

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

WRIT PETITION 5906 OF 2022

M/s. S.K. Restaurant and Bar
through its Partner
Smt. Kiran Purushottam Kishnani,
Aged about 46 years, Occ. Business,
r/o. Block No. 311 Kishnani Chowk,
Jaripatka, Nagpur

.....PETITIONER

...V E R S U S...

1. State of Maharashtra,
through its Principal Secretary
(State Excise) Mantralaya Mumbai

2. District Collector
having its office at Civil Lines,
Nagpur

...RESPONDENTS

Mr. D.V. Chauhan, counsel for petitioner.
Mr. N.S. Rao, AGP for respondents 1 & 2/State.

CORAM:- ROHIT B. DEO & M.W. CHANDWANI, JJ.
DATE : 07.07.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Petitioner is assailing the order dated 10.3.2023, passed by the 2nd respondent – District Collector, Nagpur in purported exercise of power under Section 142(1) of the Maharashtra Prohibition Act, 1949 (“Act”) directing permanent closure of the establishment “M/s. S.K. Restaurant and Bar” till FL-III license shifted elsewhere.

2. Petitioner is the holder of FL-III license 1165/2022-23, issued by the second respondent. Petitioner asserts that the license was obtained to operate the business in rented premises situated at Tirupati Apartment, shops 2 and 3, mouza-Zingabai Takli, Nagpur. The State Excise Inspector submitted report, endorsing the compliance of the procedural requirement and according non objection. Petitioner states that within one kilometer radius of the premises at Tirupati Apartment, Zingabai Takli, several license holders, illustratively Red Rose Bar and Restaurant, Nupur Wine Shop and Somras Country Liquor are operating the license.

3. Petitioner states that after the petitioner started operating the license, certain persons claiming to be local politicians came to the establishment and told the petitioner that their dictates shall have to be abided by. The petitioner did not oblige and as a consequence, on 22.7.2002, one representation was submitted to the second respondent seeking closure of the petitioner's restaurant and bar.

4. The petitioner asserts that the protest is stage managed at the behest of local politicians for reasons not far to seek. The petitioner asserts that while the ostensible reason articulated in the demand for closure of the bar and restaurant was the likelihood of law and order problem, the fact that the petitioner is singled out and the other license holders, who are operating the license in the vicinity are left untouched, is eloquent.

5. Petitioner states that the second respondent passed order dated 22.7.2022, without granting any opportunity of hearing, directing the closure of the license till 30.9.2022. It is this order which is initially assailed in the petition. During the pendency of the petition, the second respondent passed order dated 29.9.2022, extending the period of closure till 31.12.2022. The second respondent then passed order dated 30.12.2022, directing the closure of the license till 31.3.2023 and finally by order dated 10.3.2023, the second respondent directed permanent closure of the license till the license is

shifted elsewhere.

6. The fulcrum of the challenge is that the order impugned is without jurisdiction. The petitioner submit that Section 142 of the Act does not empower the Collector to order permanent closure of the license nor is the Collector empowered to force the licensee to shift the license elsewhere under the threat of permanent closure.

7. Learned AGP Mr. N.S. Rao, who appears on behalf of the State Government would submit that the order impugned is revisable. The learned counsel for the petitioner Mr. D.V. Chauhan would disagree. Be that as it may, we assuming that there is any statutory remedy available, we are not inclined to relegate the petitioner to such remedy since we are inclined to hold that the order impugned is jurisdictionally bad.

8. Section 142 of the Act reads thus:

142. Power of Collector to close place where intoxicant of hemp is sold in certain cases

(1) If the Collector is of opinion that it is in the interest of public peace to close any place in which any intoxicant or hemp is sold it shall be lawful for the Collector by an order in writing to the persons holding a licence for the sale of such intoxicant or hemp to require him to close such place at such time or for such period as may be specified in the order.

(2) If a riot or unlawful assembly is imminent or takes place it shall be lawful for any Executive Magistrate or Police Officer who is present to direct that such place shall be closed and kept closed for such period as he thinks fit and in the absence of any Executive Magistrate or Police Officer the person referred to in sub-section (1) shall himself close such place.

(3) Any order given under this section shall be final.

9. Sub-section (1) of Section 142 empowers the Collector to close the license at such time or for such period as may be specified in the order. The condition precedent is that the Collector shall reach subjective satisfaction on the basis of objective material that such closure is in the interest of public peace. Sub-section (2) empowers any Executive Magistrate or Police Officer who is present, to direct the closure of the establishment for such period as he thinks fit, if riot or unlawful assembly is either eminent or takes place.

10. It is common ground that the order impugned is passed in exercise of power under Sub-section (1) of Section 142. Mr. D.V. Chauhan would strenuously urge that the exercise of power is for extraneous reasons. The second respondent – District Collector did not have any objective material on record on the basis of which he could have arrived at the subjective satisfaction of threat to public peace. Mr. D.V. Chauhan would submit that even de hors the said aspect, it was not permissible for the second respondent to direct permanent closure of the license much less direct the petitioner to shift business elsewhere.

