

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9699 OF 2019

Amit Vasant Kadam, Partner of M/s. Kaka Wines ... Petitioner
Vs.
The Collector of Pune and others ... Respondents

Mrs. Veena Thadani for Petitioner.
Mr. N. C. Walimbe, AGP for Respondent Nos.1 to 3.
Mr. Sandeep S. Salunkhe for Respondent No.4.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 13, 2019

P.C. :

Heard Mrs. Thadani, learned counsel for the petitioner; Mr. Walimbe, learned AGP for respondent Nos.1 to 3; and Mr. Salunkhe, learned counsel for respondent No.4.

2. In this petition filed under Articles 226 / 227 of the Constitution of India, petitioner seeks quashing of order dated 23.08.2019 passed by the Collector of Pune, State Excise Department - respondent No.1 ordering suspension of the liquor licence of the petitioner under Section 54 of the Maharashtra Prohibition Act, 1949 till such time completion certificate regarding construction of the premises issued by the Competent Authority is obtained and submitted to the office of respondent No.1.

3. It may be mentioned that petitioner had a valid liquor licence and was operating a liquor shop by the name of 'Alankar Wines' which was functioning from the premises at Railway Shop No.2, Hutatma Chowk, Kurkumbha Road, Daund, District Pune. Pursuant to a decision of the Supreme Court dated 15.12.2016 regarding closure of liquor shops situated within a radius of 500 meters from the National Highways, the liquor shop of the petitioner was affected as it was within a radius of 500 meters from the National Highway.

4. Consequently, upon request made by the petitioner, respondent No.1 passed order dated 29.08.2017 granting permission to the respondent to shift his liquor shop to shop Nos.1 to 5, Gat No.154 (part) / C.T.S.No.871, Kedgaon, Taluka Daund, District Pune.

5. It appears that respondent No.4 and some others opposed shifting of the liquor shop of the petitioner to the new place and accordingly lodged complaint before respondent No.1.

6. Respondent No.1 passed order dated 16.04.2018 to the effect that till such time detailed investigations were carried out on the objections lodged and final decision was not taken, liquor business of the petitioner should remain closed. Accordingly, the liquor shop of the petitioner was closed down on 17.04.2018.

7. Aggrieved by the above, petitioner approached this Court by filing Writ Petition No.5479 of 2018. This Court disposed of the writ petition on 04.05.2018 taking the view that there was provision for appeal before the Commissioner of Excise i.e., respondent No.2 and gave liberty to the petitioner to file appeal, declaring that till such time final orders were passed by the Appellate Authority, petitioner should be allowed to continue his business.

8. Respondent No.2 by order dated 24.07.2019 declined to interfere with the said order of the Collector dated 16.04.2018 but the Collector was directed to dispose of the application of the complainants expeditiously.

9. Thereafter the impugned order was passed by the Collector on 23.08.2019, a translated copy of which has been placed on record. Collector has taken the view that the premises in which the liquor shop is set up should be authorized and observed that the petitioner failed to produce necessary completion certificate issued by the Competent Authority regarding construction of the premises. Therefore, till such time completion certificate was submitted in his office, it was directed

that the liquor licence issued to the petitioner should remain under suspension.

10. Mr. Salunkhe, learned counsel for respondent No.4 has raised a preliminary objection as to maintainability of the writ petition by contending that against the order passed by the Collector, an appeal lies to the Commissioner under Section 137 of the Maharashtra Prohibition Act, 1949 ('Act' hereinafter). He further submits that against an order passed by the Appellate Authority, there is provision for revision before the State Government under Section 138 of the Act.

11. Mr. Walimbe, learned AGP supports the contention of learned counsel for respondent No.4.

12. On the other hand, Mrs. Thadani, learned counsel for the petitioner submits that in the previous order dated 24.07.2019, the Commissioner had already disclosed her mind by declining to interfere with the suspension of licence of the petitioner. Rather, she had directed the Collector to take a final decision on the complaints. Therefore, preferring appeal before the said authority would be an empty formality as the view of the Appellate Authority is already known. This Court, therefore, should entertain the writ petition.

13. Submissions made by learned counsel for the parties have been considered.

14. Perusal of the previous order dated 24.07.2019 passed by the Commissioner would go to show that Commissioner had taken the view that the Collector by applying the Government order dated 25.03.2008 as amended on 12.02.2009 should have ideally closed down all liquor shops within the *Grampanchayat* area. He has also upheld contention of the complainants that construction of the premises where petitioner would operate his liquor shop on shifting is not an authorized one. He, therefore, held that there was no reason to interfere with the impugned order. From the above, the view taken by the Commissioner is quite

clear. In such circumstances, Court is of the view that filing of an appeal by the petitioner before respondent No.2 against the order dated 23.08.2019 would serve no useful purpose; rather it would only be an empty formality. Respondent No.2 having disclosed her mind in the previous appeal, an impartial adjudication of any appeal preferred by the petitioner may not be possible. It is fundamental that justice must not only be done, but must be seen to have been done.

15. At this stage, provisions of Section 138 of the Act may be looked into. Section 138 reads as under:

“138. Revision: The State Government may call for and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a licence, permit or authorization under this Act for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of, any such proceeding and may when calling for such record, direct that the order be not given effect to pending the examination of the record. On examining the record, it may either annul, reverse, modify or confirm such order, or pass such other order as it may deem fit.”

16. Section 138 is couched in wide language. It is the power conferred upon the State Government to call for and examine the record of any proceeding including that relating to grant or refusal of a licence, permit or authorization for the purpose of satisfying itself as to the correctness, legality and propriety of any order passed and also to examine the regularity of any such proceeding. Such power can be invoked to examine the correctness, legality and propriety of the order dated 23.08.2019 passed by the Collector.

17. Therefore, in the considered opinion of the Court, petitioner may avail the remedy of revision under Section 138 of the Act. Let the petitioner file appropriate application under Section 138 of the Act before the State Government in the Excise Department.

17.1. Since the petitioner and respondent No.4 are present before the

Court, let them appear before the Revisional Authority on 23.12.2019 at 3:00 p.m. by which date and time the revision application may be filed whereafter the Revisional Authority shall hear and decide the revision one way or the other in accordance with law within a period of 4 weeks thereafter.

18. Accordingly, writ petition is disposed of.

(UJJAL BHUYAN, J.)

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