

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10775 OF 2015

Ravi s/o Nandlal Jaiswal,
Age-40 years, Occu-Business,
R/o N-3, CIDCO, Aurangabad,
District Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
State Excise Department,
Mantralaya, Mumbai,
2. The Commissioner of State Excise,
Maharashtra State, Mumbai,
3. The Collector,
(State Excise Department),
Aurangabad,
4. The Superintendent of
State Excise, Aurangabad,
5. Shri Narayan Kuche,
Age-Major, Occu-Social Work,
6. Sangita Umrao Rudrakar,
Age-Major, Occu-Household,
7. Panchfula Vinayak Bondre,
Age-Major, Occu-Household,
8. Laxmi Yashwant Athawale,
Age-Major, Occu-Household,
9. Anita Anil Zanzale,
Age-Major, Occu-Household,
10. Madhuri Yashwant Talmale,

Age-Major, Occu-Household,

11. Rajani Satish Tak,
Age-Major, Occu-Household,

12. Mina Dipak Ambildhage,
Age-Major, Occu-Household

All r/o Santoshi Mata Nagar,
Mukundwadi, Aurangabad,
Tq. and District Aurangabad

Mr.S.R.Barlinge, Advocate for the petitioner.

Mr.D.P.Palodkar, Advocate for respondent Nos.5 to 12.

Mr.S.N.Kendre, AGP for State/respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/09/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 30/06/2015 passed by the Commissioner of State Excise, Maharashtra State u/s 137(2) of the Maharashtra Prohibition Act. By virtue of the said order, the petitioner is refused permission to start a shop which is sought to be set up in Plot Nos.74 and 75, Santoshi Mata Nagar, Mukundwadi, Aurangabad.

3. Mr.Barlinge, learned Advocate for the petitioner has strenuously criticized the impugned order. His contention is that an M.L.A. who represents a different constituency in the State Legislative Assembly resides in the Mukundwadi area where Santoshi Mata Nagar is situated. He has developed a grievance against the petitioner and is, therefore, making every attempt to prevent the petitioner from opening the said shop for vending liquor on the basis of a CL-III country liquor license, which was awarded earlier by the competent authority.

4. Mr.Barlinge further disputes the existence of any flour mill or a statue of Dr.Babasaheb Ambedkar in the said area so as to be covered by the notification dated 25/02/2015 introduced by the State Government prohibiting the vending of liquor in areas within a particular distance from the statue of National Leaders. He further submits that there are 37 liquor vending shops in the Mukundwadi area. He further states that a fresh report may be called for from the District Collector in the light of the affidavit filed by the State Excise Department in this matter on 17/03/2016.

5. The learned AGP appearing on behalf of the State Authorities has specifically drawn my attention to paragraph Nos.5, 8, 9 and 10

of the affidavit filed on behalf of the State Excise Department which read as under :-

“5. As regards to para No.3, it is submitted that, the local residents of Sanjay Nagar, Baijipura had made complaints to the Collector for closure of shop of the petitioner as it was causing nuisance in the locality due to the disputes of the customers and the local residents. In view of this, it was ordered to shift the licence to some other place vide order 29.12.2009, issued by the respondent No.3. In the meanwhile, it was directed to close down the business till the shifting of the business.

8. As regards to para Nos.7 and 8, it is true that, the petitioner had applied for permission to shift his liquor shop to plot No.74 and 75 of Santoshimata Nagar, Mukundwadi area of Aurangabad town vide application dated 6.5.2012. Pursuant to the application, the report of Inspector of State Excise was called for so also the police report. On verification, both the authorities submitted their reports.

9. As regards to para Nos.9 and 10, I say that, the local residents and the Corporator from Mukundwadi area, Aurangabad objected for shifting of country liquor shop of the petitioner in the said locality. It is stated that, there is a flour-mill so also a statue of Dr.Babasaheb Ambedkar nereby the proposed place of the country-liquor shop of the petitioner. Vide Government Notification dt.25.2.2015, there should specified distance from statue of national leaders. It is stated in the complaint that, the women going to flour-mil would cause nuisance of the customers of the country liquor shop. The

possibility of causing any untoward incident near the statue of Dr.Babasaheb Ambedkar at the hands of the customers of country liquor shop is also apprehended in the complaint. Later on, some of the complainants resiled from their complaints. I crave leave to produce the copies of the complaints / representations. Copy of Government Notification dated 25.2.2015 is annexed herewith and marked as Exh.R-1.

10. As regards to para No.11 of the petition, it is true that, the Hon'ble Minister entertained the revision application of the petitioner, thereby directing the Collector to complete the enquiry. It is directed that, in case, it is found that, the petitioner satisfies the terms and conditions of the licence, the permission to shift the country liquor shop of the petitioner be granted on condition that, in case, law and order situation has arisen, the licence would be cancelled."

