

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

PUBLIC INTEREST LITIGATION NO.94 OF 2018

Grampanchayat, Bardapur,
Tq. Ambajogai, District Beed,
through its Sarpanch
Shri Sudhakar Pandhari Shingare,
Age 45 years, Occu. Agriculture &
Social Work, R/o At Post Bardapur,
Tq. Ambajogai, District Beed
ADHAR No. 534275540666

...PETITIONER

VERSUS

1. The State of Maharashtra
through Principal Secretary,
Department of State Excise,
Mantralaya, Mumbai - 32
2. The Commissioner,
State Excise, Maharashtra State,
Old Custom House, Fort,
Mumbai
3. The Colletor, Beed.
4. The Superintendent of State Excise,
Beed.
5. The State Excise Inspector (B),
Ambajogai, District Beed.
6. Ishwar Vaijanath Telang,
Age 50 years, Occu. Business,
R/ at Near Old Vaidyanath
Bank Housing Society,
Ambajogai, Tq. Ambajogai,
District Beed.

7. Madhav Vaijanath Telang,
Age 46 years, Occu. Business,
R/ at Near Old Vaidyanath
Bank Housing Society,
Ambajogai, Tq. Ambajogai,
District Beed.

...**RESPONDENTS**

.....
Shri V.D. Sapkal, Advocate for petitioner
Shri S.Y. Mahajan, Additional G.P. for State
Shri P.R. Katneshwarkar, Advocate holding for
Shri V.S. Undre, advocate for respondents No.6 and 7
.....

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 31st January, 2019

Date of pronouncing judgment : 8th February, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. By this Public Interest Litigation (P.I.L.), the petitioner-Grampanchayat, Bardapur seeks the following relief :

“(B) To quash and set aside impugned order passed by the respondent No.3- Collector, Beed dated 28.5.2018 thereby granting permission to the respondent Nos.6 and 7 to transfer their CL-III (license) i.e. liquor shop from village Nadadi, Tq. Ambajogai, District Beed to

village Bardapur, Tq. Ambajogai, District Beed (**Exhibit 'D'**), by issuing writ of certiorari or any other appropriate writ or order in like nature thereby.”

3. Shri V.D. Sapkal, learned counsel appearing for the petitioner, would submit that, the Grampanchayat, by its resolution dated 26.1.2018, decided not to grant any No Objection Certificate for new liquor shop at the village, since there are 5 liquor shops already running there. The respondent No.5 surprisingly, recommended for transfer of CL (Country Liquor)-III licence from village Nadadi, Taluka Ambajogai, District Beed to village Bardapur. Before taking decision to transfer the licence, No Objection certificate was not obtained from the petitioner. No sooner the villagers learnt of the transfer of the country liquor shop to their village, they have moved number of representations to the petitioner to ensure that the shop would not operate at the village. According to learned counsel, the respondent No.5 has granted the permission for transfer of CL-III licence in breach of Rule 25 of the Maharashtra Country Liquor Rules. The learned counsel would further submit that, the villagers are likely to face difficulties and problems such as teasing of girls and women, by the persons, who consume liquor at the shop. The learned counsel ultimately urged for allowing the petition.

Mr. Katneshwarkar, the learned counsel for respondent No.6 and 7 would, on the other hand, submit that the petition has been filed with an oblique motive. The real brother of the Sarpanch of the village, signatory to the petition, runs a permit room at the village. The Sarpanch, therefore, created false documents in the nature of representations from the villagers so as to pass a resolution in the meeting of the members of the Village Panchayat for raising objection to the transfer of the licence. According to the learned counsel, the licence has been transferred after following due process of law. The P.I.L. is not maintainable since the petitioner has an equally efficacious remedy in the nature of an appeal under Section 137 of the Maharashtra Prohibition Act (for short 'the Act').

The learned A.G.P., representing the State and its authorities, would submit, that the transfer of the CL-III was necessitated on account of the Court's order. The transfer of the licence has been effected in accordance with the provisions of the Act and the Rules thereunder. According to the learned A.G.P., the P.I.L. is not maintainable.

