

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**PUBLIC INTEREST LITIGATION NO. 75 OF 2018
WITH
CIVIL APPLICATION NO. 2828 OF 2019**

Uttam Mareppa Gaikwad
Age: 52 years, Occu. Social Worker,
R/o. Wadhavana (Bk.), Tq. Udgir,
Dist. Latur.

... Petitioner

Versus

1. The State of Maharashtra
Through Excise Department,
Mantralaya, Mumbai-32.
2. The Commissioner, State Excise,
Old Custom House, Fort, Mumbai.
3. The Collector, Latur,
Dist. Latur.
4. The Superintendent of State Excise,
Latur, Dist. Latur.
5. The Secretary, Gram Panchayat,
Village Wadhavana (Bk.),
Tq. Udgir, Dist. Latur.
6. The Gram Sevak,
Village Wadhavana (Bk.),
Tq. Udgir, Dist. Latur.
7. Shri S. G. Ghone,
Age: Major, Occu: Business,
CL-III Licensee, Shahu Chowk,
Latur.

... Respondents

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Mr. J.M. Murkute, Advocate for petitioner.
Mr. Anil H. Kasliwal, Advocate appointed as amicus curiae to assist
the Court.
Mr. M. S. Yawalkar, Addl. Govt. Pleader for respondent-State.
Mr. Umesh Gite, Advocate for respondent No.6.
Mr. M. S. Deshmukh, Advocate h/f Mr. U.L. Momale for Respondent
No.7.

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**CORAM : PRASANNA B. VARALE
AND
NITIN W. SAMBRE, JJ**

DATED : 09th APRIL, 2019

PER COURT:-

1. This PIL is preferred by the resident of village Wadhavana (Bk), Tq. Udgir, Dist. Latur, questioning the shifting of CL-III license from Latur city to the said village.
2. The case of the petitioner is, permission granted by the respondents i.e. for shifting CL-III license in question is contrary to the provisions of Rule 25 of the Maharashtra Country Liquor Rules, 1973. According to learned counsel for petitioner, CL-III licence cannot be shifted for a cause i.e. the premise owner viz. landlord has objected for running of liquor business. According to him, such condition is not incorporated in Rule 25 governing the grant of permission for shifting. He would also invite attention of this Court to the Division Bench judgment of this Court in the matter of PIL No. 70 of 2013 (Manik Rama Toke and another Vs. The State of Maharashtra and others) decided on 22/06/2015, particularly paragraphs 12 and 13, which read thus :-

"12. In the matter of shifting of retail license shop to any place from one district to another, such shifting shall be with prior approval of the State Government. Clause '(d)' of Rule 25 provides that shifting of license under clauses (a), (b) and (c) shall be subject to

fulfillment of the conditions laid down under sub-clauses (i), (ii) & (iii) of clause (d) of Rule 25.

The second proviso to clause 'd' mandates that the conditions laid down in subclauses (i), (ii) & (iii) of clause (d) of Rule 25 shall not apply :-

(a) in case of licensee whose premises are affected by the implementation of the Development Scheme such as road widening and the like

(b) in case, where licensee is running, his licensed shop at the place under rental deed and Landlord or owner of the place does not agree to extend the rental deed or

(c) In case, shifting is essential due to Honourable High Court's order.

However in above referred circumstances, if shifting of shop is requested, such request shall be allowed within the area of such Grampanchayat or same 'C' class Municipal Council or 'A' or 'B' class Municipal Council or Municipal Corporation as the case may be.

13. In the instant matter, reason quoted by the respondent Nos.5 & 6 for shifting of liquor shop from Pune to Nanded district is that, the landlord of the premises at Pune district, has raised an objection for continuation of the business in the said premises. The reason quoted in the application does not come within the ambit of sub clause (i), (ii), (iii) of clause 'd' of Rule 25 and therefore, there does not arise any question for according permission to shift a liquor shop from one district to another district. The reason quoted by the respondent Nos.5 & 6 in the application, tendered to the State Government, is within the purview of second proviso to clause 'b' of Rule 25(d) i.e. the landlord or the owner of the place did not agree to extend the rental deed. In this view of the matter, as provided in second proviso of Rule 25(d), the application must be considered for shifting of the shop, within the same Grampanchayat or Municipal Council or Corporation area. The reason quoted by the respondent Nos.5 & 6 for shifting of the liquor shop from one district to another district permits shifting of liquor shop, within the same Grampanchayat or Municipal area.

3. The petitioner has moved an oral request on instructions for withdrawal of the petition. This court being sensitive to the position of law that the Public Interest Litigation cannot be permitted to be withdrawn, has rejected the said prayer and proceeded to decide the matter on its own merits.

