



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

WRIT PETITION NO. 5955/2023

Shreyash S/o Prakash Kharule, aged about 23 years,
Occu. Business, R/o Shop No.1, Ground Floor, Nidhi
Sakshi Apartment, Vyankatesh Colony, Wadali Naka,
Amravati, Tq. and Dist. Amravati.

PETITIONER

.....VERSUS.....

1. The Collector, Amravati, Tq. and Dist. Amravati.
2. Divisional Deputy Commissioner, State Excise
Department, Amravati Division, Amravati,
Tq. and Dist. Amravati.
3. Superintendent, State Excise Department,
Amravati, Tq. and Dist. Amravati.
4. Nidhi Sakshi Park Apartment, through its President,
Office at In Front of Wadali Garden, Chandur
Railway Road, Amravati, Tq. and Dist. Amravati.

RESPONDENTS

Shri J.B. Kasat, counsel for the petitioner.
Ms N.P. Mehta, Additional Government Pleader for the respondent nos.1 to 3.
Shri G.N. Shinde, counsel for the respondent no.4.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE : NOVEMBER 07, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the
learned counsel for the parties.

2. The question that arises for consideration in this writ
petition filed under Article 226 of the Constitution of India is whether
an Authority conferred with the statutory power can exercise the same
in a manner *de-hors* the scheme under which the same is required to

be exercised. To put it otherwise, whether the Appellate Authority under Section 137 of the Maharashtra Prohibition Act, 1949 (for short, 'the Act of 1949') could exercise such powers on representations received without the action complained of being challenged in the manner prescribed by the Bombay Prohibition (Appeal) Rules, 1953 (for short, 'the Rules of 1953').

3. The facts relevant for consideration are that the petitioner was granted permission to operate FL/BR/II license by the Divisional Deputy Commissioner, State Excise, Amravati. On the basis of this permission, he was issued a license on 05.06.2023 pursuant to which the petitioner started operating the same. At the behest of the respondent no.4, a housing Society, representation dated 08.06.2023 was addressed to the Superintendent, Central Excise raising an objection to the functioning of the said license in the premises of the society. It also made another representation on 13.06.2023 to the Hon'ble Deputy Chief Minister with copies to the Collector and other Authorities. In the light of these representations, the Collector issued a notice on 06.07.2023 calling upon the petitioner was to submit his say on the representations dated 08.06.2023 and 13.06.2023. The said hearing was scheduled on 11.07.2023. The petitioner submitted his response on the said date justifying the grant of said license to him. By the order dated 18.08.2023 the Collector proceeded to exercise powers

under Section 56 and 137(1) of the Act of 1949 and cancelled the license dated 23.05.2023 issued to the petitioner. Being aggrieved the petitioner has challenged the aforesaid order.

4. Shri J.B. Kasat, learned counsel for the petitioner submitted that it was not permissible for the Collector to have exercised powers under Section 137(1) of the Act of 1949 ignoring the provisions of the Rules of 1953. Under the said Rules, an elaborate procedure was prescribed stipulating the manner in which an appeal under Section 137 of the Act of 1949 could be filed. The Society merely submitted two representations raising a grievance with regard to grant of license to the petitioner. It did not prefer any appeal under Section 137 of the Act of 1949 though it was aggrieved by the same. In absence of any appeal having been preferred it was therefore not permissible for the Collector to have invoked such powers and to have thereafter cancelled the license granted to the petitioner. Placing reliance on the decision in *Chief Information Commissioner Versus State of Manipur [(2011) 15 SCC 1]* it was submitted that the statutory power conferred by Section 137 of the Act of 1949 ought to have been exercised only in the manner prescribed. As regards availability of an alternate remedy of preferring an appeal for challenging the order passed by the Collector, it was submitted that notwithstanding the availability of such remedy, this Court was not precluded from exercising discretion

in an appropriate case especially when the Collector had exercised jurisdiction patently in breach of the Rules of 1953. In that regard, he referred to the decision in *Harbanslal Sahnia & Another Versus Indian Oil Corpn. Ltd. & Others* [(2003) 2 SCC 107]. It was thus submitted that the order dated 18.08.2023 be set aside and the petitioner's license be restored.

