

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8290 OF 2019

M/s. NEW SONAL WINES

... Petitioner.

V/s.

The Collector of Pune & Ors.

... Respondents.

Ms. Sushma Singh, Advocate, for the Petitioner.

Mr. S. L. Babar, AGP, for Respondent Nos. 1 to 3.

Mr. Sandip S.Salunke, Advocate for Respondent No. 4.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 17, 2019.

PC :

1 Heard Ms. Sushma Singh, learned counsel for Petitioner; Mr. S.L. Babar, learned Assistant Government Pleader for Respondent Nos. 1 to 3; and Mr. S.S. Salunke, learned Advocate for Respondent No. 4.

2 This case was heard on 09.10.2019 and today is fixed for delivery of order. Accordingly, order is dictated in the open court.

3 By filing this petition under Articles 226 and 227 of the Constitution of India, Petitioner seeks quashing of order dated 18.07.2019 passed by

Respondent No.3 in a revision application filed by Respondent No.4.

4 Facts of the case, as projected by the Petitioner in the writ petition may be briefly noted as under :

5 Petitioner was carrying on the business of retail sale of Foreign Liquor and Country Liquor at Gat No. 43/1, Property No. 2620, Plot No. 2, Meher Construction, Yavatgaon, Tal. Daund, Dist. Pune, since the year 2009 on licence being granted by the State.

6 Hon'ble Supreme Court passed directions on 15.12.2016, directing that all the liquor shops which are at a distance of 500 metres from the National Highway be closed down. Petitioner's liquor-shop was affected by the aforesaid directives of the Hon'ble Supreme Court and accordingly, it made an application before Respondent No.1 for shifting of the liquor-shop to a new premise at Property No. 2366, Shop Nos. 6 & 7, Yavat, Tal. Daund, Dist. Pune. Said prayer of the Petitioner was allowed by Respondent No. 1 on 15.07.2017, whereby the Collector made an endorsement on the vendor's licence on 25.07.2017. Though Petitioner tried to commence his business at

the new premises, the same, however, was objected to by certain local people on the ground that its location was in a residential area; because of which Petitioner could not start its business in the new place.

7 In the meanwhile, the Hon'ble Supreme Court clarified that bar of 500 metres between a liquor outlet and National Highway would not apply to liquor-outlets located within Municipal Corporation areas. Said clarification came to the rescue of the Petitioner inasmuch as earlier location of the Petitioner's liquor outlet being within Municipal Corporation area was saved by the clarification. In these circumstances, Petitioner decided to shift back to the old premises where it had carried on its' business prior to the Hon'ble Supreme Court decision on 15.12.2016.

8 Petitioner applied before the Collector on 03.04.2018 with a request for grant of permission to shift back to its old premises.

9 It appears that on 23.04.2018, Gram Panchayat, Yavat, wrote a letter to the Inspector of State Excise Department, Daund Division, requesting not to permit re-shifting of the Petitioner on the ground that no objection certificate (NOC) of the Gram

Panchayat was not taken and also on the ground of possibility of objections being raised by local persons.

10 By order dated 30.10.2018, Respondent No.1 rejected the application of the Petitioner for re-shifting. Aggrieved by such rejection, Petitioner preferred an appeal before Respondent No. 2 i.e. Commissioner of Excise under section 137 (2) of Maharashtra Prohibition Act, 1949, which was registered as Appeal No. 271 of 2018. Respondent No. 2 vide order dated 25.01.2019 allowed the appeal of the Petitioner by setting aside the order dated 30.10.2018 passed by Respondent No.1 and allowed the Petitioner to re-shift to the original premises, subject to payment of necessary fees, etc..

11 It is stated that the Petitioner paid privilege fees thereafter, following which, Petitioner was allowed to re-shift to the original premises; where it recommenced its business since February, 2019. It was at this stage, that Respondent No. 4 i.e. Sarpanch of the Gram-Panchayat in question preferred a revision application before Respondent No.3 under section 138 of the Maharashtra Prohibition Act, 1949. Though the Petitioner was called for personal hearing on 21.02.2019, no copy of revision application was

furnished to the Petitioner. Finally Respondent No. 3 passed order dated 18.07.2019, whereby he quashed the appellate order dated 25.01.2019, restoring back the order dated 30.10.2018 passed by Respondent No. 1.

