

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.946 OF 2020

Vandana w/o Maroti Chudewar,
Age: 42 years, Occ: Business,
R/o: Mudkhed, Taq, Mudkhed,
District- Nanded.

...Petitioner

Versus

1. The State of Maharashtra
Through Collector of State Excise,
Nanded.
2. Mujbeebkha Ghudu Kha Pathan
Age: 38 years, Occu. Business
3. Younus Khan Wahed Khan Pathan,
Age: 39 years, Occu. Business,
4. Sk. Azgar Hussain Ahmed
Age: 40 years, Occu. Business,
5. Mohd. Aijaz Allahabaksh
Age: 32 years, Occu. Business,
6. Syed Moin Syed Karim,
Age: 35 years, Occu. Business,
7. Dr. Mohd. Mujeeb Mohd. Yousuf
Age: 45 years, Occu. Business,
8. Abdul Khadar Abdul Jaleel
Age: 44 years, Occu. Business,
9. Mohd. Gous A. Nabi,
Age: 38 years, Occu. Business,
10. Sayyed Haji Sayyed Karim
Age: 38 years, Occu. Business,
11. Feroj Khan Wahed Khan Pathan
Age: 38 years, Occu. Business,
All R/o Prabhag No.7, Railway Station
Road, Madina Nagar, Mudkhed,
Tq. Mudkhed, Dist. Nanded.

...Respondents

...
Mr. P.P. Dawalkar, Advocate for the Petitioner.
Mr. N.T. Bhagat, AGP for the Respondent/State.
Mr. S.C. Bhosle, Advocate for Respondent Nos.2 to 11.
...

CORAM : ROHIT B. DEO, J.
DATED : 07th FEBRUARY, 2020.

ORAL JUDGMENT:-

. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner is challenging the order dated 07.01.2020, whereby the Collector, Nanded, in purported exercise of power under Section 142(1) and (2) of the Bombay Prohibition Act, 1949, directed the petitioner to immediately close and then shift the FL-III licence.

3. The backdrop of the said order is that the petitioner preferred an application dated 21.03.2018 for grant of FI-III licence to run a permit room in Hotel Sandip Wonder Wine Restaurant. The said application was rejected by the District Committee. The petitioner preferred an appeal before the Excise Commissioner, which allowed the appeal vide order dated 06.09.2019. The relevant observations in the appellate order of the Commissioner of the State Excise read thus:

“It is an admitted fact that there are other liquor

establishments functioning in the vicinity of 90 to 105 meters from the proposed premises with no law and order problem. In this light, it becomes difficult to appreciate how the Appellant's application for grant of FL-III licence could be rejected simply because some local people have opposed the said licence and hence such a case cannot be sustained.

The policy of the Government of Maharashtra does not envisage any kind of cap on the number of licences in a district. However, the State's policy is very clear that stringent action shall be taken against the FL-III licensee as per law, if found committing any irregularity.

This being the case, the grounds on which the application of the Appellant for grant of FL-III licence have been rejected, cannot be sustained.

6. Therefore in light of above, I hereby set aside the impugned order of the Collector and allow the appeal with directions that FL-III licence shall be granted to the Appellant."

4. Surprisingly, the Collector issued the order impugned dated 07.01.2020, whereby the appellate order is virtually nullified. The Collector took note of the observations of the appellate authority, which are reproduced (supra). The Collector then proceeds to observe that frequent complaints are received from the local residents and the possibility of a law and order situation cannot be denied. What is shocking is such a drastic action appears to have been taken without hearing the petitioner.

5. Perusal of the order impugned would reveal that the basis is alleged frequent complaints from local residents and the possibility of law and order situation. The order impugned does not disclose the date or the broad content or any other detail of the complaints received from the local residents, nor does the order impugned elaborate the observation that there is possibility of law and order situation. In this context, if the report submitted by the Assistant Inspector of State Excise to the Superintendent of State Excise on 09.07.2018 is perused, the report notes that the local residents made a general complaint that there were too many liquor shops and therefore, no further licences be issued. The complaint was not petitioner-centric. Moreover, in the concluding paragraph of the report, the Assistant Inspector observed that the complaints lack substance and are actuated by ill-motives and personal grudges.

6. The learned counsel for the petitioner would submit relying on the decision of the learned Single Judge in Amresh s/o Suresh Jaiswal Vs. State of Maharashtra and Others, 2007(4) Mh.L.J. 488 and the decision of the learned Single Judge in M/s. Anjali Wines Vs. The State of Maharashtra and Others, Writ Petition No.4454 of 2015, that

the order impugned is without jurisdiction. The submission is that the provisions which are invoked did not empower the Collector to permanently close the establishment and to direct shifting. The submission is well merited.

7. Section 142 reads thus:

“142. Power of Collector to close places where intoxicant or hemp is sold in certain cases

(1) If the Collector is of opinion that it is in the interest of public peace to close any place in which any intoxicant or hemp is sold, it shall be lawful for the Collector by an order in writing to the persons holding a licence for the sale of such intoxicant or hemp to require him to close such place at such time or for such period as may be specified in the order.

(2) If a riot or unlawful assembly is imminent, or takes place; it shall be lawful for any Executive Magistrate or Police Officer who is present to direct that such place shall be closed and kept closed for such period as he thinks fit, and in the absence of any Executive Magistrate or Police Officer the person referred to in Sub-section (1) shall himself close such place.

(3) Any order given under this section shall be final.”

8. It is clear that the statutory provisions which are invoked by the Collector would permit the Collector to order closure only for a specified period and that too if the

conditions which are pre-requisite for exercise of the power exist. In the case at hand, in my considered view, there is no material on record which could have persuaded the Collector to record a finding that there is a threat to law and order. Further, the power could not have been exercised to direct closure and permanent shifting of the business. The order impugned suffers from a serious jurisdictional error.

9. The order impugned is quashed and set aside.

10. Rule is made absolute in terms of prayer clause (B).

(ROHIT B. DEO, J.)