

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9985 OF 2024

Late Bhujbali Tatoba Chougule died
through its LR- Abhijeet Bhujbali
Chougule

...Petitioner

V/s.

1. The state of Maharashtra
Through its Principal Secretary
State Excise Department,
Mantralay Mumbai.

2. The Commissioner of State
Excise, Old Custom, Mumbai

3. The District Collector
(State Excise) Sangali

4. The Superintendent of State
Excise, Sangali

5. Ananda Sadashiv Atungade

6. Sanjay Yuvraj Atungade

7. Sharad Shivaji Atungade

8. Rahul Rajaram Atungade

9. Lakhan Dayanand Atungade

...Respondents

Mr. Vikram S. Undre *for the Petitioner.*

Ms. A.A. Nadkarni, AGP *for Respondent Nos.1 to 4-State.*

Mr. Nikhil N. Pawar *for Respondent Nos.5 to 9.*

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CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 5 February 2025.

Judgment pronounced on : 11 February 2025

Judgment :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the petition is taken up for hearing.

2) Petitioner has filed this Petition challenging order dated 29 June 2024 passed by the learned Minister, State Excise, Maharashtra allowing the Revision filed by Respondent Nos.5 to 9 and setting aside the order dated 28 March 2023 passed by Commissioner of State Excise, Maharashtra State, Mumbai, (**Commissioner**) and confirming the order dated 11 January 2023 passed by Collector, Sangli (**Collector**). By order dated 11 January 2023, the Collector had rejected the permission for shifting of C.L.-III license No.153/90-91 (**CL-III License**) of the Petitioner to another premises in the same town.

3) Petitioner-late Bhujbali Tatoba Chougule was a holder of CL-III License for retail sale of country liquor at his shop situated at CTS No.3, Plot Nos.2A and 2B, Ashta, Taluka-Valva, District-Sangli. He filed Application dated 27 February 2021 to the Superintendent of State Excise about shifting of the CL-III

License at a different premises i.e. Gut No.1/3, Ashta. By order dated 11 January 2023 passed by the Superintendent of State Excise, Sangli on behalf of Collector, Petitioner's request was rejected after taking into consideration the adverse report from police. Petitioner preferred Appeal No.15 of 2023 before the Commissioner, which came to be allowed by order dated 28 March 2023 by setting aside order dated 11 January 2023. The Commissioner allowed the application for shifting on the condition of Petitioner submitting an affidavit to the Collector that he would voluntarily close down the business of CL-III License in the event of creation of any law and order situation. It appears that in pursuance of order dated 28 March 2023 passed by the Commissioner, Petitioner shifted his CL-III License to the new premises.

4) Respondent Nos.5 to 9, who are local residents, felt aggrieved by the order dated 28 March 2023 passed by the Commissioner and filed Revision Application No.22 of 2023 before the Hon'ble Minister, State Excise. The Appeal preferred by Respondent Nos.5 to 9 has been allowed by the Hon'ble Minister by order dated 29 June 2024 by setting aside Commissioner's order dated 28 March 2023 and by confirming the Collector's order dated 11 January 2023. Petitioner is aggrieved by order dated 29 June 2024 passed by the Hon'ble Minister and has accordingly filed the present Petition.

5) Mr. Undre, the learned counsel appearing for the Petitioner would submit that the Hon'ble Minister has grossly

erred in entertaining the application preferred by Respondent Nos.5 to 9, who had absolutely no *locus standi* to challenge the order passed by the Commissioner. He would submit that the Hon'ble Minister has not recorded any cogent reasons for setting aside well considered decision of the Commissioner, who had recorded a finding of fact that the police report did not indicate creation of any possible law and order problem on shifting of license. He would submit that in pursuance of Commissioner's order dated 28 March 2023, Petitioner had actually shifted the license to the new premises and conducted the business thereat for more than a year without there being any law and order problem. That therefore creation of law and order problem is nothing but a figment of imagination on the part of the police, whose opinion is erroneously acted upon by the Hon'ble Minister. He submitted that the Petitioner has already filed an undertaking in pursuance of order dated 28 March 2023 and has undertaken to close down his business in the event of creation of any law and order problem.