4. Before transfer of CL-III licence, to village Bardapur, the respondent No.6 and 7, who hold the said licence, would run

their country liquor shop at village Nadadi, Taluka Ambajogai, District Beed. It is a matter of common knowledge that the Hon'ble Supreme Court of India, by its order dated 15.12.2016, prohibited running of Bars and liquor shops within the distance of 500 mtrs. from the National and State Highways. The respondent No.6 and 7, therefore, preferred application to the respondent No.3 for transfer of their licence. The application was duly enquired into and came to be granted. The Superintendent of Excise, respondent No.5, has specifically averred in his affidavit that there is neither any provision under the Act or Rules thereunder that prescribe any norms as to how many licences should be granted. There is no restriction to grant such licence nor has the Government put any upper or lower limit of how many licences are to be granted.

5. In view of Rule 25(d)(c) of the Maharashtra Country Liquor Rules, 1973, if shifting of liquor licence is essential due to Court's order, the conditions laid down in clause 25(d)(i), 25(d)(iii) do not apply. For better appreciation, the said Rule is reproduced hereinbelow :

“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 site 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 shops 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 shop 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 licences 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 Grampanchayat 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 authorised 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 shop which has been closed down or required to be closed down as per the provisions of the Bombay Prohibition (Closer of Licence on Resolution by the Village Panchayat or Gramsabha or Women/ Social Organisation 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 license shall at the place under the rental deed and the landlord or owner the place do not agree to extend the rental deed or

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

6. No doubt, by virtue of Rule 24(4)(b) of the Country Liquor Rules, 1973, no licence shall be granted in respect of any shop which is situated within a distance of 100 mtrs. from any

bus stand, station or depot of the MSRTC. There is, however, no such bus stand or depot of the MSRTC at village Bardapur. What is there is a pick up point. The Commissioner, Excise, State of Maharashtra, by his letter dated 29.1.2004, had informed the Superintendent, State Excise, Ratnagiri, clarifying the position that the pick up point of MSRTC does not get covered by the term bus depot or bus stand. The fact that there is a pick up shed of MSRTC, does not, therefore, come in the way of transfer of the licence to Bardapur.

7. It is not in dispute that there are 5 liquor vends at the village. Opening of one more would, therefore, be of a little consequence. Admittedly, the real brother of the Village Sarpanch is the owner of one of those liquor vends. He is the proprietor of Kiran Bar, situated within the close vicinity of the disputed country liquor shop. The respondents have, therefore, every reason to contend that the petition lacks bonafides. True, some of the villagers appear to have made representations to the Village Panchayat so as to protest transfer of CL-III shop to village Bardapur. It is surprising as to why no such representation had ever been received by the petitioner – Grampanchayat when first 5 liquor vends started operating in the village. Furthermore, the petitioner had an equally efficacious remedy to challenge the impugned decision. Section 137 of the Act speaks of appeals and

revisions. By virtue of sub-section 5(2) of Section 137, all orders passed by the Collector and Commissioner are appealable to the Commissioner and State Government respectively at any time within 90 days from the date of the order complained of. The phraseology of Section 137 would undoubtedly indicate that, whoever would be aggrieved by orders passed by the Collector or the Commissioner, are entitled to prefer appeal. The petitioner, instead of preferring the appeal, has filed the present P.I.L. As already observed above, the respondents are justified to contend that the Sarpanch of the Village has preferred the present P.I.L. with an oblique motive since his brother runs a Bar at the village.

8. Reliance on the judgment of this Court in Public Interest Litigation No.32/2015 (decided on 15.1.2016) is of no avail to the petitioner since the basic issue involved therein was as to whether permission for transfer of liquor shop from Kolhapur to Latur under the order of the Hon'ble Minister was legal and proper. The facts of the said matter would indicate that the respondent No.8 and 9 therein did not fulfill necessary pre-requisites laid down under the Rules for according the permission to transfer the liquor shop.

9. In short,

- (a) The petitioner did not avail equally efficacious remedy of preferring appeal, under Section 137 of the Act.
- (b) The petition lacks bonafides.
- (c) The transfer of licence was necessitated in view of the Hon'ble Supreme Court's order dated 15.12.2016, prohibiting running of Bars and liquor shops within the distance of 500 mtrs. from the National Highway and State Highway.
- (d) There is no bus stand/ depot of MSRTC at the village.
- (e) The Collector has transferred the licence after following due process of law and in strict compliance with the provisions of the Act and the Rules thereunder.

10. For the reasons stated hereinabove, no interference with the impugned order is warranted. The petition fails. The same is, therefore, dismissed. Rule stands discharged.

**R.G. AVACHAT
JUDGE**

**S.S. SHINDE
JUDGE**

fmp/-