

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.7967 of 2018

(Gajanan Ramchandra Kavar .vs. State of Maharashtra and others.)

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

Mr. V.B. Gawali, Advocate for Petitioner.
 Mr. S.B. Bissa, AGP for Respondent Nos. 1 to 5.
 Mr. F.T. Mirza, Advocate for Respondent No.7.

CORAM : Manish Pitale, J.
DATED : March 01, 2019.

One of the main grounds raised in the present writ petition while challenging the order dated 03.10.2018 passed by the respondent no.2- the Commissioner of State Excise, granting FL-III licence to the respondent no.7, is that the petitioner, despite being a resident of the place for which the said licence was granted, along with other residents of the said place, were not heard. In this regard, reliance was placed on judgment of this Court in the case of **Shailaja Rajendra Badwaik .vs. Hon'ble Minister, Department of State Excise** reported in **2013(7) ALL MR 227** and it was submitted that this Court in the said judgment has held that local residents being concerned with the question of grant of FL-III licence in their vicinity, have locus to maintain a challenge to the same and that they are required to be heard by the authority before granting such licence.

2. The learned counsel appearing for the respondent no.7, without prejudice to his contentions on

merits, submits that the respondent no.2 could grant such hearing to interested persons on the question of grant of FL-III licence to the said respondent. It is submitted that if the exercise is carried out in a time bound manner, it would be in the interest of justice because despite the FL-III licence being granted in favour of the respondent no.7, due to interim order dated 22.12.2018 passed by this Court, the eating house and the bar had to be closed down.

3. In view of the above, the impugned order dated 03.10.2018 passed by the respondent no.2 is quashed and set aside on the short ground that hearing should have been given by the respondent no.2 to local residents and interested persons, including the petitioner, before grant of such licence. Since the respondent no.7 has specifically disputed the claim that the petitioner is resident of concerned area, the said question is left open to be decided by the respondent no.2 on taking the matter for consideration afresh. In order to obviate any further challenge on the aforesaid ground by interested persons, the respondent no.2 is directed to issue a public notice within a period of two weeks for hearing on the said question of grant of licence to the respondent no.7, to be published in a daily circulated in the concerned area so that the persons interested, if any, would get an opportunity to appear before the respondent no.2, on the question of grant of FL-III licence to the respondent no.7. It is made clear that the issue as to whether any such person claiming to be a resident of the said area, including the claim of the petitioner of residing in the said area, will have to be

decided by respondent no.2, upon remand of these proceedings to the said authority.

4. In view of the above, the writ petition is partly allowed. The impugned order is quashed and set aside and the respondent no.2 is directed to consider the appeal of the respondent no.7 afresh by fixing date of hearing, pursuant to a public notice as directed above. The respondent no.2 is expected to conduct the exercise expeditiously and in any case to decide the appeal of the respondent no.7 on or before 22.04.2019.

5. Since the writ petition of the petitioner has been partly allowed by this Court, the amount of Rs.25,000/- deposited by the petitioner in the Registry of this Court in terms of the order dated 22.11.2018, shall be refunded to the petitioner.

JUDGE

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