6) Mr. Undre would invite my attention to circular dated 7 May 2005, under which police report is to be submitted within a period of one month, whereas the same was submitted in the present case after lapse of period of 10 months. That the police report is otherwise vague and unsupported by any material. In support of his contentions, Mr. Undre would rely upon following judgments of this Court:-

- i. Shaikh Sikandar S/o Shaikh Nazirsab V/s. The State of Maharashtra¹***
- ii. Rahul Giridhar Pathade V/s. The Collector of Nashik and Ors.²***
- iii. Mahananda Umesh Gulwe V/s. The State of Maharashtra and Ors.³***

7) Mr. Pawar, the learned counsel appearing for Respondent Nos.5 to 9 would oppose the Petition submitting that the Hon'ble Minister has rightly appreciated the entire position, particularly opposition for shifting of the CL-III Licence by local residents and possible law and order situation resulting on account of operation of country liquor shop in the locality. He would submit that police have given a fact-finding report about possibility of creation of law and order problem as well as possibility of accident taking place on account of proximity of the shop to State highway as well as to another road. That Respondent Nos.5 to 9 were present on the spot at the time of conduct of inspection by the police and that they had every right to challenge the erroneous order passed by the Commissioner before the Hon'ble Minister. That even otherwise, Respondent Nos.5 to 9 are the local residents having interest in deciding Petitioner's application for shifting of CL-III License. He would submit that Petitioner did not indicate any specific reason for shifting of his CL-III License. That the Collector and the Hon'ble Minister have recorded subjective satisfaction based on police report while rejecting Petitioner's request for shifting of the license. That such

1 Writ Petition No.4108 of 2011, decided on 14 July 2014(Aurangabad Bench)

2 Writ Petition No.12083 of 2019, decided on 24 January 2023

3 Writ Petition No.6643 of 2022, decided on 13 July 2023 (Aurangabad Bench)

subjective satisfaction cannot be made subject matter of challenge before this Court. In support of his contentions, Mr. Pawar would rely upon judgments of this Court in ***Hotel Shobha V/s. Hon'ble Minister, Department of State Excise***⁴ and ***Ishwateshwar Siddheshdeep Co-op. Housing Society Limited V/s. The State of Maharashtra and Ors.***⁵. He would pray for dismissal of the Petition.

8) Ms. Nadkarni, the learned AGP appearing for the Respondent-State would also oppose the Petition submitting that the Hon'ble Minister has applied his mind to the facts and circumstances of the present case for holding that shifting of Petitioner's CL-III License would be against public interest. That Petitioner does not have a fundamental right to trade in liquor and grant of license is the exclusive privilege of the State Government under Section 49 of the Maharashtra Prohibition Act, 1949 (**the Act**). She would rely upon Rule 25 of the Maharashtra Country Liquor Rules, 1973 in support of her contention that shifting permission can be granted only after recording subjective satisfaction that no inconvenience of drinking liquor would be caused to the people residing in the area. That in the present case, police have given adverse report for shifting of Petitioner's CL-III License. She would therefore pray for dismissal of the Petition.

9) Rival contentions of the parties now fall for my consideration.

⁴ [2012] 6 MhLJ 708

⁵ Writ Petition No.9086 of 2014, decided on 28 November 2016.

10) Mr. Undre has contended that the Hon'ble Minister has belatedly passed the impugned order on 29 June 2024 after conduct of hearing. The order of the learned Minister would indicate that the hearing was conducted on 25 September 2023 and 12 October 2023, however, the order is passed on 29 June 2024. Mr. Undre has relied upon judgments of this Court in ***Shaikh Sikandar*** and ***Mahananda Umesh Gulwe*** (supra) in support of his contention that the order can be vitiated for pronouncement of the judgment after considerable delay. The order appears to have been pronounced after more than 8 months. It appears that the Advocates appearing for rival parties had made oral submissions on 25 September 2023 and 12 October 2023 and the proceedings were closed for passing orders on 12 October 2023. The judgment was however pronounced by the Hon'ble Minister after more than 8 long months. This would be the first reason for setting aside the judgment passed by the learned Minister. Ordinarily, proceedings would be required to be remanded for fresh decision after holding that pronouncement of order after lapse of period of 8 months from the date of conclusion of argument is a procedural irregularity. However, in the facts and circumstances of the present case, it would be imprudent to remand the proceedings to the Hon'ble Minister considering the fact that the Application for shifting of CL-III License was made by Petitioner on 27 February 2021 and by now period of 4 years has been elapsed. I accordingly proceed to

decide the petition on merits rather than making an order of remand.