12 Aggrieved, present petition has been filed.

13 Contention of the Petitioner is that firstly, Petitioner had not sought for a new license. Petitioner was already carrying on the business since 2009 but because of the direction of the Hon'ble Supreme Court, it sought relocation which was granted. Following clarification by the Supreme Court, such relocation was not required. Therefore, Petitioner decided to re-shift to the original premises which was granted. Insofar as the licence for operating liquor business at the old premises is concerned, the same was granted after receiving NOC (no objection certificate) from the concerned Gram Panchyat. Therefore, there was no requirement of obtaining fresh NOC from the concerned Gram-Panchayat. This aspect of the matter was duly considered by the appellate authority.

13.1 Secondly, in addition to the Petitioner, there are two other liquor outlets in the vicinity in respect of

which objections have not been raised by Respondent No. 4. Even in case of a liquor business, when the State had permitted the parties to operate liquor - shop, principles of non-arbitrariness and level playing field, would be attracted.

13.2 Thirdly, at the stage of revision no copy of revision application was furnished to the Petitioner. Counsel for the Petitioner was compelled to argue without having a copy of the revision application.

13.3 The revisional authority totally failed to consider the above aspects of the matter and erroneously set aside the appellate order.

14 Respondent No. 1 has filed affidavit. In the affidavit, it is stated that concerned Gram-Panchayat had adopted resolution on 11.04.2018, which was conveyed to Respondent No.1 on 13.04.2018, requesting the Excise Department not to allow the Petitioner to start business at the original place, as people were having trouble from wine shops and in future they may be affected by such wine shop. Based on such representation, Respondent No.1 rejected the application filed by the Petitioner. Regarding contention of the Petitioner as to non-receipt of a copy

of the revision application, it is stated that notice of the revision petition was served upon the Petitioner by the State Excise Office, Pune. Regarding other two liquor - shops, namely, M/s. Mahalaxmi Bhojanalay, and Sheru Dhaba, it is stated that these two shops have different types of license and the rules applicable to those shops are different from that of the petitioner's liquor-shop. NOC is not required in respect of those two shops.

15 Respondent No.4 in her affidavit, has supported the decision of Respondent No.3. In her affidavit, reference has made to Rule 25 of the Government Notification, amended on 20.04.2005, which provides for shifting of licensed shops to any other place without prior consent of the Collector. Reliance has also been placed on the resolution adopted by the Gram-Panchayat on 11.04.2018 not to grant NOC to the wine shop of the Petitioner. Further, reliance has been placed on Rule 25(4)(d)(iii) of the Bombay Foreign Liquor Rules, 1953, to contend that Gram Panchayat in whose area the licensed shop is proposed to be shifted, has not given no objection by passing a resolution to that effect.

16 Petitioner has filed rejoinder-affidavit to both the affidavits of Respondent No. 1 and Respondent No.4.

17 Learned counsel for the Petitioner strenuously argued the grounds on which the writ petition has been structured. In addition to that, reliance has been placed on a Division Bench judgment of this court in the case of **Shri Vikram Uddhav Chug vs. State of Maharashtra**, in Writ Petition No. 7597 of 2018 decided on 10.09.2018, to contend that decision of Respondent No.3 is wholly untenable in law as well as on facts and is, therefore, liable to be interfered with.

18 On the other hand, learned counsel for Respondent No. 4 has placed reliance on a Single Bench judgment of this court in the case of **Sau. Shailaja Rajendra Badwaik vs. Hon'ble Minister, Dept. of State Excise, Mantralaya, Mumbai** in Writ Petition No. 3440 of 2011 decided on 27.06.2012 as well as on a Division Bench judgment of this court in case of **M/s. Hotel Shobha vs. Hon'ble Minister, Department of State Excise**, reported in AIR 2012 (5) (Bom)(R) 728 to contend that nobody can claim absolute right to carry on business in liquor, having regard to the object of Article 47 of the Constitution of

India. He submits that since the local public of the Gram Panchayat has raised objections, Respondent No. 1 had refused permission to the Petitioner for re-shifting. Appellate authority was not justified in interfering with such order and therefore, decision of the appellate authority was rightly interfered with by the Minister in revision.

19 Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record including the decisions cited at the Bar.

20 From the narration of facts as above, it is evident that present is not a case of fresh license to start a new liquor business. Petitioner had already a liquor-shop since the year 2009 in the old premises. It was because of the decision of the Supreme Court that the liquor-shop had to be shifted, which was granted by the concerned authority. After the Petitioner had re-located, Supreme Court had clarified the matter that it's earlier direction would not be applicable to the liquor-shops within municipal areas, thereby excluding the Petitioner from the impact of the initial direction. In such circumstances, Petitioner decided to re-shift to its original location and accordingly sought for

permission. It was at this stage that the Gram Panchayat stepped in, opposing such re-shifting.

