

(2021) 10 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No.4918 Of 2021

Devram Sawleram Mundhe & Ors

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Bombay Foreign Liquor Rules, 1953 — Rule 45(1)(c)
Maharashtra Prohibition Act, 1949 — Section 37(2), 138

Citation : (2021) 10 BOM CK 0051

Hon'ble Judges : G. S. Kulkarni, J

Bench : Single Bench

Advocate : P.N. Joshi, Milind Deshmukh, P.P. Kakade, C.D. Mali, Moinuddin M.Khan, M. Khan

Final Decision : Dismissed

Judgement

G. S. Kulkarni, J

1. Whether our educational institutions are so weak that they would fear that the students would get adversely affected, if there is a restaurant having a liquor licence in the vicinity of their schools, is an issue falling for consideration in this case. The discussion is quite intriguing.

2. Challenge in this petition is to an order dated 22 June, 2021 passed by the Principal Secretary, State Excise Department (for short, "the Revisional authority") by which the revision application filed by the petitioners against an order dated 30 March, 2021 passed by the Commissioner of State Excise, Maharashtra State, allowing the appeal of respondent no.3, arising from an order dated 19 November 2019 passed by the learned Collector, Pune whereby the learned Collector had rejected an application filed by respondent no.2, for shifting of the FL-III licence to another premises.

3. Respondent no.3 is holding a FL-III licence (for short "a liquor licence") which was initially granted to him for his hotel namely Hotel Moonlight, situated at

Village Barav, Tal. Junnar, District - Pune. He applied for transfer of the said licence from Village Padali Barav Grampanchayat to the limits of Junnar Municipal Council i.e. C.T.S. No.5087, situated at Junnar, Tal.Junnar, District-Pune. By an order dated 19 November 2019 passed by the Collector, Pune, the application of respondent no.3 came to be rejected on the ground that such transfer of the liquor licence cannot be permitted considering the objections which were raised by the petitioners who were running a school in the vicinity of the place where the licence was intended to be transferred, and that granting such a transfer would lead to an impending law and order situation. Although the rejection was purely on the basis of an apprehension of some law and order situation, there are some significant observations as made by the Collector in that regard. The first observation is the comment on the enquiry which he had ordered on such application and the enquiry officer submitting a report dated 30 March 2019 after visiting the site in question. The report states that the distance between the main entrance of the petitioners' educational institution and the place where the transfer of the licence has been sought was about 450 metres. He also observed that at the time when such a proposal for transfer was made, on the north-west side of the compound wall of the petitioners' educational institution, no gate was noticed. However, he observed that when the inspection was undertaken on 27 August, 2019, it was noticed that a gate was installed on the north west side of the compound. He reported that even the distance between the said new gate and the premises of respondent no.3 was about 144 metres as also the aerial distance was about 95 sq. mtrs. The report further observed that at the distance of 375 sq. mtrs. from the main entrance of the petitioners' educational institution, there already existed a hotel namely "Hotel Anand" and that hotel owner was also holding a similar licence for the last 10 to 12 years. The report also records that the petitioners' educational institution had not raised any objection whatsoever in respect of the said hotel. The report records that considering the provisions of Rule 45(1)(c) of the Bombay Foreign Liquor Rules, a distance of 75 meters was required to be maintained, and as per the provisions of the said Rule, a licence could be granted to the owners of the restaurants even though the distance between the restaurant and the compound of the School or the religious institution was more than 75 meters. However, the Collector only on the objections as raised by the petitioners, other residents, and the member of the Parliament from Shirur Lok Sabha constituency, a local MLA and one Adivasi Shikshan Sanstha, Junnar, on the ground that there is a likelihood of a law and order problem, rejected the prayer of transfer of licence.

