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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION ST. NO. 10918 OF 2024**

1. Harpritsingh Bhupindersingh Hora,  
R/o. C-102, Quality Gardens, NIBM Road,  
Kondhava, Pune City, District; Pune.
2. Vijay Shankarlal Lalwani,  
R/o. Sindh Co-operative Society,  
Aundh Road, Pune, Dist: Pune. ... Petitioners

Vs.

1. The State of Maharashtra  
through the District Collector,  
State Excise Department, Pune.
2. Superintendent of State Excises, Pune. ... Respondents

**WITH  
WRIT PETITION ST. NO. 10971 OF 2024**

Sachin Suryakant Belagade  
R/o. House No. 200, Bazar Peth,  
Rahimatpur, Tal: Koregaon,  
District: Satara. ... Petitioner

Vs.

1. The State of Maharashtra  
through the District Collector,  
State Excise Department, Pune.
2. Superintendent of State Excises, Satara. ... Respondents

**WITH  
WRIT PETITION ST. NO. 10972 OF 2024**

Sanjay Marutrao Ingawale  
R/o. Village, Valwe, Taluka Radhanagari,  
District-Kolhapur. ... Petitioner

Vs.

1. The State of Maharashtra  
through the District Collector,  
State Excise Department, Pune.
2. Superintendent of State Excises, Kolhapur ... Respondents

Mr. Vikram S. Undre, for Petitioner (in all petitions)

Dr. Birendra B. Saraf, AG a/w Mr. P.P. Kakade, GP a/w/ Ms. S.D.

Vyas, Addl GP a/w. Mr. M.M. Pabale, AGP a/w. Mr. Jay Sanklecha,

B-Panel Counsel and Ms. Malaika Castellino for the Respondent-  
State.

**CORAM : A.S. CHANDURKAR &  
GAURI GODSE &  
RAJESH S. PATIL JJ.**

**RESERVED ON : 2<sup>nd</sup> AUGUST 2024**

**PRONOUNCED ON : 30<sup>th</sup> SEPTEMBER 2024**

**JUDGMENT (PER: GAURI GODSE J):**

1. In view of the opinion expressed by the Division Bench of this Court vide order dated 12<sup>th</sup> April 2024 (“the reference order”), passed in the aforesaid petitions, we are called upon to answer the question formulated for determination by a larger bench. The question for determination is regarding the interpretation of Section 142 (1) of the Maharashtra Prohibition Act, 1949 (**‘said Act’**). The question referred for our determination reads thus:-

“Whether the power of the Collector, under Section 142(1) of

the Maharashtra Prohibition Act, 1949, to close any place where any intoxicant or hemp is sold, would be confined to only one place, i.e. one shop or it would include the power to pass an order of closure of all places where intoxicant or hemp is sold in the entire district or parts of the district?”

**FACTS IN BRIEF:**

2. In all three petitions, separate orders passed by the District Collector to exercise the powers conferred under sub-section (1) of Section 142 of the said Act are under challenge. Learned Collector has suspended the FL-I, FL-II and FL-III, etc. licenses for one day, i.e. on 14<sup>th</sup> April 2024, on the occasion of Dr. Babasaheb Ambedkar Jayanti. The said orders passed on 8<sup>th</sup> April 2024 are challenged by the license holders in the aforesaid petitions. In all three orders, the learned Collector has opined that to avoid any untoward incident on 14<sup>th</sup> April 2024, during the celebration of Dr. Babasaheb Ambedkar Jayanti and to maintain law and order situation, the learned Collector found it fit to exercise power under Section 142 of the said Act to close the shops of the license holders on the day of Dr. Babasaheb Ambedkar Jayanti.

