

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

WRIT PETITION NO.10793 OF 2019

Maharashtra Wine Merchants
Association
Having its registered Office at:
306, Allied Industrial Estate,
3rd Floor, Prof.Ram Panjawani Marg,
(Off Mori Road), Mahim,
Mumbai-400016
Through it's authorized Signatory,
Mr Laxmikanth S/o Prahlad Kolhe
Age: 44 years, Occ: Business,
R/o. Prabhat Colony, Kolhe Niwas,
Behind Sahkar Bank, Adalat Road,
Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Principal Secretary,
(State Excise), Mantralaya,
Mumbai- 400 032
2. The Commissioner of State Excise,
Maharashtra State, Old Custom House,
Mumbai- 400 023
3. The District Collector,
State Excise Department
Parbhani
4. Superintendent of State Excise
Parbhani

5. Superintendent of Police
Parbhani

RESPONDENTS

Mr V.S.Undre, Advocate for the petitioner;
Mr A.B.Girase, Government Pleader for respondents

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATED : 30th AUGUST, 2019

ORAL ORDER:

Heard Mr Undre, learned Counsel for the petitioner and Mr. Girase, learned Government Pleader for respondents. The petition is taken up for final disposal with the consent of the parties.

2. The petition is filed on behalf of the Wine Merchants Association through the authorised signatory who is running his business in Aurangabad district and some members of the association are operating their business in Parbhani district.

3. The petitioner challenges the order passed by

respondent No.3 - District Collector, Parbhani, dated 22nd August, 2019 whereby respondent No.3 - District Collector, Parbhani directed for closure of the liquor shops for four days, namely, 30th August, 2019 on account of '*Pola*', on 31st August, 2019 on account of '*Kar*' and on 2nd September, 2019 on account of '*Ganesh Chaturthi*' festival and also on 10th September, 2019 on account of '*Moharrum*'.

4. The Collector, Parbhani, passed the order dated 22nd August, 2019 by exercising powers under section 142(1) of the Bombay Prohibition Act, 1949. This order states that all the shops operational in Parbhani district under CL-3, FL-2, FL-3 as well FL/BR-2 would remain closed for these four days.

5. The learned Counsel for the petitioner invited our attention to the order dated 29th August, 2019,

whereby notice was issued to the respondents. Learned A.G.P. waived notice for all respondents and sought time. The matter was directed to be posted before this Court on 30th August, 2019.

5. Learned Counsel for the petitioner then vehemently submitted that the order passed by the Collector -Parbhani is unsustainable on more than one count.

6. Learned Counsel, in support of his statement, placed heavy reliance on the series of judgments of this Court; firstly, Judgment and order of single Judge of this Court reported in **2007(1) AIR Bom R 46: 2006(6) All M.R. 682** in the matter of **Maharashtra Wine Merchants Association Vs. State of Maharashtra, 2018(1) Mh.L.J. 343 : 2018 (1) AIR Bom R 247** in the case of **Parbhani Jilla Daru Vikreta Sanghatana Vs. State of Maharashtra** and unreported judgment of the Division Bench of this

Court at Nagpur in Writ Petition No. 2928 of 2019 in the case of Nitin s/o Nagoraoji Mohod and another vs. State of Maharashtra and another, decided on 12th April, 2019.

7. On perusal of the judgments of this Court, we may safely say that the controversy raised in the petition is dealt with in these judgments and the issue is squarely covered by the judgments referred to above.

8. It may not be out of place to state that the order passed by the District Collector, Parbhani on 18th September, 2017 was under challenge in Writ Petition No. 11782 of 2017 which is decided by the Division Bench of this Court on 29th September, 2019 and same authority passed the order dated 22nd August, 2019 which is the subject matter of this petition. It further be stated that order impugned in the petition dated 22nd August, 2019 cannot be stated as order in ignorance of law, as the very authority was before this Court as respondent

authority in Writ Petition No. 11782 of 2017. The judgment in the matter of Maharashtra Wine Merchants Association is relied by the Division Bench of this Court in the decision dated 29th September, 2017 in the matter of Parbhani Jilla Daru Vikreta Sanghatana and also by the Division Bench delivered judgment and order dated 22nd April, 2018 at Nagpur.

9. At the cost of repetition, we may state that in the order impugned dated 22nd August, 2019 neither there is any reflection of the compliance of the requisite provision, namely, issuance of prior notice nor the order shows any reasoning to arrive at a conclusion that the authority applied its mind and passed the ultimate order.

10. In this fact situation, learned Government Pleader was fair enough to submit before this Court that there is hardly any case to oppose the petition on behalf of the respondents.

11. Considering all these facts, the only inescapable conclusion can be drawn is, to allow the petition and resultantly petition is allowed by quashing and setting aside the order of the respondent No.3 - District Collector, Parbhani, dated 22nd August, 2019.

[AVINASH G. GHAROTE, J.]

[PRASANNA B. VARALE, J.]