

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12414 OF 2017

Ajitprasad Dwarkaprasad Jaiswal,
Age : 66 years, Business,
R/o. 222, 'B' Sector, N-1,
CIDCO, Aurangabad.

.. Petitioner

VS.

1. Senior Police Inspector,
Police Station, Begumpura,
Aurangabad.

2. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.

.. Respondents

Mr. V. J. Dixit, Senior Advocate holding for Mr. S.V. Dixit,
Advocate for the petitioner.

Mr. A. B. Girase, Assistant Government Pleader and
Mr. S.P. Sonpawale, Assistant Government Pleader for
respondents.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 11-10-2017

ORAL JUDGMENT : (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith and heard learned
advocates appearing for the parties finally, by consent.

2. By invoking the writ jurisdiction under Article 226 of the Constitution of India, the petitioner has prayed for issuance of writ of certiorari calling for the record and proceedings of order dated 28/09/2017 passed by respondent No.1 and after examining the legality, validity and propriety thereof, the said order be quashed and set aside.

3. The factual matrix giving rise to the petition is that, the petitioner has been running CL-III-12 Permit Country Liquor Shop at Begumpura, Aurangabad since last more than 43 years. The respondent No.1 is a Senior Police Inspector working at Begumpura Police Station. He has passed the impugned order.

4. It is contended that, the petitioner has renewed his license from time to time and it is renewed till 31/03/2018. He also possessed the license under Maharashtra Shops and Establishments Act and the said license is also renewed till the year 2020. Nobody has made any complaint regarding law and order situation in respect of the shop of the petitioner. For the first time petitioner received notice dated 11/06/2017 issued by Police Station, Begumpura, wherein it was stated that, two persons after consuming liquor, purchased from

the shop of the petitioner had abused each other, which had caused disturbance to the passersby. The said incident was communicated by a lady to the police. It was told to the petitioner that, he should check about the behaviour of the persons who purchase liquor from his shop and take all such precautions. Thereafter, every attempt is made and precaution has been taken by the petitioner. However, on 28/09/2017 the petitioner received an order, purported to be issued under Section 142 (2) of Maharashtra prohibition Act, 1949 (hereinafter referred to as 'Prohibition Act').

5. It was stated in the said order by respondent No.1 that, people after consuming liquor from the petitioner's shop sit on dividers of Maqbara Road, and it causes disturbance to the nearby residents. He apprehended untoward incident affecting law and order. There are religious places and historical place of 'Bibika Maqbara' near the shop of the petitioner and many tourists visit such place. He also mentioned that, the Navratra Festival and Moharram is going on, and therefore, it may cause law and order situation, and in order to prevent the nuisance, he directed the petitioner to close his shop for 30 days immediately.

6. It has been stated that, the said order is per se illegal and

without any jurisdiction. It has also been passed in violation of principles of natural justice, and therefore, the petitioner has prayed for setting it aside.

7. Heard Mr. V. J. Dixit, Senior Advocate holding for Mr. S. V. Dixit, Advocate for petitioner and learned Assistant Government Pleader Mr. S. P. Sonpawale for respondents.

8. The learned Senior Counsel appearing for the petitioner submitted that, the petitioner has obtained license from time to time from the appropriate authority. There was no complaint against him. His shop was never involved in any criminal activity. By a notice which was issued by Police Constable on 11/06/2017, he was directed to take precautions in respect of the customers who were creating nuisance after drinking liquor at his shop. But thereafter petitioner was never called upon to explain anything and directly impugned notice was issued. The said notice cannot be said to be a notice invoking powers under Section 142 (2) of Maharashtra Prohibition Act, 1949 and the respondent No.1 being the Senior Police Inspector cannot be said to be a "Police Officer" contemplated for the said Section as per the notification.

9. Per contra, it has been argued on behalf of the respondents that, being the police officer, he was empowered to take all the necessary measure to maintain the law and order situation within his jurisdiction. Complaints were received in respect of the behaviour of the customers who used to be under influence of liquor after consuming the liquor from the shop of the petitioner.

10. The respondent No.1 has taken action under Section 142 (2) of the Maharashtra Prohibition Act. The said relevant section is reproduced here for the sake of convenience ;

“Section 142 (2) : - If a riot or unlawful assembly is imminent or takes place it shall be lawful for any Executive Magistrate or Police Officer who is present to direct that such place shall be closed and kept closed for such period as he thinks fit and in the absence of any Executive Magistrate or Police Officer the person referred to in sub-section (1) shall himself close such place.”

Thus it is to be noted that, the powers are given under the above section to the Executive Magistrate or police officer to close down the shop for such period. But it is only in the event that if a riot or unlawful assembly is imminent or takes place.

11. Here in this case, the record was called from the

respondent No.1 on the basis of which he had issued the impugned order. It is to be noted that, only non-cognizable offences have been registered against some other persons and the spot appears to be in front of the shop of the petitioner, and it is said that those persons who were involved in the offence were under influence of liquor after consuming it from the shop of the petitioner.

12. Thus even the respondent No.1 who was present in the Court failed to point out that, any riot or unlawful assembly had ever taken place or the situation which was brought to his notice was of such a nature that riot or unlawful assembly was imminent. Further he has no explanation as to why he had directed the petitioner to close the shop for a period of 30 days. He cannot act abruptly. Whatever the alleged reasons have been given by him while passing the impugned order are arbitrary. The record would show that, some incident had taken place on 11/06/2017, 20/09/2017 and 26/09/2017. The petitioner was never called upon by the respondent No.1 to put forth his say. Further when the notice was given on 11/06/2017, till 20/09/2017 there was no incident which was reported to the police station involving the shop of the petitioner. The wordings those have been used in the impugned order, by no stretch of

imagination would indicate that there was imminent possibility of riot or unlawful assembly. Under such circumstance respondent No.1 could not have invoked alleged powers under Section 142 (2) of the Prohibition Act. On this count, the impugned order deserves to be quashed and set aside.

13. Further it is to be noted that, as per the schedule to the Act and Government Resolution, Senior Inspector is not "Police Officer" who is entitled to take an action as contemplated. The respondent No.1 though purported to invoke the provisions of the Maharashtra Prohibition Act, failed to consider the circulars and Government Resolutions defining that who is police officer, who is entitled to take action regarding closure of any shop under the Act. Respondent No.1 has assumed that jurisdiction, which in fact, he was not having such jurisdiction. Therefore it appears that, the action taken by the respondent No.1 is with ulterior motive and with malafied intention, and also appears to be arbitrary, and therefore, before parting with the order we propose to issue directions to the superior of the respondent No.1 to take a necessary action against him for his such high handed act, assumption of power, and for the aforesaid illegality in the action. With these observations following order is passed.

ORDER

- (a) The writ petition is hereby allowed.
- (b) The impugned order dated 28/09/2017 passed by respondent No.1 is hereby quashed and set aside.
- (c) Copy of this order be sent to the superior of respondent No.1 for taking necessary action against him, for the observations made in the Judgment.
- (d) Rule made absolute in the above terms. There shall be no order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.