

(2016) 08 BOM CK 0163

In the Bombay High Court

Case No : Writ Petition No. 5769 of 2015 with Civil Application Nos. 6865, 7911, 15265 of 2015 and 10021 of 2016

Manish Ramesh Nagrani

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Citation : (2017) 1 MhLJ 850

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Shri. Anil Kasliwal (Jain), Advocate, for the Petitioners; Shri. A.R. Rathod, Advocate, for the Respondent No. 5; Shri. S.N. Kendre, Assistant Government Pleader, for the Respondent Nos. 1 to 4

Final Decision : Dismissed

Judgement

T.V. Nalawade, J. - The petition is filed under Articles 226 and 227 of the Constitution of India to challenge the orders dated 6-4-2015 and 25-5-2015 made by the Collector to take voting, go for election, on the basis the report given by the villagers to close country liquor shops of the petitioners. Both the sides are heard.

2. The petitioners are having licences to run country liquor shops in village Kurha, Muktainagar, District Jalgaon. It is CL III licence. In the Gram Sabha dated 25-1-2015 of this village resolution was passed by the villagers for closing down the country liquor shops from the village. Respondent No. 5, a social worker, gave separate representation of the villagers for closing the shops. After making necessary inquiry and after making verification as required in the procedure given in the Government Orders viz. "The Bombay Prohibition (Closure of Licence on Resolution by Gram Sabha or Representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008 as amended by the Order dated 12th February 2009, the order is made by the Collector.

3. In the Gram Sabha 370 female voters were present. The Block Development Officer gave report after making inquiry that the procedure for holding the Gram Sabha was not followed and so on the basis of the resolution of the Gram Sabha it is not desirable to take action. In view of this report, the Collector has not issued order on the basis of the resolution of the Gram Sabha and the order is made on the representation given by the villagers.

4. Inspectors of the Excise Department did the verification for the identification of the persons who had put signatures or thumb impressions on the representation. The record of the verification shows that there are 5637 voters in the village and they consist of 2748 female voters and others are male voters. During verification, 750 male voters and 927 female voters showed the record of identity like identify card issued by the Election Commission or Aadhar Card. This figure is more than 25% of the female voters. Further, the total number of female and male voters who had given signatures or thumb impressions on the representation was also more than requisite number of the total voters. In view of this record of verification, the first order was made by the Collector on 6-4-2015.

5. In notice given through Advocate by the present petitioners request was made to the Collector to give hearing before taking the election. The record shows hearing was given, each and every grievance of the petitioners was addressed by the Collector and by order dated 25-5-2015 the Collector held that there was no reason to review the previous order made on 6-4-2015. Thus, the application made by the present petitioners is rejected by the Collector.

6. Learned counsel for the petitioners placed reliance on a case reported as 2012(5) Mh.L.J. 81 (Satish v. State of Maharashtra). The facts of the reported case show that, the order made was of the year 1994. There are two Government Orders of the State Government issued on 25th March 2008 and 12th February 2009, (already quoted) and as per these Government Resolutions, the orders are made by the Collector in the present matter. These Government Orders are issued on the basis of policy decision of the State Government. The policy of prohibition can be found in Article 47 of Constitution of India and the Maharashtra Prohibition Act, 1949. In view of these circumstances and as case of Satish was decided prior to the date of issue of aforesaid two Orders, the observations made in the case of Satish (supra) by this Court need not be considered.

7. Relevant portions of the Order of 2008 and the Order of 2009 giving procedure for election are as under :-

3. Resolution by Gram Sabha for closing down liquor shop:-

(1) The Collector shall close down such liquor shop if not less than fifty per cent of the total voters or women voters present in the Gram Sabha pass the resolution by a simple majority for closing down the liquor shop. Any such resolution shall be passed in accordance with the Bombay Village Panchayats Act,

1958 (Bom.III of 1959) and rules made thereunder. The voters shall produce their photo identity before the Gram Sabha for verification as the voter is resident of the same village. If photo identity is not produced, under such circumstances the Secretary of Panchayat shall certify regarding the bona fide of voters. The voters, those produce such proofs, shall be allowed to participate in Gram Sabha.

(2) The verification of voters shall be done by the Block Development Officer along with the Inspector of State Excise of the area. The Gram Sabha shall be held in the presence of these two officers and representative of the liquor licence holder. There shall be video shooting of such Gram Sabha and said shooting shall be used as an evidence.

(3) The Collector shall not take into consideration the resolution passed by the Gram Sabha for reopening of shop at least one year from the date of passing resolution for closure of the shop. If the Gram Sabha fails to pass the resolution for closure of liquor shop then at least one year, Gram Sabha shall not pass any such resolution for closure of shop.

4.

5. Time for completion of action on resolution under clause (3) or representation under clause (4) received:- After receiving the resolution by Gram Sabha under clause (3) or representation from ward of Municipal Council or Corporation under clause (4) above for closing down the liquor shop, the Collector shall complete the necessary final action within three months from the date of receipt of such resolution or representation. If for any reason action is not completed within a period of three months, the Collector shall obtain prior permission from the Commissioner of Prohibition and Excise as appointed under the Bombay Prohibition Act, 1949, for extending the period."

By Order dated 12th February 2009, following portion is inserted in the aforesaid Order, 2008 :-

(a) after clause 3, the following clause shall be inserted, namely:-

"(3A) If, not less than Twenty-five per cent of the women voters or total voters in any village give a representation in writing to the concerned Superintendent of State Excise and demand to close down the liquor shop in a village, such application shall be verified by the Superintendent of State Excise. After verification of authenticity of signature on the representation and its genuineness, the Collector shall direct the concerned Tahsildar, to take secret poll fearlessly by utilizing a specimen ballot paper appended herewith. Thereafter, the concerned Tahsildar shall declare place, date and time of election at least seven days in advance. The latest list of voters shall be used for such election. The election process of voters of that concerned village shall be completed by secret ballot under the supervision of the concerned Tahsildar or an Officer not below the rank of Naib Tahsildar, authorised by him. The representative of

Superintendent not below the rank of Inspector of State Excise and the liquor licensee shall be allowed to remain present during the poll. If, in such election more than fifty per cent of the women voters or total voters of the concerned village vote for closing down the liquor shop, the Collector shall pass an order for closing down such liquor shop.

(b) in clause 5, -

(i) in the title, for the words, brackets and figure "or representation under clause (4) received" the words, brackets and figure "or representation under clauses (3A) and (4) received" shall be substituted;

(ii) for the words, brackets and figure "representation from ward of Municipal Council or Corporation under clause (4)", the words, brackets and figure "representation from Village or ward of Municipal Council or Corporation under clauses (3A) and (4)" shall be substituted;

(c) In clause 9, for the words "Name of the ward in case of Municipal Corporation/Municipal Council", the words "name of the Village or word in the case of Municipal Corporation./Municipal Council", shall be substituted.

8. In the case reported as (1996) 3 SCC 709 = AIR 1996 SC 1627 (State of AP v. McDowell & Co) it is laid down by the Apex Court that ban on manufacture, production of intoxicating substance like liquor within the State is not in violation of Article 14 or Article 19(1)(g) of the Constitution of India. So there is no right at least constitutional right to persons like the petitioner to say that during licence period they are entitled to do such business without interference of anybody. Provisions of Section 54 and 56 of the Maharashtra Prohibition Act 1949 show that there is power given to the authority/State to cancel the licence. It can be said that the provision of section 56 shows absolute power of the authority / State to cancel the licence without giving any reason. It runs as under :-

"56. Cancellation for other reasons : (1) Whenever the authority granting a licence, permit, pass or authorization considers that it should be cancelled for any cause other than those specified in section 54, he may cancel it either --

(a) on the expiration of not less than fifteen days" notice in writing of his intention to do so, or

(b) forthwith without notice, recording his reasons in writing for doing so.

(2) Where a licence, permit, pass or authorization is cancelled under sub-section (1), a part of the fee for the licence, permit, pass or authorization proportionate to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or authorization shall be refunded to him after deducting any amount due from him to the State Government."

This provision is in consonance with the directive principles of the Constitution of India. The Prohibition Act, the aforesaid Government Orders and further action on the basis of Government Orders are in accordance with provisions of

Constitution. Thus it is the policy decision of the State that if people desire that the sale of liquor needs to be banned in their village or ward, such resolution needs to be enforced by the Collector/ State Government. The procedure given in these Government Resolutions show that transparency is required to be maintained and no room is kept to have the grievance.

9. Learned counsel for the petitioners placed reliance on the case reported as 1975 Mh.L.J. 515 (SC) (Ramchandra v. Govind). On the basis of the observations made in this case by the Apex Court learned counsel submitted that the necessary procedure was not followed and so the order cannot sustain in law. It is submitted for petitioner that when the Superintendent was expected to do verification for authenticity of the signatures or thumb impressions appearing on representation, the Inspector of the Excise Department did the verification and so further orders are illegal. This submission is not at all acceptable. The provisions of the Act show that the officers appointed under the Act are to work under the directions of the Collector and the services of the Superintendents and other staff are to be used by the authority like Collector. Subjective satisfaction of the authority about verification is involved in such matters and so when the Collector makes order on the basis of the verification, it needs to be presumed that there is compliance of the procedure. The details of the verification are already quoted. In view of these circumstances, this Court holds that there is no force in the contentions made by the learned counsel for the petitioners that only the Superintendent of Excise ought to have made verification. The Court is not expected to interfere lightly in the orders made by the authority when order involves subjective satisfaction. There is material on the record for subjective satisfaction.

10. Considering the policy of the State and the right of the people in asking to implement total prohibition there was no other option before the Collector than to direct the election by secret poll. Thus it cannot be said that the order of the Collector is illegal. In any way, there is no possibility of interference in the order made by the Collector. In the result, the petition stands dismissed. All the civil applications are disposed of. Result of the voting is to be declared forthwith. The learned Assistant Government Pleader to inform the authority.