

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2273/2019

(M/S DAWRA WINE SHOP, BHANDARA **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri Sahil S. Dewani, counsel for petitioner.
 Mrs. M. Naik, A.G.P. for R-1 to 3.

CORAM : A.S. CHANDURKAR, J.

DATE : MARCH 25, 2019.

RULE. Heard finally with consent of learned counsel for the parties.

An order passed by the Collector, Bhandara on 05.03.2019 suspending the CLFLTOP-III license issued to the petitioner for a period of fifteen days on account of breach of the provisions of Rule 31(2) of the Bombay Foreign Liquor Rules, 1953 (for short, 'the said Rules') is under challenge in this writ petition.

According to the petitioner, in the show cause notice dated 26.12.2018 the petitioner was called upon to show cause as to why action for breach of the provisions of Rule 31(2) of the said Rules be not taken against the petitioner on the ground that during inspection it was found that about 397 bottles of Beer had been stored beyond their validity period. Pursuant to that notice, the impugned order has been passed.

At the outset, a preliminary objection was raised on behalf of the respondent that a statutory remedy under Section 137 of the Maharashtra Prohibition Act, 1949 (for short, 'the Act of 1949') was available for challenging the impugned order. Without exhausting that remedy, the petitioner could not be permitted to approach this Court directly.

In response, it was submitted that the impugned order is dated 05.03.2019 and the license of the petitioner stands suspended for a period of fifteen days. The statutory remedy cannot be treated to be efficacious in the light of nature of penalty imposed. Further reference was also made to the decisions in *Nagpur Distillers, Nagpur Versus State of Maharashtra & Another* [2007 (2) Mh.L.J. 285] and the judgment of the Full Bench in *Shireen Sami Gadiali & Another Versus Spenta Co-op. Hsg. Soc. Ltd. & Others* [2011 (3) Mh.L.J. 486].

On merits, it was submitted that in absence of any material to indicate that the foreign liquor in question was either adulterated, deteriorated or spurious, no action could have been taken under Rule 31(2) of the said Rules. Reliance has been placed on the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018 as well as the notification dated 19.03.2018 issued by the Ministry of Health and Family Welfare stating therein that said Regulations were to come into force on 01.04.2019 and that the petitioner would not be affected by those Regulations for the present. By filing an additional affidavit on record, it is sought to be justified that the Regulations of 2011 would be applicable to the foreign liquor in question, namely Beer.

It is found that various questions relating to applicability of Rule 31(2) of the said Rules arise for adjudication. An adjudication by the Authorities in this background is considered imperative. At the same time, considering the fact that the penalty imposed is suspension of the license for a period of fifteen days and in the light of the fact that the shop of the petitioner has been closed from 16.03.2019 for a period of almost ten days till today, the interests of justice can be met by passing the following order:-

- I. Within a period of ten days from today, the petitioner shall avail the statutory remedy under Section 137 of the Act of 1949. If said proceedings are initiated within a period of ten days from today, same shall be entertained on merits without going into the question of limitation.
- II. The order dated 05.03.2019 shall be kept in abeyance from today and the same shall be subject to the final outcome of the proceedings before the Commissioner under Section 137 of the Act of 1949. Needless to state that the fact that the shop of the petitioner was closed from 16.03.2019 till today shall be taken into account while passing the final order under Section 137 of the Act of 1949.
- III. All respective contentions are kept open for being urged before the Commissioner.

Rule is disposed of in aforesaid terms. No costs.

Authenticated copy of the order is granted on request to the learned counsel for the petitioner.

JUDGE

APTE