

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3494 OF 2017

(Babulal Hiralal Jaiswal...VS...The State of Maharashtra, Thr. Its Secretary, State Excise and Others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. G. Jagtap, Advocate for Petitioner.
Shri N. R. Patil, A.G.P. for Respondent Nos.1 to 5.
Shri P. S. Wathore, Advocate for Respondent Nos.6 and 7.

CORAM : S.C.GUPTA, J.

DATED : 20th SEPTEMBER, 2017.

Heard learned counsel for the petitioner, learned
Assistant Government Pleader for the State (respondent Nos.1
to 5) and learned counsel for respondent Nos.6 and 7.

02] The petition challenges an order passed by the
Minister of State Excise, Government of Maharashtra, on 7th
April, 2017. By the impugned order, the Hon'ble Minister
quashed the order of Commissioner, State Excise passed on
28th June, 2016 thereby restoring the order dated 24th
November, 2015 passed by the Collector of Nagpur,
cancelling the CL-III Licence issued to the country liquor shop
of the petitioner at Mouza-Khairgaon, Tahsil-Narkhed,
District-Nagpur.

03] The State Government has issued a Government
order in exercise of the powers conferred by sub-Sections (1)
and (2) of Section 139 of the Bombay Prohibition Act, 1949,
known as the Bombay Prohibition (Closure of licence on
resolution by Gram Sabha or representation by Voters in the

Ward of Municipal Council/Corporation) Order, 2008 (hereinafter called "Prohibition Order, 2008"). The Prohibition Order, 2008 *inter alia* provides for closure of liquor shop by resolution of Gram Sabha. The order was amended by the State Government by another Order of 12th February, 2008. By this Government order, a clause has been inserted in the Prohibition Order, 2008, which provides for a meeting to be requisitioned by Tehsildar to take a secret poll of voters in the village to consider the demand of closure of a liquor shop in the village. The Clause provides that if not less than 25 per cent of women voters or total voters in any village give a representation in writing to the concerned Superintendent of State Excise and demand to close down any liquor shop in the village, after verification of authenticity of the signatures on the representation and its genuinity, the Collector has to direct the concerned Tehsildar to take such secret poll. The concerned Tehsildar has to then declare the place, date and time of the poll at least seven days in advance. The latest list of voters is used for such poll. The election process is conducted by a secret ballot under the supervision of the Tehsildar or an Officer authorized by him. If more than 50 per cent of the women voters or total voters in the concerned village vote for closing down the liquor shop, the Collector is required to pass an order for closing down such liquor shop.

04] More than 25 per cent women voters of village Khairgaon made a requisition in this behalf to the concerned Superintendent of State Excise. The Collector thereupon directed the concerned Tehsildar to take a secret poll in accordance with the Government order. The poll was held on 29th October, 2015. The list of women voters prepared by the

Tehsildar appears to have included a total number of 1844 women voters in the village. The election report of the Tehsildar, who was also the Election Officer, indicates that out of total 1022 women voters of the village, who participated in the secret poll, as many as 894 voted for cancellation of licence, whereas 68 voted in favour of the liquor shop and 60 votes were declared invalid. Based on this result and the report submitted by Tehsildar, Narkhed, the Superintendent of State Excise held that 894 women voters out of the total 1844 women voters of the village did not constitute 50 per cent of the total number of women voters in the village and accordingly, the licence of the country liquor shop could not be cancelled. This order was challenged in an appeal by respondent Nos.6 and 7 before the Collector of Nagpur. The Collector, by his order dated 24th November, 2016, held that the list of voters used for the purpose of conduct of the secret poll had names of 58 women, who were already dead, seven women, whose names were included twice in the list and three names of men. The Collector held that accordingly, 68 women voters in the list of 1844 used by the Tehsildar for the secret poll were not genuine voters. If these voters were excluded from the list of voters, out of 1776 eligible voters more than 50 per cent, i.e. 894 women voters, voted in support of closure of the country liquor shop. The Collector held that, in the premises, according to the Government Resolution of 12th February, 2009 read with Section 11(a) of the Maharashtra Prohibition Act, 1949, the petitioner's country liquor shop licence ought to be cancelled. Accordingly, the Collector cancelled the CL-III Licence held by the petitioner with immediate effect. This order was challenged by the petitioner in an appeal filed before the Commissioner of State Excise, Maharashtra State, Mumbai. By

his order dated 28th June, 2016, the Commissioner agreed with the petitioner's contention that the required number of women voters did not vote in the secret poll for closure of the licence. According to the Commissioner, there was no provision to re-verify or modify the election list, or add or delete the names in it, once it is finalized by the process of the Election Commission. The Commissioner was of the view that a voter list is prepared from time to time and once prepared, cannot be altered and has to be considered as it is for all official purposes (unless a new voter list is prepared by the Election Commission). The Commissioner was of the view that the Collector, Nagpur had not adhered to the procedure prescribed in Clause-3(A) of the Government Resolution dated 12th February, 2012 and accordingly, set aside the order of the Collector and allowed the petitioner to carry on business on the strength of the CL-III Licence held by him at Khairgaon. On a revision preferred by respondent No.6, the Minister of State Excise by his order dated 7th April, 2017 cancelled and set aside the order passed by the Commissioner of Excise, thereby restoring the order passed by the Collector, Nagpur of cancellation of the CL-III Licence of the country liquor shop at Khairgaon. This order is impugned by the petitioner in the present petition.

