

SSC

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

PUBLIC INTEREST LITIGATION NO. 102 OF 2017

Manohar s/o Ramrao Gaikwad

....Petitioner

Versus

The Hon'ble Minister, State Excise
Department, Maharashtra State,
Mantralaya, Mumbai, 32 and others

....Respondents

Mr. Mahesh S. Deshmukh h/f. Mr. P.A. Bharat, Advocate for
petitioner.

Mr. S.K. Tambe, A.G.P. for respondent no.1/State.

Mr. Ajinkya Reddy, Advocate for respondent no.7.

Mr. M.D. Gitte, Advocate for respondent no.9.

Mr. R.R. Deshmukh h/f. Mr. R.B. Deshmukh, Advocate for
respondent no. 10.

**CORAM : DIPANKAR DATTA, CJ. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 06, 2022.

PER COURT :

Grant of permission by the Deputy Commissioner (Inspection), Commissioner, State Excise, State of Maharashtra, Mumbai, for shifting of a country liquor shop from Nalegaon, taluka Chakur to Udgir, taluka Udgir, both in the district of Latur, *inter alia*, is the subject matter of challenge in this public interest litigation at the instance of a former Railway employee.

2. The cause of action set out in the writ petition for instituting this public interest litigation is that shifting of the country liquor shop, impugned herein, would facilitate teasing of

girls and women by persons who consume liquor; also, students of colleges in the relevant area would be addicted to liquor and that would pose danger to public health and disturbance of public peace.

3. Having regard to the case run in the public interest litigation, we doubt whether the petitioner has approached this Court with a genuine public cause and with a *bona fide* intention. If indeed the concern expressed by the petitioner about consumption of liquor is to be taken seriously, all liquor shops in the State may have to be closed.

4. However, after hearing of the public interest litigation progressed to some length, Mr. Mahesh Deshmukh, learned advocate for the petitioner, had to concede that the order dated 1st February, 2016, made by the Deputy Commissioner under rule 25 of the Maharashtra Country Liquor Rules, 1973 is amenable to a challenge in the appellate jurisdiction of the State Government under section 137 of the Maharashtra Prohibition Act, 1949.

5. The Supreme Court in its decision in **Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan**, reported in (2014) 5 SCC 530, has held as follows:

"49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other down-trodden people. Through the public interest litigation, the cause of several people who are not able to approach the court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while

entertaining public interest litigation. The judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely, to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of public interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people whose rights are adversely affected or are at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation."

(emphasis ours)

6. Bearing the dictum in **Jaipur Shahar Hindu Vikas Samiti** (*supra*) and accepting the request of Mr. Mahesh Deshmukh, we dispose of this public interest litigation by granting liberty to the petitioner to present an appropriate appeal within fifteen days, in accordance with law, before the State Government under section 137(2) of the Maharashtra Prohibition Act and if within the aforesaid time an appeal is presented, complete in all respects, the State Government shall proceed to decide the appeal on merits, waiving the bar of limitation. All contentions are left open. No costs.

7. In view of disposal of the public interest litigation, the interim relief granted earlier stands vacated.