21 Pausing here for a moment, it is quite apparent that had there been no direction of the Supreme Court, there would have been no occasion for the Petitioner to seek re-location. It would have continued with the liquor shop as before. That apart, till the time of re-location, there was no objection by Respondent No. 4. It was only after the Petitioner had shifted and following clarification of the Supreme Court, when the Petitioner sought permission for re-location back to the original site / old premises that Respondent No.4 had lodged the objection.

22 In so far Rule 25(4)(d)(iii) of the Bombay Foreign Liquor Rules, 1953 is concerned, it says about shifting of licensed shop subject to fulfillment of the conditions, including the condition of granting no objection by the Gram Panchayat in whose area the licensed shop is proposed to be shifted. In my view, this provision would not be attracted in case of the Petitioner inasmuch as it is not a case where the liquor-shop of the Petitioner is being shifted from some other place. It is a case where the liquor shop was already in existence earlier but because of the intervening

development in the form of Supreme Court directives, the liquor shop had to be shifted but following clarification of the Supreme Court, the liquor shop was sought to be re-shifted back to the old premises. In such a scenario, requirement of Rule 25 (4)(d)(iii) would not be attracted.

23 The two decisions relied upon by learned counsel for Respondent No. 4, would also not be attracted in the facts and circumstances of the present case. It is not the case of the State - Respondents that they are closing down the liquor business in the area as a whole, as part of public policy. There is no dispute to the proposition that in view of Article 47 of the Constitution of India and having regard to the expansive meaning given to Article 21 of the Constitution of India, State can enforce prohibition. But that it not the position here. In the present case, the decision in **Vikram Uddhav Chug** (supra) would be more appropriate. That was also a case where the liquor shop of the said Petitioner had to be shifted because of the Supreme Court directives. In that case re-shifting of the liquor shop of the Petitioner was cancelled by the competent authority which compelled the Petitioner to approach the High Court, which has held as under :

“16. We have heard learned Counsel. Admittedly, the petitioner was having a liquor license in respect of the old premises. Pursuant to the order of the Hon'ble Supreme Court, an application was made by him for shifting of the license to new premises. Though respondents allowed the petitioner to shift, the petitioner could not shift to the new premises due to personal reasons and therefore applied for cancellation of his application for shifting. The same was granted by the respondent No.3. The respondent No.3 further informed the petitioner to find suitable place for shifting of his license premises.

17. It can thus be seen that the petitioner on his own volition never intended to shift his license from one site to another site. It is on account of the directions of the Apex Court dated 15/12/2016 which held there could be no liquor shop within 500 mtrs. from the National / State Highway, that the petitioner had to make an application for shifting. Later on, the Hon'ble Supreme Court by the order dated 11th July, 2017 clarified that the prohibition mentioned in order dated 15/12/2016 shall not be applicable in cases where the licenses are situated within Municipal Corporation and Municipal Council areas. It can thus be seen that the prohibition contained in the order dated 15/12/2016 now does not apply to the petitioner's old premises in view of the clarification of its earlier order by Hon'ble Supreme Court. In fact even the respondents have not charged any privilege fees for shifting of the license from old premises to new premises which shifting was necessitated and was the outcome of the directions of the Apex Court dated 15/12/2016.

18. The Apex Court having clarified its earlier order by a subsequent order dated 11th July, 2017 and as the petitioner wants to continue his license in respect of the old premises, the question of charging any fees for transfer of license from one site to another does not arise at all. In view of the

clarificatory order of the Apex Court, there is no need for the petitioner to shift from old premises to new premises. The petitioner's license in the old premises stand protected and the petitioner is entitled to carry on business in the old premises. But for the directions of the Hon'ble Supreme Court on 15th December, 2016 the petitioner would not have applied for transfer of the license from old premises to new premises. The transfer of the license was not on the petitioner's own volition but in compliance with the directions of the Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court having issued necessary clarifications vide order dated 11th July, 2017, as a result of which the shop of the petitioner is not affected, the petitioner cannot be penalized only because he had already applied for shifting from old premises to new premises. It is a matter of record that the petitioner did not shift to the new premises. As a matter of fact the application made by him for shifting to new premises which was earlier granted was also cancelled at his request and the respondents themselves had called upon the petitioner to find out suitable premises for shifting of his license.