05] Relying on the particular clause, namely, amended Clause 3(A) of the Prohibition Order, 2008, learned counsel for the petitioner submits that there were only 222 verified signatures of women voters on the representation purportedly made by women voters of the village. Secondly, it is submitted that after the Election Officer had finalized the list of voters and conducted the secret poll and announced the election result, the Collector could not have altered the voter

list so as to delete 68 voters from the list and then altered the result of the poll.

06] As far as the requisition of women voters which initiated the process of secret poll is concerned, it is pertinent to note that originally about 238 women voters had attended the Gram Sabha and passed a resolution for cancellation of liquor licence. Subsequently, a representation was submitted by 866 valid women voters of Khairgaon village to the respondent-Collector for conducting a secret poll for cancellation of the licence on the basis of the Gram Sabha resolution. On the petitioner's objection to the validity of the Gram Sabha resolution and the representation of 7th May, 2015 and 8th June, 2015, an enquiry was conducted. The inquiry report prepared by the Excise Inspector indicated that although signatures of only 222 women voters from out of the signatures/thumb impressions of 866 signatories could be verified, approximately 500 women voters were present with their voter identity proofs to submit to the verification process. Since there was paucity of staff, 222 signatures were physically verified with reference to the voters' identity shown by them. The leader of the congregation announced that minimum 900 women voters were in favour of the resolution for closure of the liquor shop. All women voters present supported this statement. Based on these facts and after verification of the names of 866 signatories with the list of women voters in the village, the Excise Inspector expressed his satisfaction that more than 454 out of the total 1844 women voters, i.e. over 25 per cent of the women voters, had requisitioned the meeting for conducting the secret poll. The verification process, in the facts narrated above, substantially satisfies the requirement of the necessary requisition to

initiate the poll under the Prohibition Order, 2008.

07] The record of the case shows that after the Collector directed the Tehsildar to conduct the poll, Tehsildar issued a public notice of the election declaring a list of voters. The list was published on 15th October, 2015 at about 6.00 p. m. in the office of the Gram Sabha. On the immediately following day, i.e. 16th October, 2015, respondent Nos.6 and 7 raised an objection to the voter list, since the list contained names of non-eligible voters including several deceased voters. The Tehsildar refused to entertain the objection. The respondents thereupon approached the Collector with their objections in respect of 172 non-eligible women voters. The objections were raised before the date of the poll scheduled on 29th October, 2015. The objections, however, could not be disposed of as of the date of the poll, i.e. by 29th October, 2015. The poll was held in these circumstances, and at the end of which, as noted above, 894 women voters were found to have voted in favour of the resolution for cancellation of the CL-III Licence out of 1022 eligible voters, who participated in the secret poll. When after the order of the Superintendent of State Excise was carried in appeal before the Collector, the Collector took into account the report of the Tehsildar prepared in connection with the secret poll, which indicated that names of 58 dead women were, in fact, included in the list, whilst seven names were repeated and three names were not of women but of men. The Collector was of the view that if these voters were excluded from the list of eligible voters, there were only 1776 women voters in the village and of which 894, i.e. more than 50 per cent, voted in favour of cancellation of the licence. The Collector, accordingly, issued the order of cancellation of the liquor licence.

08] Even if one were to accept that there was a technical lapse inasmuch as the voting list was not corrected as of the date of the secret poll, it is not really in dispute that the list used by the Tehsildar for conducting the secret poll in fact had 58 women shown as voters, who were already dead, whilst seven names were repeated and three were wrongly calculated. The Tehsildar for holding the poll is expected to use the latest list of voters. Preparation of a list of voters for conducting of any poll to be held by the Collector or by the Tehsildar count amongst duties concerning the holding of the election. There is an order of the State Election Commission dated 16th November, 2007 in this behalf, which entrusts these duties to the Collector or the Tehsildar, as the case may be. In any event, since the particular order, i.e. Prohibition Order, 2008, required the Tehsildar to use the latest list of voters, the Tehsildar could have very well used the updated list of voters as of the date of the secret ballot. According to learned counsel for the petitioner, if the list was not updated as of the date of the secret ballot, it could not have been used as such for the ballot. Technically learned counsel may be right. However, the question before this Court is, for that reason alone, is this Court, sitting as a writ Court and exercising jurisdiction under Articles 226 and 227 of the Constitution of India, to interfere with the impugned order. When, all said and done, it is indisputable that out of eligible women voters of the village more than 50 per cent women voters did in fact vote in favour of the resolution for cancellation of the liquor licence, can it be said that there is any failure of justice so far as the petitioner is concerned. High prerogative writs to be issued by this Court under Articles 226 and 227 are for doing substantial justice. The requirements of such substantial justice, in my opinion, do

not call for interference with the impugned order in the facts of the case. If, as a matter of substance, the requirements of Clause 3(A) of the Prohibition Order, 2008 are clearly satisfied in the present case, merely on a technical plea such as this, I am not inclined to interfere with the impugned order.

09] In the premises, the impugned order does not warrant any interference. The writ petition is, accordingly, dismissed. No order as to costs.

JUDGE

PBP