

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7490 OF 2017

SANTOSH VYANKATESH KALAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. A.B. Kale, Advocate for the petitioners

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

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

DATE : 28-07-2017

ORAL ORDER :

1. By this Petition, under Article 226 of the Constitution of
India, the petitioners before us are seeking the following reliefs :-

- “B) By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature, this Hon'ble Court may be pleased to quash and set aside the order of the Respondent No.4 dated 05/05/2017 thereby directing to close the business of the petitioners and consequently direct the respondent authorities to permit the petitioners to run the said business in view of the provisions of law and for that purpose issue necessary orders.
- C) The Hon'ble high Court may be pleased to issue a Writ of mandamus or any other appropriate writ, order or direction in the like nature, to

direct the Respondents to forthwith de-seal the shops of the petitioner and permit to continue with the businesses in accordance with the provisions of law and for that purpose issue necessary orders.

- D) The Hon'ble High Court may be please to hold and declare that, establishments of the Petitioners are not situated on any national / state highway and also hold and declare that, order of closure the establishments of the Petitioners is illegal and arbitrary and for that purpose issue necessary orders.”

2. The petitioners submit that their cases are distinct and different from other matters and cases, which have been dealt with by this Court following the judgment and order of the Hon'ble Supreme Court of India in the case of **The State of Tamilnadu Rep. by its Secretary Home, Prohibition and Excise Dept. and others Vs. K Balu and anr. [(2017) 2 SCC 281]**.

3. The argument here is that the petitioners' CL-III licences and their Country Liquor Shops are situate on Station Road, Jalgaon. In the Petition, in paragraph 1 itself, it is stated that the Road in question is known as Jalgaon State Road [State Road No.42]. The first argument is that this Road is neither a National Highway nor a State Highway but it is a State Road.

4. Concededly, this aspect has been covered by Order dated 07/07/2017 passed by this Court in Writ Petition no. 5182 of 2017 and connected matters.

5. Mr. A.B. Kale, learned counsel for the petitioners, therefore, pressed into service the other arguments, namely, that the petitioners' Establishments are on the Roads, which are within the Municipal limits. The petitioners possess requisite licences and permissions from all the Authorities. Respondent no.1 and 3 are the Authorities under the Maharashtra Prohibition Act, 1949, Respondent no.2 is State through Secretary, Public Works Department whereas respondent no.4 is the Collector, Jalgaon district. Fifth respondent is the Sub-Divisional Engineer of Public Works Department of Jalgaon District.

6. The petitioners submit that their licences were subsisting and renewed till 31/03/2018, however, to their utter shock and surprise, the Collector passed an Order directing closure of the Establishments of the petitioners. This order is dated 05/05/2017 and the petitioners' Establishments are sealed on 05/05/2017.

7. The argument is that these Establishments are neither located on a Highway but a mere State Road, even that status of the roads as State Roads was lost on account of a Resolution of the second respondent dated 31/03/2017. After the resolution, Establishments of the petitioners were allowed to be opened. That is because the Roads were handed over for maintenance to the respondent no.6 – Corporation. However, suddenly, on 04/05/2017, respondent no.2 cancelled this resolution de-notifying the Road and again, the Establishments were closed.

8. The argument of the petitioners' counsel, therefore, is that the impugned order dated 05/05/2017, directing closure of the Shops with effect from 31/03/2017, is ex-facie illegal. Secondly, there are no details about the Road/Highway, from which the distance of 500 Meter is computed. Thirdly, there was de-notification order dated 31/03/2017 and the Road in question even if, it is a State Road or Highway, came to be handed over for maintenance to the Jalgaon Municipal Corporation. At that time, reliance was placed on the decision of State itself dated 09/03/2001 and Note no. 5. Thus, Highways and Roads within the Jalgaon Municipal limits were de-

notified. However, that decision or resolution was cancelled on 04/05/2017.

