

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO. 1977 OF 2021

SHAREEF HASAN HEDDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. K.S. Patil,
Addl. GP for Respondent Nos. 1 to 4: Mr. P. S. Patil
Advocate for Respondent Nos. 5 to 7 : Mr. M.B. Kolpe h/f
Mr. V. B. Deshmukh

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**CORAM : RAVINDRA V. GHUGE AND
S. G. DIGE, JJ.**

DATE : 12th APRIL, 2022

PER COURT :-

1. While issuing notice on 9th February, 2021, this Court (Coram : S.V Gangapurwala and Shrikant D. Kulkarni, JJ.) had passed the following order.

“Keeping the point of maintainability of the writ petition open, issue notice to the respondents, returnable on 06-04-2021. The learned A.G.P waives service of notice for respondent nos. 1 to 4.”

2. Since this Court has ordered that the point of maintainability of the petition will have to be decided, we called upon the learned Advocate for the petitioner to satisfy us, as to which is the provision under which the petitioner has made a representation to the Superintendent, State Excise Department, Osmanabad, praying for

closing down a Beer Shoppe and in the alternative, the same shall be re-located elsewhere.

3. The learned AGP has placed before us an order issued by the Home Department dated 12th February, 2009 under the Bombay Prohibition Act, 1949. It would be appropriate to reproduce the said order hereunder.

“HOME DEPARTMENT
Mantralaya, Mumbai 400 032, dated 12th February, 2009
Order
The Bombay Prohibition Act, 1949

No. MIS 1108/C.R.7/EXC-3 – In exercise of the powers conferred by sub-sections(1) and (2) of Section 139 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949) and of all other powers enabling it in that behalf, the Government of Maharashtra is hereby pleased to amend the Bombay Prohibition (closure of Licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) order, 2008, as follows, namely:-

In the Bombay Prohibition (Closure of Licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/ Corporation) order, 2008-

(a) After clause 3, the following clause shall be inserted, namely:-

“(3A) If, not less than Twenty five percent 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 State Excise. After verification of authenticity of signature on the representation and its genuinity, the Collector shall direct the concerned Tahsildar, to take secret poll fearlessly by utilizing a specimen balot 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 licensee shall be allowed to remain present during the poll. If, in such election more than fifty percent 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.”

(b) in clause 5:-

(i) In the title, for the words, brackets and figure “or representation under clause (4) received”, the words, brackets and figure “or representation under clauses (3A) and (4) received” shall substituted;

(ii) for the words, brackets and figure “representation from ward of Municipal Council or Corporation under clause (4)”, the words, brackets and figure “representation from village or Ward of Municipal Council or corporation under clauses (3A) and (4)” shall be substituted;

(c) In clause 9, for the words “name of the Ward in case of Municipal Corporation/Municipal Council”, the words “Name of the Village or Ward in case of Municipal Corporation/ Municipal Council,” shall be substituted.

By order and in the name of the Governor of Maharashtra,

*P. T. GOUD,
Joint Secretary to Government.”*

4. The learned AGP has also drawn our attention to an earlier order dated 25th March, 2008, issued by the Home Department. The entire procedure to be resorted to for passing a resolution by the *Gramsabha* for closing down a liquor shop, has been prescribed. The manner in which the issue of closing down a liquor shop is to be put to voting, is also prescribed, in as much as, the specimen ballot paper, which is to be used in such *Gramsabha* meeting, is also provided for.

5. It is, thus, apparent that the State Excise has a policy in place. It is only that the petitioner will have to utilise the said policy and the provisions, to seek redressal of his grievance.

6. The learned Advocate for the petitioner submits that he cannot muster support of 25% ladies from the ward in which he resides. He further submits that respondent Nos. 5 to 7 are influential people.

7. We are of the view that if we entertain this petition by a single person, it would run counter to the policy of the State. Even while

passing orders for deciding a representation, we have to ensure that a representation is maintainable. We cannot issue a writ of mandamus for deciding such representation, which is not tenable.

8. In view of the above, this petition is dismissed.

9. Needless to state, the petitioner is at liberty to avail of the remedy as is prescribed under law for closing down a liquor shop.

(S.G. DIGE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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