
(2007) 04 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 1128 of 2007

Amresh Jaiswal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Bombay Prohibition Act, 1949 — Section 142, 142(1), 142(2), 34

Citation : (2007) 6 ALLMR 812 : (2007) 4 MhLj 488

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : N.W. Sombre, for the Appellant; Bharti Dangre, A.G.P. for Respondent Nos. 1 to 4, for the Respondent

Judgement

R.C. Chavan, J.—Rule. By consent made returnable forthwith.

2. Petitioner, who runs a wine shop in the name and style "Samrat Liquors Shop" under a valid licence for selling liquor was ordered by Senior Inspector of Police, Police Station, Ajani, Nagpur on 3-2-2007, not to open his shop until further orders. Senior Police Inspector informed the petitioner that the petitioner was attempting to open a shop at a place which was surrounded by statue of Dr. Babasaheb Ambedkar, a charitable dispensary and a playground. The notice recites that opening of a liquor shop at that place has created discontent among the citizens which was likely to escalate into agitation. Senior Police Inspector, therefore, ordered u/s 142 of the Bombay Prohibition Act that petitioner should not open his shop until further orders.

3. The petitioner contends that after complying with the stringent requirement for obtaining licence to run a liquor shop the petitioner has been granted licence to run the shop at a particular place. Respondent No. 3 was not competent to issue an order closing the petitioner's shop for unlimited period. The petitioner contends that in fact it was for the respondent to protect the petitioner when the petitioner's shop was vandalised. The petitioner states that another wine shop is situated at a distance of 400 mtrs. and therefore, the petitioner believed that

rival businessmen were behind the move to close down the petitioner's business. The petitioner contends that power u/s 142(2) of the Bombay Prohibition Act could not have been exercised in the present case and therefore, seeks quashing and setting of the said order.

4. On behalf of respondents No. 2 and 3 an affidavit in reply has been filed to support the impugned action. It was stated that in the year 1998 one Tarachand Sahare had committed suicide before Dr. Ambedkar's statue at Trisharan Square and that it was well known means of protest of the people of that locality. The respondents have also filed on record a number of representations received opposing the opening of said shop.

5. The petitioner filed rejoinder reiterating that apart from Kisanlal Wine Shop, which was 400 mtrs from the petitioner's shop, there were about six Country Liquor licences and four wine shops and ten Beer Bars operating within the jurisdiction of Ajani Police Station. The petitioner reiterated that the question of location of shops is to be decided by the Superintendent, State Excise, who is the competent authority under the Bombay Prohibition Act.

6. We have heard learned Advocate for the petitioner and learned A.G.P. for the State.

7. The petitioner is right in contending that the question as to whether the liquor shop should be permitted to be opened at a particular place can be decided by the authorities in the Excise Department after considering the requirements under the Rules. Clause (2) of Section 142 which has been invoked by respondents No. 2 and 3, reads as under:

142. Power of Collector to close places where intoxicant or hemp is sold in certain cases:

(1) ...

(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.

8. It is clear from reading of the clause that a police officer who is present when a riot or unlawful assembly is imminent he could direct that the place where intoxicant are sold be closed and kept closed for such a period as he thinks fit. Bare reading of the aforesaid clause would make it clear that such closure is obviously for the period during which the riot or unlawful assembly is felt to be imminent. Therefore, Clause (2) of Section 142 does not empower the Police Officer to direct the holder of a valid liquor vending licence to close his business for an indefinite period. Objections of the citizens to location of the shop can be dealt with appropriately by Excise Authorities while granting vendor's licence u/s 34 of the Bombay Prohibition Act.

9. In view of this, we find that the impugned notice dated 3rd February, 2007 is in excess of powers vested in the Police Officer u/s 142(2) of the Bombay Prohibition Act and is therefore, quashed and set aside.

10. Rule is made absolute in the above terms. In the circumstances, parties shall bear their own costs.