

(2017) 03 BOM CK 0281
In the Bombay High Court
Case No : 2697 of 2017

Vithal Mallu Chintalwar, & Anr.

APPELLANT

Vs

The State of Maharashtra Through Excise Department,
Mantralaya, Mumbai, & Ors.

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

[Bombay Prohibition Act, 1949](#), [Section 142\(2\)](#) -

Bombay Prevention (Closure of licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008, Rule

Citation : (2017) 03 BOM CK 0281

Hon'ble Judges : S.B. Shukre

Bench : SINGLE BENCH

Advocate : Anil H. Kasliwal, S.R. Yadav (Lonikar)

Final Decision : Allowed

Judgement

1. Heard Mr. Anil H. Kasliwal, learned Counsel for the petitioners and Mr. S.R. Yadav (Lonikar), learned AGP who appeared for the respondents on last date by waiving notice.

2. Rule. Rule made returnable forthwith and heard finally by consent.

3. The petitioners, who possess FL-3 license and run them through their vends situated at village Shahapur, in September, 2016, faced ire of women villagers, who made a complaint to the Collector for closing down of the liquor vends or the shops of the petitioners on the ground that they are the root cause of the sufferings of women and children of the village, because of the menace of the irresponsible drunkards of the village. As required under the Rules, an enquiry was conducted, but it was found that the signatures and the thumb impressions appearing on the representation of the women agitators could not be verified in the enquiry and ultimately the enquiry was required to be closed. This action provoked further the women villagers and they assembled at a prominent place

in the village and started making violent protest. Fearing creation of the law and order problem, the Sr. Police Inspector, Police Station, Degloor by his order passed on 31.01.2017, closed the liquor vends under section 142(2) of the Maharashtra Prohibition Act, 1949 (for short "Act of 1949"). By this order, the liquor shops were closed down until further orders. This order was confirmed by the Collector, Nanded - respondent No.2, by his order passed on 17.02.2017. Being aggrieved by these orders, the petitioners are before this Court in the present writ petition.

4. Respondent Nos. 2 and 3 have filed a detailed reply. On its perusal, it becomes clear that although initially enquiry was undertaken on representation received from women agitators, in terms of Rules 3,4 and 5 of the Bombay Prevention (Closure of licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council/Corporation) Order, 2008 (for short "Rules of 2008") enquiry could not be taken to its logical end as verification process itself disclosed that requisite number of women voters had not signed the representation. However, the reply further shows that there was extreme unrest among the women agitators and situation was likely to turn for the worse, the authorities considered it expedient to control the situation by exercising powers under section 142(2) of the Act of 1949. This is how the impugned order has been passed initially by respondent No.4 and later on confirmed by respondent No.2. As the order has been passed under section 142(2) of the Act of 1949, it would be necessary to first consider the nature of powers vested by this section in the Collector to close down the liquor shop. This section reads as under :

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

"(1) If the Collector is of opinion that it is in the interest of 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.

(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 Subsection (1) shall himself close such place.

(3) Any order given under this section shall be final"

5. It is obvious that the power vested in the Collector is for the purpose of meeting some unforeseen situation where there is likelihood of disturbance of public peace. Section 142(2) lays down that where an unlawful assembly is imminent or takes place, the Collector or the Police Officer present at the spot may direct closure of the liquor shop. This power so vested in the authority only enables them to control the situation of disturbance of public peace and therefore

it would have to be stated that the power by its very nature has a defined life span which is of limited period and confined to that period in which disturbance continues or is expected to die down. Such situation cannot exist for indefinite period of time. So the order passed in exercise of this power would also have to mention as to for what period of time, the order shall be in operation.

6. On going through the impugned order, one can see that the order closes down the liquor shops for indefinite period of time and no period is stipulated for the effect of the order to come to an end. As stated earlier, the authority must stipulate the period of time during which the order of closure of liquor shops shall be in operation. This requirement has direct nexus with the purpose of power conferred upon the authorities. But, it is not stated here. Therefore, on this count alone, I find that the impugned order is patently illegal and liable to be quashed and set aside. However, in such matters, it is also necessary for the Courts to take into account the present circumstances so as to hand out a practical justice. Learned AGP is not in a position to assist the Court regarding present state of affairs at the spot, but considering the fact that there are no fresh reports of rioting or gathering of crowds forming unlawful assembly, it can be presumed that the situation is now well under control.

7. In the circumstances, I am inclined to allow the present writ petition.

8. The writ petition is allowed. The impugned order dated 31.01.2017 passed by respondent No.4 is quashed and set aside. Further, the order dated 17.02.2017 passed by respondent No.2 confirming the order dated 31.01.2017 is also quashed and set aside. The shops be accordingly desealed.

9. Liberty shall always be there with the respondent - authorities to take appropriate action afresh in terms of section 142 of the Act of 1949, if occasion arises.

10. Authenticated copy of this order be furnished to both sides.