3. Learned counsel for the petitioners in support of the

petitioners' contentions to challenge the learned Collector's order relied upon the decision of the Division Bench of this Court in the case of *Parbhani Jilla Daru Vikreta Sanghatana, Parbhani Vs The State of Maharashtra and Ors*<sup>1</sup> and the decision of the Division Bench of this Court in the case of *Nitin s/o Nagoraoji Mohod & anr. Vs the State of Maharashtra & Ors*<sup>2</sup> and the decision of a Single Judge of this Court in *Maharashtra Wine Merchants Association Vs. State of Maharashtra and Others*<sup>3</sup>. Learned counsel for the petitioners mainly relied upon paragraph 7 of the judgment in the case of *Parbhani Jilla Daru Vikreta Sanghatna* ("the judgment under reference"). By referring to the petitioners' contentions, the Division Bench, while making the reference order, has opined in paragraphs 9 and 11 as under:

9. *Having heard learned Counsel for the parties, and having perused the provisions of Section 142 of the Act, prima facie we respectfully find ourselves not in agreement with the interpretation as placed on Section 142 by the Division Bench in Parbhani Jilla Daru Vikreta Sanghatana, Parbhani (supra), when, in paragraph 7 of the said judgment, the Division Bench has restricted the application of Section 142 only to a particular place or for that matter one shop or one licence. We are of the opinion that sub-section (1) and sub-section (2) of*

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1 2018(1) Mh.L.J 343

2 Writ Petition No. 2928 of 2019 dated 12<sup>th</sup> April 2019.

3 2007(3) Bom. CR 343

*Section 142 are mutually exclusive. The powers and circumstances as contemplated under sub-section (2) stand independent of sub-section (1). Sub-section (1) appears to be an independent power conferred on the Collector to be exercised in the interest of public peace. In our opinion, such power also appears to be a wide power and hence required to be interpreted broadly and it ought not to confine the powers of the Collector to close only one place, one shop or one licence, more particularly when the power is to be exercised by the Collector in the interest of public peace, which is a phrase indicating larger import and not limited in its application.*

*11. Further, we may also observe that sale of liquor is an activity permitted under a licence which has been issued to a retailer to deal in intoxicants, which has specific conditions which the licence holder is bound to comply with. In the present case, the powers conferred under Section 142 have not been challenged. The petitioners have merely prayed for the reliefs de hors the licence conditions. It may also be observed that it is a settled principle of law that there is no fundamental right to carry on business in liquor since, as a matter of constitutional doctrine, Article 19(1)(g) does not extend to trade in liquor which is consistently regarded as res extra commercium. This has been held by the Supreme Court in **Khoday Distilleries Ltd. and Others vs. State of Karnataka and Others**, **Ugar Sugar Works Ltd. vs. Delhi Administration and Others**, **State of Tamil Nadu represented by Secretary and others vs. K. Balu and Another** and in a catena of other*

*decisions. Considering this aspect also, the restriction imposed by the impugned order for one day cannot be said to be an unreasonable restriction.”*

**SUBMISSIONS ON BEHALF OF THE PETITIONERS:**

4. Learned counsel for the petitioners submitted that the orders impugned in the aforesaid writ petitions are issued by the learned Collector in the exercise of the power conferred under Section 142 of the said Act. The petitioners contend that Section 142 of the said Act would apply only to the specific places where the liquor is sold. Thus, the Collector is not empowered to order the closure of all the retail outlets in the entire district. Learned counsel for the petitioners submitted that the petitioners are FL-III license holders for the sale of liquor of imported foreign liquors (potable) and Indian made foreign liquors (potable) on which Excise Duty has been paid at special rates. The learned Collector issued an order directing all liquor establishments to remain closed on 14<sup>th</sup> April 2024 on account of the birth anniversary of Dr. Babasaheb Ambedkar. Thus, the learned Collector's order declared a dry day across the entire district. According to the learned counsel for the petitioners, the learned Collector's order did not comply with Rule 9-A(2)(d) of the Maharashtra Foreign Liquor (Sale on cash, register of sales, etc) Rule 1969, which requires at least seven days notice

in the Official Gazette and a local newspaper before declaring a dry day.

5. The learned counsel for the petitioners further submitted that the license is granted on certain terms and conditions of closure of shops on 2<sup>nd</sup> October of every year and on such special occasions and in such area as the State Government may after giving notice of not less than seven days in the official gazette or in any local newspapers directing closure of licensed shops on such special occasion and days as declared under the said Rules. Thus, learned counsel for the petitioners submitted that the orders passed by the learned Collector, in the exercise of the power conferred under Section 142 of the said Act, amounts to declaring the day as a dry day for which only the State Government is empowered by following the procedure as prescribed for declaring the day as a dry day.