19. We may make a profitable reference to the decision of the Apex Court in the case of Raj Kumar Dey and others Vs. Tarapada Dey and others reported in [(1987) 4 SCC 398] in this context. In para 6 it is held thus :

“6. We have to bear in mind two maxims of equity which are well settled, namely, *actus curiae neminem gravabit* – An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution.”

20. A useful reference can also be made to the decision in the case of Gursharan Singh and others Vs. New Delhi Municipal Committee and others reported in [(1996) 2 SCC459] wherein the principle laid down in Raj Kumar Dey's case(supra) is followed.

21. In this view of the matter, the petitioner cannot be faulted for making an application for shifting his license from old premises to new premises. The respondent No.3 and 4 were justified in not charging fees for transfer the license from old premises to new premises in view of the Circular dated 7th June,2017. Conscious that as a result of the shifting for which the applicants are not at fault and even as the applicants would have to face severe hardships and monetary loss, the State Government had taken a decision not to charge any fees for transfer from the old premises to the new premises. Pursuant to the clarification issued by the Hon'ble Supreme Court, if the license of the petitioner as regards the old premises stand protected, the question of the respondents demanding transfer fee under Rule 4 (b) of the Rules 1954 does not arise. In the present fact situation the respondents are not at all justified in raising the demand for transfer fee on the pretext that Rule 4(b)of the Rules 1954 is attracted, as the petitioner cannot be said to have made any application for transfer from one site to another site since the petitioner wants to carry the business in the old premises itself. In our opinion, the impugned Demand Notice is completely arbitrary and irrational and therefore deserves to be quashed and set aside."

24 This court is in respectful agreement with the view expressed by the Division Bench of this court in the

case of **Vikram Uddhav Chug** (supra), which, in any case, is binding on this court.

25 In so far as the order dated 25.06.2019 passed by the appellate authority is concerned, relevant portion of the same is extracted here under :

“6. I have gone through the appeal memo, impugned order of the Collector and submissions made during the personal hearing.

I record my observations as under :

After the order of the Hon’ble Supreme Court the licence came to be shifted in the same Grampanchayat in new premises for which permission was accorded by the Collector. Obviously since the shifting had been caused due to the order of the Hon’ble Supreme, as per the provisions in the rules no privilege fees were charged. As per the impugned order the Collector has disallowed the shifting of the licence back to the old premises, as now the distance restrictions from the highway have been lifted by the subsequent orders of the Hon’ble Supreme Court, on the basis that there is opposition to the said licence. It is the contention of the Appellants that they have not been allowed to function at the new premises as there was opposition from the local residents. The Appellants want to shift to their old premises as it is free from distance restrictions now and they have not been allowed to function at the new premises. I do not concur with the Collector’s views that the opposition is in form of possibility of demonstrations and complaints

and therefore, it should not be allowed back to its original place. The Collector has not considered the following that this particular licence is meant for sale of liquor through "off" consumption; that the Appellants have been functioning in the old premises for the past 8-10 years without any untoward incident; the Appellants had been forced to leave the place due to extraneous reasons. Therefore, the reason given by the Collector is not valid. At the same time it is important to observe here that the Appellants are shifting from their new premises to their old premises. Therefore, in this case the privilege fee cannot be exempted.

The Superintendent State Excise Pune is hereby directed to recover the privilege fees from the Appellants while implementing this order.

The Appeal is allowed. The impugned order is set aside."

26 In my considered view there was no infirmity, legal or otherwise, in the order passed by the appellate authority and therefore, the revisional authority erred in interfering with the decision of the appellate authority. It is well settled that the scope of revision is extremely circumscribed and that it cannot be used as an extension of the appellate jurisdiction.

27 That apart, Respondent No. 1 in his affidavit has stated that notice of the revision petition was served upon the Petitioner by the State Excise Office, Pune, thereby virtually acknowledging that copy of the revision petition was not served upon the Petitioner. Merely serving notice of the revision petition, without furnishing a copy of the same would certainly be inadequate and would be in violation of the principles of natural justice, as the party against which the revision petition has been filed would be prejudiced in the absence of knowing the contents of the revision that has been preferred.

28 For the aforesaid reasons, court is of the view that interference by Respondent No. 3 with the appellate order was not justified. Consequently, impugned order dated 18.07.2019 passed in revision application by Respondent No. 3 is hereby set aside.

29 Writ Petition is allowed, but without any order as to costs.

(UJJAL BHUYAN, J.)

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