

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

Writ Petition No.213 of 2018

Smt. Saroj w/o Rakesh Jaiswal Vs The State Of Maharashtra, Department Of State
Excise, Through Its Secretary, Mumbai And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Uday Dastane, Advocate for the Petitioner/s
Ms Shamsi Haidar, AGP for the Respondent Nos.1 to 4/State
Shri R.D. Bhuihar, Advocate for the respondent No.5
Shri U.D. Darne, Advocate for the respondent No.6
Shri P.S. Kalangiware, Advocate for the intervenor.

**CORAM : ANIL S. KILOR, J.
DATED : 11.07.2023**

1. Heard.
2. In this petition, the order dated 27.12.2017 passed by the Collector, State Excise, Yavatmal closing down the licence No.CL-III/80/2013-18 of the petitioner, is under challenge.
3. The petitioner herein holds liquor licence No.CL-III/80/2013-18 for village Kotha, (Veni), Tahsil : Kalamb, District : Yavatmal. On 24.11.2017, a special Gram Sabha of women, was organized for voting on a resolution relating to closure of liquor shop of the petitioner. In the said meeting out of total 1107 women voters, 594 were present, which has fulfilled the requirement of presence of 50 % women as per the Maharashtra Government Order dated 25.03.2008. Accordingly, a motion was put to vote and it was passed unanimously against the petitioner.

4. The petitioner raised objection to the same on the ground that a proper procedure was not followed and the meeting is illegal.

5. The Collector, State Excise, Yavatmal accordingly, heard the petitioner and after considering the record, rejected the objection raised by the petitioner vide order dated 27.12.2017 and cancelled the licence of the petitioner by holding the meeting as valid, which is the subject matter of the present writ petition.

6. The learned counsel for the petitioner submits that the Collector, State Excise, Yavatmal has considered the Government Order dated 25.03.2008 issued by the Home Department but not considered the subsequent notification to it, issued by the Home Department on 12.02.2009. It is submitted that the notification dated 12.02.2009 was issued in continuous of Government Order dated 25.03.2008, which mandates to take secret voting by ballot papers. It is submitted that this procedure has not been followed. He also points out that even the proforma of ballot papers is provided in the said notification and admittedly, no ballot papers were printed. He therefore, submits that the whole process vitiates and resultantly, the order of the Collector, State Excise, Yavatmal, also vitiates.

7. On the other hand, the learned AGP strongly, opposed the present writ petition and submits that as per the procedure, as it has been prescribed in the Government Order dated 25.03.2008, more than 50 % women were present and voted unanimously against the petitioner. It is submitted that, a motion was passed against the petitioner and the Collector, State Excise, Yavatmal

has rightly held that the meeting was validly held and as such, the licence of the petitioner was closed down.

8. She further submits that the procedure given in the notification dated 12.02.2009 is an optional and the department can either follow the procedure as prescribed in the Government Order dated 25.03.2008 or the procedure of voting given under notification dated 12.02.2009.

9. In light of the rival contentions of the parties, I have perused the record and the impugned order.

10. If the submission of the learned AGP is accepted that, the procedure prescribed in the notification dated 12.02.2009 i.e. to put a motion for voting by secrete ballot papers is optional and either of the procedures can be followed as given in the Government Order dated 25.03.2008 or notification dated 12.02.2009, there is no such finding recorded by the Collector, State Excise, Yavatmal.

11. On perusal of the order of the Collector, State Excise, Yavatmal, it is evident that the Collector has not taken into consideration at all the subsequent notification dated 12.02.2009. There is no reference made of the said notification in the impugned order. Whereas, the only reference is made of the Government Order dated 25.03.2008.

12. It is further evident that there is nothing to show that any such option as argued by the learned AGP, was given to the Gram Sabha. Hence, I have no hesitation to hold that the whole

process was followed as prescribed in the Government Order dated 25.03.2008.

13. It is not the case of the learned AGP that the notification dated 12.02.2009 was cancelled or superseded and said notification was not in existence on the date of holding of the Gram Sabha i.e. on 24.11.2017. Hence, it can safely be said that the notification dated 12.02.2009 was in force.

14. In the circumstances, I am of the opinion that since the learned Collector has not taken into consideration the above referred factors while passing the impugned order dated 27.12.2017, the matter needs to be remanded back to the learned Collector, State Excise, Yavatmal to decide the same afresh, after taking into consideration the Government Order dated 25.03.2008 as well as the notification dated 12.02.2009 and after hearing both the parties. Accordingly, I pass the following order:

(i) The writ petition is partly **allowed**.

(ii) The order dated 27.12.2017 passed by the Collector, State Excise, Yavatmal, is hereby quashed and set aside.

(iii) The matter is remanded back to Collector, State Excise, Yavatmal for deciding the objection of the petitioner afresh, after taking into consideration the above referred observation.

(iv) The interim relief granted by this Court vide order dated 29.01.2018 shall continue till final decision by the Collector, State Excise, Yavatmal and 15 days, thereafter, in case of adverse order to the petitioner.

(v) The Collector, State Excise, Yavatmal shall decide the objection of the petitioner within one month from the appearance of the parties.

(vi) The parties shall appear before the Collector, State Excise, Yavatmal on **28.07.2023** at 11.00 a.m.

[ANIL S. KILOR, J.]