AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10297 OF 2009

Kemavati Gupta, wife of late
Brijbihari Gupta ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.10298 OF 2009

ATUL GANESH KULKARNI
Digitally signed by ATUL GANESH KULKARNI
Date: 2025.12.24 15:29:07 +0530

Jayashree Gajanan Shelar ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.10299 OF 2009

Pratap Mathuradas Chande ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.10317 OF 2009

Pandurang Damodar Gite ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.10318 OF 2009

Shyam Kishanchand Lalwani ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.10319 OF 2009

B.K. Shaikh ... Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10320 OF 2009

Pritamkumar J. Saluja … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10321 OF 2009

Smita Arun Chumble … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10322 OF 2009

Prakash Vasudev Mehtani … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10323 OF 2009

Kamla Shamdas Khatri … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10324 OF 2009

Pritamkumar J. Saluja … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10325 OF 2009

Nirmala Asandas Mulchandani … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH

WRIT PETITION NO.10326 OF 2009

Kiran Vishwasrao Kohok … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10327 OF 2009

Ratan S. Lath … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10328 OF 2009

Abdul Gafoor Shaikh Jafar … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10329 OF 2009

Arjun Kishanchand Lalwani … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
WRIT PETITION NO.10331 OF 2009

Chandramohan Damodar Shelar … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

Mr. Ankit S. Tiwari i/by Mr. Vinayak R. Salokhe for the petitioner in all Writ Petitions.

Mr. P.G. Sawant, AGP for respondent Nos.1 to 3-State in WP/10297/1999.

Mr. S.P. Kamble, AGP for respondent Nos.1 to 3-State in WP/10298/1999.

Smt. M.P. Thakur, AGP for respondent Nos.1 to 3-State in WP/10299/1999.

Smt. P.J. Gavhane, AGP for respondent Nos.1 to 3-State in WP/10317/1999.

Smt. S.D. Chipade, AGP for respondent Nos.1 to 3-State in WP/10318/1999.

Ms. Savina R. Crasto, AGP for respondent Nos.1 to 3-State in WP/10319/1999.

Mr. Hamid Mulla, AGP for respondent Nos.1 to 3-State in WP/10320/1999.

Mr. P.V. Nelson Rajan, AGP for respondent Nos.1 to 3-State in WP/10321/1999.

Dr. Dhruti Kapadia, AGP for respondent Nos.1 to 3-State in WP/10322/1999.

Ms. Kavita N. Solunke, Additional G.P. with Mr.S.L. Babar, AGP for respondent Nos.1 to 3-State in WP/10323/1999.

Mr. A.I. Patel, Additional G.P. with Smt. M.S. Bane, AGP for respondent Nos.1 to 3-State in WP/10324/1999.

Smt. A. A. Nadkarni, AGP for respondent Nos.1 to 3-State in WP/10325/1999.

Mr. A.R. Deolekar, AGP for respondent Nos.1 to 3-State in WP/10326/1999.

Smt. S.A. Prabhune, AGP for respondent Nos.1 to 3-State in WP/10327/1999.

Mr. Y.D. Patil, AGP for respondent Nos.1 to 3-State in WP/10328 /1999.

Mr. Shahaji Shinde, 'B' panel with Mr. S.L. Babar, AGP for respondent Nos.1 to 3-State in WP/10329/1999.

Mr. M.M. Pable, AGP for respondent Nos.1 to 3-State in WP/10331/1999.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 24, 2025

P.C.:

1. As all these writ petitions raise common questions of law and facts, they are being decided by a common judgment. For convenience, the facts are taken from Writ Petition No. 10297 of 1999.

2. The petitioner holds a CL-III licence and carries on the business of sale of country liquor in accordance with the Maharashtra Country Liquor Rules, 1973. These Rules are framed under Section 143 of the Bombay Prohibition Act, 1949.

