



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5579 OF 2025

1. Lalita Ramesh Jaiswal, Aged about 56 years,
Occ: Business.
2. Shruti Rakesh Jaiswal, Aged about 28 years,
Occ: Business.

Both R/o at Jaiswal Country Liquor Bar,
Mouza Wadgaon, Jamb Road, Yavatmal.

PETITIONERS

VERSUS

1. The State of Maharashtra, Department of Home
and Excise, Through its Secretary, Mantralaya, Mumbai.
2. The Commissioner, State Excise, State Excise Bhavan,
Fort, Mumbai.
3. The Collector, State Excise, Yavatmal, Dist.Yavatmal.
4. The Superintendent, State Excise, Yavatmal.
5. Sangitatai Pavar, For Darubandi and Vyasani Mukti
Andolan, Shaha Complex, Shyam Talkies, Yavatmal.
6. Umesh Meshram, For Darubandi and Vyasani Mukti
Andolan, Shaha Complex, Shyam Talkies, Yavatmal.

RESPONDENTS

Shri S.G. Jagtap and Shri Sayajee Jagtap, Counsel for the petitioners.
Shri D.V. Chauhan, Senior Advocate and Government Pleader with Ms.PT. Joshi,
Assistant Government Pleader for the respondent nos.1 to 4.
Shri P.K. Raulkar, counsel for the respondent nos.5 and 6.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 13, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : OCTOBER 17, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioners have raised a challenge to the order dated 09.09.2025 passed by the respondent no.3-Collector, State Excise, Yavatmal exercising powers under Section 142(1) of the Maharashtra Prohibition act, 1949 (for short, 'the Act of 1949') directing the petitioners to close the business till their license is shifted to other premises.

3. At the stage of admission, while advancing arguments an issue was raised by the learned Government Pleader as to whether the instant petition should lie before the Division Bench, since there is a challenge to an order passed by the Collector under Section 142 of the Act of 1949 which is an administrative order. Record reveals that the instant petition was earlier listed before the Division Bench and the Division Bench has passed an order dated 22.09.2025 directing that this petition be listed before the Single Bench. Thus, the issue was set at rest by this order and accordingly the matter was listed before this Bench.

4. Shri S.G. Jagtap, learned counsel for the petitioner submitted that the impugned order is passed under Section 142(1) of the Act of 1949 in absence of any compelling situation as required under the said provision and the impugned order is passed only on the basis of the objections raised by the respondent nos.5 and 6, and without conducting any independent enquiry about alleged disturbance to public peace warranting closure of business of the petitioners. He submitted that the petitioners are running their CL-III license in accordance with the terms and conditions and there is absolutely no violation of the same on their part. He submitted that the impugned order is in the nature of cancellation of the license although worded as closure of business for indefinite period.

5. Apart from these contentions, he also submitted that although the impugned order is passed by considering the complaints/representations dated 26.08.2025 of the residents as referred in the reference at Serial Number 2 to the impugned order, the same is in violation of the provisions contained in the Bombay Prohibition (Closure of License on Resolution by

Gram Panchayat or Representation by Voters in the Municipal Councils/ Corporation) Order, 2008 (for short, 'the Order of 2008'). Although the Collector has exercised powers under Section 142(1) of the Act of 1949, nothing is disclosed in the order about basis of formation of opinion, warranting exercise of powers under Section 142(1) of the Act of 1949.

6. Shri D.V. Chauhan, learned Senior Advocate and Government Pleader appearing for the respondent nos.1 to 4 opposed the writ petition and submitted that the impugned order is passed by the Collector under Section 142(1) of the Act of 1949 on the basis of his subjective satisfaction and formation of an independent opinion about need to pass the order in the interest of public peace. He primarily submitted that by the powers conferred under Section 142(1) of the Act of 1949, the Collector is empowered to pass orders in tune with the policy of prohibition and necessity to regulate the license. He also submitted that under Section 142(1) of the Act of 1949, the Collector is empowered to close any place of business based on his subjective satisfaction, if situation is warranted. In support of his submissions, he relied upon judgment of the Full Bench of this Court in *Harpritsingh Bhupindersingh Hora & Another Versus State of Maharashtra & Another* [2024 SCC OnLine Bom 3128]. As regards the nature of the impugned order, he submits that the order under Section 142(1) of the Act is an administrative order and mere issuance of notice by the Authorities prior to passing any order does not change the character of the order.