9. In the circumstances, and going by the ad-interim order and direction of this Court, the petitioners should have been given an opportunity to place the factual matrix before the Authorities. Further, the distance is measured from what point and how it is within 500 Meter, has thus not been clarified. All the more, when even Highways and parks are part and parcel of Development Plan contemplated by Section 22 of the Maharashtra Regional and Town Planning Act, 1966 and in that regard, our attention is invited to clause (d) thereof. For all these reasons, an attempt was made to distinguish this matter from other matters and by placing reliance upon the judgment and order of the Division Bench of Punjab-Haryana High Court at Chandigarh in Civil Writ Petition no. 5594 of 2017 decided on 29/03/2017 in the case of **Arrive Safe Society of Chandigarh Vs. Union Territory of Chandigarh and another.**

10. Shri A.B. Girase, learned Government Pleader and Shri A.R. Kale, learned A.G.P. arguing for the respondents, would submit that none of the contentions of the petitioners have any merit. Our

attention has been invited to the pleadings in the Petition and it is submitted that the petitioners do not dispute that the licences were granted but after the order of the Hon'ble Supreme Court of India, a direction came that they should be cancelled forthwith. The extended period also came to an end. The Establishments were also not closed down though the order of the Hon'ble Supreme Court of India was binding on the State Government. The Establishments of the petitioners are on State Highway but that was not possessing such status at the relevant time. That was because of de-notification resolution dated 31/03/2017. It is conceded in the Petition that after the resolution, the Establishments of the petitioners were allowed to be opened. However, Mr. Girase would submit that earlier resolution has been expressly cancelled. The language of the two resolutions would mean that the Roads, which are State Roads and located at the places set out in the Chart to the Government Resolution dated 31/03/2017 page 46 and 47 of the Petition, were de-notified and were to be handed to the Jalgaon Municipal Corporation for upkeep and maintenance. It is that decision taken on 31/03/2017, which was being reconsidered by the State thereafter, the Government took a decision on 04/05/2017 not to handover these Roads to the Municipal Corporation. Therefore, the earlier resolution was cancelled. The

prohibition came into force. Once that came into force, the impugned order was passed. As far as the distance is concerned, in the entire Petition, there is no averment that the Establishments were not within the 500 Meter distance from the Road / State Highway. In the circumstances, no question arose of ever issuing any direction to carry out the measurement. The argument that the Collector has not applied his mind before issuing the communication on 05/05/2017, is entirely misconceived. There was a measurement carried out and in the affidavit-in-reply, the details of the same are set out together with the said communication (Exhibit R-2). Once the petitioners' Shops are within the 4 Meter distance, then, the arguments of the petitioners have no merit and the Petition deserves to be dismissed.

11. After perusing the Writ Petition and all the annexures thereto, so also affidavit-in-reply and the annexures thereto, we are of the firm opinion that the Petition deserves to be dismissed.

12. The petitioners have no vested right much less a fundamental right, to deal in intoxicants and sale of liquor. They have no right vesting in them to insist on de-notification of a Road or that Road which was already de-notified, being again notified as State

Road or State Highway. These are not matters which the petitioners can control nor do they possess a right in any of these aspects. The law does not recognize any such right and in a liquor vendor or a liquor shop.

13. Maintenance and upkeep of Roads / Public Roads / State High Highway / State Road is entirely within the domain of the State and the State machinery has carved out a Division called Public Works Division, through its Sub-Divisions for that purpose. There is a complete mechanism for the Road, which is styled as a Highway and under the control of the Public Works Department, be de-notified.

14. While it is true as Mr. A.B. Kale, learned counsel urges that on 31/03/2017, the Jalgaon Municipal Corporation received a proposal for a final decision by the State, requesting de-notification of the Roads specified in the Government Resolution dated 31/03/2017, to be de-notified and handed over to the Jalgaon Municipal Corporation.

