



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 WRIT PETITION NO. 1643 OF 2025

**KAMALABAI BHAGWANRAO SHETE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Mr. Irale Patil D. R.
AGP for Respondents/State : Mr. R.K. Ingole
Advocate for Resp. No.4 : Mr. S.A. Deshmukh
Sr. Advocate for Resp. No.5: Mr. V.D. Sapkal a/w. Amit Gadekar i/b.
Vikram Undre

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**CORAM : MANISH PITALE &
Y.G. KHOBRAGADE, JJ.
DATE : 28th July, 2025**

P.C. :-

1. Heard the learned counsel for the Petitioners, the learned AGP for the Respondent Nos.1 and 3, the learned counsel for the Respondent No.4 and the learned senior counsel for the Respondent No.5.
2. The Petitioners herein have challenged the communication / order dated 07.01.2025 sent by the Respondent No.4/Chief Executive Officer of the Zilla Parishad to the Respondent No.2/ Superintendent of Prohibition, District Jalna stating that resolution of Gramsabha dated 01.05.2024 was validly passed.

3. The Petitioner No.1 is a country liquor license holder Grampanchayat Hasnabad and the Petitioner No.2 is her son and perhaps assisting her in running the license of country liquor shop.

4. The principal grievance raised in the present petition is that the said impugned communication / order of the Respondent No.2 ignores the statutory requirement of Section 7(5) and 5A of the Maharashtra Village Panchayat Act, 1959 and that evidently the resolution of the Gramsabha giving no objection to shifting of the liquor shop of Respondent No.5 from Jalna to Hasnabad is illegal and unsustainable.

5. It is to be noted that on an earlier occasion also the Petitioners had filed Writ Petition No.12082/2024 at the stage when the Grampanchayat had passed a resolution in its monthly meeting permitting the shifting of the liquor license shop of Respondent No.5 to Grampanchayat Hasnabad. At that point in time, this Court disposed of the Writ Petition observing that the Excise Department was yet to pass an order granting permission for relocation / shifting of the shop of the Respondent No.5 and therefore, the Petitioners did not have any actionable wrong. The petition was disposed of, keeping it open for the Petitioners to raise a challenge if and when the Excise Department actually permitted such shifting. It is significant to note that even today the Excise Department is

yet to pass its order on the permission sought by Respondent No.5 for shifting the liquor show from Jalna to Hasnabad within the jurisdiction of Grampanchayat. In that sense, even this petition can be said to be premature.

6. But, since the Petitioners have argued with some vehemence on the specific ground raised in the present petition and on that basis, by an order dated 04.02.2025 passed by the Division Bench of this Court (Coram: Mangesh S. Patil & Prafulla S. Khubalkar, JJ.), status quo was granted, we are of the opinion that the specific issue raised on behalf of the Petitioners can be decided and thrashed out, so that the Excise Department would be clear about the issue sought to be raised in the present petition.

7. Mr. Patil the learned counsel appearing for the Petitioners submitted that the resolution of the Gramsabha in the present case giving no objection for shifting of the aforesaid shop, which has been observed to be valid in the impugned order dated 07.01.2025 issued by the Respondent No.2-CEO of the Zilla Parishad, violates Section 7(5) and (5A) of the aforesaid Act. It is submitted that in the present case there is nothing to show that there was a meeting of the women members of the Gramsabha before the regular meeting of the Gramsabha was held and on this ground alone the impugned resolution and consequent impugned communication /

order dated 07.01.2025 deserve to be quashed. As a consequence, there is no question of considering the permission sought by Respondent No.5 for shifting of the country liquor shop. Reliance is also placed on Rule 25 (D) (iii) of the Maharashtra Country Liquor Rules, 1973, framed under the provisions of the Bombay Prohibition Act, 1949.

8. In response, the learned counsel appearing for the Respondent No.4/Grampanchayat submitted that a report called in the said matter and the submitted by the Extension Officer of the Panchayat Samiti demonstrates that as many as 17 women members were present during the meeting of the Gramsabha, which granted no objection in favour of Respondent No.5 and this sufficiently satisfied the statutory requirement.

9. The learned senior counsel appearing for the Respondent No.5 pointed out a fundamental issue that arises in the present case. He submits that the Petitioners are heavily relying upon Rule 25 (d) (iii) of the aforementioned rules to raise a challenge to the impugned resolution of the Gramsabha, but if the said Rule is properly appreciated, particularly proviso below Rule 25 (d), it becomes evident that the same is not applicable to the facts of the present case.

10. It is emphasised that since the liquor shop being run at Jalna was in a rented premises and the application for shifting the same was

triggered by a notice sent by the landlord on 13.03.2024 to vacate the said shop premises, the proviso to Rule 25 (d) clearly applies and there is no requirement in law for a resolution of the Gramsabha giving no objection for shifting the shop to Grampanchayat Hasnabad. On this basis, it is submitted that the petition deserves to be dismissed. It is submitted that this is without prejudice to the basic contention of Respondent No.5 that this writ petition is also pre-mature and ought not to be entertained by this Court.

11. We have considered the rival submissions and we find that although this petition can be disposed of by a short order reiterating that this petition can also be said to be pre-mature like the earlier Writ Petition No.12082/2024 filed by the Petitioners, it would be appropriate that the specific issue being raised in this petition is decided so that the Excise Department can proceed further in the matter in accordance with law.