11) By now, it is well settled position of law that no one can claim any fundamental right to trade in liquor, which is an exclusive privilege of the State under Section 49 of the Act. The judgment in *M/s. Hotel Shobha* (supra) has been followed in *Ishwateshwar Siddheshdeep Co-op. Housing Society Limited* (supra). Keeping the broad principles enunciated in those judgments, the correctness of the order passed by the Hon'ble Minister is being considered.

12) Petitioner's application for shifting of CL-III License was initially rejected by Collector, Sangli by order dated 11 January 2023 relying upon adverse report submitted by the police department. Perusal of the said report dated 28 October 2021 of Superintendent of Police, Sangli, would indicate that the proposed place has been secured by the Petitioner on rent and that there are no temples, masjid, darga, church, school or statues of national leaders in the vicinity. The police also confirmed that no incident of communal riots or serious crimes had taken place in the past near the establishment. The Police also verified the background of the Petitioner and found that he was not facing any prosecution. However, Superintendent of Police referred to letter of Sub-Divisional Engineer, PWD, Islampur, indicating that the premises stood at the distance of 20 mtrs from median of State highway No.152 and 37 mtrs from the control line. Superintendent of Police therefore observed that the

possibility of creation of obstruction to the traffic by drunken people and cause of accidents could not be ruled out. It was further indicated in the report that the possibility of occurrence of communal riots by drunkards and creating law and order situation could also not be ruled out. On these broad grounds, the Police Superintendent refused to recommend shifting of Petitioner's CL-III License at the new premises. The Collector acted upon the report of Superintendent of Police dated 28 October 2021 and rejected Petitioner's permission for shifting of CL-III License.

13) The Commissioner allowed the Appeal preferred by the Petitioner by recording following findings in paragraph 6 of its order:

6. I record my observations as under:

On perusal of the impugned order of the Collector, it is seen that the contention of the Superintendent of Police is that because there are complaints from various organisation and that the proposed premises are at a distance of 37 mtrs. from State Highway No.152 which could thus lead to accidents and communal riots, and hence apprehended law and order problem. However the police report is silent on law and order.

It is pertinent to note that, the Government policy regarding such law and order reports is that it should indicate past history of communal tension and sensitivity, future communal riots or such other aspects. Therefore, I do not agree with the police assessment of law and order.

Apparently, there are other CL-III & FL-III licenses functioning in the same village Ashta.

14) The Commissioner thus, specifically observed that there are other CL-III License and FL-III licenses functioning in the

same village. Commissioner also referred to the government policy requiring indication of past history of communal tension and sensitivity in police report. The Commissioner therefore refused to agree with the inference of law and order situation drawn by the Superintendent of Police. Perusal of order passed by the Hon'ble Minister would indicate that he has not dealt with the findings recorded by the Commissioner. He has not held that any particular finding recorded by the Commissioner is erroneous. The learned Minister merely referred to the adverse police report dated 28 October 2021 and has allowed the Appeal preferred by Respondent Nos.5 to 9 by recording following findings :-

3. निष्कर्ष :- सदर प्रकरणी सुनावणीदरम्यान उपस्थित झालेले मुद्दे सुनावणी दरम्यान पुनरिक्षण अर्जेदार व गैरअर्जेदार यांच्याकडून सादर केलेली विनंती, तसेच अभिलेखावर उपलब्ध अन्य कागदपत्रे / आदेश विचारात घेण्यात आले.

गैरअर्जेदार यांची सीएल-३ अनुज्ञप्ती क्र. १५३ चे सी. स. क्र.२. प्लॉट नं.२ अ व २ ब येथून गट क्र. १/३, प्लॉट क्र.१, आष्टा शहर, ता. वाळवा, जि. सांगली येथे स्थलांतर करण्यास आष्टा शहरातील समस्त नागरीक व विविध राजकीय संघटनांचा विरोध आहे.

