, Renewal or Continuance of Licences) Rules, 1996 in exercise of powers conferred under section 143 of the Maharashtra Prohibition Act, 1949. Rule 2(i) defines fees as:-

> " (i) "Fee" means respective fees payable for grant of renewal or continuance of a licence in 1996-97 as in force immediately preceding the date of coming into force of these rules and fee for any subsequent year means (or less than previous year's fee or the fee increased up to 10 per cent, or more) on previous years fee to be rounded off to the nearest rupees hundred as notified by the Commissioner before the (commencement of a licensing year,

provided that, no such fee which is less than previous year's fee or more than 10 per cent of the previous year's fee shall be notified by the Commissioner without direction of the State Government in that behalf). "

7 Periodicity of Licences has been provided under Rule 3; which provides that subject to fulfillment of other requirements, a licence shall be granted, renewed or continued by the Licensing Authority, either for a period of one year or five years as per the request of the applicant/licensee in that behalf. The explanation to Rule 3 provides that for the purposes of these Rules, an year means the financial year ending March 31st; and a period of five years would mean the end of fourth year immediately following the year in which the licence is granted or renewed or continued.

Thus, an year has been defined in respect of issuance of licence periodicity and prescribed for grant, renewal or continuation of license as a financial year ending on 31st March. It has not been contended by the State Government that the excise year in this regard extends beyond 31st March.

8 In view of above, on proper interpretation of the order passed by the Supreme Court on 31.3.2017, since it has not been

demonstrated that the excise year in the State of Maharashtra extends beyond 31st March, it would not be permissible for the petitioners to operate their business under the licenses issued by the State beyond 1.4.2017.

9 In view of above, request made by the petitioners in the instant writ petition does not deserve consideration.

10 The writ petitions are therefore rejected.

11 We have not considered any other submissions in these petitions except the submissions for operating of the licenses beyond 31.3.2017 and it would be open for the petitioners to take steps as permissible in law for raising other grievances.

(K.L. WADANE, J) (R.M. BORDE, J)

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