12. It is to be noted that the present petition cannot be said to be filed on the basis of liberty reserved for the Petitioners in the order dated 11.11.2024, disposing of earlier Writ Petition No.12082/2024, for the reason that liberty was reserved for the Petitioner only in case the Excise Department actually permits shifting of the said liquor shop. But, that stage is yet to arrive.

13. Be that as it may, we are concerned here with the question of applicability of Rule 25 of the aforesaid Rules and in that context the question as to whether the impugned resolution of the Gramsabha and the consequent communication / order dated 07.01.2025 issued by the Respondent No.2/CEO of the Zilla Parishad violate Section 7(5) and (5A) of the aforesaid Act.

14. The documents on record sufficiently demonstrate that the Respondent No.5 was required to apply for shifting of the liquor shop from Jalna to another place due to the notice issued on 13.03.2024 by the landlord of the shop premises where the country liquor shop of the Respondent No.5 was being run in Jalna. It is because of the said notice that the Respondent No.5 is constrained to approach the Excise Department for shifting of the liquor shop. In this context Rule 25 of the aforesaid Rules needs to be appreciated.

“25. Prohibition to shift licensed shop to any other place :-

(a) a licensed shop shall not be shifted by a retail licensee to any other site within a taluka without prior approval of the Collector.

(b) a licensed shop shall not be shifted by retail licensee to any place from one taluka to another taluka of the district without prior approval of the Commissioner.

Provided that, the number of licensed shops for such shifting shall not exceed 15% of the total existing licensed shops in any district [excluding Mumbai City and Mumbai Suburban District] which would be inclusive of the licensed shop already shifted with prior approval of

the Government or the Commissioner before the date of publication of these rules;

Provided further that, any licensed shop shall not be shifted within the Mumbai City and Mumbai Suburban District, without prior approval of the Government.

(c) a licensed shop shall not be shifted by retail licensee to any place from one district to another district without prior approval of the Government.

(d) the shifting of licences under clauses (a), (b) and (c), shall be subject to the fulfillment of the following conditions, namely :-

(i) Considering the sale of liquor of past five years, the sale of liquor of any two years of last four years shall be less than the sale of first year of this block of five years or considering the sale of liquor of past five years, the sale of liquor of any three years shall be less than that of the annual average sale of the liquor for the same five years.

(ii) that there is no inconvenience of drinking of liquor to the people residing in that area;

(iii) that the Grampanchayat in whose area licensed shop is proposed to be shifted has given no objection by passing a resolution of the Gramsabha; and if the shop is proposed to be shifted to any area other than Grampanchayat area, no objection of the Municipal Council concerned has been obtained.

(iv) that the proposed premises are free from distance restriction as provided under sub-rules (4) and (5) of Rule 24;

(v) that the construction of the premises in which shop is proposed to be shifted is an authorised construction and a certificate of the competent local authority is submitted :

Provided that, the proviso to clause (b) and sub-clauses (i) and (ii) of clause (d) shall not apply in respect of shifting of licensed shop which has been closed down or required to be closed down as per the provisions of the Bombay Prohibition (Closer of Licence on Resolution by the Village Panchayat or Gramsabha or Women/ Social Organisation or Representation by Voters in the Village or Ward of Municipal Council) Order, 2003.

[Provided further that, the conditions as laid down in sub-clauses (i), (ii) and (iii) of clause (d) shall not apply in respect of the following situation however, under such situation shifting shall be allowed within the area of [same district) as the case may be;

(A) licensee whose premises are affected by the implementation of Development Scheme such as road widening, and the like;

(B) in the case where the licensee is running his license shall at the place under the rental deed and the landlord or owner of the the place do not agree to extend the rental deed; or

(C) in the case where the shifting is essential due to Hon'ble Court's order.”

15. A proper reading of the aforementioned Rule would show that it governs the procedure for shifting of the country liquor shop from one place to the other. Proviso (B) to Rule 25 (d) of the said Rules clearly specifies that when the proposed shifting is within the same district and it is triggered due to a landlord asking the licensee that the rental deed would not be extended, the requirement of the Rule 25 (d) (iii) of the said Rule itself does not apply. Once it is found in the facts of the present case that proviso (B) applies with full force, the reliance placed on behalf of the Petitioners on Section 7(5) and (5A) of the said Act is rendered meaningless. We find that in the facts of the present case, although the Respondent No.5 would certainly have to satisfy other requirements as per law that would be examined by the Excise Department, insistence on a resolution of the Gramsabha giving no objection for such shifting is clearly

misplaced. The very basis of the present petition is therefore rendered unsustainable, quite apart from the fact the petition itself appears to be pre-mature.

16. We also find that the Petitioners are themselves running a country liquor shop in Grampanchayat Hasnabad and this could be a petition filed to avert a competitor from shifting the country liquor shop within the jurisdiction of Grampanchayat Hasnabad.

17. Since the Petitioners invited this Court to decide the aforesaid issue of law, we have been constrained to give a finding in the present petition.

18. Having rendered the said finding, we find no merit in the present petition and it is accordingly dismissed.

19. It is made clear that the Excise Department shall proceed with the application filed by the Respondent No.5 for permission to shift the liquor shop from Jalna to Grampanchayat Hasnabad on its own merits and in accordance with law.

[Y.G. KHOBRAGADE, J.]

[MANISH PITALE, J.]