

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

WRIT PETITION NO. 5168 OF 2022

1. Wine Samrat Itwara Chowk, Yavatmal,
through its Proprietor Nilesh S/o Rattan Lal Jaiswal,
Aged about 39 years.
2. Ekvira Wine Bar, Ekvira Chowk, Yavatmal,
through is Proprietor Manohar s/o Tahalram Tilwani,
Aged about 65 years.
3. Saki Wine Bar, Civil Lines Yavatmal,
through its Authorised Signatory Sumeet S/o Rajesh Jaiswal,
Aged about 42 years.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra,
through the Principal Secretary,
Department of State Excise,
Government of Maharashtra, Mantralaya, Mumbai.
2. The District Collector,
Yavatmal.
3. The Superintendent, State Excise Department,
Yavatmal.

RESPONDENTS

Shri Sahil Dewani, Advocate for the petitioners.
Ms. S.S. Jachak, Assistant Government Pleader for the respondents/ State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 26/8/2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this Writ Petition is to the order dated 22/8/2022 passed by the Collector, Yavatmal under Section 142(1) of the Maharashtra Prohibition Act, 1949 (for short “the said Act”). By that order, it has been directed that on 27/8/2022, the liquor shops in the district would remain closed.

3. It is submitted by the learned Counsel for the petitioner that the impugned order has been passed without complying with the requirements of Section 142(1) of the said Act. Under the said provisions, though the Collector is empowered to act in public interest and close any place where any intoxicant is sold, such action has to be undertaken on the basis of concrete material available. Merely on the premise that there is a likelihood of breach of law and order, such closure cannot be directed. The learned Counsel has relied on the decision in *Parbhani Jilla Daru Vikreta Sanghatana Vs. State of Maharashtra and others* [2018(1) Mh.L.J. 343] to substantiate his contention. It is his submission that the impugned order does not refer to any material that could be relied upon for arriving at such a conclusion. It is thus prayed that the impugned order is liable to be set aside.

4. The learned Assistant Government Pleader for the respondents, on instructions, submits that the Superintendent of Police,

Yavatmal on 19/8/2022 had issued a communication to the Collector stating therein that there is a likelihood of breach of law and order on 26/8/2022 and 27/8/2022. Hence, a request for closure of the liquor shops was made. Acting on that request, it is submitted that the Collector has passed the impugned order.

5. Perusal of the impugned order indicates that except referring to the provisions of Section 142(1) of the said Act, there is no reference to any other material that has been considered by the Collector while passing the impugned order. Even the communication dated 19/8/2022 issued by the Superintendent of Police does not find reference in the impugned order. In *Parbhani Jilla Daru Vikreta Sanghatana (supra)*, the Division Bench of this Court has considered the provisions of Section 142(1) of the said Act. In paragraph 7, it has been observed as under :

"7. XXXX Mere speculation on the basis of some experience in the past cannot prompt such action. Further, if consider the wordings in the above provision, we can see that the opinion of the Collector requiring for the closure of the shops where intoxicant or hemp is sold cannot extend to entire district. Word "any place" used in the section cannot be interpreted to include entire district. Therefore, we are of the opinion that the reason for passing the impugned order was not in the interest of the public peace, without any concrete evidence before him. It has been observed in the above said decision that, "The power granted under sub-section (1) of section 142 to order closure of a shop selling liquor or a permit room can be exercised not 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 not by somebody else"."

6. In the light of the aforesaid position, we find that there is no material whatsoever to pass an order under Section 142(1) of the said Act. The said order having been found unsustainable it is liable to be set aside.

7. For the aforesaid reasons, the order dated 22/8/2022 is set aside. The learned Assistant Government Pleader to inform the respondents of the same. Rule is made absolute in the aforesaid terms. No costs.

8. An authenticated copy of this order be supplied to the learned Counsel for the parties.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT