

(2024) 05 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 6389 Of 2024

Navi Mumbai Hotel Owners Association And Others	APPELLANT
Vs	
District Collector And Others	RESPONDENT

Date of Decision : 03-05-2024

Acts Referred:

Maharashtra Prohibition Act, 1949 — Section 142
Representation Of The People Act, 1951 — Section 135C

Citation : (2024) 05 BOM CK 0010

Hon'ble Judges : A. S. Chandurkar, J; Jitendra Jain, J

Bench : Division Bench

Advocate : R. D. Soni, Sujay Gawade, Sumedha Dhopate, Mudita Pawar, Manasi Sawant, Rekha Keni, N. C. Walimbe, T. N. Bhatia, R. R. Kole

Judgement

1. Rule. Rule made returnable forthwith, by consent of the parties.
2. The challenge raised in this Writ Petition is to the order dated 2nd April 2024 that has been issued by the Collector (State Excise). By the said order issued in exercise of powers under Section 142 of the Maharashtra Prohibition Act, 1949 (for short "the Act of 1949"), a prohibition has been imposed on the operation of licenses issued under the Act of 1949, in view of the ensuing parliamentary elections. The grievance of the Petitioners is that insofar as the District of Raigad is concerned, there are two Lok Sabha constituencies of Maval and Raigad within the said District. In the Lok Sabha constituency-Maval, the Vidhan Sabha Constituencies of Panvel, Karjat and Uran are included. Insofar as Lok Sabha constituency-Raigad is concerned, Vidhan Sabha constituencies of Pen, Alibagh, Shrivardhan and Mahad are included.
3. According to the learned counsel for the Petitioners, the impugned order seeks to restrict the operation of such licenses for the entire Raigad District ignoring the provisions of Section 135-C of the Representation of the People Act, 1951 (for short "the Act of 1951"). Under the said provision, it is only in the polling area that the sale of liquor is prohibited. Since the impugned order is excessive

in nature, it is submitted that its operation deserves to be restricted in terms of Section 135-C of the Act of 1951. Secondly, it is urged that the period for which the prohibition should apply has not been indicated in the impugned order. Referring to the order dated 29th October 2021 passed in Writ Petition No.12201 of 2021 (Nanded Zilla Madya Vikretasanghatana, through its Authorised Signatory/CL III License\ Holder Vs. The State of Maharashtra & Anr.), at the Aurangabad Bench, it is submitted that such prohibition ought to operate only till the time the polling is completed. It is, therefore, submitted that the impugned order deserves to be modified accordingly.

4. The learned Additional Government Pleader supported the impugned order and submitted that the exercise of the powers conferred by Section 142 of the Act of 1949, there is no reason to interfere with the said order.

5. Having considered the rival submissions, we find that the impugned order operates far beyond the area of what is contemplated under Section 135-C of the Act of 1951. The prohibition prescribed under Section 135-C is only for the polling area and not beyond it. It is true that Section 142 of the Act 1949 empowers the Collector to close a place where any intoxicant is sold but, the exercise of such power in the present situation ought to be guided by Section 135-C of the Act, 1951. This is for the reason that the power under Section 142 of the Act 1949 is being exercised in the present case only in view of the parliamentary elections. Similarly, this Court has already held in Nanded Zilha, Madya Vikretasanghatna (supra) that beyond the polling hours, such prohibition cannot operate.

6. In view of aforesaid, the following order is passed:-

(i) The order dated 2nd April 2024 issued by the Collector is partly modified. Insofar as the prohibition for sale of liquor in Raigad Lok Sabha constituency is concerned, the same would operate in the Vidhan Sabha Constituencies of Pen, Alibagh, Shrivardhan and Mahad from 5:00 p.m. on 05.05.2024 till end of polling on 07.05.2024 and thereafter on 04.06.2024 till the declaration of results.

(ii) Insofar as Maval Lok Sabha constituency is concerned, the prohibition for sale of liquor would operate in Vidhan Sabha Constituencies of Panvel, Karjat and Uran from 5:00 p.m. on 11.05.2024 till end of polling on 13.05.2024 and thereafter on 04.06.2024 till the declaration of results.

(iii) Rule is made absolute in the aforesaid terms with no order as to costs.

(iv) Parties to act on an authenticated copy of this order.