6. Thus, learned counsel for the petitioners submitted that the view expressed by the Division Bench of this Court in the case of *Parbhani Jilla Daru Vikreta Sanghatana*, interpreting the word “place” is the correct interpretation of the law and would not require any reconsideration. Learned counsel for the petitioners, thus, submitted that the question referred to for determination of larger bench needs to be answered in conformity with the view expressed

by the Division Bench in the case of *Parbhani Jilla Daru Vikreta Sanghatna*.

7. In support of his contentions, the learned counsel for the petitioners relied upon the decision of this court in the case of *Rahul s/o. Babanrao Deshmukh Vs The State of Maharashtra and another*<sup>4</sup> and the decision of this Court in the case of *Shyam Kisanrao Mehetre Vs The State of Maharashtra and another*<sup>5</sup>. He thus, submitted that the word 'any place' used in the said section would not amount to the entire district. Learned counsel for the petitioners submits that the interpretation of the word 'place' as held by the Division Bench of this Court in the case of *Parbhani Jilla Daru Vikreta Sanghatana*, would not require any reconsideration.

**SUBMISSIONS ON BEHALF OF RESPONDENTS:**

8. Learned Advocate General submitted that the view taken by the Division Bench of this Court in the case of *Parbhani Jilla Daru Vikreta Sanghatna*, would require reconsideration in view of the relevant provisions of the said Act. He submitted that under sub-section (1) of Section 142 of the said Act, an independent power has been conferred on the Collector to close any place in which any intoxicant or hemp is sold if the Collector is of the opinion that the

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4 Writ Petition No. 1567 of 2022, dated 17<sup>th</sup> March 2022.

5 Writ Petition No. 304 of 2023(Nagpur Bench), dated 11<sup>th</sup> January 2023.



same is in the interest of public peace. Thus, according to the learned Advocate General, Section 142 (1) of the said Act comprises two broad ingredients; firstly, the Collector can exercise the power when under a circumstance he is of the opinion that the interest of public peace requires the closure of any place where intoxicant or hemp is sold, and secondly, the mode and manner of exercising the power by issuing an order in writing to the person holding a license to keep such a place closed.

9. The learned Advocate General submitted that the limited question of law involved under the reference is confined only to whether the scope and ambit of the expression “any place” as appearing in Section 142(1) of the said Act is confined to a singular place or can take within its fold multiple places that are selling any intoxicant or hemp in a particular district or parts of the district. Learned Advocate General submitted that in the case of *Parbhani Jilla Daru Vikreta Sanghatna*, the petitioner association therein had challenged an order passed by the District Collector in the exercise of power under sub-section (1) of Section 142 of the said Act, issuing a direction to keep all the liquor shops closed on certain festival days of Dusshera and Muharram. He submitted that in the said case, the petitioner’s grievance was that the learned Collector’s

order was illegal on the ground that he had mechanically passed the impugned order based on mere speculation and had not complied with the relevant rules which required notice to be given in the official gazette and any local newspaper. He, thus, submitted that it was in the context of the submissions of the petitioner therein that the Division Bench of this Court in the case of *Parbhani Jilla Daru Vikreta Sanghatna*, had taken a view regarding the expression “any place”.

10. Learned Advocate General further submitted that in the facts of the case of *Parbhani Jilla Daru Vikreta Sanghatna*, it was held that there was no concrete information on which the Collector could have formed an opinion that there was an apprehension to law and order that necessitated the passing of the order of closure. Hence, the order was found to be mechanical based on mere speculation. It was held that there was a failure to comply with Rule 26 of the Maharashtra Country Liquor Rules, 1973 (“said Rules of 1973”) and Rule 9-A of the Maharashtra Foreign Liquor (Sale on Cash, Register of Sales etc) Rules 1969 (“said Rules of 1969”). Learned Advocate General thus submitted that the observations made by the Division Bench on the interpretation made on the expression “any place” appearing in sub-section (1) of Section 142 of the said Act was

strictly not necessary for the adjudication of that petition and may be regarded as obiter. He, thus, submitted that the observations made by the Division Bench do not lay down the correct position of law.

