



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

Writ Petition (WP) No. 2707 of 2024

Buldhana District Licensed Liquor Association through its Authorised
Representative Shri Gopal S/o Babulal Chaudhari

Versus

State of Maharashtra, through the Principal Secretary, Department of State
Excise, 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 Sahil Dewani, Advocate a/w Ms. Anushree Bangde,
Advocate for the petitioner.
Shri D.V.Chauhan, Government Pleader a/w Ms.
Sangeeta Jachak, AGP for the respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : 23rd APRIL, 2024.

Heard Shri Sahil Dewani, learned counsel
for the petitioner and Shri D.V.Chauhan, learned
Government Pleader for the respondent/State.

2. This matter pertains to closure of liquor
shops in Buldhana District on the occasion of Hanuman
Jayanti on 23rd April, 2024. The impugned order came
to be passed in exercise of power under Section 142 of
Maharashtra Prohibition Act, 1949, by the Collector.

3. At the outset, learned Government Pleader Shri Chavan has raised an objection to the tenability of this writ petition before the Single Bench. It is submitted that having a liquor license or to run a liquor shop is not a right but it is a privilege and such a privilege can be withdrawn at any time. It is therefore, contended that, the impugned order is not a quasi judicial order but it is an administrative order. Hence, this matter pertains to Division Bench. In support of his submission, Shri Chavan, learned Government Pleader has placed reliance of Hon'ble Supreme Court of India in the case of A.K.Kraipak and others Vs. Union of India and others¹ and Indian National Congress (I) Vs. Institute of Social Welfare and others².

4. In reply, Shri Dewani, learned counsel for the petitioner submits that though to carry out a business of liquor is not a right but once the license is issued, a right is created to carry on trade or business subject to limitations, if any.

5. It is submitted that the order passed is a quasi judicial order since the Collector has to form an opinion and to arrive at an objective satisfaction. He, therefore, submits that the present matter covers under Chapter XVII Rule 18 clause (20) of the Bombay High

1 1969(2) SCC 262

2 2002(5) SCC 685

Court Appellate Side Rule. In support of his submission, he has placed reliance on the Hon'ble Supreme Court of India in the cases of Khoday Distilleries Limited and others Vs. State of Karnataka and others³, National Indian National Congress (I) Vs. Institute of Social Welfare and others (supra) and M/s Mahabir Prasad Santosh Kumar Vs. State of U.P and others⁴.

6. The Division Bench of this Court in a case of M/s Shri Hariom Krishi Kendra Vs. State of Maharashtra and others in Writ Petition No. 7056 of 2018, has held that all the writ petitions under Article 226 of the Constitution of India challenging the administrative as well as judicial or quasi judicial orders are required to be heard and disposed of by the Division Bench in terms of Rules 1, 4 and 17 under Chapter XVII of the Bombay High Court Appellate Side Rules. It is further held that, Rule 18 therein carves out an exception and it confers a jurisdiction upon the Single Judge to hear and dispose of the writ petitions challenging the orders passed by the judicial or quasi judicial authorities under several enactments, which are listed at Items (1) to (46) therein. The Division Bench of this Court has further observed that two tests are

3 1995(1) SCC 574

4 AIR 1970 SC 1302

required to be satisfied by the Single Judge to hear and dispose of the writ petitions under Articles 226 and 227 of the Constitution of India and those are - (i) that it challenges the judicial or quasi judicial orders, and (ii) that such orders are passed in exercise of the statutory power conferred under the enactments specified in Items (1) to (46).

7. Thus, it is imperative to find out whether the impugned order is a judicial or quasi judicial order and whether it is passed in the exercise of statutory power under the enactments specified in items (1) to (46).

8. As far as second requirement is concerned, there is no doubt that the impugned order is covered by clause (20) of Rule 18 of Chapter 17, as the order is passed under the Bombay Prohibition Act, 1949.

