

(1)

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

1021 WRIT PETITION NO.14641 OF 2023

**MADDIKUNTA DATTAGAUD NARSAGAUD
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE DISTRICT
COLLECTOR AND OTHERS**

....

Mr V. S. Undre, Advocate for Petitioner;
Mrs Priya R. Bharaswadkar, A.G.P. for Respondent Nos.1 & 2
Mr Alok Sharma, Standing Counsel for Respondent No.3

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 1st December, 2023

PER COURT:

1. By this Writ Petition, the Petitioner has put forth prayer clauses (A) and (B), which read as under :-

"A] By issuing writ of certiorari or any other writ in the like nature, this Hon'ble Court may kindly be pleased to quash and set aside the Order dated 30.10.2023 bearing no. BPA/112023/Telangana Election / 1167 / 2776 / Adhi / 2023 passed by the Ld. District Collector, (State Excise) Nanded.

B] Pending hearing and final disposal of this writ petition, this Hon'ble Court may kindly be pleased to grant stay to the effect, implementation and execution of the Order dated 30.10.2023 bearing no. BPA/112023/Telangana Election/1167/2776/Adhi/ 2023 passed by the Ld. District Collector, (State Excise) Nanded."

(2)

2. The contention is that, due to State Assembly Elections in the Telangana State, the District Collector, Nanded has declared a 'Dry Day' for 48 hours prior to the commencement of the polling and until the polling ends and for a day on the date of counting of votes, which is 03/12/2023. The Petitioner's FL-III licence shop by the name 'Hotel Madhuban Garden Restaurant' is situated at the address mentioned in the title clause at Subhashnagar, Dharmabad in District Nanded. Though the location of the Restaurant is around 5 kms. from the State Border of the Telangana State, the said location does not form a part of the State Legislative Constituency.

3. Reliance is placed on Rule 26 of the Maharashtra Country Liquor Rules, 1973 and Maharashtra Foreign Liquor (Sale on Cash, Register of Sales, etc.) Rules, 1969, as well as the provisions of the Representation of the People Act, 1951. It is pointed out that, this Court had earlier passed an order on 29/10/2021 in Writ Petition No.12201/2021 at Aurangabad, thereby restricting the closure of CL-III and FL-III shops, only to the State Assembly Constituency or the Constituency which is election going. We have perused Section 135-C of the Representation of the People Act, 1951 and Rule 9-A of the

(3)

Maharashtra Foreign Liquor (Sale on Cash, Register of Sales, etc.) Rules, 1969. It is obvious that, there is no authority vested in the District Collector to declare a 'Dry Day' in an area which is not election going.

4. The learned A.G.P. points out a communication from the Collector and District Magistrate/ District Election Officer, Nizamabad, State of Telangana, addressed to the District Collector, Nanded, dated 04/11/2023, to declare a 'Dry Day' in the area which is within 5 kms. from the State Border of the State of Telangana. The reason cited is, to ensure that such 'Dry Day' would assist the Election Authorities for peaceful and smooth conduct of free and fair poll. In the light of such communication, the District Collector, Nanded had declared a 'Dry Day' in the area which is within 5 kms. distance from the Borders of the State of Telangana.

5. The learned Advocate for the Petitioner informs us that three days i.e. the 48 hours preceding the polling day and the date of polling, have expired. However, the counting of votes would be on 03/12/2023 and that would affect the Petitioner's

(4)

business, since the 'Dry Day' has been declared by the District Collector.

6. In view of the above and considering the provisions of law, and since there is no judicial pronouncement cited before us to indicate that the areas within 5 kms. of the election going Constituency can be subjected to an order of prohibiting sale and distributing the products mentioned in the impugned order, **this Writ Petition is allowed.** The impugned order dated 30/10/2023 stands quashed and set aside. Needless to state, this would relate to the day of counting of votes only.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

sjk