15. On 06/03/2002, the Public Works Department handed over the Roads to Jalgaon Municipal Corporation for improvements, repairs and maintenance. Once they were handed over, the State was considering whether to de-notify these six (6) Roads, which were already handed over to Jalgaon Municipal Corporation for a limited purpose but not de-notified till that date. What happened was that the Chief Engineer of the Public Works Department Regional Division, Nasik addressed a communication dated 20/03/2017 and at the same time, the Executive Engineer of the Public Works Department addressed a letter dated 23/03/2017 and based on these communications, the State decided to de-notify these Roads. Admittedly, there was a proposal and, thereafter, a report, a request from the local representatives and in the field was a guiding principle incorporated and inserted in the Government Resolution dated 09/03/2001 (Note no.5). Based on that, the Government decided that these Roads be de-notified. They will have to entirely maintained, repaired and improved by the Jalgaon Municipal Corporation. The expenses incurred in that behalf would not be reimbursed. Nor there would be any additional grants issued for that purpose. Thereafter, on 04/05/2017, the State Government recalled this Government

Resolution of 31/03/2017. That was because it was found that the earlier decision was neither feasible nor pragmatic. The Executive Engineer of the very Division, namely, Public Works Division, Jalgaon addressed a letter dated 02/05/2017 coupled with the Municipal Commissioner's communication dated 02/05/2017 on identical lines. It was found that it would not be possible to maintain, improve these Roads without any corresponding obligation of the State, particularly of reimbursement of expenses. The Roads then would be in the state of utter neglect. That is how the Public Works Department took the issue again with the State Government and the State Government through the Public Works Department issued the Government Resolution dated 04/05/2017. The Government cancelled the earlier Government Resolution dated 31/03/2017 and stated that these Roads would be with the Public Works Department and the Public Works Department would be incharge of upkeep, maintenance and improvements or repairs of the Roads.

16. To our mind, the impugned decision was taken after the Roads were again taken over by the State Government and the Public Works Department. The earlier Government Resolution was also issued by the Public Works Department and subsequent one as well.

There was no question, therefore, of any de-notification order remaining in the field. Once, this position was ascertained, then, the 5th May, 2017 Order (impugned Order), which was issued by the Collector of District – Jalgaon came to be served on the petitioners. A perusal of this Order and impugned in the present Petition would indicate that it refers to the entire record, including the Orders of the Hon'ble Supreme Court of India, the communications from the Commissioner, State Excise dated 22/12/2016 and 24/03/2017, the letters of the Collector's office dated 30th and 31st March, 2017, the de-notification Order and in the meanwhile, the communications from the State Excise Department. All these have been referred and, thereafter, the impugned Order which directs closure of the Shops of the petitioners which are admittedly within the 500 Meter distance from the State Road, was passed and served.

17. If all these developments are considered in the backdrop of the pleadings of the petitioners, then, we do not see any issue of measurement or re-measurement arising at all. There was no question, therefore, of arguing that there is a complete non-application of mind or that a prohibition which is directed by the 5th May, 2017 Order comes into effect from a prior date. The Collector has taken

care and has served the closure order on 05/05/2017. The petitioners have themselves averred in the Petition that their Shops were allowed to run till this date.

18. In such circumstances, we do not see how either arguments of Shri A.B. Kale, learned counsel can be accepted. There is complete record of the location of the Road, the distance of the petitioners' Establishments / Shops from the Road, how the measurements have been made and the distance computed and the impact of the de-notification earlier and its withdrawal later. All these matters have been considered by those administering and implementing the legislation in the field. They have neither committed a breach or violation of any law much less any Rule or Regulation nor have they acted arbitrarily or malafide.

19. We do not see, therefore, how any right accrues in favour of the petitioners, to question the State's decision. We do not think that in these facts and circumstances, and peculiar to these cases, the Judgment and Order of the High Court of Punjab-Haryana at Chandigarh (supra), has any application. No larger issue or question of the Maharashtra Prohibition Act, 1949, its provisions and the Rules

made thereunder or their applicability and interpretation, therefore, arises in this case.

20. As a result of the above discussion, the Writ Petition is dismissed.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/