

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.304 OF 2023

Shyam s/o Kisanrao Mehetre,
aged about 42 years, occupation :
Business, r/o Ward No.15,
Laxmi Niwas, Manik Chouk,
Sindhkhedraja, Taluq Sindhkhedraja,
District Buldhana.

... Petitioner

- Versus -

1) The State of Maharashtra, through
the Principal Secretary (State Excise),
Mantralaya, Mumbai-32.

2) The District Collector, State Excise
Department, Buldhana.

... Respondents

Shri J.B. Kasat, Advocate for petitioner.

Shri A.S. Fulzele, Additional Government Pleader for respondents.

CORAM : A.S. CHANDURKAR AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : JANUARY 11, 2023

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

Rule. Rule is made returnable forthwith. Heard finally
by the consent of the learned Counsel for the parties.

2) The challenge raised in this writ petition is to the order dated 9/1/2023 passed in exercise of power conferred by Section 142 of the Maharashtra Prohibition Act, 1949. By the said order, the Collector has been pleased to direct that on the said date, there shall be no sale of country/foreign liquor in the city of Sindkhedraja, Taluq Sindkhedraja, District Buldhana.

3) Shri Kasat, learned Counsel for the petitioner, submits that the impugned order has been passed in violation of the provisions of Section 142 of the said Act for the reason that there is no sufficient material that was considered by the Collector for arriving at a conclusion that the sale of liquor ought to be prohibited on the said date. It is submitted that reference in the impugned order is made to the communication dated 20/12/2022 issued by the Superintendent of Police, Buldhana and on that basis, the opinion has been formed. He seeks to place reliance on the judgments of this Court in Writ Petition No.2928/2019 (Nitin s/o Nagoraoji Mohod and another vs. The State of Maharashtra and another – rendered on 12/4/2019) and Writ Petition No.1567/2022 (Rahul s/o Babanrao Deshmukh vs. The State of Maharashtra and another –

rendered on 17/3/2022). It is thus submitted that the impugned order is liable to be set aside.

4) Shri Fulzele, learned Additional Government Pleader for the respondents, has opposed the writ petition. He has referred to the communication dated 20/12/2022 issued by the Superintendent of Police, Buldhana to the Collector, Buldhana in which it has been stated that considering the nature of activities that are likely to be undertaken on 12/1/2023 on the occasion of birth anniversary of Jijau-mata, sale of liquor should be prohibited as a preventive measure. It is submitted that after considering the aforesaid opinion, the order in question came to be issued. Similarly, the order was restricted for Sindkhedraja City and hence, the same is not excessive. It is thus submitted that no interference with the impugned order is called for.

5) We have heard the learned Counsel for the parties and perused the documents on record. The scope of Section 142(1) of the said Act has been considered by this Court in various decisions. For convenience, reference to para (8) of the decision in the case of

Rahul s/o Babanrao Deshmukh (supra) can be made, wherein it has been observed as under :

“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 of Maharashtra Wine Merchants Association vs. State of Maharashtra. 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.”

6) When the communication dated 20/12/2022 issued by the Superintendent of Police is perused in the aforesaid context, it can be seen that there is a mere apprehension expressed that considering the earlier history, it would be advisable to have a dry day on 12/1/2023. The impugned order merely refers to the said communication and does not indicate any independent application of mind by the Collector. It was necessary for the Collector to have

formed his own opinion before issuing such order. In absence thereof, we find that the learned Counsel for the petitioner is justified in relying upon the decisions referred to hereinabove.

7) Hence, for the aforesaid reason, the impugned order dated 9/1/2023 is set aside. The Collector is, however, not precluded from passing any fresh order in accordance with law under Section 142(1) of the said Act with due application of mind, after disclosing cogent reasons.

8) Rule is made absolute in the above terms. The writ petition is disposed of accordingly. No costs.

9) An authenticated copy of this judgment be given to the learned Additional Government Pleader.

JUDGE

JUDGE

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