

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1169 OF 2023

JALGAON DISTRICT LIQUOR ASSOCIATION THROUGH ITS LICENSE
HOLDER RAJENDRA SHANKARLAL JAISWAL
VERSUS
THE DISTRICT COLLECTOR STATE EXCISE DEPARTMENT AND ANOTHER
...

Advocate for the Petitioner : Mr. Undre Vikas S.
AGP for the Respondents/State : Mr. A.S. Shinde

CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.

DATE : 27.01.2023

PER COURT :

Not on board. At the request of the learned advocate for the petitioner, it is taken on board.

2. Heard both the sides.

3. The petitioner is aggrieved by the order passed by the Collector Jalgaon dated 19.01.2023 in purported exercise of the powers under the Maharashtra Prohibition Act and the Rules framed thereunder and in tune with the provisions of Section 135C of the Representation of People Act, 1951, prohibiting sale of intoxicating stuff from 28.01.2023, 4 p.m. till the end of 30.01.2023. In addition he has also prohibited such sale on 02.02.2023 on which date the counting is to take place.

4. Following the provisions of Section 135C of the Representation of People Act, 1951 bar to sell *inter alia* liquor is to be imposed on the date of poll for 48 hours ending after one hour of conclusion of the polls. The learned advocate for the petitioner, therefore submits that to the extent of

ban by the impugned order from 28.01.2023 4 p.m. till the end of 30.01.2023, the petitioner is not disputing the powers of the Collector.

5. However, when Section 135C does not contemplate any prohibition to sell liquor on the date of counting, the order passed by the Collector is *de hors* the provisions of law and is not sustainable.

6. The learned A.G.P. submits that even under the provisions of Section 142 of the Maharashtra Prohibition Act, the Collector has power to impose ban on sale of intoxicants.

7. Perusal of the impugned order *ex facie* demonstrates that the order has been passed only in view of the provisions of Section 135C of the Representation of People Act, 1951. There is not even a whisper as regards the provision of Section 142 of the Maharashtra Prohibition Act much less disclosing the circumstances which would have enabled him under that provision to impose ban.

8. Therefore, even if the Collector in a circumstance indicated therein can exercise the power, the impugned order does not either expressly or impliedly suggests that he was intending to invoke that power. The submission of the learned A.G.P. therefore, is not sustainable on facts and in law.

9. We allow the writ petition partly and quash and set aside the order dated 19.01.2023 to the extent of declaring bar under Section 135C of the Representation of People Act, 1951 for selling liquor on 02.02.2023.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-