गैरअर्जेदार यांची सीएल-३ अनुज्ञप्ती क्र. १५३ चे स्थलांतरण करण्यासाठीची प्रस्तावित जागा महाराष्ट्र देशी दारु नियम, १९७३ मधील नियम २४ (४) (ब) (क) अन्वये अंतरनिर्बंधमुक्त असल्याचे निरीक्षक, राज्य उत्पादन शुल्क, इस्लामपूर यांनी त्यांच्या अहवालात नमूद केले असले तरी सदर अनुज्ञप्ती स्थलांतराबाबत पोलीस विभागाचा कायदा व सुव्यवस्थेबाबतचा अहवाल प्रतिकूल प्राप्त झालेला आहे. उपविभागीय अभियंता, सा. बां. उपविभाग, इस्लामपूर यांच्या पत्रानुसार सदर आस्थापना पेठ-सांगली रा.मा.क्र. १५२ (रा.म.मा. १६६ एच) या रस्त्याने मध्यापासून इमारत रेषा २० मी. व नियंत्रण रेषा ३७ मीटर अंतरावर आहे. त्यामुळे मद्यपीकडून वाहतूकीस अडथळा होवून गंभीर अपघात होण्याची शक्यता नाकारता येत नाही. तसेच सदर आस्थापना स्थलांतर करण्यास मंजूरी दिल्यास मद्यपीकडून जातीय दंगली घडून कायदा व सुव्यवस्थेचा प्रश्न निर्माण होण्याची शक्यता नाकारता येत नाही. तरी सदर अनुज्ञप्ती प्रस्तावित जागी स्थलांतर करण्यास शिफारस नाही, असे पोलीस अधीक्षक, सांगली यांनी दि. २८.१०.२०२१ च्या पत्रान्वये कळविले आहे. सबब आयुक्त, राज्य उत्पादन शुल्क यांचे दि. २८.३.२०२३ चे आदेश रद्द करण्यात यावेत या निष्कर्षाप्रत मी आलो आहे. सदर वस्तुस्थिती विचारात घेऊन मी खालीलप्रमाणे आदेश पारीत करीत आहे.

15) In the present case, Petitioner already possessed CL-III License and was operating his establishment with that license at premises located at CTS No.3, Plot Nos.2A and 2B, Ashta, Taluka-Valva, District-Sangli. He proposed shifting of the license to another premises within the same municipal limits. The Superintendent of Police has already verified absence of any school or any religious place of worship or statues of national leaders in the locality. The opinion recorded by the police about possibility of creation of obstruction to traffic and occurrence of accident is not supported by any material. The opinion of Superintendent of Police about possibility of communal riots taking place resulting in law and order situation is again not supported by any material on record. It is not that any communal tensions have occurred at the locality in the past,

16) As observed above, the assumption made by Police about obstruction to traffic, possibility of occurrence of accident, possibility of communal riots, etc. are not supported by any material on record. Petitioner is otherwise running CL-III License in the same town of Ashta, which is not a very large urban area. It is relatively a smaller semi-urban area where a Municipal Council has been established. As observed by the Commissioner in his order, there are several other CL-III and FL-III Licenses operational in Ashta. Therefore, considering the fact that the town is not significantly large, mere shifting of the license within a smaller town would obviously require much

lesser scrutiny as the distance between the two places is not too long. Had there been any religious place of worship, schools or other sensitive establishments in the vicinity, the case would have been different. The Superintendent of Police has not referred to any past occurrence of communal tension in the area. Therefore, his assumption that Petitioner's establishment with CL-III License would result in communal tension is not well supported by any material on record. True it is that the satisfaction recorded by the Superintendent of Police is a subjective satisfaction with which ordinarily this Court would not interfere. However, at the same time, the recommendations made by Police cannot be based on whims and fancies unsupported by any material on record. So far as the distance of the shop from the median and control line of State highway is concerned, the Hon'ble Minister has not recorded any finding as to how operation of CL-III license at that distance is prohibited by any particular Rule, Regulations or guidelines. The Hon'ble Minister has merely copied the distance indicated in police report without recording any finding about any prohibition on running of the shop at a particular distance from the State highway. Even Ms. Nadkarni is unable to point out any particular prohibition from operating CL-III License at a distance of 20 mtrs from median of the road and 37 mtrs from the controlling line. In my view therefore the Hon'ble Minister has erred in allowing the Appeal preferred by Respondent Nos.5 to 9 without even bothering to indicate any possible error in the reasonings adopted by the Commissioner.