11. Learned Advocate General submitted that the said Act seeks to achieve twin objects of amending and consolidating the law relating to the promotion and enforcement of carrying into effect the policy of prohibition in the State. According to the learned Advocate General, the underlying policy of the State by enacting the said Act is in furtherance of the directive principles referred to in Article 47 of the Constitution of India. He further submitted that the said Act is relatable to the entries in List II of the Seventh Schedule to the Constitution of India.

12. Learned Advocate General submitted that Article 47 of the Constitution of India casts a duty on the State at least to reduce the consumption of liquor in the State, gradually leading to prohibition itself. Learned Advocate General relied upon certain observations of the Hon'ble Supreme Court in the case of the *State of Bombay Vs F.N. Balsara*<sup>6</sup>, in the context of a constitutional challenge to the provisions of the said Act. Learned Advocate General relied upon the observations in the said decision to support his contentions regarding the object and scope of the said Act. Learned Advocate

6 1951 SCC Online SC 47

General thus submitted that the said Act being social welfare legislation in furtherance of the directive principles of the State policy, the provisions of the said Act need to be construed in line with the colour of the content and context rather than literal import, with due regard to the directive principles and bearing in mind social perspective in the interpretative process.

13. Learned Advocate General also placed reliance on the provisions of the Maharashtra General Clauses Act. By referring to Section 13 of the Maharashtra General Clauses Act, the learned Advocate General submitted that unless there is anything repugnant in the subject or context, the words used in State Legislation in the singular shall include the plural or *vice versa*. Hence, he submitted that by virtue of Section 13 of the Maharashtra General Clauses Act, the singular expression “any place” or “person” used in Section 142(1) of the said Act would include within its fold the plural expressions “any places” or “persons” unless such a construction is repugnant to the subject or context.

14. Learned Advocate General, thus, submitted that it would be necessary to examine whether the constructions of the singular expression “any place” or “person” used in Section 142(1) of the said Act to include “any places” or “persons” is repugnant to the

subject or context. Thus, according to the learned Advocate General, such a construction is not repugnant to the subject or context, but it is, in fact, in furtherance to the objects that ought to be achieved by the said provision. Thus, the learned Advocate General submitted that the pre-condition to exercising power under Section 142(1) of the said Act and the object thereof is the “interest of public peace”. Learned Advocate General thus submitted that it is apparent that the language of Section 142(1) is of wide import. The provision is intended for the preservation of public peace, order and tranquillity. Hence, any interpretation of the provision restricting the power of the learned Collector to only one place will defeat the object of the provisions of the Act. He, thus, submits that such interpretation would lead to a situation where even if there is an actual breach of public peace or order or an apprehended breach, no authority under the Act will have the power to direct the closure of places where any intoxicant or hemp is sold.

15. Thus, the learned Advocate General, in conclusion, submitted that by virtue of Section 13 of the Maharashtra General Clauses Act and the purport and object of the said provision, viz. the interest of public peace, the answer to the question under reference would be in the negative and it will not be possible to confine the application

of Section 142(1) of the said Act to only a single place or person. If it is accepted that Section 142(1) of the said Act is applicable to places or persons in the plural, then in that event, provided that the condition precedent or circumstance thereunder for the exercise of power is satisfied, there is no reason that the provision could not apply to all such places in the district or parts of the district.

**CONSIDERATION OF THE SUBMISSIONS:**

16. To correctly understand the question referred for our determination regarding the interpretation of Section 142 (1) of the said Act, we need to examine the reasons recorded in the judgment under reference and the reasons recorded in the reference order. The judgment under reference was delivered in a petition filed by the Association of Members holding licenses to sell liquor. The association challenged a communication from the District Collector intimating that he made a decision that all license holders in the district should keep their shops closed on the festival days of Moharrum and Dasera. The said decision was made based on the information received from the Superintendent of Police. The basic grounds of challenge were that (i) the order was illegal, (ii) there were no reasons recorded, (iii) every festival day cannot create a law and order problem, and (iv) the order under section 142(1) of

the said Act cannot be mechanical. The Government justified the Collector's order by contending that the Superintendent of Police had informed that there was the likelihood of riots, and the apprehension was expressed based on the past experience. It was also contended that the order was published in the local newspapers. The Division Bench in the judgment under reference observed that (i) the apprehension based on past experience is not contemplated under Section 142(1) of the said Act, (ii) there was no concrete information about the likelihood of riots, (iii) mere speculation based on the past experience cannot prompt such action, (iv) opinion of the Collector requiring closure of shops where intoxicant or hemp is sold cannot extend to the entire district, (v) the word 'any place' used in the sub-section (1) of Section 142 of the said Act cannot be interpreted to include the 'entire district', and (vi) the wordings of relevant sub-sections and Rule 26 of the said Rules of 1973 and Rule 9A(2) (d) of the Rules of 1969 are the same which provides for giving seven days notice and that no such notice was given in the said case.

