

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

PUBLIC INTEREST LITIGATION NO. 45 OF 2019

Pathan Aslam Ahemad Khan

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. R.V. Gore, Advocate for petitioner

Mr. S.P. Sonpawle, A.G.P. for respondent nos. 1 to 5

Mr. Y.G. Somani, Advocate for respondent nos. 6 and 7

Mr. S.J. Salunke, Advocate for respondent nos. 8 and 9

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**CORAM : P.B. VARALE AND
R.G. AVACHAT, JJ.**

DATED : 18th FEBRUARY, 2020

PER COURT :

Heard learned Counsel for the petitioner at length.

2. The petitioner, who claims to be resident of village Tembhorni, Tq. Jafrabad, Dist. Jalna and earns his livelihood by doing labour work, is approaching this Court by way of present public interest litigation raising the grievance against the permission granted to Respondent No.8 to run FL-III licence. Accordingly, the prayers in public interest litigation are as follows :-

A] To quash and set aside impugned order passed by the Collector, Jalna thereby granting permission to the respondent no.8 to run FL-III license for Hotel Vijay beer bar in property no. 1507, Tembhorni, Tq. Jafrabad, Dist. Jalna (Exhibit-"E"), by

issuing writ of certiorari or any other appropriate writ or order in the like nature thereby.

B] To direct the respondents no.2 to 5 not to grant permission for country liquor shop in favour of respondent no.9 in ward no.6 of village Tembhurni, Tq. Jafrabad, Dist. Jalna.

3. We must state at this stage that the petitioner added Respondent No.9 and a sweeping statement is made in paragraph no.26 that permission granted to Respondent Nos. 8 and 9 would cause a prejudice to the residents in general and students and women in particular, but there is no specific prayer against Respondent No.9. The petition is based on the material in the form of representations to the authorities. Perusal of these representations, mostly to the Village Development Officer, raised a grievance that the permission to start a country liquor shop or FL-III licence in the area of Ward No.6, next to Shri Datta Ginning would adversely affect the interest of the students. It is stated that certain schools and colleges are situated in the said locality and permission to run the country liquor shop or FL-III licence may lead to an apprehension to the students and more particularly girl students. Learned Counsel for the petitioner in his oral submissions made an attempt to submit before this Court that the documents which were presented before the competent authority by Respondent No.8 were obtained by playing mischief and fraud. As such, the licence granted in favour of Respondent No.8 be revoked.

4. In response to the notice issued by this Court, a detailed affidavit-in-reply is filed on behalf of Respondent Nos. 1 to 5 through Mr. S.A. Shinde, Inspector, State Excise, Jalna. It is stated in the said affidavit-in-reply that all the requisite formalities before issuing licence or grant or permission are scrupulously followed. As the grievance of the petitioner was of locating this country liquor shop and FL-III licence within the area of 50 meters from the school and college, it would be necessary for us to refer to the statement in the affidavit-in-reply. It is stated in the affidavit-in-reply that the distance between the entry door of Hotel Vijay Beer Bar and the temples was measured and it was recorded as 220 meters. The requirement for granting licence to a country liquor shop is that it should be situated at a distance of more than 75 meters from any registered institution or religious institution. It is also stated in the affidavit-in-reply that as per the requirement a check list is prepared and on an application filed by Respondent No.8 – Badrinath Bangale on 24th August, 2018 for grant of FL-III licence there was a verification and all the requirements were confirmed as per the check list. It is also stated that before grant of licence, the statements were obtained of the persons residing in that area including the petitioner. Then the reply refers to the report called for and submitted to the Superintendent of State Excise, Jalna. Copy of the said report is annexed to the affidavit-in-reply at Exhibit R-1. In the said report it is specifically stated that on a grievance that there are religious places and educational institutions nearby the country liquor

shop of FL-III licence, exercise of measurement was undertaken in presence of the petitioner and all these places were found much beyond the stipulated distance and then a no objection certificate was submitted. We are surprised to see that this exercise which was undertaken and in the measurement it revealed that the religious places and other academic institutions are at a distance of 220 meters from the said Hotel Vijay, wherein the FL-III licence was sought for and the petitioner himself is a signatory to the statement having a counter signature of Sub-Inspector of State Excise, Jalna. This is a statement recorded on 22nd October 2018. Thus, the affidavit-in-reply clearly shows that the licence granted to Respondent No.8 is by following due procedure and in respect of adherence to the rules, more particularly the Bombay Foreign Liquor Rules, 1953. It was orally submitted before this Court by learned Counsel for the petitioner that Respondent No.9 failed to submit all the required documents for grant of shifting of the licence from one place to another place. As such, the petitioner prayed by way of prayer clause (B) not to grant permission for country liquor shop in favour of Respondent No.9 in Ward No.6 of Tembhurni, Tq. Jafrabad, Dist. Jalna.

5. In view of the statement in the affidavit-in-reply that the proposal for shifting is under consideration and only preliminary formalities are completed, the authority at district level i.e. State Excise, Jalna, has only collected the documents and submitted report to the State Government.

These submissions clearly show that there is no final order passed on the application filed by Respondent No.9 for shifting. In view of this fact, we see no reason to entertain this petition even for Respondent No.9 for the simple reason that there is no cause at this stage for the petitioner to approach this Court in so far as Respondent No.9 is concerned.

6. Considering all these aspects, we are of the opinion that the present public interest litigation is devoid of merits and the same is accordingly dismissed.

(R.G. AVACHAT, J.)

SSD

(P.B. VARALE, J.)