3. In the year 1996, the State of Maharashtra brought into force the Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licences) Rules, 1996. These Rules authorize the Commissioner to issue a notification sixty days prior to the commencement of the financial year for fixing licence fees. In exercise of powers under Rule 4 of the 1996 Rules, the Commissioner of State Excise issued a notification in January 2001 fixing the licence fee for the year 2001–2002, commencing from 1 April 2001 and ending on 31 March 2002. The fee was fixed on the basis of the population of Nashik City as per the 1991 census. Accordingly, the petitioner was required to pay Rs. 59,000 as licence fee for the year 2001–2002. Rule 3 of the 1996 Rules permitted payment of licence fee for a block period of five years at the rate of four and a half years. Availing this facility, the petitioner paid Rs. 2,65,500 and renewed the licence up to the year 2007–2008.

4. Thereafter, the petitioner received a demand notice dated 1 December 2008 from respondent No. 3. By this notice, the petitioner was called upon to pay Rs. 1,39,500 towards alleged arrears of licence fee for the period from 2001–2002 to 2007–2008. The notice stated that the total liability was Rs. 4,05,000 and after adjusting the amount already paid, the balance amount was demanded.

5. The petitioner challenged the said demand by filing an appeal under Section 137 of the Bombay Prohibition Act, 1949 before respondent No. 2. The appeal came to be dismissed by judgment and order dated 20 April 2009. The petitioner thereafter preferred a revision under Section 138 of the Bombay Prohibition Act, 1949 before the Minister of State Excise. The revision application was dismissed by judgment and order dated 28 August 2009. Aggrieved thereby, the petitioner has filed the present writ petitions.

6. Learned counsel for the petitioner relied upon an unreported decision of this Court in *Writ Petition No. 3533 of 2009, Sanjeev J. Shetty versus The Collector of Pune and others, decided on 15 June 2009* along with connected matters. He submitted that in similar circumstances, this Court had set aside identical demands for the same period. He fairly pointed out that the said decision related to the Bombay Foreign Liquor Rules. He contended that the relevant provisions under the Bombay Country Liquor Rules are pari materia. On that basis, it was argued that the said judgment squarely applies and the impugned demand notice is unsustainable.

7. On the other hand, the learned AGP strongly opposed the writ petitions. It was submitted that the decision relied upon by the petitioner does not apply to the present case as the facts are materially different. According to the State, the demand raised is only for the differential amount calculated on the basis of the actual population of the city in the year 2001. It was contended that the issuance of census notification in 2004 does not affect the authority of the department to raise demand under the Rules, which permit fixation of fees on the basis of actual population. It was submitted that the population of Nashik City had crossed ten lakhs in the year 2001 itself. On that basis, the demand raised under the notification dated 30 January 2001 was justified. The State, therefore, prayed for dismissal of the writ petitions.

8. I have carefully considered the rival submissions advanced on behalf of the petitioner and respective AGP in each writ petition. The question is whether the excise authorities were legally justified in raising a demand for differential licence fees for the period 2001–2002 to 2007–2008 by relying upon population figures which were formally notified only in the year 2004.

9. For the purposes of adjudicating said issue, it is necessary to set out Rule 24 of the Bombay Country Liquor Rules, 1973 along with its explanation:

> "**24. Grant of licence** : (1A) The Collector shall in confirmity with the committee's recommendations and after satisfying himself that the premises proposed for location of the shop for selling country liquor are in confirmity with the provisions of the rules and instructions issued in this behalf by the State Government or the Commissioner from time to

time and that there is no objection to grant the licence applied for, may inform the applicant of the decision and grant the licence in form CL-III on payment of the fee (inclusive of consideration) prescribed in the sub-rule (13).

Provided that if the selected applicant fails to complete necessary formalities for obtaining the licence within 3 months or the receipt of intimation, it shall automatically be treated as cancelled and after the expiry of the said period of 3 months the Collector shall proceed to allot the licence to another suitable applicant.

Explanation.—for the purpose of this sub-rule "population" means the population as ascertained at the last preceding census of which the relevant figure, either provisional or final, have been published."

