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

**WRIT PETITION NO.7594 OF 2021**
**WITH**
**CIVIL APPLICATION NO.9374 OF 2021**
**IN**
**WRIT PETITION NO.7594 OF 2021**

Smt. Shankarabai w/o Swami Gaud Jangampalli
(through her Special Power Attorney holder)
Shri. Ramesh Gaud Swami Gaud Jangampalli
Age : 50 years, Occu: Business,
R/o. Dharmabad, Tq. Dharmabad,
Dist. Nanded. **... PETITIONER**

**VERSUS**

1. The State of Maharashtra
through Secretary
Government of Maharashtra Home
(Transport), Maharashtra State
Mantralaya, Mumbai – 400 032.
2. The Collector,
(State Excise Department)
Nanded Tq. & Dist. Nanded.
3. The Superintend of State Excise
Nanded, Tq. & Dist. Nanded.
4. Sarpanch,
Gram Panchayat Naigaon (Dh.)
Gram Panchayat Karyalaya Naigaon (Dh.),
Tq. Dharmabad, Dist. Nanded.
5. Gramsevak
Gram Panchayat Naigaon (Dh.)
Gram Panchayat Karyalaya Naigaon (Dh.),
Tq. Dharmabad, Dist. Nanded. **... RESPONDENTS**

...
Advocate for Petitioner : Mr. V.P. Latange
AGP for Respondents/State : Mr. K.B. Jadhavar
Advocate for respondent No.4 : Mr. Anil M. Gaikwad
Advocate for Respondent No.5 : Mr. D.B. Rode h/f. Mr. G.R. Ingole
Advocate for Intervenor : Mr. Avinash D. Hande
...

**CORAM : MANGESH S. PATIL, J.**
**Reserved on : 28.10.2021**
**Pronounced on : 17.11.2021**

**JUDGMENT :**

Heard. Rule. The Rule is made returnable forthwith. The learned AGP waives service for the respondent Nos.1 to 3. The learned advocate Mr. Gaikwad waives service for respondent No.4. The learned advocate Mr. Rode holding for Mr. Ingole waives service for respondent No.5. Also heard the learned advocate Mr. Hande for the Intervenor. At the request of all the matter is heard finally at the stage of admission.

2. The petitioner holds a CL-III licence No.95 issued under the Maharashtra Prohibition Act (hereinafter the Act) for village Naigaon (Dh.) Tq. Dharmabad District Nanded. She is impugning the judgment and order of the respondent No.2 Collector passed under Section 142 (1) of the Act directing closure of her liquor shop upholding the resolution passed by the Grampanchayat stated to have been passed in terms of the order passed by the State Government under Section 139 of the Act dated 25.03.2008 as amended by the subsequent order dated 12.02.2009 (hereinafter the Order under Section 139).

3. The learned advocate for the petitioner submitted that the decision of the Collector was solicited pursuant to the enabling provision contained in Clause 3 (3A) of the order under Section 139. However, the procedure prescribed thereunder was not followed. It requires a representation in writing to be made by 25% of women voters or total voters

in any village to the Superintendent of State Excise demanding closure of a liquor shop in a village. Such application is thereafter to be verified by the Superintendent of State Excise. After such verification regarding its authenticity, the Collector has to direct the Tahsildar to take a secrete poll. The Tahsildar thereafter has to declare the place, date and time of the election at least seven days in advance. The list of voters is to be used for that purpose. The election is to be conducted under the supervision of the concerned Tahsildar or an officer not below the rank of Naib-Tahsildar as is authorized by him. Even Inspector of State Excise has to be present during the poll and the resolution has to be passed for closure of the liquor shop by 50% of women voters or total voters of the Village. It is after following such an elaborate procedure that the Collector can pass an order under Section 142 (1) for closure of the liquor shop.

4. He would demonstrates from the papers that none of this prerequisites were followed and still ignoring everything, the Collector by the impugned order has directed closure of the liquor shop. The decision is absolutely illegal besides being perverse and arbitrary.

5. The learned advocate, in the alternative, would submit by referring to the decision of this Court in the case of **Vithal Mallu Chintalwar VS. State of Maharashtra and Ors.; 2017 (3) Mah. L.J. 661** that apart from the above state of affairs, if the Collector was to exercise the power under Section 142, it was imperative on his part to have prescribed the period for the closure of the shop as is mandated for in that provision. He would

therefore submit that the impugned order is grossly erroneous and may be quashed and set aside.