7. In order to appreciate rival contentions, the provision of Section 142 of the Act of 1949 need to be looked into, which is reproduced below:-

“142. Power of Collector to close place where intoxicant of hemp is sold in certain cases

(1) If the Collector is of 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 for the Collector by an order in writing to the persons holding a license for the sale of such intoxicant or hemp to require him to close such place at such time or for such period as may be specified in the order.

(2) If a riot or unlawful assembly is imminent or takes place it shall be lawful for any Executive Magistrate or Police Officer who is present to direct that such place shall be closed and kept closed for such period as he thinks fit and in the absence of any Executive Magistrate or Police Officer the person referred to in sub-section (1) shall himself close such place.

(3) Any order given under this section shall be final.”

8. A perusal of the impugned order shows that it is passed under Section 142(1) of the Act of 1949. The documents on record shows that several persons have made complaints against the running of business by the petitioners at the concerned place and the impugned order also refers to a representation dated 26.08.2025 submitted by Vyasnmukti Andolan. Apart from this, the residents of locality have submitted a representation dated 21.08.2025 to the Police Superintendent. The impugned order also clearly refers to the report submitted by Superintendent of Police, Yavatmal dated 27.08.2025 expressing the possibility of law and order situation with respect to the license in question. It is thus clear that on the basis of material available before the Collector, he has formed his opinion about the necessity to exercise powers under Section 142(1) of the Act of 1949.

9. During the course of hearing, learned Government Pleader Shri D.V. Chauhan has placed on record the original record made available from the Office of Collector, State Excise, Yavatmal which contains, amongst other documents, the report submitted by the Superintendent of Police,

Yavatmal dated 27.08.2025. The record also contains documents of panchnama and statements of various persons and it is submitted that on the basis of these material documents, the Collector has formed an independent opinion to pass order under Section 142(1) of the Act of 1949.

10. The learned counsel for the petitioners vehemently submitted that the impugned order is in the nature of a quasi judicial order since the respondent no.3 has given notice of hearing to the petitioners as well as objectors and hearing was with respect to deciding a lis. He also submitted that even in case where there is no lis, the order can be considered to be quasi-judicial in nature when the statutory Authority is required to act judicially. In support of his submissions, he relied on the judgment in *Indian National Congress (I) Versus Institutte of Social Welfare & Others* [(2002) 5 SCC 685]. There is no quarrel with the provisions of law laid down in this judgment. However, in the instant case, the controversy was about objection for selling liquor by the petitioner at the particular place. Although the respondent no.3 has issued notice to the petitioner as well as to objectors, there was no dispute about the claim for running business by the two parties, i.e. the petitioner on one side and the objectors on the other side. The objectors who are members of Vyasnmukti Andolan and residents of the locality had submitted complaint in view of the law and order situation. As such, the controversy cannot be considered to be in the nature of a lis. Further, in view of the nature of the order passed under Section 142(1) of the Act of 1949 based on the opinion formed by the Collector, the same cannot be considered to be a judicial order. The position of law in this regard is also clarified by the judgment of the

Division Bench of this Court in **Writ Petition No.616 of 2025** [*Anand Chandrakumar Jaiswal Versus The State of Maharashtra, Thr.the Principal Secretary, Home Department, Mantralaya, Mumbai & Others*] holding the order under Section 142 to be an administrative order. As such, the judgment in the Indian National Congress (I) (supra) is of no assistance to the petitioners.