9. Thus, now the only question remains is to find out whether the impugned order is an administrative order or judicial order or quasi judicial order.

10. For this purpose, it would be beneficial to refer to the judgment in the case of *National Indian National Congress (I) Vs. Institute of Social Welfare and others* (supra), wherein the Hon'ble Apex Court has dealt with the test to be carried out to determine

whether the order is quasi judicial or administrative.

The Hon'ble Supreme Court of India has held thus:

21. But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. In *R. vs. Dublin Corporation*, it was held thus:

"In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body *empowered by law to enquire into facts*, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts."

11. From the above referred observations and it is evident that where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. The term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by competent authority upon

consideration of facts and circumstances and imposing liability or affecting the rights.

12. Thus, the two tests are, whether any liability imposed or rights are affected by the act under challenge, to find out whether the order is a quasi judicial.

13. Shri Chauhan, learned Government Pleader submits that the licence to run a business of liquor is a privilege and not a right as held by the Division Bench of this Court in the case of Rajendrakumar S/o Shailendrakumar Dixit and others Vs. State of Maharashtra and others⁵ more particularly in paragraph 46 which reads thus:

46. Chapter III of the Act consists of Sections 11 to 24-A and is on "Prohibition". We need not point out all sections therein and it can be easily seen that all types of activities, dealings or trades in any intoxicants are totally prohibited. Section 11 is a *non-obstante* provision overriding these injunctions, but then person engaging therein must have a license to undertake that specific activity. The State thus parts with its privilege only in favour of such a licensee and to the extent prescribed in it. The license and the act allowed thereby are expressly made subject to the Act, Rules etc. framed. Hence, if the State Government so decides, it can issue a license, permit, pass, authorisation and the holder thereof is bound by its terms/conditions. The instruments thus issued are also subject to the statutory provisions.

5 2016(6) Mh.L.J 290

14. At this stage, it would be profitable to refer the case of *Khoday Distilleries Limited* (supra), more particularly paragraph 60 (e) (f) and (g) which reads thus:

60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) to (d)....

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitation and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

15. From the above referred clause (g) of paragraph 60, it is evident that the Hon'ble Supreme

Court of India has categorically held that when the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any.

16. Thus, it is evident that though carrying on business of liquor is not a fundamental right but once the licence is granted the right is created to carry on trade or business subject to the limitations, if any.

17. In view of the above referred judgment in the case of *Khoday Distilleries Limited Vs. State of Karnataka* (supra), I find substance in the argument made by Shri Dewani, learned counsel for the petitioner that since the petitioner is holding the licence, he has a right to carry out the business subject to the limitation prescribed in the licence and the statute. If the above referred right is taken away contrary to law, it can be said that the right of the petitioner is affected.

18. In the circumstances, in view of the judgment in the case of *National Indian National Congress (I) Vs. Institute of Social Welfare and others* (supra), though there is no lis or two contending parties in this case before the Collector, the decision rendered by the Collector is a quasi judicial decision and not an administrative decision.

19. Hence, the preliminary objection raised by the learned Government Pleader to the tenability of the writ petition before the Single Judge is hereby rejected and it is held that this writ petition is maintainable before the Single Judge.

20. Moving further, on merits of the case, Shri Dewani, learned counsel for the petitioner submits that it is a settled law that under Section 142(1) of the Maharashtra Prohibition Act, 1949, the Collector has to form an 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 to close such place at such time or for such period as may be specified in the order. It is submitted that while arriving at such conclusion, concrete information is required about the situation. It is submitted that no sufficient reasons are given by the Collector while closing down the shop of the petitioner under Section 142(1) of the Maharashtra Prohibition Act, 1949. In support of his submission, he has placed reliance on the judgment of the Division Bench in the case of Parbhani Jilla Daru Vikreta Sanghatana Vs. State of Maharashtra and others reported in 2018(1) Mh.L.J. 343.

