

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

WRIT PETITION NO.6879 OF 2017

Hotel Vrundawan Through Proprietor N S Jondhale and Others.

VERSUS

The State Of Maharashtra And Others.

Mr.Sapkal V.D., Advocate for Petitioners.

Mr.A.B.Girase, GP 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

Per Court :

1 By this Writ Petition under Article 226 of the Constitution of India, the Petitioners are challenging the communications dated 30.03.2017 and 31.03.2017 issued by the Collector closing down and refusing to renew licences of Beer Bars/ Beer Shopees/ Permit Rooms/ Country Liquor Shops/ Wine Shops/ Bar and Restaurants. The Petitioners are also seeking direction to the Respondents to remove the seals on their establishments.

2 This Writ Petition was presented by the Petitioners on 26.05.2017. The Respondents are the State of Maharashtra, through the

Secretary, Department of Excise, the Commissioner for Excise and the District Collector/ Superintendent of State Excise, Ahmednagar. The matter comes from Ahmednagar district.

3 This petition along with others were moved before the learned Vacation Judge of this Court. After hearing both sides on 30.05.2017, the learned Vacation Judge passed the following order:-

- "1. *The petitions which are not already circulated are allowed to be mentioned and circulated. They are taken on board.*
2. *Heard the learned Counsel for the petitioners.*
3. *Leave granted to amend Writ Petition Nos.5249 of 2017 and 5317 of 2017.*
4. *Issue notice to the respondents, returnable on 09.06.2017 in the Writ Petitions, in which notices have not been issued. The learned AGP waives notice on behalf of the respondents.*
5. *Today, 291 petitions of the similar nature are on the board. The petitioners are seeking exemption for running their liquor shops/permit rooms in view of the order of the Hon'ble Supreme Court, on the say that their premises are not within the prohibited limits, as prescribed by the Hon'ble Supreme Court.*
6. *The petitioners shall prepare a chart giving location of the premises of their liquor shops/permit rooms, which shall be verified by the learned AGP on seeking instructions from the Collector (Excise).*
7. *In case, the Collector (Excise) finds that the premises of liquor shops/permit rooms are not within the prohibited area carved out by the Hon'ble Supreme Court, the Collector (Excise) would be at liberty to allow, as per the provisions of law, such petitioners to run their liquor shops/permit rooms.*
8. *Place the Writ Petitions on 09.06.2017.*

9. *Authenticated copy of this order be supplied to the learned Counsel for the petitioners, on their requests."*

4 Thereafter, all these petitions along with other matters were listed before this Bench and preliminary objections were noted. We directed that this matter be listed as a group on 07.07.2017. During the course of his arguments, Mr.Sapkal, learned Advocate appearing for the Petitioners, would submit that we should not dispose of this petition in the light of the order delivered by us in Writ Petition No.5182/2017 (*Hotel Sonai Beer Bar and Permit Room vs. State of Maharashtra and others*) on 07.07.2017 and other connected matters. The points here are slightly different.

5 Mr.Sapkal then outlined different points, according to him. First one, according to him, is that the impugned orders are passed in the case of all these Petitioners, but without indicating their specific names and establishments. There is a general direction which has been issued in a cyclo-styled order. It is not establishment-wise or shop-wise. The blanket order banning all these establishments without verifying whether, they come within the prohibitory distance stipulated in the Honourable Supreme Court's judgment on the National Highway or State Highway, is vitiated and there is total non application of mind. There could be a Municipal road and within the Municipal limits. If that is how the road is

styled, then, certainly the prohibition in terms of the Honourable Supreme Court's judgment is inapplicable.

6 During the course of his arguments, Mr.Sapkal read out to us several portions and in fact from the main judgment dated 15.12.2016 (State of Tamil Nadu vs. K.Balu, (2017) 2 SCC 281, Civil Appeal Nos.12164-66/2016) as also the clarificatory order dated 31.03.2017 (State of Tamil Nadu vs. K.Balu, AIR 2017 SC 1670, I.A. Nos.4-6/2017) of the Honourable Supreme Court. His emphasis throughout was that the Honourable Supreme Court had never in mind any road other than National Highway or State Highway. So long as the road does not acquire that status and in terms of the Honourable Supreme Court's orders, the prohibition is inapplicable. The State now cannot come out with an improved version when the Sub Divisional Officers have clarified that the concerned roads are not "State Highways". Mr.Sapkal would then submit that merely because the State Government did not seek any clarification from the Honourable Supreme Court, does not mean it should not wait for the outcome of those applications seeking clarification of the main judgment. The Collector proceeded hastily and passed the blanket orders. He has not even perused the clarificatory orders of the Honourable Supreme Court. In these circumstances, there is no question of invoking and applying the Honourable Supreme Court's judgment dated 15.12.2016.

7 Mr.Sapkal would submit that the very course suggested by the Division Bench in it's common order passed at Mumbai on 12.06.2017 in Writ Petition No.5733/2017 (Kiran Y. Nikam vs. State of Maharashtra and others) and other connected matters, should be followed in this matter as well. He would emphasize that the rule of consistency and judicial discipline equally demands that we do not differ and deviate from the Division Bench order passed at the Principal Seat.