4. Respondent no.3 being aggrieved by the said order passed by the Collector rejecting his application for transfer of the licence, approached the appellate authority being the Commissioner of State Excise, Maharashtra State as provided for under Section 37(2) of the Maharashtra Prohibition Act. The appellate authority considering the provisions of the rules observed that the distance from the educational institution and respondent no.3's premises was 144 meters from the nearest gate, by which ordinarily a pedestrian would take the nearest path to

reach. It was also observed that the Collector had in fact considered that the distance from the main gate of the educational institution of the petitioners to the premises of respondent no.3 was mentioned as 450 meters and that for a functioning FL-III licence, the required distance was 375 meters. It was observed that there was no assessment or any material from the police department that there might be a law and order situation. Also before the hearing of the appeal, the petitioners' educational institution filed a complaint with the Commission for Scheduled Tribe Central Authority, against respondent no.3 stating that if respondent no.3's licence is allowed to be functional, it would cause violation of tribal rights. The said institution also filed complaints with several other authorities including some central authorities. It was observed that even after the hearing was concluded, the office of the appellate authority received a letter from the Commission for Scheduled Tribe asking for the decision on the appeal to be given immediately. The appellate authority/Commissioner, taking into consideration the provisions and the report of the inspection which was on the record of the Collector, as also considering that there is no challenge whatsoever to the report and the observations as made in regard to the distance, set aside the order passed by the Collector which was made on grounds falling outside the rules, and allowed the shifting/transfer of the said licence.

5. The petitioners being aggrieved by the order passed by the appellate authority filed a revision before the Principal Secretary (State Excise Department) under section 138 of the Maharashtra Prohibition Act, 1949. The revisional authority, considering the fact that there already existed a restaurant at the distance of 375 meters and that the distance between the petitioners' institution and the premises of the respondent no.3 is much beyond the statutory distance of 75 meters, dismissed the petitioners' application which is subject matter of this writ petition.

6. Mr.Joshi, learned counsel for the petitioners in assailing the impugned order has two fold submissions. The first submission of Mr. Joshi is to the effect that there was an apprehension of the petitioners that if licence is transferred/granted to respondent no.3, there would be a law and order problem. He submits that in fact, a fresh police report is required to be called for to ascertain such position. Mr. Joshi's second contention is that this Court ought to appoint a Court Commissioner to actually verify the distance between the two premises namely the petitioners' institution and the premises of respondent no.3 as according to him, the inspector, who has undertaken the site inspection on 27 August, 2019, has not appropriately undertaken the measurement. It is his submission that if such a fresh exercise is undertaken, certainly it would reveal that the distance between the petitioners educational institution and the premises of respondent no.3 is less than 75 meters. It is his submission that such course of action was adopted by the Court in the case of *Vikrama Shama Shetty Versus State of Maharashtra and others*(2006) 6 Supreme Court Cases 70.

7. On the other hand, Mr.Mali, learned AGP supports the impugned order. He

submits that the Commissioner of State Excise, Maharashtra State is the revisional authority who has considered the factual materials on record. He submits that the impugned order passed by the appellate authority as also the revisional authority are in accordance with law and rule 45(1)(c) of the Bombay Foreign Liquor Rules. He submits that no interference of this Court in the writ proceedings is called for.

8. Having heard learned counsel for the parties and having perused the record, I am not persuaded to accept any of the limited submissions as made by Mr. Joshi. It appears to be very clear from the order passed by the Collector, that although he categorically observed the distance of the petitioners' educational institution and the premises of the respondent no.3 to which the licence was sought to be transferred, was more than 450 meters as also the distance between the new gate of the petitioners educational institution and the premises of respondent no.3 was also about 144 meters, he nonetheless rejected the application of respondent no.3 to transfer the license. The Collector also observed that there was already a hotel namely 'Hotel Anand' at the distance of 375 meters from the school. The petitioners never objected to the said hotel. Thus the requirements of the said rules stood totally complied. However despite this, only on the issue of 'law and order' situation and considering the representations made by the member of the parliament and other MLAs, the transfer application of respondent no.3 came to be rejected by the Collector. Such reasons as set out by the Collector were completely outside the purview of the rules as also were unsupported by any materials on record. Such reasons appear to have been given by the Collector on apparent political pressure brought on him, as seen from the nature of the complaints made and the persons who made such complaints. In my opinion, the appellate authority namely, Commissioner of State Excise has appropriately considered the clear position in law as required by the rules who passed a well reasoned and detailed order. The Commissioner in doing so, did not succumb to any political pressure. I thus find substance in the contention as raised on behalf of respondent no.2 that the appellate authority as also the revisional authority have taken into consideration the report which was undisputed to consider that the distance between the petitioners' educational institution and the premises of respondent no.3, where the licence was sought to be transferred was as per the requirement under the said rules. The petitioners' contention before this Court in fact is a contention which is opposed to the rule itself. Rule 45(1)(c) provides that the distance to be maintained should be upto 75 meters and that the licence be not granted within 75 meters of any educational or religious institution inter-alia the educational institution of the petitioners. Although the observations were made by the Collector taking into account the inspector's report setting out distance of 450 meters as also distance of 144 meters by the pathway of the new gate, and the aerial distance of about 95 sq. mtrs., which could be the only relevant factors to be considered applying such statutory rule, the petitioners never objected to these observations, nor did they assail the report of the Commissioner. When such findings were made by

