

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1567/2022

Rahul S/o Babanrao Deshmukh ... Petitioner

- Versus -

The State of Maharashtra and another ... Respondents

Mr. J.B. Kasat, Advocate for the Petitioner.

Mr. N.R. Patil, Assistant Government Pleader for the
Respondents.

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATE : 17 MARCH 2022

P.C. :

Not on board, taken on board upon mentioning.

2. Heard the learned Counsel for the parties. At the joint request, writ petition is taken up for disposal as the learned Assistant Government Pleader has chosen to argue on the basis of the record and the communications tendered.

3. Petition is moved on urgent basis in light of the order passed by the Collector, Amravati on 16 March 2022 under Section 142(1) of the Maharashtra Prohibition Act (for short 'Act'). By this order, the Collector has directed that establishments selling country liquor and foreign liquor holding CL-3, FL-3, FLBR-2, FL-2, CL-FL-TOD-3, CL-2 and FL-1 in the entire Amravati district shall remain closed on 18 March 2022

4. The Petitioner, who is a FL-3 licence holder has challenged this action of the Collector.

5. Learned Counsel for the Petitioner makes a grievance that the impugned order passed was available in the evening of yesterday-16 March 2022 giving virtually no time to approach the Court. Learned Counsel for the Petitioner submits that under Rule 9A of the Maharashtra Foreign Liquor (Sale on Cash, Register of Sales etc.) Rules, 1969 certain days have been specified for closure and if the establishments have to be closed, other than those days specified, then advance notice has to be given, which

was not given in this case. The learned Counsel submits there is no material before the Collector in this case that there is a breach of public peace. Under Section 142(1) the Collector has to come to the conclusion himself, which in this case has not been done. The Petitioner has relied upon the order dated 12 April 2019 passed in Writ Petition No.2928 of 2019 (Nitin S/o Nagoraoji Mohod and another V/s The State of Maharashtra and another) wherein in identical circumstances the order passed by the District Collector, Amravati in the year 2019 was quashed and set aside.

6. The learned Assistant Government Pleader has placed on record the communications received from the Superintendent of Police by the Collector which is referred to in the impugned order. The learned Assistant Government Pleader also submits that the input from the Superintendent of Police will show that there would be a serious issue and he had recommended closure for 3 days.

7. The input given by the Superintendent of Police shown to us by the learned AGP. As regards the apprehension expressed by the police authority regarding communal issues it is for 21 March 2022 and not for 18 March 2022 for which order is

passed. Therefore the Collector has not accepted this input of the police and has passed an order only as regards 18 March 2022. There is no independent application of mind by the Collector as reflected in the order.

8. The division bench of this Court in the case of *Nitin S/o Nagoraoji Mohod* had set aside the exercise of power by the Collector Amravati following the decision in the case *Maharashtra Wine Merchants Association v. State of Maharashtra*¹. By this decision it is held that the power granted under sub-section (1) of section 142 to order closure of a shop selling liquor or a permit room cannot be exercised at the fancy of the Collector but only if the Collector is satisfied that it is necessary to do so in the interest of public peace. The opinion that it is necessary so to do in the interest of public peace must be formed by the Collector himself and must be reflected in the order. We do not find any such independent application of mind and that too for the entire district.

9. In light of the above discussion, the impugned order dated 16 March 2022 will have to be quashed and set aside.

1 2006 SCC Online Bom 714

10. We make it clear that we have confined ourselves only to the impugned order and if under any other provision or order the sale of liquor and hemp is prohibited on 18 March 2022, this order shall not be deemed to have overridden such a closure.

11. We also make it clear this order cannot be deemed to be restraining the Collector from passing a fresh order as per law after following the provisions of section 142(1) of the Act with application of mind after disclosing reasons regarding the aspect of public peace.

12. Writ petition is disposed of in above terms.

13. The learned A.G.P. may communicate the order to the Collector without waiting for the copy of the order.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

Tambaskar.