6. The learned AGP as also the learned advocates of other respondents and the learned advocate for the Intervenor unanimously submit that there is no perversity or arbitrariness muchless any illegality in the impugned order. The Collector has considered and rightly decided the matter by invoking Clause 3(1) of the order under Section 139 and not Clause 3(3A). There is a difference between these two clauses. For the purpose of Clause 3(1) a Collector can direct closure of a liquor shop if not less then 50% women voters present in the Gram Sabha pass a resolution by a simple majority and which resolution is to be passed in accordance with the provisions of the Maharashtra Village Panchayat Act, 1958 and the Rules framed thereunder. Photo identity of the voters is to be produced before the Gramsabha for verification, in the absence of which Secretary of the Panchayat has to certify regarding *bona fides* of the voters and it is only such voters are entitled to participate in the Gramsabha. They would further submit that by virtue of Clause 3(2) verification of Voters is to be done by a Block Development Officer along with the Inspector of the State Excise. The Gramsabha has to be held in presence of these two officers and representative of the licence holder. The proceeding has to be video-graphed. They would refer to the documents produced along with their respective affidavits and replies to bring home the point that all such procedure was duly followed and was objectively scrutinized by the learned

Collector and there is no error or illegality.

7. I have carefully considered the rival submissions and perused the papers.

8. As can be appreciated, the dispute between the parties is as to if while exercising the powers under Section 142 (1) of the Act, the Collector has undertaken a scrutiny and has directed closure of the liquor shop pursuant to Clause 3(1) and (2) or Clause 3 (3A) of the order under Section 139. This is the decisive point, on which fate of the matter hinges. These clauses are as follows :

***3. Resolution by Gram Sabha for closing down liquor shop.-***

*1. The Collector shall closed down such liquor shop if not less than fifty per cent of the total voters or women voters present in the Gram Sabha pass the resolution by a simple majority for closing down the liquor shop. Any such resolution shall be passed in accordance with the Bombay Village Panchayats Act, 1958 (Bom.III of 1959) and rules made thereunder. The voters shall produce their photo identity before the Gram Sabha for verification as the voter is resident of the same village. If photo identity is not produced, under such circumstances the Secretary of Panchayat shall certify regarding the bona fide of voters. The voters, those produce such proofs, shall be allowed to participate in Gram Sabha.*

*2. The Verification of voters shall be done by the Block Development Officer alongwith the Inspector of State Excise of the area. The Gram Sabha shall be held in the presence of these two officers and representative of the liquor licence holder. There shall be video shooting of such Gram Sabha and said shooting shall be used as an evidence.*

*3. The Collector shall not take into consideration the resolution passed by the Gram Sabha for reopening a shop at least one year from the date of passing resolution for closure of shop. If the Gram Sabha fails to pass the resolution for closure of liquor shop then at least one year, Gram Sabha shall not pass any such resolution for closure of shop.*

*["(3A) If, not less than Twenty-five per cent of the women voters or total voters in any village give a representation in writing to*

*the concerned Superintendent of State Excise and demand to close down the liquor shop in a village, such application shall be verified by the Superintendent of the State Excise. After verification of authenticity of signature on the representation and its genuinity, the Collector shall direct the concerned Tahasildar, to take secret poll fearlessly by utilizing a specimen ballot paper appended herewith. Thereafter, the concerned Tahsildar shall declare place, date and time of election at least seven days in advance. The latest list of voters shall be used for such election. The election process of voters of that concerned village shall be completed by secret ballot under the supervision of the concerned Tahsildar or an Officer not below the rank of Naib Tahsildar, authorised by him. The representative of Superintendent not below the rank of Inspector of State Excise and the liquor license shall be allowed to remain present during the poll. If, in such election more than fifty per cent, of the women voters or total voters of the concerned village vote for closing down the liquor shop, the Collector shall pass an order for closing down such liquor shop.")*

9. If it is to be found that it is pursuant to the Clause 3(1) and (2) the Collector has passed the order then the Petitioner has no case. Rather no argument is made to demonstrate that the procedure prescribed under those clauses is not followed.

10. Conversely, if it can be demonstrated that the whole attempt was to solicit an order of the Collector pursuant to the procedure to be followed under Clause 3 (3A), there is enough material of the record, regarding which there is no dispute raised by the respondents that the pre-requisites for passing the resolution under that clause were not followed. There is no material to show that 25% of the women voters or total voters had made representation in writing to the Superintendent of the State Excise and which was thereafter verified by him. No order was passed by

the Collector directing the concerned Tahsildar to undertake a secrete poll. The Tahsildar had not declared the place, date and time of Election muchless seven days in advance. No secrete ballot was held. The minutes of the meeting also show that a Talathi was present at the meeting as the representative authorized by Tahsildar when this clause requires that the secrete ballot should be held under the supervision of Tahsildar or an Officer not below the rank of Naib-Tahsildar duly authorized by him. Therefore if it is to be found that the impugned order of the Collector was passed in purported exercise of the powers under Clause 3 (3A), the impugned order would fall to the ground.