6. Mr.Palodkar, learned Advocate appearing on behalf of all the respondents submits that the petitioner proposes to establish a shop at a place where persons living below poverty line are residing. Several slums are found in those areas. Citizens are aggrieved by the proposed location of the shop. Complaints have been filed raising objections. The respondents represent the grievances of several residents and hence are litigating against the petitioner only to ensure that damage to the families and society is averted. He relies upon the judgment of the learned Division Bench of this Court in the

matter of Hotel Shobha Vs. Hon'ble Minister, Department of State Excise and others, [2012(6) Mh.L.J. 708].

7. Upon considering the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

8. The affidavit in reply filed on behalf of the State Excise Department at Aurangabad, indicates that the residents and the local Corporator of the Mukundwadi area are objecting to the proposed shop. A statue of Dr.Ambedkar is found in that area. Women visit the flour mill during the day and the presence of persons purchasing or consuming country liquor in the said area would cause serious nuisance to the ladies.

9. It is pointed out vide Govt. notification dated 25/02/2015 that the proposed site for the petitioner's shop would violate the said notification.

10. In the Hotel Shobha case (supra), the learned Division Bench has relied upon catena of judgments. The objections of the residents are given importance in the light of the ill effects of sale and consumption of country liquor. It would be apposite to reproduce

paragraph Nos. 23 to 27, 36 and 40 of the Hotel Shobha judgment, hereunder :-

*"23. We are not in agreement with Mr.Samarth that the distance factor, namely, 75 metres or 100 metres from the schools, religious structures/ temples, hospitals etc. should have been taken into consideration and if no such structures are there within the vicinity of the Appellant's establishment, then, the licence could not have been rejected. Here, emphasis is not on distance from such establishments and structures which is of course an mandatory requirement. Apart therefrom, in the facts and circumstances of the present case, the foundation of the orders passed by the Collector and the Commissioner is that there is serious objection from the residents and there are complaints made from time to time which highlighted the issue of public nuisance, inconvenience to the residents, embarrassment to women and school and college going children. The situation being unsafe and specially during late evening and late night hours, the scenario where a person in drunken condition and inebriated **state** coming out of the establishment in case a licence is granted, is a matter equally of concern. It is certainly germane and relevant consideration for grant of licences and particularly to serve liquor and intoxicants in an establishment which is set up for purely commercial gains. If right to trade in intoxicant is not a fundamental right, then, the complaints from local residents, adverse police reports and opposition from the local representative of people, so also, statutory authorities, can be taken into account to deny the licence in individual cases and to*

such Applicants and establishments who can be potential cause of harassment, nuisance and annoyance to the residents. If public interest and public good is dominant and paramount consideration, then, all such activities have to be regulated, controlled, checked and even prohibited and that can be done by the **State**. There is no unrestricted and absolute right in anybody and particularly of selling liquor and intoxicants. If public health, public nuisance and public interest are not germane considerations and relevant factors, then, we fail to understand what can be the guiding tests for the authorities in considering the application of the nature made by the Appellant before us. In such cases where there is wide opposition and that is not found to be at the behest of any vested interest or rival traders or on account of personal or pure enmity, then, that cannot be ignored or brushed aside. In these circumstances, we are of the view that both the Collector and the Commissioner committed no error by relying on these complaints and adverse police reports and concluding that no case is made out for issuance of FL-III licence in favour of the Appellant.

24. The **State** Government while exercising its revisional powers has not held that there were no complaints or that complaints were deliberately invited, concocted or cooked up, but what the **Minister** in his order **states** is that such police reports ought to indicate only the aspect of any communal tension or riots and **other** sensitive matters. The report of law and order situation and comments from the Police ought to project only these aspects and essentially whether, the grant of licence would incite any communal tension or violence. The **Minister** does not dispute that

*the police in their reports can take into consideration not just the impact on the community with special emphasis on development of any communal violence or tension, but **other** sensitive matters also. We do not see how the **Minister** can comment upon the contents of Police reports. If the Police reports indicate that there are large scale complaints of public nuisance, public inconvenience and serious harassment and embarrassment to the women and children which may give rise to law and order problem in case licence is granted, then, certainly the Police **Department** and individual Police Stations are well within their authority and powers to include such events and aspects in their reports. It is not for the **Minister** to express any opinion or make any comment or lay down any guidelines as to how a Police report should be prepared or what it should indicate or what matter it should contain or project.*