4. As could be noticed from the earlier observations, the subject matter of challenge in the PIL is about permitting shifting of CL-III license intra district i.e. from one taluka to another taluka in the very revenue district. Such shifting of a country liquor license which is issued under the Maharashtra Prohibition Act is governed by the Maharashtra Country Liquor Rules, particularly Rule 25, which reads thus:

"25. Prohibition to shift licensed shop to any other place :-

(a) a licensed shop shall not be shifted by a retail licensee to any other within a taluka without prior approval of the Collector;

(b) a licensed shop shall not be shifted by retail licensee to any place from one taluka to another taluka of the district without prior approval of the Commissioner;

Provided that, the number of licensed shop for such shifting shall not exceed 15% of the total existing licensed shops in any district excluding Mumbai City and Mumbai Suburban District, which would be inclusive of the licensed shops already shifted with prior approval of the Government or the Commissioner before the date of publication of these rules;

" Provided further that, any licensed shop shall not be shifted within the Mumbai City and Mumbai Suburban District, without prior approval of the Government"

(c) a licensed shop shall not be shifted by retail licensee to any place from one district to another district without prior approval of the Government;

(d) the shifting of licenses under clauses (a), (b) and (c); shall be subject to the fulfillment of the following conditions, namely:-

(i) Considering the sale of liquor of past five years, the sale of liquor of any two years of last four years shall be less than the sale of first year of this block of five years or considering the sale of liquor of past five years, the sale of liquor of any three years shall be less than that of the annual average sale of the liquor for the same five years;

(ii) that there is no inconvenience of drinking of liquor to the people residing in that area;

(iii) that the Grampanchayat in whose area licensed shop is proposed to be shifted, has given no objection by passing a resolution of the Gramsabha; and if the shop is proposed to be shifted to any area other than Grampanahayat area, no objection of the Municipal Council concerned has been obtained;

(iv) that the proposed premises are free from distance restriction as provided under sub-rules (4) and (5) of Rule 24;

(v) that the construction of the premises in which shop is proposed to be shifted is an authorized construction and a certificate of the competent local authority is submitted;

Provided that, the proviso to clause (b) and sub-clauses (i) and (ii) of clause (d) shall not apply in respect of shifting of licensed ship which has been closed down or required to be closed down as per the provisions of the Bombay Prohibition (Closer of License on Resolution by the Village Panchayat or Gramsabha or Women/Social Organization or representation by Voters in the Village or Ward of Municipal Council) Order 2003.

Provided further that, the conditions as laid down in sub-clauses (i), (ii) and (iii) of Clause (d) shall not apply in respect of the following situation, however, under such situation shifting shall be allowed within the area of same Gram Panchayat or same 'C' Class Municipal Council or in 'A' and 'B' Class Municipal Council or Municipal Corporation, as the case may be,

(a) licensee whose premises are affected by the implementation of Development scheme such as road widening, and the like

(b) In the case where the licensee is running his licensed shop shall, at the place under the rental deed and the land lord or owner of the place does not agree to extent the rental deed or

(c) in the case where the shifting is essential due to Hon'ble High Court's Order."

5. The case of the petitioner is that the shifting is contrary to above Rule 25 and also the judgment of Division Bench of this Court at Aurangabad Bench delivered in PIL No. 70 of 2013 (Manik Rama Toke and another Vs. The State of Maharashtra and others) on 22/06/2015. So far as the first submission of non-compliance of Rule 25 is concerned, the amicus curiae who was earlier appearing for the petitioner has urged that the shifting is without citing any lawful cause which can be considered as genuine one. Pursuant to the requirement of Rule 25 of the Rules and the judgment of Manik Rama Toke and another, the said Rule is interpreted against the license holder and in favour of the objectors like petitioner considering the cause cited for such transfer.

6. The aforesaid submissions are resisted by the learned Additional Government Pleader and the license holder, thereby claiming that the Rules were followed in its true spirit.

7. Right to trade in liquor cannot be claimed to be a fundamental right, however, Article 14 of the Constitution in such an eventuality is applicable. Appropriate support can be drawn

from the judgment of Hon'ble Apex Court in Maharashtra Wine Merchants Association Vs. The State of Maharashtra (AIR 1992 Bom 3), particularly paragraph 10, which reads thus:

"10. The learned Government Pleader has submitted that right to carry on business of sale of liquor is not a fundamental right. She is undoubtedly right. No one says it is a fundamental right. It is, however, well settled by the various Supreme Court judgments that wherever sale of liquor is permitted under a licence or a permit granted under a statute, the action of the State must conform to the Act and the rules. Whenever any action of a State is challenged on the ground that the impugned action is not in conformity with the provisions of the parent Act or that the statutory functionary has exercised the power at the instance of an outside authority, however high it may be, it is open to the party aggrieved to move the High Court under Art. 226 of Constitution of India. Art. 14 of the Constitution is undoubtedly applicable."