11. Pertinently, the impugned order proceeds on the premise that Collector's powers under Section 142 were sought to be invoked by adopting a procedure under Clause 3 (1) and (2) of the order under Section 139. Even he has proceeded to decide it in the same fashion.

12. However, importantly, the affidavit-in-reply filed by the respondent No.3 who is Superintendent of State Excise, Nanded (page No.67) in paragraph No.10 specifically mentions that the impugned order was passed as per the provisions under Clauses 3 (3 A) of the order under Section 139. When the fact was pointed out to the learned AGP he tried to explain it by saying that it is a typographic mistake and may be allowed to be corrected. However, as can be appreciated it is a decisive fact and a clinching admission which is now sought to be withdrawn or explained away. True it is that in paragraph No.5 of the affidavit-in-reply it has also

been mentioned that the impugned order was passed in accordance with the provisions of Clause 3(1) and (2) of that order. The learned advocate for the petitioner therefore took strong objection to the request of the learned AGP to allow him to file additional affidavit explaining the error.

13. The circumstances are indeed peculiar. As is mentioned earlier, according to the impugned order it is only under the enabling clauses 3(1) and (2) of the order under Section 139 that the Collector was invoking the power under Section 142 (1) of the Act. In view of such an observation of the Collector when a query was put to the learned advocate for the petitioner as to why it should be inferred that he was intending to exercise the power under Section 3 (1) and (2) and not under Section 3 (3A), the learned advocate would point out that various Womans Self Help Groups had from time to time made representations to various authorities and it is pursuant thereto that a Special Gramsabha was held and the resolution was passed. He would submit that filing of such representation is a condition for proceeding under Clause 3 (3A) and there is no such requirement for following the procedure under Clause 3(1) and (2). I am afraid this could not be a sufficient basis to draw an inference that the villagers were intending to resort to clause 3 (3A) and not 3 (1) and (2). In fact the procedure as is required for passing a resolution under Clause 3 (1) and (2) was duly followed as has been objectively examined and concluded by the learned Collector. Merely because different Women Self Help Groups were keen and made representations from time to time to various authorities for

closure of the liquor shop, in itself, would not be sufficient to conclude that they were intending to resort to the procedure under Clause 3 (3A).

14. As is mentioned above though there seems to be a statement in the affidavit-in-reply filed by the respondent No.3 that the order was passed by the Collector by resorting to Clause 3 (3A) in earlier part of the affidavit it has also been mentioned that it was passed under Clause 3(1). In any case when the Collector in the impugned order has specifically mentioned and has examined the dispute from the perspective of Clause 3(1), no weight can be attached to such statement in the affidavit-in-reply which seems to an error.

15. To conclude, as is observed earlier, since it is found that the impugned order was passed pursuant to a procedure followed under Clause 3 (1) and (2) of the order under Section 139 and the Collector having objectively concluded as to how the procedure prescribed under that clause has been duly followed, the impugned order cannot be said to be perverse, arbitrary or illegal.

16. However, as can be seen from the provision of Section 142 of the Act, while directing closure of a liquor shop/suspension of liquor licence, the Collector is bound to provide the outer limit for the period for such suspension/closure, as has been elaborately considered, discussed and held by this Court in the case of **Vithal Mallu Chintalwar** (supra). Since the impugned order does not stipulate the period, for the order to remain in operation, to that extent there is an error and illegality.

17. In the circumstances the Writ Petition in substance fails. However, the matter needs to be remitted to the Collector for providing for a period for the operation of his order as is contemplated under Section 142 of the Act and as per the observations of this Court in the case of **Vithal Mallu Chintalwar** (supra).

18. The Writ Petition is partly allowed. The Writ Petition to the extent it challenges the impugned order is dismissed. However, the matter is remitted to the Collector respondent No.2 for passing appropriate order for providing a period for the operation of his order as per the observations herein above. He shall take such decision within four weeks from today after giving an opportunity to the petitioner to be heard only in respect of the period of such operation. The petitioner shall appear before the Collector on 15.12.2021 and there shall be no need for the Collector to issue a notice to him.

19. The Civil Application is disposed of.

**(MANGESH S. PATIL, J.)**

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