



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

WRIT PETITION NO.2617/2023

Smt. Jaya w/o Santosh Hukare and others

...Versus...

State of Maharashtra, through its Principal Secretary, Mantralayak, Mumbai
and others

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

Court's or Judge's orders

Mr. S.P. Bodalkar, Advocate for petitioners
Mr. B.M. Lonare, AGP for respondent nos.1 to 3
Ms Smita Dashputre, Advocate for respondent no.4
Mr. P.A. Gode, Advocate for respondent no.5
Mr. S.G. Jagtap, Advocate for respondent no.6

CORAM : AVINASH G. GHAROTE AND
M.W. CHANDWANI, JJ.

DATE : 05/08/2024

1. Heard Mr. Bodalkar, learned counsel for the petitioners; Mr. Lonare, learned Assistant Government Pleader for respondent nos.1 to 3; Ms Dashputre, learned counsel for respondent no.4; Mr. Gode, learned counsel for respondent no.5 and Mr. Jagtap, learned counsel for respondent no.6.

2. The petition questions the resolution dated 16/02/2023 (pg.48) passed by the Gram Sabha of Gram Panchayat, Nandura (B) Tahsil Babulgaon, District Yavatmal, by which the resolution dated 16/02/2023 passed by the Women's Gram Sabha in the matter of refusing grant of NOC

for shifting of the country liquor licence CL-III of respondent no.6 has been upturned, and it has been resolved by majority vote that the No Objection Certificate [NOC] for shifting of the licence be granted.

3. Mr. Bodalkar, learned counsel for the petitioners invites our attention to proviso to Section 7 (5) of the Maharashtra Village Panchayats Act, 1959 (for short hereinafter “MVP Act”) to contend that if the Gram Sabha is not agreeable to the recommendations made in the meeting of the women members, it shall record the reason therefor, to contend that the resolution dated 16/02/2023 of the Gram Sabha (pg.48) though makes a reference to the resolution dated 15/02/2023 of the women members, however, it does not record any reasons, as to why the resolution is incorrect or any other reason whatsoever for the purpose of taking a different view than what has been taken there. He, therefore, submits that the resolution dated 16/02/2023 passed by the Gram Sabha not being in consonance to the proviso to Section 7 (5) of the MVP Act cannot be sustained and is required to be quashed and set aside.

4. Mr. Lonare, learned Assistant Government Pleader for respondent no.1 to 3 supports the Gram Sabha resolution contending that the Gram Sabha has power and authority to pass the same.

5. Mr. Gode and Mr. Jagtap, learned counsel for respondent nos.5 and 6 respectively rely upon Rule 25 (d) (iii) of the Maharashtra Country Liquor Rules, 1973 (for short hereinafter “MCL Rules, 1973”) [pg.121] to contend that the requirement of having a Women’s Gram Sabha is not there for the purpose of shifting a liquor vend/licence, in view of which, the provisions of Section 7 (5) of the MVP Act would not be attracted and the resolution passed by the Gram Sabha dated 16/02/2023 would hold the field.

6. The provisions of Rule 25 (d) (iii) of the MCL Rules, 1973 would always be subservient to the provisions of Section 7 (5) of the MVP Act, which were brought into force for the very purpose of shifting of liquor licences and therefore, would prevail over Rule 25 (d) (iii) of the MCL Rules, 1973.

7. Section 7 (5) of the MVP Act reads as under :

“7.(1)....

(2) to (4).....

(5) The meeting of the women members of the Gram Sabha shall be held before every regular meeting to the Gram Sabha, convened under sub-section (1) and the proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the Gram Sabha by the Sarpanch, and the Gram Sabha shall consider the recommendations made in the meeting of the women members, and the panchayat shall ensure the implementation of such recommendations:

Provided that, if the Gram Sabha is not agreeable to the recommendations made in the meeting

of the women members, it shall record the reasons therefor.”

The requirement of proviso to Section 7 (5) of the MVP Act is clear and specific inasmuch as it mandates that in case the Gram Sabha does not agree with the resolution passed by the women members, it shall have to record reasons for the same.

8. In the instant matter, the application for shifting of CL-III licence of respondent no.3 was put up before the women's meeting held on 15/02/2023, in which it has been resolved that no NOC should be given (pg.47) and in view of the requirement of proviso to Section 7 (5) of the MVP Act, if the Gram Sabha wanted to disagree with the same, it had to record reasons for such disagreement. A perusal of the minutes of the meeting of the Gram Sabha dated 16/02/2023 (pg.48) would indicate that though it mentions the resolution dated 15/02/2023 of the Women's Gram Sabha, it does not record any reasons whatsoever, for disagreeing with what has been resolved therein, which would clearly indicate the non-satisfaction of the requirement of the proviso to Section 7 (5) of the MVP Act.

9. The very purpose of enacting of Section 7 (5) of the MVP Act which was introduced by Section 2 (c) of Maharashtra Act No.3 of 2023 was to ensure an opportunity to

the women members of a village, to have a say in the matter of shifting of liquor licence.

10. In the result, the impugned resolution dated 16/02/2023 (pg.48) is hereby quashed and set aside on account of non-compliance with the proviso to Section 7 (5) of the MVP Act. It would be open for the Gram Sabha to convene a fresh meeting for considering the resolution dated 16/02/2023, passed by the Women Gram Sabha and in case of any disagreement thereto to record reasons for such disagreement and then put it to vote.

11. The writ petition is accordingly allowed in the above terms. In the circumstances, there shall be no order as to costs.

(M.W. CHANDWANI, J.)

(AVINASH G. GHAROTE, J.)