

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7614 OF 2017

Ashok Narayan Gund and others .. Petitioners

VS.

The State of Maharashtra and others .. Respondents

AND
WRIT PETITION NO. 7615 OF 2017

Digambar Ranoji Pawar and others .. Petitioners

VS.

The State of Maharashtra and others .. Respondents

Mr. Ram S. Shinde, Advocate for the petitioner in both WPs
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. These Petitions under Article 226 of the Constitution of India seek Writ of Mandamus, so as to de-notify a National / State Highway. Prayer clause (c) of the Petition reads as under :-

“The respondent No.1 to 4 may kindly be directed to consider the proposal forwarded by the Municipal Council, Bhokar and de-notify the State Way No. 251 and State Highway No.10 which passes through Bhokar City and hand over to the Municipal Council, Bhokar”.

Pertinently, this request comes from some liquor shop/Beer Bar/Permit room owners. They are affected by the order passed by the Hon'ble Supreme Court on 15/12/2016 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]** and dated 31/03/2017. In an attempt to get over this judgment and order, now we see a flurry of such litigation.

2. When we specifically asked the learned counsel appearing for the petitioners, as to whether anybody, who is in liquor business has any fundamental right of the nature set out in Article 19(1)(g) of the Constitution of India, he was unable to say anything to the contrary as that is well settled. Article 19(1)(g) of the Constitution of India which guarantees freedom of trade, business, occupation or carrying on a profession of one's choice, is specifically interpreted to mean not to include the business of selling liquor or dealing in intoxicants. Therefore, such a person cannot claim that his

fundamental right is affected and to carry on business merely because his liquor shop / permit room / beer bar situated on State Road / National Highway / State Highway is abruptly closed down. The argument is that trade in liquor is pursuant to a privilege from the State. The State is issuing a licence and that is still operative. However, though that is subsisting, still the business is suddenly brought to an end by the Department of Prohibition and Excise, without any prior notice or hearing.

3. The Petitioners cannot, for the sake of their liquor business and to be conducted on a Highway, whether a National or State insist on such roads being de-notified.

4. Secondly, de-notification of the road is a process, which the Local body in its discretion, may or may not initiate. That though the road is a State or National Highway, then, they cannot be de-notified by a Writ of this Court. None can claim that a de-notification is an absolute right and vesting in him. Nobody can insist that such a discretionary duty should be performed by the State and if not performed, then, to issue a Writ of Mandamus.

5. There are several issues and matters which will have to be considered including heavy maintenance and repair costs of such roads which are passing through cities, towns and villages. The constitutional status given to Municipalities / Panchayats, as units of Local Self-Government does not mean that they can take over and maintain such roads as of right. The de-notification of a National or State Highway is not automatic and cannot take place unless a proposal is forwarded by the Public Works Department through its Sub-Division to the Executive Engineer operating at the District level. If the Sub-Division receives a request of de-notification from the Local Body (for example, Municipal Council), then, on due consideration and proper application of mind the same is forwarded to the District Headquarter and that thoroughly examines it. It is not bound to endorse or accept it and as it is. It may reject it or modify it. Then, the same is forwarded to the Chief Engineer at the Regional level. Then, it is forwarded to the State for a final decision. The Highways may be passing through a town or city but maintaining a town or city road and maintaining a Highway, is a altogether different matter. One cannot compel the local body to take over the road in the manner suggested by the petitioners. A Writ of Mandamus, therefore, cannot

issue in such cases. The Petitions are entirely misconceived and are dismissed. No costs.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/