



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

WRIT PETITION NO. 2914/2018

Kamalabai wd/o Kisanji Rewatkar

V/s

Department of State Excise, Government of Maharashtra and others.

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

Court's or Judge's Order

Mr. C.S. Dharmadhikari, counsel for petitioner.

Mr. N.R. Patil, AGP for the respondent Nos. 1 to 5/State.

Ms. A.D. Kolhe, counsel for the respondent No.6.

CORAM: AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ

DATED : 08/11/2023.

1. Heard Mr. C.S. Dharmadhikari, learned counsel for the Petitioner, Mr. N.R.Patil, learned Additional Government Pleader for the respondent Nos. 1 to 5 and Ms. A.D. Kolhe, learned counsel for the Respondent No.6.

2. The petitioner questions the communication dated 08/05/2018, whereby the CL-III license granted in favour of the petitioner regarding which, objections were raised for its continuation under Clause 3A of the Bombay Prohibition (Closure of License on Resolution of Gram Sabha or Representation by Voters in the Wards of Municipal Council/Municipal Corporation) Order, 2008 (for short 'the Order of 2008'), in pursuance to which, the elections were slated to be held on the date and time to be fixed.

3. Mr. C.S. Dharmadhikari, learned counsel for the Petitioner raises a basic objection contending, that the requirement of Clause 3A of the Order of 2008 was not satisfied on the part of the respondents/authorities, inasmuch as, there is no complaint in this regard. He contends, that no copy of the complaint with the original signatures of 25% of the Woman Voters or total Voters as required by the said clause was available and therefore, the very initiation of the proceedings were non-est. Though, a copy of the complaint dated 05/03/2018 has been filed at (Page 56), it is contended that the signatures in original are not there and what is filed along with the same is the xerox copy of the complaint as indicated by Pages 58 to 81, from which according to him, it is clearly seen that the impugned communication does not satisfy the requirement of Clause 3A which required that upon the original complainant being received by the authorities, the authenticity of the signature on the representation and its genuinity would be verified by the Superintendent of State Excise.

4. Since, this was the bone of the contention, the learned Additional Government Pleader was called upon to produce the original record which has been so produced, a perusal of which indicates that the original complaint is not the part and parcel of the record. Though it is contended, that this requirement has subsequently been satisfied by obtaining the signatures of the villagers in the requisite number and verifying their authenticity

and genuineness, in our considered opinion, this does not satisfy the basic requirements as contemplated by Clause 3A of the Order of 2008.

5. Though Ms. A.D. Kolhe, learned counsel for the respondent No.6, while supporting the proposed action to hold the elections, invites our attention to the order dated 18/5/2018, by which the elections were permitted to proceed however, the results were directed not to be declared till further orders, that by itself, would not be of any assistance in the matter of compliance of Clause 3A of the said order.

6. Upon perusal of the record, we are satisfied that the original complaint is absent from the record, on account of which, the impugned action on the part of the respondent/ authorities cannot be sustained. The communication /direction dated 08/05/2018 is hereby quashed and set aside and the petition is accordingly **allowed** in the above terms.

7. Needless to mention, that in case, the villagers propose to shut down the CL-III license of the petitioner, it would be open for them, to take all necessary steps as are contemplated by the provisions of the Order of 2008, however, in strict compliance in terms of the clauses framed therein.

(URMILA JOSHI-PHALKE)

(AVINASH G. GHAROTE)