
(2017) 09 BOM CK 0098
In the Bombay High Court
Case No : 11782 of 2017

Parbhani Jilla Daru Vikreta Sanghatana, Parbhani, Through its President, Shri Chandraprakash Chetanram Sangtani

APPELLANT

Vs

The State of Maharashtra, Through the Principal Secretary (State Excise), Mantralaya, & Ors.

RESPONDENT

Date of Decision : 29-09-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Bombay Prohibition Act, 1949, Section
142(1), Section 142 -
(C

Citation : (2017) 09 BOM CK 0098

Hon'ble Judges : R.M. Borde, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : Vikram S. Undre, A.B. Girase, S.P. Sonpawale

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. Present petition has been filed by the Petitioner Association to challenge order passed on 18-09-2017 by respondent No. 3 under Sec. 142 (1) of Mumbai Prohibition Act (for short the said Act) issuing direction to keep all the liquor shops closed on 22-09-2017, 30-09-2017 and 1-10-2017.
3. Members of the Petitioner Association hold licences to sell liquor. They are operating in Parbhani district. The Association received a communication on 21-09-2017 from respondent No. 3 informing that a decision has been taken by him on the basis of letter from Superintendent of Police, Parbhani that all the licence holders of the district should keep their shops closed i.e. they shall not transacted any transaction on 21-09-2017, 30-09-2017 and 1-10-2017; which are the days on which Mohurrum starts, Dashehara and Mohurrum respectively.

It has been submitted that the said order is illegal. No date has been mentioned on the order. No reason has been assigned for exercise of the said power. Every public festival will not create law and order problem. Hence, the petition has been filed invoking writ jurisdiction of this Court under Art. 226 of the Constitution of India for quashing the said order.

4. Heard learned Counsel Shri. V. S. Undre for Petitioner and learned G. P. Shri. Girase for respondent No. 1 to 5. Perused the documents on record. Matter is taken up for final disposal with consent of both the parties, taking into consideration the controversy involved. Rule. G. P. waives service for respondent No. 1 to 5.

5. It has been argued on behalf of Petitioner that the impugned order is illegal. There was no circumstance giving rise to law and order problem, which prompted respondent No. 5 to make application to respondent No. 3. Respondent No. 3 has not given any reason while issuing directions to close the shops on the said dates. Proper procedure has not been followed before issuance of said order. He pointed out the relevant provisions and submitted that the order cannot be sustained in law. He has placed reliance on the decision in Maharashtra Wine Merchants Association v/s. State of Maharashtra and Ors. reported in 2006 (6) All. M. R. 682 : 2007 (1) AIR (Bom R) 46; wherein Collector cannot pass any order under Sec. 142 of the said Act mechanically.

6. It has been pointed out by the learned Government Pleader that the impugned order has been passed under Sec. 142 (1) of the said Act, after it was informed by respondent No. 5 that there is likelihood of riots. That apprehension was based on the experience in the past. The said order was published in the local news papers.

7. Sec. 142 (1) of the said Act prescribes that if the Collector is of the opinion that it is in the interest of the 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 licence 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. According to respondents the order has been passed taking into consideration the apprehension about law and order situation on the said dates. This apprehension is stated to be based on the experience in the past. Such situation is not contemplated under Sec. 142 (1) of the said Act. It has been not been demonstrated that there was concrete information with respondent No. 5 about the riots on those festival days. Mere speculation on the basis of some experience in the past cannot prompt such action. Further, if consider the wordings in the above provision, we can see that the opinion of the Collector requiring for the closer of the shops where intoxicant or hemp is sold cannot extend to entire district. Word "any place" used in the section cannot be interpreted to include entire district. Therefore, we are of the opinion that the reason for passing the impugned order was not in the interest of the public peace, without any concrete evidence before him. It has been observed in the

above said decision that, "The power granted under subsec. (1) of Sec. 142 to order closure of a shop selling liquor or a permit room can be exercised not at the fancy of the Collector, but only if the Collector is satisfied that it is necessary to do so in the interest of public peace. The opinion that it is necessary so to do in the interest of public peace must be formed by the Collector himself and not by somebody else". Here it appears that respondent No. 5 was of the said opinion and therefore, he had made that request. However, without verifying the contents, it appears that respondent No. 3 has passed the impugned order. The order appears to have been passed mechanically passed, hence, cannot be allowed to be sustained.

8. Another point that has been raised by the Petitioner is also required to be considered. It has been contended that the requisite procedure has not been followed after the impugned order was passed. Rule 26 of The Maharashtra Country Liquor Rules, 1973 deals with closure of shops. Rule 9A of The Maharashtra Foreign Liquor (Sale on Cash, Register of Sales, etc) Rule 1969 deals with Vendor's licence. The relevant provision for our purpose is Rule 26 (1) (d) of The Maharashtra Country Liquor Rules, 1973 which is as follows:

"26. (1) No licensed shop be kept open for the sale of country liquor on,

(a)-----

(b)-----

(c)-----

(d) Such special occasions and in such area as the Collector may, after giving notice of not less than seven days in the official Gazette and in any local newspaper having wide circulation in such area specify in this behalf".

Rule 9A (2) (d) of The Maharashtra Foreign Liquor (Sale on Cash, Register of Sales, etc) Rule 1969 is as follows:

"9A. (2) No licensed premises in respect of which any such has been granted shall be kept open for the sale of foreign liquor on,

(a)-----

(b)-----

(c)-----

(d) Such special occasions and in such area as the Collector may, after giving notice of not less than seven days in the official Gazette and in any local newspaper having wide circulation in such area specify in this behalf".

9. Thus, it is to be noted that the wordings of the relevant subsections is the same. The relevant rules provide that the Collector should give notice of not less than seven days before any order is passed. Here the order which was served on Petitioner did not bear any date. Respondents have contended that the said order

was passed on 18-09-2017. The news item has been published, but it can be seen from the communication between District Information Officer to respondent No. 3 that the said news has been published in the news papers on 27-09-2017. That means the said notice was not published prior to 22-09-2017, which day was included in the order. We cannot now segregate the date for subsequent period as the direction for closure of the shops for three different dates was given by the said single order.

10. Another point is that the subsection requires that the notice should be given "in official Gazette and in any local newspaper". The word used is "and", therefore, notice should be given by both the modes. Here in this case, there is no evidence produced by respondents that the notice has been given for publication in the official Gazette also. Therefore, the procedure laid down in both the above rules is not adhered to. On this count also the said impugned order will have to be quashed. We therefore, proceed to pass following order: Order

(i) Writ petition is hereby allowed.

(ii) The impugned order dated 18-09-2017, passed by respondent No. 3 - District Collector, State Excise Department, Parbhani is hereby quashed and set aside.

(iii) Rule made absolute in the above terms. In the circumstances of the case, no order as to costs.