11. Learned AGP Mr. N.S. Rao would submit that the order impugned is traceable to the power conferred under Section 142(1) of the Act and in exercise of writ jurisdiction, the High Court must be slow to interfere with the exercise of subjective satisfaction.

12. We need not dilate on the first limb of the

submission canvased by Mr. D.V. Chavan that the order impugned is rendered for extraneous consideration and that the second respondent did not have any material to arrive at the subjective satisfaction that there is threat to public peace nor are we require to delve deeper in the submission that the protest is orchestrated by local politicians for any motive. We are satisfied that the petition must succeed on the short ground that Sub-section (1) of Section 142 does clothe the second respondent with the jurisdiction to order permanent closure of license or to direct shifting of license.

13. The plain language of Sub-section (1) of Section 142 of the Act manifests the legislative intent that the power is restricted to order closure of the license for specified period which cannot be indeterminate. The power is drastic and is conferred to ensure that public peace is not jeopardized. The Collector is obligated to arrive at subjective satisfaction on the basis of objective material that the license is required to be closed for such period as may be specified, if the closure is in the interest of public peace. Sub-section (2)

confers similar power on any Executive Magistrate or Police Officer, who is present on the spot, if a riot or unlawful assembly is eminent or takes place. The statutory scheme clearly does not envisage the power of permanent closure of the license. Permanent closure of the license partakes the character of cancellation, which is governed by the other provisions of the Act. Section 54 of the Act confers power to cancel or suspend licenses and permits in certain situations, and reads thus:

54. Power to cancel or suspend licences and permits.- (1) [The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or suspend it,];-

(a) if any fee or duty payable by the holder thereof is not duly paid;

(b) if the purpose for which the licence, permit, pass or authorization was granted ceases to exist;

(c) in the event of any breach by the holder of such licence, permit, pass or authorization or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms or conditions of such licence, permit, pass or authorization or of any licence, permit, pass or authorization previously held by the holder;

(d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or if the

holder of the licence, permit, pass or authorization is convicted of any cognizable and non-bailable and non-bailable offence or [of any offence under the Dangerous Drugs Act, 1930 or under the Drugs Act, 1940 or under the Bombay Drugs (Control) Act, 1952] or under the Indian Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, or of any offence punishable under Article 8 of the Schedule to section 167 of the Sea Customs Act, 1878;

[(e) if the licence, permit, pass or authorization has been obtained through wilful misrepresentation or fraud.]

(2) Where a licence, permit, pass or authorization held by any person is cancelled, under sub-section (1), the authority aforesaid may cancel any other licence, permit, pass or authorization granted or deemed to have been granted to such person under this Act.

[(3) Notwithstanding anything contained in this section, the State Government may, for reasons to be recorded in writing, suspend or cancel any licence, permit pass or authorization.]

14. Section 56 empowers the authority to cancel the license for “any cause other than those specified in Section 54” and reads thus:

56. Cancellation for other reasons.- (1) Whenever the authority granting a [licence, permit, pass or authorization] considers that it should be cancelled for any cause other than those specified in section 54, he may cancel [it] either -

(a) on the expiration of not less than fifteen days'

notice in writing of his intention to do so; or

[(b) forthwith without notice, recording his reasons in writing for doing so.]

[(2) Where a licence, permit, pass or authorization is cancelled under sub-section to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or authorization shall be refunded to him after deducting any amount due from him to the State Government.]

15. It is not the case of the respondent that the license is cancelled in exercise of power either under Section 54 or 56 of the Act. The direction that the establishment be permanently closed till the license is shifted clearly falls foul of the provisions of Section 142 of the Act. The said provision neither empowers to District Collector to order shifting nor to order permanent closure till the license is shifted.

16. In *Amresh s/o. Suresh Jaiswal vs. State of Maharashtra and others, 2007(4)Mh.L.J. 488*, the Division Bench of this Court held that Sub-section (2) of Section 142 does not empower the Police Officer to direct indefinite closure of the license.

17. It is irrefutable that the order impugned is passed without affording any opportunity of hearing. In ***Vithal Mallu Chintalwar and another..vs.. State of Maharashtra and Others, 2017(3) Mh.L.J. 661***, in the context of the exercise of power under Sub-section (2) of Section 142, a learned Single Judge has held that the closure cannot for indeterminate period. The breach of the principles of natural justice apart, a Coordinate Bench was pleased to articulate in ***Satish s/o. Damodhar Kasar..vs.. State of Maharashtra and others 2012(5)Mh.L.J. 81***. Section 142 of the Act does not empower the authority to cancel the license which aspect is governed by the provisions of Section 54 and 56 of the Act.

18. In view of the discussion supra, we hold and declare that the order dated 10.3.2023, passed by the second respondent – District Collector, Nagpur is contrary to the provisions of Section 142(1) and is without jurisdiction.

19. The order impugned is quashed.

20. We clarify that we have not made any observation on the merit of the stand of the respondents that there is a possibility of breach of public peace.

21. This judgment shall not preclude the respondents from taking an appropriate action in accordance with law, if so advised.

22. The petition is allowed in the aforestated terms.

(M.W. Chandwani, J.)
belkhede

(Rohit B. Deo, J.)