17) What is material to note in the present case is the fact that Petitioner operated CL-III license at the shifted premises for over a year after passing of order in his favour on 28 March 2023. There is nothing on record to indicate that any law and order situation got created during the period when Petitioner operated his license at the shifted premises. This is yet another factor which must be borne in mind while considering the issue of grant of permission for shifting of CL-III License at the new premises. This Court has adversely commented on *locus standi* of local residents, who oppose shifting premises of CL-III License in ***Rahul Giridhar Pathade*** (supra) in which it is held in paragraphs 14 and 15 as under:

14. At the outset, it is seen that the locus of the Petitioner in filing the present Petition is required to be seen. The Petition is not filed as a Public Interest Litigation. Though it is argued across the bar that having a Country Liquor bar in the predominantly residential area is detrimental to the residents of the area, the said submissions however do not find mention in any of the pleadings. Challenge to the Petitioner's CL III license is on account of non-compliance of certain statutory conditions by Respondent No. 3. However, whether the Petitioner is entitled to maintain the said challenge and whether the proceedings under the Article 227 of the Constitution of India are maintainable is the moot question which needs to be addressed at the outset. The impugned order for granting license is passed by the Collector. Respondent No. 2 Commissioner has given his consent to Respondent No. 1 after following the due process of law to grant the license. Respondent No. 1 is the licensing authority who has granted the license. Admittedly, Petitioner never objected or was not a party to the original Application seeking transfer of the CL III license from Ozar to the subject premises in Peth. The Petition as seen is not filed by the Petitioner in a representative capacity on behalf of the residents in the area. Therefore, the Petitioner has no locus standi to file the present Petition. Collector. Respondent No. 2 Commissioner has given his consent to Respondent No. 1 after following the due process of law to grant the license. Respondent No. 1 is the

licensing authority who has granted the license. Admittedly, Petitioner never objected or was not a party to the original Application seeking transfer of the CL III license from Ozar to the subject premises in Peth. The Petition as seen is not filed by the Petitioner in a representative capacity on behalf of the residents in the area. Therefore, the Petitioner has no locus standi to file the present Petition.

15. That apart perusal of record clearly reveals that the manner in which the Petition is drafted is an abuse of the process of law. It is seen that the Petition proceeds on the basis of the violation of fundamental rights of the Petitioner under Article 14 and Article 21 of the Constitution of India. However, Petitioner has not given any event or incident as to how his fundamental rights are violated. On the contrary the Respondent No. 3's right under article 19(1)(g) to carry on trade and business by following the due process of law is in fact hampered on the allegations of the Petitioner. Record clearly indicates that the Licensing Authority has followed the due process of law in granting the license. The entire gamut of documentary material i.e. Application, NOC, permissions etc. have all been enumerated in the affidavit-in-reply filed by Respondent No. 3 and is confirmed by Respondent Nos. 1, 2 and 4 in its affidavit-in-reply dated 12.03.2021. All such necessary documents namely Application, NOC, permission, affidavits, orders, etc. are all appended to the affidavit-in-reply of the Respondent No. 3. That apart, the Statutory Authority has confirmed on affidavit that the transfer application in respect of Respondent No 3 was thoroughly inquired into by Respondent No. 1 only after following the due process of law the same has been issued. Record also indicates that Respondent No. 3 has received N.A. Permission for Plot No. 284 in the year 1996 and copy of the same is produced on record. Hence, this objection of the Petitioner also does not survive. Record clearly indicates that the FL III license premises and CL III license premises are both running independently from Plot No. 284 with separate entrances and there is no violation of any conditions or rule by Respondent No. 3. That both the premises are separate and distinct. Needless to state that if there is any violation by Respondent No. 3 of any rules under the Maharashtra Country Liquor Rules 1973, the Statutory Authorities shall take cognizance and action in accordance with law.

18) In my view, the order passed by the Hon'ble Minister suffers from non-application of mind and is passed on mere reproduction of report by the Superintendent of Police without

making an attempt to indicate any error in the findings recorded by the Commissioner. The order is liable to be set aside. The Commissioner has already provided for sufficient safeguard by securing an undertaking from Petitioner about shutting down the establishment in the event of creation of any law and order problem. Mr. Undre would clarify that Petitioner has submitted such an undertaking after shifting of his license in the new premises. Such undertaking would continue to operate and the concerned authority would be in a position to forthwith cancel the shifting permission in the event it is found any serious law and order situation is created on account of operation of CL-III license by the Petitioner at the shifted premises.

19) Petition accordingly succeeds and I proceed to pass the following order:

- i. Order dated 29 June 2024 passed by the learned Minister, State Excise is set aside.
- ii. Order dated 28 March 2023 passed by the Commissioner, State Excise is confirmed.

20) With the above directions, Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]