25. *It may be that communal tension or communal violence or communal peace is relevant consideration and factor, however, that alone is not decisive or final. Particular area or colony will have its own peculiar problems or issues. It is combination of several factors which may give rise to conflicts, fights, disturbances and this could be because of peculiar composition of the area. It is not which religious community or group, majority or minority, inhabitants the area. The situation of the present nature has to be judged not by religious or communal standards or in terms of religion or by dividing the inhabitants or residents into minority or majority communities. Even a predominantly minority or majority area can witness communal tension and communal*

violence. There could be **other** tensions which may give rise to violence or similar such activities which are prejudicial to public peace. Therefore, it is combination of several factors and one of which may be communal situation, but to suggest that this alone is conclusive, is preposterous to say the least. The **Minister** of **State Excise** is no authority to guide the police **department** and Home Ministry personnel on these matters. He, therefore, exceeded his jurisdiction. That apart he called for Police report himself and which reiterated the contents of earlier reports. However, the **Minister** discards that report on the ground that within the vicinity of the Appellant's establishment and 300 to 600 metres thereof, there are five Liquor Shops and Bars and which are functional and because of them no law and order problem has arisen or will arise, then, how could such situation arise only if a licence is issued to the Appellant, has not been clarified at all. Therefore, the **Minister** terms the Police report as vague.

26. The sweeping and general observations in the **State** Government's order indicate that the **Minister** was bent on granting a licence in favour of the Appellant and that is why he ignored and brushed aside cogent and relevant material and considerations. That there is possibility of law and order problem or adverse law and order situation in case the licence is granted to the Appellant is the conclusion in the Police reports based on number of complaints from the residents over a period of time and also from local representative of people. Therefore, this is a valid criteria adopted by the Police and their comments that the law

and order situation may be affected adversely in case of Appellant's licence being granted, need not be taken lightly leave alone totally discarded by the **Minister** because there are **other** establishments of similar nature on account of which such situation has not developed or arisen for all these years. The Police **Department** cannot give any guarantee and is not expected to give one. They indicate possibilities. They alone know the law and order situation and how to control the same. Once the Police **Department** finds that individual establishment can cause law and order situation in future, then, it is not proper on the part of the licensing authority and equally the **State** Government/ **Minister** to override their reports or their contents and grant licence to the establishment like the Appellant. It is such conduct of the **State** Government which has invited certain adverse comments from the learned Single Judge. One could be appalled and disturbed at such an approach of the **State** which is supposed to uphold public interest and act for maintenance of public peace and in preserving and protecting public good. The **State** is expected to set such standards so that there is balance in the society and conflicts emerging from exercise of conflicting rights of the nature as in the present case and opposition thereto, are avoided. If larger public interest requires the **State** to override private interest and that is an expectation from a welfare **state**, then, if in particular facts and circumstances such an approach is not reflected and the expectation is not fulfilled that is enough justification to make an adverse comment. The order passed by the **State** Government, in this case, which is based on certain

general assumptions, conjectures and surmises by ignoring overwhelming public interest and attempts to justify such order before a Court of Law, certainly can invite the comments of the nature made by the learned Single Judge. Moreover, the observations and conclusions in the order of the **Minister** and particularly that the area was earlier residential, but now commercial, are clearly contrary to and beyond the record. The **Minister** refers to the complaint made by the local Corporator and one Mahila Mandal, but proceeds to observe that such Corporator or Women Organization ought to have complained against **other** establishments selling liquor and serving the same. The **Minister** seems to suggest that the Corporator and such organizations are targeting only the Appellant, therefore, there is possibility, according to the **Minister**, that such complaints could be motivated and at the behest of the rival traders.

27. We are equally surprised at such act of exceeding the brief and to such an extent. The powers under the Bombay Prohibition Act, 1949 certainly enable the Government and the **State** to grant and regulate the issuance of licences to establishments carrying on business similar to that of the Appellant before us. However, if the order of the **Minister** in this case is perused in its entirety and in totality, so also, in the backdrop of the facts and circumstances in this case, one finds that a holder of public office is expected to uphold public trust. He should have been more careful and responsible. He is the **Minister** of Prohibition and **Excise Department** of the **State** of Maharashtra. However, the **State** Government comprises of several **departments** and all

such **departments** are expected to act in coordination so that their orders and actions reflect genuine concern for the public. As a part of welfare **state**, the Government has to take into account public sentiments. The complaints from public and public voice can be ignored by the welfare **state** at its own risk and peril. The **State** Government cannot evaluate the public interest by looking at it **department**-wise or by apportioning it departmentally. An activity which is beneficial and generates revenue for one **Department** may be directly in contravention to the functions and duties of another **department** and might equally run counter to the obligation of a welfare **state**. The learned Single Judge has, therefore, emphasized that liquor licences may generate revenue and give tremendous income to the **State**, however, the **State** cannot ignore that all discretion and power including to issue licences is coupled with a duty. That power and discretion cannot be exercised as per the whims and fancies of the **State**. If the orders of the nature passed in the present case show that the discretionary power which is in the nature of a trust, has not been exercised bearing in mind public interest and public good, then, while striking down the act and order, it is equally the duty of the Court to remind the **State** of doctrine of Good Governance. Precisely that has been emphasized in the order of the learned Single Judge. Therefore, we are of the view that the comments and remarks of the learned Single Judge must be seen in the facts and circumstances of the present case and considering the order impugned before him. While scrutinizing the order of the **State** Government impugned before him, he has made

