

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1153 of 2022

Suresh s/o Gajilal Jaiswal,
Aged about 54 years, Occ.
Business, R/o Chinchkheda,
Tq. Brahmapuri, Dist. Chandrapur.

... Petitioner

... Versus ...

(1) The State of Maharashtra, through
its Secretary, Department of Excise,
Mantralaya, Mumbai – 32.

(2) The Commissioner, State Excise,
Mumbai.

(3) The Collector Chandrapur,
District Chandrapur (State
Excise Department)

... Respondents

Mr. Abhay Sambre, Advocate for the petitioner
Mr. S. M. Ukey, Addl. G. P. for the respondents

CORAM : ROHIT B. DEO, J.

DATED : 28-3-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner holds licence under CL-III under the Maharashtra Prohibition Act.

3. The Collector, Chandrapur vide order dated 1-12-2013, directed closure and shifting of the said licence on the premise that in the Special Gram Sabha held on 21-11-2013, which was attended by 361 women voters, 284 women voters supported the closure of the liquor shop. The Collector referred to clause 3 of the Bombay Prohibition (Closure of Licence on Resolution by Gram Sabha or Representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008 ('2008 Order') which reads thus :

3. Resolution of Gram Sabha for closing down liquor shop. -

(1) The Collector shall close 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 of 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.

4. The limited submission of the learned counsel Mr. Sambre is that the 2008 Order was amended vide notification dated 12-2-2009 and after clause 3, which is noted supra, clause (3A) is added. According to the learned counsel, Mr. Sambre, not less than twenty five percent of the women voters did give a representation in writing to the concerned Superintendent of State Excise and demanded closure of the liquor shop in the village. The submission is, that such a process invoking clause (3A) having been initiated, recourse could not have been taken to clause 3.

5. Clause (3A) which is heavily relied by learned counsel Mr. Sambre reads thus :

“(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 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 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 Tahasildar, 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.”

6. The Commissioner has negated similar submission on the premise that clause 3 and clause 3A are not mutually exclusive and the fact that representation was received under clause 3A did not foreclose the right of the women voters to vote in the special gram sabha, as is done in the present case.

7. I am inclined to agree with the reasons recorded by the Commissioner.

8. In any event, I am not inclined to exercise writ jurisdiction for an additional reason. Whether clause 3 or clause 3A ought to have been invoked may provide some food for the legal brain. The fact of the matter is that majority of the women voters in the village did not wish that the liquor shop shall function further,

obviously for valid and sound reasons. In writ jurisdiction, I would be loathe to nullify the decision of the majority of women voters to close liquor shop, on technical considerations.

9. The writ petition is dismissed.

JUDGE

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