BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2139 OF 2017

Hotel Owners Association of
Thane and Another ..... Petitioners.

V/s

The District Collector and Others ..... Respondents.

ALONGWITH
WRIT PETITION NO. 2173 OF 2017

Maharashtra Wine Merchants
Association and Others ..... Petitioners.

V/s

The District Collector,
Mumbai District State Exercise
Department and Others ..... Respondents.

ALONGWITH
WRIT PETITION NO.2174 OF 2017

Maharashtra Wine Merchants
Association and Others ..... Petitioners.

V/s

The District Collector,
Mumbai District State Exercise
Department and Others ..... Respondents.

ALONGWITH
WRIT PETITION NO.2175 OF 2017

Maharashtra Wine Merchants
Association and Others ..... Petitioners.

V/s

The District Collector,
Mumbai District State Exercise
Department and Others ..... Respondents.

ALONGWITH
WRIT PETITION NO.2176 OF 2017

Indian Hotel and Restaurant
Association and Another ..... Petitioners.

V/s

The District Collector,
Mumbai District State Excise
Department and Others ..... Respondents.

ALONGWITH

WRIT PETITION NO.2177 OF 2017

Indian Hotel and Restaurant
Association and Another ..... Petitioners.

V/s

The District Collector,
Mumbai District State Excise
Department and Others ..... Respondents.

ALONGWITH

WRIT PETITION NO.2178 OF 2017

Maharashtra Wine Merchants
Association and Others ..... Petitioners.

V/s

The District Collector,
Mumbai District State Excise
Department and Others ..... Respondents.

Mr. R.D. Soni a/w Mr. Sujay Gawde, Mr. Ajay Sharma i/b Shree & Co. for the Petitioners.

Mr. N.C. Walimbe, AGP for Respondent Nos 1 to 3/State.

CORAM: V.M. KANADE &
P. R. BORA, JJ.

DATE: 17th February, 2017

P.C.:- **(*Per V.M. Kanade, J.*)**

1] Heard

2] Rule. Rule is made returnable forthwith. Respondents waive service. By consent of the parties, Petitions are taken up for final hearing.

3] All these Petitions can be disposed of by a common order since the issue involved in all these Petitions is identical and the relief which is sought is also identical. These Petitions have been filed by the Associations of hoteliers viz. Hotel Owners Association of Thane, Maharashtra Wine Merchants Association and the Indian Hotel and Restaurant Association engaged in the business of running Establishments of Hotels and Restaurants within the area of Thane District.

4] Petitioners are aggrieved by the Circular issued by the Collector of Thane dated 24/01/2017. By the said Circular, a direction has been given by the Collector, Thane to the Excise Department and all shop owners, hoteliers and restaurant owners that they shall not serve or sell liquor from 5.00 P.M. in the evening of 19/02/2017 to

21/02/2017 and also on 23/02/2017 for whole day.

5] The grievance of the Petitioners is that under Rule 9-A(2)(c)(2) of the Maharashtra Foreign Liquor (Sale on Cash, Regis of Sales) Rules 1969, a direction can be given by the authority to all the vendors who have obtained license for sale of liquor not to keep their shops open during general election or by-election to any local authority a day immediately before such day of poll and on the counting day. It is submitted that the Circular impugned in these Petitions is contrary to the said Rule 9-A(2)(c)(2) and the same Rule is applicable in respect of Maharashtra Country Liquor Rules and the said Rule is 26. It is submitted that in respect of other Districts, Respondents have followed the said Rule and have imposed a ban one day prior to the election and on the day of election till the election is over and on the counting day. It is therefore submitted that the said Circular may be set aside to the extent it prohibits/bans the sale of liquor two days prior to the election i.e. from 19/02/2017 from 5 P.M. onwards. Secondly, it is submitted that the ban on sale of liquor on the counting day may be restricted till the declaration of the results. In support of the said submission, reliance is placed on several judgments of this Court, some of which are annexed to the Petitions.

6] On the other hand, the learned AGP appearing on behalf of the State, after taking instructions, submits that on conjoint reading of Section 135-C and sub-section (2) of Section 2 of the Representation

of the People Act, 1951, it is apparent that local elections are also governed by the said provisions. It is therefore submitted that the said Circular has been issued as per the said provisions and is not illegal.

7] The learned Counsel appearing on behalf of the Petitioner, countering the said submission, submitted that it has been held by this Court that so far as the said provisions are concerned they are not applicable to the local elections and they are only applicable to Loksabha and Assembly elections.

8] After having heard both the Counsel for some time, we are of the view that there is some substance in the submissions made by the learned Counsel appearing on behalf of the Petitioners. Rule 9-A(2)(c)(2) is squarely applicable to the general elections which are held in respect of the local authority. The said Rule reads as under:-

> "**9-A. Vendor's Licence.**- (1).....
>
> (2) No licensed premises in respect of which any such licence has been granted shall be kept open for the sale of foreign liquor in on -
>
> (a)..... to (c)(1).....
>
> (2) the day or days on which poll in relation to any general election or by-election to any local authority in the State

> is taken in the constituency in which such premises are located and a day immediately before such day of poll and on the counting day."

Rule 26 of the Country Liquor Rules is also identically worded and, therefore, it is not necessary to reproduce Rule 26. On the plain reading of the said Rule, it is apparent that power which is vested in the authority to impose ban on sale of liquor is restricted only to a day before the election and on the counting day. Secondly, so far as submission made by the learned AGP appearing on behalf of the State is concerned, it cannot be accepted since the Preamble to the Representation of the People Act, 1951 clearly provides that it is an Act to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State and not in respect of election to Local Councils. Sub-section (2) of Section 2 merely clarifies that for the purpose of this Act even a Council constituency, a local authorities' constituency, a graduates' constituency shall be treated as a constituency of a different class. Sub-Section (2) of Section 2 does not make it clear as to whether the Representation of the People Act and the Rules framed thereunder are applicable to the election of Municipal Council or Corporation. Perusal of the said Act and the Rules framed thereunder therefore clearly disclose that Section 135-C which speaks about period of ban on sale or distribution of liquor on the polling day shall be applicable

only in respect of Assembly or Loksabha Elections and the said period which is mentioned in Section 135-C cannot be made applicable to the elections of Corporation. The impugned Circular, therefore, to this extent, will have to be set aside.

8] We therefore set aside the impugned Circular to the extent it imposes ban on sale of liquor on 19/02/2017 from 5.00 P.M. onwards. We are of the view that, at the same time, it is not necessary to impose ban on sale of liquor after results are declared. Since the counting is made electronically and the results are declared by afternoon, it is not necessary to impose ban for the entire day.

9] Petitions are accordingly allowed and the Rule in all these Petitions is made absolute in the aforesaid terms.

(P. R. BORA, J.) **(V. M. KANADE, J.)**