10. According to the petitioner, at the time when the licence fee for the year 2001–2002 was fixed by the notification issued in January 2001, the competent authority consciously relied upon the population figures of Nashik City as per the 1991 census. On that basis, the licence fee payable by the petitioner was determined at Rs. 59,000 for one year. The petitioner did not dispute this fixation. He further exercised the statutory option available under Rule 3 of the 1996 Rules and paid a consolidated amount for a block period of five years, calculated strictly in accordance with the rate then applicable. The licence was renewed accordingly up to 2007–2008. At that stage, the transaction stood concluded. There was no reservation, condition, or provisional fixation communicated to the petitioner that the fee would be revised retrospectively depending upon any future census data.

11. The demand raised in December 2008 seeks to reopen this settled position after several years. The foundation of the demand is that the actual population of Nashik City had crossed ten lakhs in the year 2001 and that the petitioner ought to have paid licence fees applicable to a higher population slab. This justification, however, ignores the express language of Rule 24 of the Bombay Country Liquor Rules, 1973. The Explanation to Rule 24 defines population to mean the population ascertained at the last preceding census of which the relevant figures, either provisional or final, have been published. The emphasis is not on an assumed or estimated population, but on census figures which are officially published and available for application.

12. On the date when the licence fee for 2001–2002 was fixed and collected, the only census figures that satisfied this definition were those of the 1991 census. The census of 2001 may have been conducted, but its figures were neither published nor notified at the relevant time. The Rules do not permit the authority to act on internal assessments, projections, or subsequent disclosures. They mandate reliance on published census figures alone. This requirement is not procedural. It goes to the root of the power to fix and levy licence fees.

13. The submission of the State that the department is empowered to recover fees based on actual population cannot be accepted in the absence of statutory support. The Rules do not recognise the concept of actual population independent of published census data. Once the Rule itself defines population in a specific manner, the authority is bound by that definition.

Administrative convenience or fiscal considerations cannot override the clear language of the Rule.

14. The argument that the census notification was issued in 2004 and therefore can be retrospectively applied to the licence period commencing in 2001 is equally untenable. A fiscal liability must be certain, predictable, and capable of being known at the time it is incurred. A licence holder who has paid fees in accordance with a valid notification cannot be exposed to a retrospective demand years later on the basis of material that was not legally operative at the relevant time. Such an approach would introduce uncertainty and arbitrariness into the licensing regime.

15. The reliance placed by the petitioner on the earlier decision of this Court *Sanjeev J. Shetty* , though arising under the Foreign Liquor Rules, is well founded. The relevant provisions governing fixation of fees on the basis of population are materially similar. The principle laid down therein is that once licence fees are fixed and collected on the basis of the last published census, the department cannot subsequently revise the demand retrospectively on the strength of later census data. The distinction sought to be drawn by the State does not alter the legal position, as the operative rule and its explanation are pari materia.

16. It is also significant that the petitioner had opted for a long-term renewal by paying a lump sum amount as permitted by the Rules. This option carries with it a legitimate expectation that the fee structure applied at the time of renewal would remain stable for the agreed period. Allowing retrospective revision would defeat

the very object of providing such a facility and would render the statutory option illusory.

17. In view of the above analysis, I find that respondent No. 3 lacked the authority to issue the impugned demand notice seeking recovery of differential licence fees for the period in question. The demand is contrary to Rule 24 of the Bombay Country Liquor Rules, 1973, is based on census figures not legally applicable at the relevant time, and seeks to impose a retrospective financial burden without statutory sanction.

18. Accordingly, the impugned demand notice in all petitions cannot be sustained in law. The orders in all petitions passed by the appellate and revisional authorities, which mechanically upheld the demand without addressing this core legal issue, also suffer from the same infirmity. All writ petitions, therefore, deserve to be allowed, and the demand raised against the petitioner in each petition is liable to be quashed.

19. Acoordingly, Rule is made absolute in terms of prayer clause (a) in each petition.

20. No costs.

(AMIT BORKAR, J.)