

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

WRIT PETITION NO. 2419 OF 2023

1. Nagpur Zilla Permit Room Association,
through its President Rajeev s/o Pyarelalji Jaiswal,
Aged about 56 years, Occ. Business,
R/o 103 Sai Shraddha, Bante Layout,
Wardha Road, Nagpur.
2. Nagpur Liquor Association,
through its Secretary, Rajendranath Bose,
Aged about 55 years, R/o 285,
Dharampeth Extension, Nagpur – 4.
3. Nagpur Zilla Chillar Deshi Daru Vikreta Sangh,
having its Registration No. 150/75(N)
having its registered office at Plot No. 160,
Navi Shukrawari, Nagpur,
through its President Arun Gulabji Jaiswal,
aged about 53 years.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra,
through Principal Secretary (State Excise),
Mantralaya, Mumbai – 32.
2. The District Collector, Nagpur.

RESPONDENTS

Shri D.V. Chauhan with Shri S.P. Bodalkar, Advocate for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondents/ State.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : 13/4/2023

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 13/4/2023 that has been passed by respondent No.2 – District Collector in exercise of powers under Section 142(1) of the Maharashtra

Prohibition Act, 1949 (for short “Act of 1949”) declaring the District of Nagpur to be a dry District on 14/4/2023 in view of “Dr. Babasaheb Ambedkar Jayanti”.

3. The learned Counsel for the petitioners submits that the impugned order has been passed mechanically without considering the requirements of Section 142(1) of the Act of 1949. A similar order came to be passed by the District Collector, Amravati last year and that order was set aside in *Writ Petition No. 2928/2019 (Nitin s/o Nagoraoji Mohod & Anr. Vs. The State of Maharashtra & Anr.)* by observing that the Collector had failed to record any satisfaction that it was necessary to order the closure of liquor shops in the District in the interest of public peace. The order impugned also does not indicate the same and except for the reference to likelihood of breach of peace, nothing further demonstrated. It is thus submitted that the impugned order is liable to be set aside.

4. The learned Assistant Government Pleader for the respondents has supported the impugned order by urging that power under Section 142(1) of the Act of 1949 has been exercised for bonafide reasons.

5. On hearing the learned Counsel for the parties, we find that the impugned order does not satisfy the requirements of Section 142(1) of the Act of 1949. This Court has held in paragraph 7 of the decision in *Parbhani Jilla Daru Vikreta Sanghatana Vs. State of Maharashtra & Ors. [2018(1) Mh.L.J. 343]* that merely on the basis of speculation or past experience, the Collector cannot direct closure of liquor shops in the District. Satisfaction is required to be recorded that the same is necessary in public interest.

It is clear that for recording such satisfaction, there has to be some material that is required to be considered by the Collector.

However, the impugned order does not indicate reference to any such material. Except for referring to communications issued by the Deputy Commissioner of Police requiring 14/4/2023 be declared as a dry day, there is no independent application of mind before passing the impugned order. The Division Bench in *Writ Petition No. 1567/2022 (Rahul s/o Babanrao Deshmukh Vs. The State of Maharashtra & Anr.)* in paragraph 8 has 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 Maharashtra Wine Merchants Association v. State of Maharashtra 1 . 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. Hence, for the aforesaid reasons, the order dated 13/4/2023 passed by the Collector, Nagpur is set-aside. It is however clarified that the Collector is not precluded from passing a fresh order in accordance with the provisions of Section 142(1) of the Act of 1949 with due application of mind and by disclosing cogent reasons.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

8. Parties to act upon an authenticated copy of this order.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)