5. Ms N.P. Mehta, learned Additional Government Pleader for the respondent nos.1 to 3 opposed the aforesaid submissions. According to her, after giving due opportunity and notice to the petitioner, the impugned order came to be passed. Since there was due compliance with the principles of natural justice, there was no reason for the petitioner to bypass the alternate remedy available. In response to the notice issued by the Collector on 06.07.2023 the petitioner had submitted his say and thereafter the impugned order came to be passed. Since the Collector was clothed with appellate power under Section 137 of the Act of 1949, no fault could be found with exercise of such power.

Shri G.N. Shinde, learned counsel for the respondent no4 supported the aforesaid contentions. He sought to further support the impugned order by urging that the reasons stated therein were based on the record as available and hence no interference in writ jurisdiction was warranted.

6. Having heard the learned counsel for the parties and having perused the material on record, we are of the considered opinion that the Collector has proceeded to exercise powers conferred by Section 137(1) of the Act of 1949 giving a complete go by to the Rules of 1953. In addition we find that the petitioner was not made aware of the action proposed to be taken under Section 137 of the Act of 1949 as the notice dated 06.07.2023 taking cognizance of the representations made by the Society does not indicate the action proposed to be taken.

7. Under Section 137(1) of the Act of 1949 an appeal against the order passed by a Prohibition Officer can be preferred before the Collector and the jurisdiction in that regard could be exercised. The manner of filing and entertaining such appeal is prescribed by the Rules of 1953. The representations dated 08.06.2023 and 13.06.2023 have been addressed to the Superintendent, State Excise and the Hon'ble Deputy Chief Minister respectively. A copy thereof has been marked to the Collector, Amravati. Both these representations pray that no permission be granted to start the beer shop in the Society. Cognizance of these representations was taken by the Collector and on 06.07.2023 a notice was issued to the petitioner and the members of the respondent no4. A perusal of this notice indicates that except for referring to the two representations and requiring the petitioner to attend the Office of the

Collector on 11.07.2023 to give his say on the representations nothing further has been stated. The parties have not been indicated the purpose of conducting the said proceedings except in the context of the aforesaid representations. It has also not been indicated that the Collector desired to exercise powers under Section 137 of the Act of 1949. We find that in the facts of the present case, if the Collector intended to exercise such powers as conferred by Section 137 of the Act of 1949, the petitioner ought to have been put to notice of the action proposed against him in that regard. In absence of any indication in the said notice, the petitioner could not be expected to gather that appellate power under Section 137 of the Act of 1949 would be exercised by the Collector so as to cancel the petitioner's license. It is to be noted that it is the specific case of the petitioner that he had started the said shop in question on 06.06.2023 which was prior to submission of both the representations. Since the petitioner was issued a license and had already started operating the same, it was necessary for the Collector to have indicated the action proposed against him especially when rights accrued in favour of the petitioner with the grant of such license had already be exercised. Thus for want of proper notice to the petitioner indicating the action proposed against him, it cannot be said that by merely requiring the petitioner to attend the proceedings on 11.07.2023 in the context of representations received amounted to compliance with the principles of natural justice.

8. The issue can be looked at from another angle. With the grant of a license in favour of the petitioner, rights were created in his favour. If those rights were sought to be taken away and the manner of doing so was statutorily provided, that mode alone was required to be adopted. The Rules of 1953 prescribe the manner in which an appeal under Section 137 of the Act of 1949 could be filed. Once such appeal is filed and entertained, the party proceeded against is made aware of the consequences of the appeal being allowed. By disregarding the statutory mode of exercise of appellate power and thereafter exercising such power without putting the other side to notice that the order passed in its favour could be set aside, such exercise of power by the authority may not be justified. It would be a different matter if in the show cause notice itself the proposed exercise of appellate power is indicated by the authority which is empowered to exercise such power. In this regard, we may draw support from the ratio of the decision in *Gorkha Security Services Versus Government (NCT of Delhi) & Others* [(2014) 9 SCC 105] that the show cause notice must provide adequate and meaningful opportunity to the concerned party. The show-cause notice in the present case falls short of this requirement thus making the exercise of power unsustainable.

9. For aforesaid reasons, the order dated 18.08.2023 is set aside as having been issued in a manner contrary to the Rules of 1953. The Society is at liberty to take appropriate steps in accordance with the Rules of 1953 read with Section 137 of the Act of 1949 if it is aggrieved by the grant of license to the petitioner. Consequentially, the petitioner would be entitled to operate the said license in accordance with the license as granted on 23.05.2023. The respondent nos.1 to 3 to take appropriate steps in that regard including removal of the seal on the petitioner's shop.

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

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)