



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

MCA No.25/2024 in Writ Petition No.5955/2023 (D)
(Nidhi Sakshi Park Apartment, Amravati V the Collector, Amravati and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.P. Mahalle, Advocate for applicant.
Mrs. N.P. Mehta, Addl.GP for respondent nos.1 to 3.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ
DATE : 09-01-2024.

This is an application for review preferred by the original respondent no.4 to Writ Petition No.5955/2023.

2. The said Writ Petition was preferred by the non-applicant no.4 questioning the order of the Collector passed on 18-8-2023, whereby the bear shoppe license granted in favour of the said non-applicant came to be cancelled.

3. Learned Counsel appearing for the original respondent no.4/review applicant would urge that the application before the Collector was preferred by the applicant under the provisions of Section 54(1)(e) of the Maharashtra Prohibition Act. He would claim that even if there is no reference to said provision in the application, the fact remains that there was suppression and fraud practiced by the original petitioner i.e non-applicant no.4 as the relevant clauses in the

Deed of Declaration recorded under the Maharashtra Apartments Ownership Act, 1970 was not brought to the notice of the Collector. As such, he would urge that this Court while passing the order dated 07-11-2023 has failed to appreciate the scheme of the said provision, particularly, as it is always open for the licensing Authority to cancel the licence granted in favour of a licensee if it is noticed that the same was obtained by practicing fraud or mis- representation. According to learned Counsel for original respondent no.4/review applicant, the applicant cannot be relegated to the remedy of appeal under Section 137 of the said Act.

4. On the other hand, learned Additional Government Pleader would submit that in the facts and circumstances, the Court may pass an appropriate order in the matter.

5. We have perused the judgment under review dated 07-11-2023.

6. The fact remains that this Court while deciding the Writ Petition was sensitive to the stand of the original respondent no.4 before the Collector and the Collector exercising the powers under the Act and cancelled the license.

The grant of license of course creates a right in favour of the licensee and in such an eventuality, it appears that the Collector has issued notice and heard the original licensee in the matter.

7. The right to trade in liquor cannot be termed as fundamental right, however, the provisions of Article 14 of the Constitution are not attracted as could be noticed from the judgment of this Court in the matter of *Maharashtra wine Merchants Association and others vs The State of Maharashtra and another*, reported in *1992(2) Bom.C.R. 523*.

8. However, this Court is required to be sensitive to the fact that the applicant has come up with the case of obtaining license by mis-representation and practicing fraud which issue was looked into in detail by this Court while deciding the matter on merits. It is not the fact that this Court while passing the aforesaid order allowing the petition was not sensitive to the rights of the petitioner i.e. original respondent no.4. Rather this Court has given an opportunity to the applicant to take recourse to the provisions of appeal as provided under Section 137 of the Maharashtra Prohibition Act.

9. In is background, it cannot be said that the Court has committed an error of law by not referring to the provisions of Section 54 of the Maharashtra Prohibition Act.

10. That being so, we do not see any reason to interfere in the order of which review is sought. As such, the application is devoid of merits and stands rejected.

11. Needless to clarify that, in case, if an appeal is preferred by the applicant, the time consumed in prosecuting the petition and the present application be considered if the issue of limitation crops up.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)