17. The Division Bench, passing the order of reference, disagreed with the interpretation of Section 142(1) of the said Act made by the Division Bench in the judgment under reference. The disagreement

is on the restricted application of Section 142 only to a particular place or, for that matter, one shop or one license. The Division Bench, while passing the order of reference, observed that (i) sub-section (1) and sub-section (2) of Section 142 are mutually exclusive, (ii) the powers and circumstances as contemplated under sub-section (2) stand independent of sub-section (1), (iii) sub-section (1) appears to be an independent power conferred on the Collector to be exercised in the interest of public peace and such power appears to be a wide power required to be interpreted broadly, (iv) the powers of collector cannot be confined to close only one place, one shop or one license and (v) the power is to be exercised in the interest of public peace which phrase indicates larger import and not limited in its application.

18. In support of the said observations, the Division Bench, while making the reference Order, has expressed that it is a settled principle of law that there is no fundamental right to carry on the business of liquor, as Article 19(1)(g) does not extend to trade in liquor which is consistently regarded as *res extra commercium*. By referring to the decisions of the Apex Court in the cases of *Khoday Distilleries Lt. and others Vs State of Karnataka and others*<sup>7</sup> *Ugar*

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<sup>7</sup> (1995) 1 SCC 574



*Sugar Works Ltd. Vs Delhi Administration and others*<sup>8</sup> and *State of Tamil Nadu represented by Secretary and others Vs K. Baly and Another*<sup>9</sup> the Division Bench while making the reference Order observed that the restriction imposed for one day by the impugned order in the facts of the said case, cannot be said to be unreasonable restriction.

19. The question referred for our determination does not involve any question of prohibition on the right to trade in the liquor business. Section 142 of the said Act deals with the closure of the place where an intoxicant or hemp is sold for a specified period, and the object is to maintain public peace. Thus, for determination of the question referred to us, we are not required to elaborate on the right to trade with reference to Article 19 (1) (g) of the Constitution of India. The validity of Section 142(1) of the said Act is not questioned. The limited question for our determination is the interpretation of the Collector's powers conferred under sub-section (1) of Section 142. Therefore, we have not dealt with the legal principles settled by the Hon'ble Apex Court in dealing with the right to trade with reference to Article 19 (1) (g) of the Constitution of India.

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8 (2001) 3SCC 635

9 (2017) 6SCC 715

20. With this background, we have considered the submissions made by the learned counsel for the petitioners and the submissions made by the learned Advocate General.

21. In the judgment under reference, the Division Bench dealt with an order passed by the Collector directing all the liquor shops in the district to be closed on the days of the festivals of Mohorrum and Dasera. Thus, the Division Bench observed that the opinion of the Collector for closure of the 'shops where the intoxicant or hemp is sold' cannot extend to the 'entire district' and that the word 'any place' used in the section cannot be interpreted to include 'entire district'. Thus, it appears that the Division Bench interpreted the words 'to close any place' with reference to the order passed by the Collector to close all the shops in the entire district.

