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

Writ Petition No.5677 of 2022

Sau. Anusaya Bhauraoji Gharad And Others
Vs
Commissioner, State Excise, Maharashtra State, 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 T.S. Kene, Advocate for the Petitioner/s
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 to 3/State
Shri Sayajee S. Jagtap, Advocate for the respondent No.4

CORAM : ANIL S. KILOR, J.
DATED : 31.08.2023

1. Heard.

2. The order dated 09.09.2021 passed by the Commissioner, State Excise, Mumbai, holding that the liquor shop of the respondent No.4 does not come within a distance restriction of 75 meters, the same is under challenge in this petition.

3. The petitioners are the local residents of nearby area of the liquor shop in question and from the record it is evident that, before granting liquor licence to the respondent No.4, there was opposition by the local residents. The report, dated 25.06.2021 prepared by the Inspector State Excise, Nagpur and forwarded to the Commissioner, State Excise, Mumbai, shows that there is a school "Banarasidas Ruiya Secondary School and Junior College, Katol" and the liquor shop in question was earlier at a distance of 70 meters. However, the respondent No.4 closed down one small get which was at a distance of 70 meters and now he is operating his liquor shop from another get, which is a distance of 84 meters. This report, *prima facie,* shows that some modifications were made by the respondent No.4 to come out of the hurdle relating to the distance restriction.

4. Thus, *prima facie*, in contravention of the rules relating to the distance restriction, the licence appears to have granted. Moreover, it is apparent on the face of record that no hearing was granted to the petitioners by the Commissioner, State Excise before passing the impugned order.

5. Thus, considering the nature of the issue, the public interest, I am of the opinion that the matter needs to be remanded back to the Commissioner, State Excise, Maharashtra State, Fort, Mumbai for granting an opportunity to the petitioners as well as the respondent No.4 to put up their respective cases. Accordingly, I pass the following order:

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

(ii) The order dated 09.09.2021 passed by the Commissioner, State Excise, Maharashtra State, Fort, Mumbai, is hereby quashed and set aside.

(iii) The Commissioner, State Excise, Maharashtra State, Fort, Mumbai is directed to decide the appeal preferred by the respondent No.4 afresh, after hearing the petitioners and the respondent No.4.

6. The petitioners and the respondent no.4 are directed to appear before the Commissioner, State Excise, Maharashtra State, Fort, Mumbai on **13.09.2023** at 12 noon.

7. The Commissioner, State Excise, Maharashtra State, Fort, Mumbai shall decide the appeal within two months from the date of appearance of the parties.

[ANIL S. KILOR, J.]