8 Mr.Sapkal places reliance upon the judgment of the Honourable Supreme Court in the case of Official Liquidator vs. Dayanand, AIR 2008 SC (Supp) 1177. Reliance is also placed upon the Division Bench judgment of the High Court of Punjab and Haryana in Civil Writ Petition No.5594/2017 (Arrive Safe Society vs. Union Territory of Chandigarh) decided on 29.03.2017.

9 Finally, he would rely upon the clarification stated to have been issued by the Shrirampur Municipal Council on 06.05.2017 to one Rajesh Hariram Alagh, who is the Councilor of Ward No.2B, clarifying that the road which is described therein, namely, passing through the Municipal limits, but a State Highway (Sangamner-Newasa road), has been handed over for maintenance to Shrirampur Municipal Council. There are conditions attached. Those conditions are being abided by and the road is being maintained and it's upkeep is with Shrirampur Municipal

Council. All this, according to Mr.Sapkal, would denote that our order passed in Writ Petition No.5182/2017 would not apply here.

10 On the other hand, Mr.Girase, learned Government Pleader appearing for the State, submits that there is absolutely no difference between the grievance raised in Writ Petition No.5182/2017 and the present matter. The same grievance that these are not “State Highways”, but “State Roads” has been raised here as well. This is nothing but a play of the words and the nomenclature is not decisive. The nomenclature devised by the officials would not take away from the roads the status assigned to them in terms of the Maharashtra Highways Act (Bombay Act No.IV of 1955). He would submit that the Maharashtra Highways Act would squarely apply. That is a clarification now very much issued by the Public Works Department, State of Maharashtra, Mumbai to the Superintending Engineer, Public Works Department, Civil Lines, Nagpur on 08.06.2017. Thus, there is no difference between a “State Highway” and “State Road”.

11 We have given our anxious consideration to the submissions of Mr.Sapkal. We do not find that in the present case, any issue is raised about the location of the establishments beyond 500 metres of the roads. The argument is that they are located within this prohibitory distance, but not on a “National Highway” or “State Highway” and the Honourable Supreme Court judgment was confined only to these two category of

roads.

12 We must, therefore, at the outset clarify that in Writ Petition No.5733/2017 at the Principal Seat, the argument was that the premises/ establishments/ shops/ hotels/ permit rooms are not falling within the distance of 500 metres from the State Highway or National Highway and they are 500 metres away and that the directions of the Honourable Supreme Court are not applicable to them. The State, on the other hand, argued that these are establishments covered by the two orders of the Honourable Supreme Court noted above. It is in these circumstances that the Division Bench in paragraphs 5 and 6 of its order dated 12.06.2017 in Writ Petition No.5733/2017 observed as under :-

"5] *Having considered the submissions made by the learned Counsel for the parties, we find that the impugned orders have been passed without ascertaining in each case as to whether premises in question fall within 500 meters of the State Highways or are otherwise covered by the aforesaid orders made by the Hon'ble Supreme Court. However, considering that there are serious factual and other disputes involved, we are inclined to dispose of this bunch of petitions by directing Secretary, PWD (Road) Department, who will be assisted by the Commissioner for State Excise, State of Maharashtra to decide the grievances of the petitioners and the petitioners' contention that the Hon'ble Supreme Court's directions are not applicable to them. Let this aspect of the matter be considered in each case by the said Secretary with assistance of the Commissioner for State Excise. It is open for the petitioners to appear through their representatives/associations.*

6] *For the aforesaid purpose, the present petitions may*

be treated as representations on behalf of the petitioners. In case, the petitioners desire to make any additional submissions or furnish any additional material, they may do so within a period of one week from today. The Secretary, PWD (Road) Department, shall consider such representations and the petitioners' contention that they are not covered by the orders made by the Hon'ble Supreme Court and pass a reasoned order thereon, as expeditiously as possible and in any case upto 5th July 2017."

13 Before us, there is no argument that the distance is a crucial factor. The location of the shops within the distance specified in the Honourable Supreme Court judgment is an admitted position. The argument is slightly different and that is about the status of the roads. In paragraphs 5 and 6 of the present petition, it is stated that the Honourable Supreme Court judgment is restricted to "State Highways" and "National Highways" only. The Petitioners are operating business on the basis of the valid licences. The Public Works Division has clarified the position that the roads on which the Petitioners are running their business are neither "State" nor "National" Highways. They are "State Roads" bearing distinctive numbers. At the same time, the argument is that insofar as Shrirampur city is concerned, these are State Roads bearing Nos.36, 50 and 51. Insofar as Shrigonda is concerned, Petitioner Nos.45 and 49 are operating their businesses on Shrigonda-Belwandi- Ukkadgaon Road which is numbered as State Road No.67. Similarly, there are pleadings

with regard to the location of shops of other Petitioners in paragraph 7 of the petition.

14 The summary of all this is that all the establishments belonging to the Petitioners are not located on the State or National Highways and a copy of the certificate issued by the Public Works Department is relied upon and styled as Exhibit D.