observations and comments. We see them as confined and restricted to the facts and circumstances of this case. The learned Single Judge has not laid down any general rule or any principle of law as suggested by the learned counsel appearing for the Appellant and the learned Additional Government Pleader. The comments and remarks of the learned Single Judge reflect his pain and anguish on the approach of the **State** Government. Even we could not resist the above observations and comments because if the order or opinion of the learned **Minister** of Prohibition and **State Excise** is to be taken as a view of the **State** Government, then, there is likelihood of liquor licences being granted for the asking and even if there are large scale complaints from members of public. It is not expected that protests, which are peaceful and democratic, would be overlooked for some gains, by a elected Government in the Parliamentary System of Democracy. People in residential colonies are not expected to resort to remedies provided by the 2003 Order only. They can lodge complaints and given representations by approaching **State** functionaries. Even elected representatives at local level can convey public sentiments to the officials.

36. The scheme of Sections and Orders in which they appear in the statute makes it clear that the underlying policy of the **State** by enacting the Act is to fulfill and perform, so also, act in furtherance of the directive principles referred to in Article [47](#) of the Constitution of India. Therefore, the learned Single Judge was in no error and we do not agree with Mr.Samarth and the learned AGP that the learned Single Judge was not required to emphasize

or has laid undue emphasis on the directive principles of **State** Policy and particularly dealing with prohibition. In a recent judgment of the Honourable Supreme Court, reported in (2006)5 SCC 112 : AIR 2006 SC 1987 (**State** of Maharashtra v/s Nagpur Distillers), it has been held thus:

“9. This factual distinction apart, we have to keep in mind that the right to trade in liquor is only a privilege farmed out by the **State**. Article 47 of the Constitution of India clearly casts a duty on the **State** at least to reduce the consumption of liquor in the **State** gradually leading to prohibition itself. It appears to be right to point out that the time has come for the **States** and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become an obsession with very many. Surely, we do not need an indolent nation. Why the **State** in the face of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate. The only excuse for the **State** for not following the mandate of Article 47 of the Constitution is that huge revenue is generated by this trade and such revenue is being used for meeting the financial needs of the **State**. What is more relevant here

*is to notice that the monopoly in the trade is with the **State** and it is only a privilege that a licensee has in the matter of manufacturing and vending liquor.”*

*40. In view of our conclusions as above, we are of the opinion that there is no merit in appeal preferred by the Appellant M/s **Hotel Shobha**. Once above view is taken then each of the contentions of Mr.Samarth must fail. There is no question of any alternate remedy and particularly under the Order of 2003. That is but one more opportunity for aggrieved parties like original Writ Petitioners to raise their grievance and make complaints, but existence of that does not prevent them from opposing grant of licence to the establishments like the Appellant as that is the underlying theme of the law of prohibition in the **State**. Even grant of authorisation and licence for manufacturing and sale of the intoxicant can be opposed and precisely that is the reason why the complaints were entertained by the Police, Collector and Commissioner. The Writ Petition, therefore, could not have been dismissed on the ground of alternate remedy.”*

12. If the stand of the State Excise Department is to be appreciated, it naturally is expected that the State Excise Department at Aurangabad would apply the same parameters and yardsticks to similar CL-III license shops if they are found in the vicinity of a School, colleges, places of worship and statutes of National Leaders. Keeping the law in view and the observations of

this Court in the Hotel Shobha case (supra), I do not find it appropriate to foist a CL-III license shop on the localites living in the colony at issue. It has been already held by this Court that the right to vend liquor cannot be equated with a right to business or profession under the Constitution.

13. Considering the above, this petition being devoid of merit, is therefore dismissed. Needless to state, if the petitioner desires to relocate his shop elsewhere and if the CL-III license is subsisting, the petitioner would be at liberty to approach the appropriate authorities for seeking the requisite permission which would be strictly in accordance with the rules and the policies of the State. The said application could therefore be considered on its own merits.

14. So also, it is expected that the State Excise Department at Aurangabad would consider the existence of such CL-III or similar liquor vending shops, if are within the vicinity of schools, colleges, places of worship and statues, keeping in view the submissions of Mr.Barlinge that there are several such shops in the Mukundwadi area and in the event of location of such instances, the competent authorities are expected to initiate appropriate steps considering the observations in this judgment.

15. Rule is discharged.

(Ravindra V.Ghuge, J.)