21. On the other hand, Shri Chauhan learned Government Pleader has pointed out that, sufficient

material was available with the Collector which is referred in the reply filed by the Collector. It is therefore submitted that since Collector has formed the opinion on the basis of concrete material available on record that, it is in the interest of public peace the liquor shops in the Buldhana District, shall be kept closed on the occasion of Hanuman Jayanti.

22. It is further submitted that, as the proper procedure was followed and there is a compliance of requirement of Section 142(1) of 1949, the impugned order is just and proper.

23. In light of rival contentions of the parties, I have perused the record and the impugned order and the reply filed by the Collector.

24. The Collector in his reply has cited the material considered by him for taking such a decision or to form an opinion under Section 142 of the Bombay Prohibition Act, 1949. Paragraph 8 of the reply of the Collector is relevant which reads thus:

8. It is humbly submitted that, vide letter dated 22.04.2024, the office of the answering respondent has called a detailed incident report from the office of the Superintendent of Police, Buldhana regarding the incidences occurred and happened while celebrating social and religious festivals, Processions during the period of election 2nd phase in Buldhana district issued from 28.03.2024 till 21.04.2024. A copy of the report

is hereby attached as an Annexure R1-4 for kind perusal of the Hon'ble Court.

It is humbly and respectfully submitted that, vide report dated 22.04.2024 the office of the Superintendent of Police, Buldhana reported that,

A. Buldhana district has recorded the highest crimes in the State of Maharashtra during the Sobhayatras and Processions (Mirawnuk) i.e. serious incidence of murder, riot, atrocities, public order and tranquillities, unlawful assemblies, public nuisance, breach of prevention of liquor provisions. The crimes are as follows – 1. Crime no. 307/2024 PS Buldhana City under section 302, 34 of IPC, 2. Crime no. 238/24 PS Jalgaon Jamod Dist. Buldhana under sections 143, 147, 149, 336, 323 R/w section 3 (1)(1)(5), 3(2) (va) Atrocities Act, 3. Crime no. 239/24 PS Jalgaon Jamod under section 143, 147, 149, 336, 323 of IPC. 4. Crime no. 263/24 PS Mehkar under sections 353, 332, 504, 506 of IPC read with 85 of Bombay Prohibition Act, 1949. 5. Crime no. 115/2024 PS Shivaji PS Khamgaon, under Section 143, 147, 323, 324 and 504 of IPC. 6. Crime no. 112/2024 PS Amadapur under section 135 of Maharashtra Police Act etc.

B. It is also reported that, coming days i.e. on 23.04.2024 there are a permission of Procession (Mirawnuk) of Dr. Babasaheb Ambedkar is granted on 06 places and in various places Hanuman Jayanti Procession (Mirawnuk) is scheduled in the district.

C. As the Lok Sabha Polls will be held in Buldhana Dist in the next 3 days, during these processions, excessive consumption and sale of alcohol liquor may lead to violence and create law and order problem.

D. And therefore to avoid law and order problems, it is requested to close the sale of liquor during election campaign period though there are social and religious

festival unexpectedly and luckily came in the month of April, 2024.

25. The above referred paragraph 8 shows that incidents relating to disturbing peace took place proximity in time. Thus, it can be said that there was sufficient material available with the Collector to form an opinion as required under Section 142 of the Maharashtra Prohibition Act.

26. Thus, in the peculiar facts and circumstances of this case and considering the material available on record of the Collector, which was considered by the Collector before forming an opinion under Section 142 of the Maharashtra Prohibition Act, 1949, the judgments cited by the learned counsel for the petitioner are of no assistance and help to the petitioner.

27. Having held that sufficient and concrete material was available with the Collector while issuing the impugned order, though the Collector has not mentioned the reasons in detail or the material available with him, it will not vitiate the impugned order. In the circumstances, since there is no merit in the present writ petition, the writ petition is dismissed.

[ANIL S. KILOR, J.]