11. As regards the nature of order to be administrative or quasi judicial, the learned Government Pleader has placed reliance on the Division Bench judgment of this Court in *Anand Chandrakumar Jaiswal Versus The State of Maharashtra, thr. The Principal Secretary, Home Department, Mantralaya, Mumbai & Others* [**Writ Petition No.616 of 2025 with connected writ petition**] and submitted that after considering the provisions of law and the position of law laid down by the Hon'ble Supreme Court in various judgments, it has been concluded that the order under Section 142(1) of the Act of 1949 is an administrative order in nature. In this regard, it is beneficial to reproduce paragraph 12 of the said judgment, which reads as under:-

“12. An order under Section 142 is in the nature of emergency action which envisages closing of any place for specified time and/or period, in which any intoxicant or hemp is sold so as to protect public peace. Section 142(2) also contemplates a prompt action by the Police Officer or Executive Magistrate in the cases of riots or unlawful assembly. There is no duty to act judicially because in arriving at its decision, the Collector, Police Officer or the Executive Magistrate has to only consider the policy and expediency and at no stage has before it any form of lis. The administrative order is related to the regulation or supervision of the matters as distinguished from an order which decides the rights of the parties as held in Shankarlal Aggarwala & Others Versus Shankarlal Poddar & Others [AIR 1965 SCC 507], and an

order under Section 142 fits the above-mentioned criteria. Therefore, we are of the opinion that the order passed under Section 142 of the Act of 1949 is of administrative nature as it does not fulfill the tests laid down to determine a quasi-judicial act viz. there is neither a lis nor duty to act judicially (as section confers powers to act administratively) nor opportunity of hearing is contemplated under the aforesaid section.”

12. Pertinently, another Division Bench while dealing with the issue about nature of power being administrative or quasi judicial, by its judgment dated 03.09.2025 in **Writ Petition No.77 of 2024 [M/s Balaji Sales, Through its Partner Amit Madanlal Agrawal .vs. State of Maharashtra & Others]** has also held that the power under Section 142 of the Act of 1949 is an administrative order. Thus, this position appears to have been well considered and clarified.

13. As regards the contention of learned counsel for the petitioners that the impugned order is in the nature of cancellation of license, it has to be seen that the powers to cancel or suspend the license are provided under Section 54 of the Act of 1949. The impugned order is clearly administrative and even expressly mentions that it is passed under Section 142(1) of the Act of 1949. Further, there is no direction about cancellation of license rather the direction is only to stop the business till the license is shifted to some other premises. Therefore, the contention of the petitioner has no force. Further the petitioners’ contention that by the impugned order the petitioners’ business is stopped for indefinite period is also not acceptable since there is a specific direction to close the business till the license is shifted. It is thus clear that as soon as the petitioners shifts their license to

new premises, they are entitled to run the business on the basis of their license and the submissions in this regard are therefore unsustainable.

14. As regards the contentions of the petitioners about non-compliance with the Order of 2008, the counsel for petitioners has submitted that the procedure contemplated under Clause 4 about submission of representation by not less than 5% women voters demanding closure of a liquor shop and holding a secret poll is not followed and therefore the proceedings initiated on the basis of complaints of few residents were unwarranted.

It has to be seen that the impugned order is specifically passed under Section 142(1) of the Act of 1949 and the provisions of Order of 2008 are with respect to closure of license on a resolution by Gram Sabha and based on the situations contemplated therein. As such, the contentions about non-compliance of provisions of Order of 2008 also do not find any force.

15. A perusal of the impugned order shows that the respondent no.3 has considered the report submitted by the Superintendent of Police, Yavatmal and it is clear that on the basis of material available before the Authority, an independent opinion is formed to exercise powers under Section 142(1) of the Act of 1949. It is clear that the Collector has passed the order on the basis of its subjective satisfaction and the petitioners have failed to demonstrate any perversity or illegality in the impugned order. On careful reading of the impugned order and the original record made available before me, I do not find any necessity to interfere with the order passed by the respondent no.3-Collector. Needless to mention, the petitioners are entitled to resume their business after shifting the license

to new premises by following the procedure provided under the Act of 1949 and the Rules framed thereunder.

16. In view of aforesaid discussion, no interference is warranted with the impugned order. The writ petition accordingly stands dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE