

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2974 OF 2019**

M/s. Association of Progressive Retail
Liquor Vendors ...Petitioner

Versus

The Collector of Mumbai (Suburbs) State
Excise Department & anr. ...Respondents

**AND
WRIT PETITION (L) NO. 2976 OF 2019**

M/s. Association of Progressive Retail
Liquor Vendors ...Petitioner

Versus

The Collector of Mumbai (City) State Excise
Department & anr. ...Respondents

Ms. Veena Thadhani, a/w Mr. Vishal Thadhani, for the
Petitioner in both petitions.
Mr. Amit Shastri, Asst. GP for the State/Respondent in both
petitions.

**CORAM: N. J. JAMADAR, J.
DATED: 23rd OCTOBER, 2019
(Vacation Court)**

PC:-

1. Mentioned for production board. Taken up on production board in view of urgency.
2. Heard Ms. Thadhani, the learned Counsel for the petitioner - association and Mr. Shastri, the learned Asst. Government Pleader for the State.
3. The petitioner, in both petitions, is an association of licensed liquor vendors. The petitioner – association has

challenged the orders dated 5th October, 2019 and 4th October, 2019 passed by the Collector Mumbai (City) and Mumbai (Suburbs) respectively, whereby the licensed liquor shops have been directed to be closed for the entire day on 24th October, 2019, being the day of counting of the votes polled in the election to the Maharashtra Legislative Assembly held on 21st October, 2019. The petitioner – association averred that the prohibition on opening the licensed liquors outlets for the entire day is unreasonable and it be restricted up to 6.00 pm. on 24th October, 2019, as the results are declared by the afternoon, in any event.

4. The petitions are resisted by the respondent/State. An Affidavit of Mr. Manoj Shevare, Deputy Superintendent of State Excise is tendered on behalf of respondent no.1, in opposition of the prayers in the petitions.

5. Ms. Thadhani, the learned Counsel for the petitioner – association has invited the attention of the Court to various orders passed by this Court, in the contingencies like the one at hand; whereby the operation of the orders directing closing of the licensed liquor outlets for the entire day of counting have been restricted up to 6.00 pm., on the given date. Ms. Thadhani has invited the attention of this court to the latest order dated 18th October, 2019, in Writ Petition No.11197 of

2019, preferred by another Association of Retail Licensed Liquor Shop Owners, in respect of the very same impugned order. By the said order, the learned Single Judge of this Court directed that the prohibition in terms of order dated 4th October, 2019, in respect of the day of counting of votes i.e. 24th October, 2019, shall be till 6.00 pm. only and it would thus be open to the members of the petitioner – association, therein, to open their liquor shops after 6.00 pm.

6. As against this, Mr. Shastri, the learned Asst. Government Pleader banked upon the provisions contained in Rule 9A(2)(c)(2) of the Maharashtra Foreign Liquor (Sale on cash, Register of Sales etc) Rules, 1969, and the instructions issued by the Election Commission of India, by its communication dated 30th September, 2019, *inter alia*, directing that the date of counting of votes be declared, “Dry Day” under the relevant laws in the State. It was submitted that respondents have passed impugned orders in conformity with the aforesaid provisions and directions of the Election Commission of India. Thus, no fault can be found with the impugned order.

7. It is indubitable that this Court has, by a series of orders, restricted the prohibition to 6.00 pm. on the day of counting. The rationale behind these orders is that the

counting of votes, being in the nature of the counting of the votes registered in the Electronic Voting Machine (“EVM”), does not last beyond the afternoon. From this standpoint, the restriction on opening the liquor shops for the entire day has not been found to be reasonable. In any event, since this Court by order dated 18th October, 2019 has already restricted the prohibition in terms of the impugned order till 6.00 pm., on a petition by another association of licensed liquor shop owners, the same dispensation is required to be given to the petitioner – association, herein.

8. Hence, the following order:

The prohibition in terms of order dated 5th October, 2019, in Writ Petition No.2974 of 2019, and 4th October, 2019, in Writ Petition No.2976 of 2019, shall be up to 6.00 pm. only and it will be open to the members of the petitioner – association to open their licensed liquor shops, after 6.00 pm. on the date of counting of votes i.e. 24th October, 2019.

9. With the aforesaid clarification, both the petitions stand disposed of.

[N. J. JAMADAR, J.]