22. For correct interpretation of the powers of the Collector, it is necessary to understand the object of the provision. Section 142 of the said Act reads thus;

***“142. Power of Collector to close place 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 sub-section (1) shall himself close such place.*

*(3) Any order given under this section shall be final.”*

23. Thus, under sub-section (1) of Section 142, when the Collector is of the opinion that it is in the interest of public peace to close any place in which any intoxicant or hemp is sold, he is empowered to direct in writing to the persons holding a license for the sale of such intoxicant or hemp to close such place. Thus, the power of the Collector is to issue directions to ‘the persons holding license’ for the sale of intoxicant or hemp. Therefore, to exercise the power under sub-section (1) of Section 142, it is necessary for the Collector to form an opinion that it is in the interest of public peace to close ‘any place’ in which intoxicant or hemp is sold. If the Collector forms such an opinion, he is empowered to issue directions in writing to the persons holding licenses for the sale of such intoxicant or hemp. Thus, the Collector is empowered to issue directions to more than one person, but the requirement is to form an opinion that such closure is in the interest of public peace, and

the order has to be in writing to the 'persons' holding a license for the sale of intoxicant or hemp to close 'any place' where the intoxicant or hemp is sold. It is necessary to note the plural word 'persons' and the singular word 'place' used in the said provision.

24. Thus, on plain reading of the provision, there are no restrictions to issue directions to more than one person. However, the directions issued to one or more than one person must be in the context of the closure of a 'place' where the intoxicant or hemp is sold. Thus, in a given case, the directions issued by the Collector can be for the closure of 'one place' or 'places', depending upon the opinion of the Collector that it is in the interest of public peace to close 'any place or places in which any intoxicant or hemp is sold'. Thus, the Collector is empowered to issue directions to one person or more than one person to close one place or more than one place, provided he forms an opinion that it is in the interest of public peace that 'the place' where the intoxicant or hemp is sold is required to be kept closed.

25. Therefore, the word 'any place' interpreted by the Division Bench in the judgment under reference cannot be read to mean that there is any restriction on the powers of the Collector to direct the closure of more than one shop in a district under his jurisdiction. But

the words 'any place' cannot be read independently of the words 'where the intoxicant or hemp is sold'. The power of the Collector is thus to issue directions by an order in writing, directing the license holders to keep the place, i.e. the shop closed where such intoxicant or hemp is sold. Thus, the directions have to be specific to the license holders and not a general direction. The object of sub-section (1) of Section 142 appears to be to maintain public peace. Thus, the powers conferred upon the Collector under sub-section (1) of Section 142 of the said Act are not restricted to one place, provided the Collector forms an opinion that it is in the public interest to keep the 'place' or 'places' closed 'where' the intoxicant or hemp is sold and the Collector issues the directions in writing to one person or more than one person holding the license for sale of such intoxicant or hemp.

26. When riots or unlawful assembly are apprehended or take place, the powers to control such situations are contemplated under sub-section (2) of Section 142. Under the said sub-section (2), the powers are given to the Executive Magistrate or Police Officers present at such place, i.e., where there is the likelihood of riots or unlawful assembly or such situation actually takes place, to direct closure of such place. The words 'such place shall be closed' used

in sub-section (2) are to be read with reference to 'such place' used in sub-section (1), i.e. the place where intoxicant or hemp is sold.

27. The interpretation of the words 'any place' made by the Division Bench in the judgment under reference appears to be concerning the general order that was issued by the Collector, in the facts of that case, directing the closure of all the shops in the district. The interpretation cannot be read to mean that the powers of the Collector are restricted to only one place or one shop. We do not find that the interpretation made by the Division Bench in the judgment under reference to the words 'any place' indicates any restrictions on the powers of the Collector. In the judgment under reference, the Division Bench referred to the said Rules of 1973, and the said Rules of 1969, which provide for the issuance of notice of seven days to the license holder. The said Rules of 1969 are framed in exercise of the powers conferred by Clauses (b), (h1), (iii), (iv) and (vi), (k) and (12) and (13) of sub-section (2) of Section 143 of the said Act. The said Rules of 1973 are framed in the exercise of the powers conferred by Clauses (b), (c), (f), (g), (h1), (i), (k), (1), (2), (3) and (a) of sub-section (2) of Section 143 read with Sections 11 and 52 of the said Act. The said Rules are in the context of the restrictions imposed for the closure of shops on the specified days

while granting licenses and on such special occasions directed after giving notice as contemplated in the said Rule. The question referred for our determination does not involve applicability or interpretation of the said Rules in the context of Section 142 of the said Act. However, the said Rules are relevant to understand the significance of the word “place”.

