

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6702 OF 2017

Rajendra S/o Bhimrao Shelke

.. Petitioner

VS.

The State of Maharashtra and others

.. Respondents

Mr. V.P. Latange, Advocate for the petitioner

Mr. A.B. Girase, G.P. and Mr. A.R. Kale, A.G.P. for the respondent/State

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 07-07-2017

ORAL ORDER :

1. This Petition under Article 226 of the Constitution of India, seeks the same reliefs as prayed in WP/5182/2017, as it is directed against the order of the Collector of the District, by which the Liquor Shop / Beer Bar / Permit Room at Pachod - Paithan Road in the name and style "Hotel Samrat" has been closed down.

2. The proprietor – petitioner contends that he has been running this hotel under a licence from the State. That licence has been renewed by the Officials incharge implementing the Maharashtra Prohibition Act, 1949. The licence has been renewed but the Collector,

Aurangabad, District – Aurangabad ordered abrupt closure of the shop in the garb of judgment of the Hon'ble Supreme Court in the case of **The State of Tamilnadu Rep. by its Secretary Home, Prohibition & Excise Dept. and others Vs. K Balu and anr.** delivered on 15/12/2016 ((2017) 2 SCC 281). Therefore, the order passed on 04/03/2017 by the third respondent, be struck down and set aside.

3. Reliance is placed on the Maharashtra Government's policy document styled as Maharashtra State's Vision of Roads 2001 – 2021 and the map approved in pursuance of this policy. This document, according to the petitioner's counsel, would indicate that such of the roads which are indicated in the map are identified as covered by the Maharashtra Highways Act, 1955 connecting any arterial or internal road is not falling within the purview of the Hon'ble Supreme Court's judgment and yet, the ban is imposed.

4. As far as the subject road is concerned, reliance equally is placed on a letter dated 17/05/2017 addressed by the Sub-Divisional Engineer, Public Works Sub-Division, Paithan, clarifying that Paithan-Pachod road is neither a National Highway nor a State Highway, it is a State Road and bearing no. 61

5. After hearing both, the petitioner's counsel and Mr. Girase and perusing the written submissions of the State, we are of the opinion that once the State is entirely disputing the position, then, it would be highly risky to rely on the petitioner's version and grant any relief. The Sub-Divisional Engineer does not say that the road has no status in law. He says that it is a State Road. He is no authority to decide whether the subject road is a National Highway or a State Highway. Section 3 of the Maharashtra Highways Act, 1955 empowers the State Government by notification in the Official Gazette to declare any road, way or land to be a highway and classify it as (i) a State highway (Special), (ii) a State highway, (iii) a Major District Road, (iv) other District Road, or (v) a Village Road. The said provision makes it very clear that any Highway can be classified in terms of the notification in the Official Gazette. The word 'Highway' as defined in section 2(i) of the Maharashtra Highways Act , 1955 means any road, way or land which is declared to be a highway under section 3. The expression includes and what is set out in Sub-Clauses of Clause (i) of Section 2.

6. In such circumstances, and when the State is not supporting the Sub-Divisional Engineer's version but clarifying that the map annexed to a policy document, would not be decisive and

conclusive with regard to the status of the road, that we are of the opinion that this Petition and the petitioner's case herein is no different than in Writ Petition no. 5182 of 2017. For the reasons that have been set out therein by us today, this Petition also fails and is dismissed.

7. In the passing, we note the argument of the petitioner's Advocate that no affidavit controverting any of the statements in the Petitions has been filed by the State. In the absence of any such affidavit, we should not rely on the oral statements of the learned Government Pleader. We are of the opinion that this contention has to be stated, only to be rejected. The learned Government Pleader is making statements on instructions from the Officials and particularly the Collector of the District. He is not ready to attribute to the Collector a total non-application of mind, as is suggested in the Petition and in the oral arguments of the learned counsel for the petitioner. At no time in the past, any of these petitioners/Beer Bars/Permit Rooms/Liquor Shops have questioned the status or classification of the roads. When the licences were obtained and renewed each of them were aware that their outlets are on State roads connecting Tehsils/Talukas with District places and thereafter major towns and cities in this region. Their outlets/shops/premises are

located on such roads and virtually abutting or facing them. The classification or Division or Road status is contained in a State Notification of 1967, copies of which are readily available. It is a Notification duly published in the Official Gazette. None can therefore raise any dispute about the contents thereof and by a casual oral submission. Pertinently, until the Supreme Court judgment this issue was never raised. Now because of the ban or closure as an afterthought the same is raised. Even otherwise, the ban is not absolute and the outlet can be shifted elsewhere without any additional charges.

8. The petitioner may say that the Collector imposed a blanket ban and rather all Collectors of all Districts unmindful of the consequences, have gone ahead and imposed such a ban or brought the business of the petitioner to a abrupt closure. We are sorry that such submissions are made in the High Court without any supporting material. The State is therefore not obliged to file any affidavit when such statements are not forming part of the pleadings or submissions, and are canvassed across the Bar.

9. The Sub-Divisional Engineers of the Public Works Department have been approached after the roads are laid and post

the Hon'ble Supreme Court's order, they have been issuing clarifications.

10. According to the petitioner, there is no confusion much less about the status of the road in terms of the law. Further, the Hon'ble Supreme Court did not specify a State road in its order.

11. The Hon'ble Supreme Court, with greatest respect, did not deliver its order, by specifying or referring to the name or nomenclature attached to the public roads and Highways connecting cities, towns and districts.

12. In such circumstances, we do not think that the petitioner's submission on this point can be accepted. We cannot take a different view than in Writ Petition no. 5182 of 2017. The Petition is therefore dismissed.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/