the Collector, admittedly the respondent no.3 had a good case on facts and law before the appellate authority against the orders of the Collector. In fact the Collector's order laid down a strong factual foundation to respondent no.3's case in appeal. Even in the revision application as filed on behalf of the petitioners a copy of which, although was not annexed to the petition and is tendered across the bar, by Mr. Joshi during the hearing, it appears that there is no ground taken that the report of the inspector is not an appropriate report and/or that the site report which was on record of the Collector ought not to be considered. The petitioners, it appears, were quite certain of their success before the Collector, hence, despite the fact that the inspection report was against them, they did not take any steps to challenge and set aside the same, at the first possible opportunity. Thus Mr. Joshi's submission that a Commissioner be appointed by the High Court to have a fresh inspection cannot be accepted. The Court would certainly not aid the petitioners in collecting evidence.

9. Admittedly there is no ground to assail such findings of fact, which cannot be reopened before the writ court in the absence of anything to indicate perversity of these findings. None of the grounds as raised by the petitioners in the revision application inspires any confidence that the same ought to have weighed with the revisional authority to take a different view than what the appellate authority had decided in the revision.

10. Mr.Joshi's reliance on the decision of this Court on Vikrama Shama Shetty's case (supra) is wholly misplaced, as the facts of the said case are completely at variance with the facts of the present case. In the said case the only issue which fell for consideration was as to whether there was compliance of the statutory distance to be maintained between the petitioners' educational institution and the premises of the respondent no.3 where the licence was sought to be transferred. Perusal of paragraph 4 of the decision would indicate that in the facts of the said case, the Commissioner of Police had raised an objection to the grant of licence on the ground that there was a religious institution namely a mosque within 60 metres from the restaurant. The Court Commissioner appointed by this Court submitted a report that there were two entrances to the mosque which were within the mandatory distance of 75 metres. Looking at this report, a learned Single Judge of this Court dismissed the writ petition filed by the licensee. The order passed by the learned Single Judge was also confirmed by the Division Bench of this Court and later on by the Supreme Court in dismissing the special leave petition.

11. In so far as Mr. Joshi's contention on the law and order situation is concerned, it appears to be a total figment of imagination of the petitioners as there is no material from the police department to that effect as concurrently observed by the appellate and the revisional authorities. The petitioners hence have failed on both the issues as urged by Mr. Joshi.

12. In the present facts, the petitioner's institution ought not to have formed such opinion that the education being imparted by their educational institution

was so fragile that the students would get easily influenced by a restaurant serving liquor in the vicinity. This for two fold reasons. Firstly, this educational institution was never bothered about a similar restaurant having a liquor licence functioning in the vicinity since last 10 to 12 years. Secondly and most importantly, if the quality of learning and inculcation of moral values in the children is to be of a standard, as what the 'Father of the Nation' intended to imbibe in our citizens, then the petitioner's institution ought not to have worried at all, about any student being adversely affected, by any such place in the vicinity of the school. In my opinion, it would be more imperative for educational institutions to create students with strong moral values so as to prepare them to face tougher journeys and challenges in life. An educational institute certainly contributes in creating ideal citizens. Human virtues and morals can never remain the same. It is thus more important that an endeavour of an educational institution should be to impart such education, so that the basic human values and good virtues are inculcated in the students, to make them ideal citizens. It is an onerous obligation for an educational institution to devote itself in building a robust society by imparting creative education at the school level which ought not to be overlooked. It is thus a sincere hope, that these words fall on the receptive ears of the institution and the institution creates a situation for itself, that it would feel proud of its students.

13. For the aforesaid reasons, I do not find any merits in the present case. It is, accordingly, rejected. No costs.