

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1430/2023

WINE SAMRAT, ITWARA CHOWK, YAVATMAL

..VS..

STATE OF MAHARASHTRA AND ORS.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Sahil Dewani, Advocate for the petitioner

Ms. N.P Mehta, Assistant Government Pleader for the respondents

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, J.J.

DATED : 06/03/2023

Rule. Rule made returnable forthwith.

2. Ms. N.P Mehta, learned Assistant Government Pleader waives service of notice for the respondents.

3. An order dated 02.03.2023 passed by the respondent no. 2 – District Collector, Yavatmal in exercise of the powers under Section 142(1) of the Maharashtra Prohibition Act, 1949 (for short the “Act of 1949”) declaring the District of Yavatmal as a dry District on 07.03.2023 in view of the festival of Holi is the subject of challenge in this writ petition.

4. The learned Counsel for the petitioner submits that the impugned order has been passed mechanically without considering the requirements of Section 142(1) of the Act of 1949. A similar order came to be passed by the District Collector, Amravati last year with regard to the same festival and that order was set aside in Writ Petition No. 1567/2022 (*Rahul S/o Babanrao Deshmukh Vs. The State of Maharashtra and anr.*) by observing that the Collector had failed to record any satisfaction that it was necessary to order the closure of liquor shops in the District in the interest of public

peace. The order impugned also does not indicate the same and except for the reference to likelihood of breach of peace, nothing further demonstrated. It is thus submitted that the impugned order is liable to be set aside.

5. The learned Assistant Government Pleader for the respondents has supported the impugned order by urging that power under Section 142(1) of the Act of 1949 has been exercised for *bonafide* reasons.

6. On hearing the learned Counsel for the parties, we find that the impugned order does not satisfy the requirements of Section 142(1) of the Act of 1949. This Court has held in paragraph no. 7 of the decision in ***Parbhani Jilla Daru Vikreta Sanghatana Vs. State of Maharashtra and others [2018(1) Mh.L.J. 343]*** that merely on the basis of speculation or past experience, the Collector cannot direct closure of liquor shops in the District. Satisfaction is required to be recorded that the same is necessary in public interest

It is clear that for recording such satisfaction, there has to be some material that is required to be considered by the Collector. However, the impugned order does not indicate reference to any such material. In fact, in the impugned order, there no reference to any communication being issued by the Police Authorities requiring 07.03.2023 be declared as a dry day and on this count the impugned order is found to be unsustainable.

7. Hence for the aforesaid reasons, the impugned order dated 02.03.2023 issued by the Collector, Yavatmal is set aside. It is however clarified that the Collector is not precluded from passing a fresh order in accordance with the provisions of Section

142(1) of the Act of 1949 with due application of mind and by disclosing cogent reasons.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

9. Parties to act on the authenticated copy of this order.

(M. W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)