8. In the wake of above, it can be inferred that in case there is violation of Article 14, a petition can be held to be maintainable in the matter arising out of operation of liquor license.

9. In the aforesaid background, we proceed to consider the rival submissions.

10. In the case in hand the shifting is recommended by the Superintendent of Excise of the District to the Collector on the ground amongst others :-

that the landlord of the respondent license holder has objected for operation of the license. It is also to be noted that the cause which is mentioned in the application by the license holder

forming basis for supporting the request for transfer is considered by the Collector. Such cause cited by the license holder was one amongst others which are available and can be considered by the authority while granting request for transfer of the liquor license. What can be noticed is, the shifting ordered by the Collector is based on the report called from the office of Superintendent of State Excise, who has recommended the case of respondent license holder for shifting, in the light of grounds raised for permitting shifting of the license.

11. Once a cause is looked into by an officer like the Collector who, under the provisions of Maharashtra Prohibition Act is authorised to grant such shifting, in our opinion, we hardly see any illegality on the part of the respondent Collector in granting the prayer for shifting.

12. So far as the prayer for shifting is concerned, same was supported by no objection from the Grampanchayat of which the petitioner claimed to be a member. No material is brought on record by the petitioner so as to demonstrate that at the relevant time the petitioner objected the resolution of shifting of liquor shop of the respondent license holder to a place where it is shifted, in the said Grampanchayat meeting.

13. Though Shri Kasliwal has invited our attention to the total prohibition adopted by the village Panchayat by keeping the village

liquor-free, still, it can be inferred from the record that there are other liquor licenses operational in and around the village in question against whom neither the petitioner nor the village panchayat has initiated any action. The State Government has also framed a policy dealing with such eventuality. Neither the petitioner nor the village panchayat has taken any steps to implement the total prohibition within the jurisdiction of village panchayat, nor the resolution, and the no objection granted in favour of respondent license holder permitting shifting was objected or questioned before the competent authority.

14. In the aforesaid background, the claim of the petitioner that license ought not to have been permitted to be shifted at new place is without any lawful basis. From the aforesaid conduct of the petitioner, this Court notices tricky behavior of the petitioner of questioning the decision of shifting of license of respondent and not of others which are operational in the village. There is scope to infer that the petitioner is set up by the rival license holders, so as to avoid competition in the business.

15. In the aforesaid background the claim of the petitioner that the case in hand is squarely covered by the judgment dated 22/06/2015 delivered in PIL No.70 of 2013 (Manik Rama Toke and another Vs. The State of Maharashtra and others) must fail.

16. In the judgment of *Manik Rama Toke*, while considering the prayer for cancellation of shifting order of liquor shop, the Division Bench dwelt upon certain mala-fide steps initiated by the license holder of filing petition at the principal seat by suppressing the pendency of petition at Aurangabad Bench. The said malafide conduct of license holder and the fact that the license was shifted inter district i.e. from one district to another, the Division Bench held that the permission for shifting was illegal.

17. In the aforesaid background, this Court, having noticed the *mala-fide* conduct of the petitioner was about to saddle costs of Rs.1,00,000/- (Rupees One Lakh only). After this Court made its mind open to the learned Counsel for petitioner, the learned counsel volunteers to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand) towards costs, in addition to Rs.25,000/- (Rupees Twenty Five Thousand), which he has already deposited, within a period of six weeks from today. Since the submission is made on instructions, same is accepted as an undertaking.

18. If amount as undertaken is not deposited by the petitioner, the same shall be recovered as arrears of land revenue and be and be remitted to this court within twelve weeks from the expiry of six weeks period.

19. As such, this Court refrains from passing any order.

20. So far as the aforesaid amount of Rs.75,000/- is concerned, let the amount of Rs.25,000/- be released in favour of "*Srushti Sanvardhan Sevabhavi Sanstha*", N-4, CIDCO, Aurangabad and balance amount of Rs.50,000/- in favour of "*Bhavani Vidyarthi Kalyan Pratishthan*" at post Arvi, Tq. Shirur (Kasar), Dist. Beed-314249 (S.B. A/c. No.919010006330040, Axis Bank, Branch Beed, IFSC Code No.UTIB0001090.)

21. The PIL stands dismissed. Pending civil application does not survive, therefore same is disposed of.

22. Post this PIL on 10/06/2019 "first on board", so as to see whether the costs as volunteered is deposited by the petitioner or not.

(NITIN W. SAMBRE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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