28. The use of the word ‘place’ in Section 142 has some significance. The License for the sale of intoxicant or hemp is granted by following the procedure prescribed under the Rules framed under the said Act. A perusal of the said Rules of 1969 and 1973 indicates that the license is granted qua a premises. The terms and conditions of the permit for the sale of intoxicant or hemp are referable to the ‘licensed premises’. For example, Rules 9 and 9-A of the said Rules of 1969, which deal with the working hours and days, refer to the licensed premises in respect of which a trade and import license has been granted for the sale of foreign liquor. Rule 2 (j) of the said Rules of 1973 defines ‘licensed retail shop’ or ‘licensed shop’ to mean the premises in respect of which a license has been issued under the Rules for the retail sale of country liquor. Rule 9-A of said Rules of 1969 and Rule 26 of said Rules of 1973 also deal with the closure of licensed shops for the sale of country

liquor on certain specified days, which also empowers the Collector to direct closure of shops on such special occasions after giving notice of not less than seven days in the official gazette and local newspaper. Rule 27 of the said Rules of 1973 deals with the Collector's power to close down licensed shop etc. in public interest. Thus, the Collector's power under sub-section (1) of Section 142 is referable to Rule 27 of the said Rules of 1973, which reads as under:

*"27. Power of collector to close down licensed shop etc. in public interest. – The collector may by order require a retail licensee to close his shop in the public interest for any period specified in the order; and may in public interest, also curtail the hours of sale; and in either case the retail licensee shall not be entitled to any compensation."*

29. Thus, the Rules of 1969 and 1973 deal with the permissions granted for the sale of liquor in a licensed shop or premises. Even Rule 27 of the said Rules of 1973, which is referable to the powers under sub-section (1) of Section 149, provides for closure of the licensed shop.

30. Thus, we find substance in the submissions made by the learned Advocate General that under sub-section (1) of Section 142 of the said Act, an independent power has been conferred on the Collector to close any place in which any intoxicant or hemp is sold



if the Collector is of the opinion that the same is in the interest of public peace. We also find substance in the arguments made by the learned Advocate General that Section 142 (1) of the said Act comprises two broad ingredients; firstly, the Collector can exercise the power when under a circumstance he is of the opinion that the interest of public peace requires the closure of any place where intoxicant or hemp is sold, and secondly, the mode and manner of exercising the power by issuing an order in writing to the person holding a license to keep such a place closed. The learned Advocate General's argument that the observations made by the Division Bench in the judgment under reference to the interpretation made on the expression "any place" appearing in sub-section (1) of Section 142 of the said Act was strictly not necessary for the adjudication of that petition and may be regarded as obiter, is irrelevant. In view of the question referred for our determination, we have interpreted the provision of Section 142 of the said Act. Hence, our view will have a binding effect. Thus, it is not necessary to deal with the said argument.

31. Learned Advocate General may be right in submitting that the said Act seeks to achieve twin objects of amending and consolidating the law relating to the promotion and enforcement of

carrying into effect the policy of prohibition in the State and that the underlying policy of the State by enacting the said Act is in furtherance of the directive principles referred to in Article 47 of the Constitution of India. However, in our opinion, the object of Section 142 of the said Act is not to perform the State's duty as envisaged under Article 47 of the Constitution of India. The object of Section 142 of the said Act is to maintain public peace. The legal principles settled in the decision of the Hon'ble Supreme Court, in the case of *F.N. Balsara*, are in the context of a constitutional challenge to the provisions of the said Act. Learned Advocate General relied upon the observations in the said decision to support his contentions regarding the object and scope of the said Act on the ground that the said Act being social welfare legislation in furtherance of the directive principles of the State policy, the provisions of the said Act need to be construed in line with the colour of the content and context rather than literal import, with due regard to the directive principles and bearing in mind social perspective in the interpretative process. However, in our opinion, to achieve the object of the said Act, the Collector cannot exercise the powers under sub-section (1) of Section 142 of the said Act to issue general directions. The exercise of power by the Collector under sub-section (1) of Section 142 must satisfy the parameters contemplated under

the said sub-section, which refers to closing the 'place' where intoxicant or hemp is sold.

32. Reliance placed by the learned Advocate General on the provisions of the Maharashtra General Clauses Act is not necessary to interpret the Collector's powers under sub-section (1) of Section 142 of the said Act, in as much as the provision of Section 142 makes a clear distinction in the words 'place' and 'persons'.