15 Exhibit D of this petition is identical to the communications, which were addressed and produced by the Petitioners in Writ Petition No.5182/2017. We have already held in that judgment and order that this is a desperate attempt to get over the binding judgment of the Honourable Supreme Court. The State of Maharashtra was never in any doubt that its nomenclature of roads under the Maharashtra Highways Act would enable it to conclude that the Honourable Supreme Court judgment and directions and prohibition in terms thereof, would squarely apply. There is no way that the Honourable Supreme Court judgment can be given a go-bye. The State of Maharashtra consciously and conscientiously decided to abide by it as it was of the clear view that so long as the Maharashtra Highways Act and all the connecting roads and connecting the State across its borders can be either notified as State Highway (Special), State Highway, Major District Road, other District Road or Village Road. Then, going by the clear language of Sections 3 and 4 and definition of the term “Highway” as appearing in Section 2(i) of this Act, the Sub Divisional

Officers could not have issued on their own the clarifications and held that there is a difference between a State Highway or State Road. The higher authorities were aware of the potential mischief of any artificial distinction as above and promptly clarified that both mean the same, namely, Highways. It is not open for the Sub Divisional Officers to give any opinion contrary to the Maharashtra Highways Act and its interpretation and understanding by the State at the highest level. Therefore, promptly on 08.06.2017, the Public Works Department of the State clarified to the Executive Engineer, Public Works Department, Civil Lines, Nagpur, copy of which communication is placed before us by Mr. Girase and taken on record, that several writ petitions have been filed before the Nagpur Bench of this Court. The Executive Engineer desired some information with regard to the difference between a State Road and State Highway. This clarification from the Public Works Department says that the "State Roads" and "State Highways" are one and the same. They are known as "State Highways" in English whereas, they have specific nomenclatures at departmental level. However, "State Highways" would include "State Highways", "State Roads", "Special State Roads" and "Main State Roads".

16 We have no hesitation, therefore, in concluding that so long as the State of Maharashtra has, in terms of the Honourable Supreme Court judgment, acted bonafide and the Collectors of each of these

Districts of the State have applied their mind, not only relied upon the data with regard to the implementation of the Maharashtra Prohibition Act, but have taken views and opinions of the Authorities under the Maharashtra Land Revenue Code (Deputy Director of Land Records, Incharge of Measurement), Public Works Department operating at the Divisional levels through their Superintending Engineers, visited sites and made spot inspections, then, it is not open for the Petitioners to assail that decision of the State. The State has implemented the judgment of the Honourable Supreme Court dated 15.12.2016. It did not have any problem with it. It did not feel that there is anything in the said judgment which requires a clarification. There is no ambiguity in it. It proceeded to implement that judgment. It was not obliged, therefore, to wait for any clarificatory order as it was always open to take a call in the event there is anything in the clarificatory order which would require revisiting the State's earlier opinion and conclusion. There is nothing in the clarificatory order beyond reiteration and restatement of the earlier judgment. We have to place this issue at the level and pedestal of public health. It is the concern and anxiety of the highest court of the country about menace of drunken driving on the busy roads and highways. The menace results in increasing the number of accidents. Apart from over speeding, accidents are also occurring because of drunken driving and we cannot in terms of the percentage dilute the seriousness of the issue. This is also a cause of

accidents resulting in deaths of innocent co-passengers in the same vehicle or others using the same road. Even if one or two die in accidents caused by drunken driving, they die hundred percent (100%). Their families suffer a permanent and lasting blow as it impacts them enormously.

17 We do not think that Mr.Sapkal was justified, therefore, in arguing that the judgment of the Honourable Supreme Court is restricted only to National Highways and State Highways. In the light of the clarification now from the State and in our detailed order delivered in Writ Petition No.5182/2017, there is neither any ambiguity nor any error in the understanding of the State of Maharashtra as far as the judgment of the Honourable Supreme Court and it's binding effect. We should not, therefore, be carried away by any such distinction as is sought to be made when all the more there is a Notification dated 19.04.1967 in the field and issued by the State of Maharashtra. The cluster of roads which connects the State from it's boundaries from the State of Goa to the States of Andhra Pradesh, Karnataka, Madhya Pradesh and Chattisgarh linking all cities, major towns, districts, leaves us in no manner of doubt that these are State Highways. It is not for us to consider the ambit and scope of the Maharashtra Highways Act vis-a-vis the judgment of the Honourable Supreme Court. We do not think that Mr.Sapkal's argument would enable us to direct holding such an exercise either by the State or any other official or authority.

18 We are of the opinion that this case is no different the one dealt by us in Writ Petition No.5182/2017. For the above additional reasons as well, this Writ Petition must fail.

19 In the light of the view that we have taken, it is not necessary to decide any larger controversy about the doctrine of precedents and whether, a Division Bench is bound to follow the judgment or order of the coordinate Bench of the same Court. We have noted and pointed out the distinguishing features from the order passed at the Principal Seat. In the circumstances the said order which is not even considering the merits of the controversy, which we have expressly dealt with in the individual matters, this principle invoked by Mr.Sapkal has no application.

20 Hence, this Writ Petition fails and is dismissed. No costs.