

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

8 WRIT PETITION NO. 7452 OF 2017

HOTEL GOKUL RESTAURANT BEER BAR AND PERMIT ROOM
THROUGH ITS PROPRIETOR P.H. KARDA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. P.R. Katneshwarkar h/f. S.R. Patil
AGP for Respondents/State: Mr. A.R. Kale
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 24.07.2017

P.C. :-

. Heard Mr. Katneshwarkar. The additional affidavit on behalf of the petitioner is taken on record.

2. Mr. Katneshwarkar, raised only one contention, that this petition cannot be disposed of in terms of the order passed in Writ Petition no. 5182 of 2017 and connected matters.

3. He would submit that the document at page 13 of the paper book would indicate that from 09.06.1977, the stretch of the road which is mentioned in this Government notification has been handed over to the Municipal Council, Bhusawal for maintenance. In such circumstances, the petitioner's establishment would not fall within the

prohibited distance from a State or a National Highway. The road on which the establishment is located is, thus, not a Highway at all.

4. The argument is that the hotel is situated within the territorial limits of Bhusawal Municipal Council. It is situated besides the Jamner Road Nahata College, that road was transferred to the Municipal Council Bhusawal. It is in these circumstances that, if the road is a municipal road or within the municipal limits, it is neither a State Highway nor a National Highway within the municipal limits.

5. We are not in agreement with Mr. Katneshwarkar for more than one reason. The petition proceeds to rely upon this Government Resolution dated 09.06.1977, a careful perusal of the same, together with a further document at Exhibit 'C' collectively indicates that the extent of the road length indicated in this resolution, a major district road styled as Bhusawal-Jamner road passing through the municipal limits from one culvert up to the Bhusawal Municipal limits for the length of 2.4 kilometers be handed over for maintenance and upkeep to the Municipal Council. Pertinently, after the order passed by the Hon'ble Supreme Court on 15.12.2016 and a letter from Prohibition and Excise Department of the Government dated 22.12.2016, the petitioner wrote a letter not to the Public Works Department nor the Bhusawal Municipal

Council but to the Excise Department of the State and sought information under the Right to Information Act, 2005. The said Department of Excise, then, took up the matter by addressing an application to the Chief Officer of the Bhusawal Municipal Council. The queries raised by the Superintendent State Excise, Bhusawal would indicate that the chief Officer was requested to clarify, whether the stretch of road passing through the municipal limits can be termed as National / State Highway or otherwise. It is this Chief Officer of the Municipal Council who is clarifying the position, however, he says that the information is not authentic and it should be verified from the Sub Divisional Engineer of the Public Works Department, Sub Division Bhusawal, Maharashtra State. Pertinently, the petitioner's pleading in the petition is also guarded. The petitioner says not very emphatically but reserving or keeping behind something that this is not a State Highway nor National Highway within municipal limits.

6. We have already held in Writ Petition no. 5182/2017 that this argument is without substance. The Supreme Court expressly ruled that any municipal limits through which a National or a State Highway or a Highway passes may look after its upkeep and maintenance, but that does not mean that, the road ceases to be a National Highway or a State

Highway or a Highway by itself, something more is required and the petitioner is aware of the same. Pertinently, the communication relied upon by the petitioner and the Government Resolution describe the road as major district road, a major district road has also been notified in terms of Section 3 of the Maharashtra Highways Act and classified as a Highway. The word 'Highway' is also defined in inclusive terms in Section 2 Clause (i). Further, pertinently all bridges, culverts, cause ways, carriage ways and other structures built on across such road or would also come within the definition of the term Highway.

7. In the light of the above, even the additional affidavit and the contents thereof will not carry the case of the petitioner any further. The petitioner's perception is that, if only heavy vehicle passes under a culvert or a bridge, then, that would be a highway or a busy highway. We do not think that perception is correct for there are several other vehicles which also use the highway. These circumstances are identical to the earlier Writ Petition no. 5182/2017 and other connected matters, order passed therein would cover this case as well. The writ petition is disposed of.

[MANGESH S. PATIL, J.]

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[S.C. DHARMADHIKARI, J.]