33. The submissions made by the learned counsel for the petitioners that the Collector's Order did not comply with Rule 9(A) (2)(d) of the said Rules of 1969 requiring issuance of seven days notice is not relevant to decide the question under reference as the said Rule is applicable in the context of the restrictions imposed while granting license. The submissions made by the learned counsel for the petitioners that the orders passed by the learned Collector, in the exercise of the power conferred under Section 142 of the said Act, amounts to declaring the day as a dry day for which only the State Government is empowered by following the procedure as prescribed for declaring the day as a dry day, is also not relevant to the question referred for our determination. We have interpreted the applicability of the said Rules of 1969 and Rule 27 of the said Rules of 1973 as applicable for exercising the powers

under Section 142(1). The decisions of this Court relied upon by the learned counsel for the petitioners are on merits concerning the facts of those cases. Those decisions do not deal with the interpretation of sub-section (1) of Section 142 of the said Act.

34. The Division Bench in the reference order has expressed that sub-section (1) and sub-section (2) of Section 142 are mutually exclusive. In our opinion, though sub-sections (1) and (2) of Section 142 of the said Act are mutually exclusive, the words 'to close such place' and 'such place shall be closed' used in the respective sub-sections are to be read with reference to 'the place where intoxicant or hemp is sold'. Thus, the sub-sections differ in the situation mentioned therein and the authority to exercise the power. For example, under sub-section (1), only the Collector is empowered to issue directions when he forms an opinion that it is in the interest of public peace that a place be kept closed where an intoxicant or hemp is sold; whereas under sub-section (2) when a riot or unlawful assembly is imminent or takes place, the Executive Magistrate or Police Officer whoever is present can direct closure of the place where intoxicant or hemp is sold. The sub-section (2) further provides that in the absence of the Executive Magistrate or Police Officer, the person referred to in sub-section (1) shall himself close

the place. The 'person' referred to in sub-section (1) is a person holding a license for the sale of an intoxicant or hemp. Thus, in our opinion, the powers under sub-section (1) are conferred upon the Collector and the powers under sub-section (2) are conferred upon the Executive Magistrate or Police Officer. Another difference in the sub-sections of Section 142 is that under sub-section (1), a situation contemplated to exercise the power by the Collector is when he forms an opinion that the place is required to be closed in the interest of public peace, and the situation contemplated under sub-section (2) is when a riot or unlawful assembly is imminent or takes place. Under sub-section (1), the Collector is required to issue directions in writing to the person or persons holding the license for the sale of intoxicant or hemp, whereas sub-section (2) does not contemplate the issuance of any direction in writing.

35. Thus, we answer the question referred for our determination by summarising our conclusions as under:

- (a) The Collector, in exercising power under sub-section (1) of Section 142, is empowered to issue directions to one 'person' or 'persons', but the requirement is to form an opinion that such closure is in the interest of public peace, and the order has to be in writing to the 'person' or 'persons' holding a

license for the sale of intoxicant or hemp to close 'any place' or 'places' where the intoxicant or hemp is sold.

(b) There are no restrictions to issuing directions to more than one person; however, the directions issued to one or more than one person must be in the context of the closure of a 'place' or 'places' where the intoxicant or hemp is sold.

(c) Thus, in a given case, the directions issued by the Collector can be for the closure of 'one place' or more than one place, depending upon the opinion of the Collector that it is in the interest of public peace to close 'any place or places in which any intoxicant or hemp is sold'.

(d) Therefore, the word 'any place' interpreted by the Division Bench in the judgment under reference cannot be read to mean that there is any restriction on the powers of the Collector to direct the closure of more than one shop in a district under his jurisdiction. However, the words 'any place' cannot be read independently of the words 'where the intoxicant or hemp is sold'.

(e) The power of the Collector under sub-section (1) of Section 142 is thus to issue directions by an order in writing, directing

the license holders to keep the place or places, i.e. the shop or shops closed where such intoxicant or hemp is sold. Thus, the directions have to be specific to the license holders and not a general direction.

(f) Thus, the powers conferred upon the Collector under sub-section (1) of Section 142 of the said Act are not restricted to one place, provided the Collector forms an opinion that it is in the public interest to keep the 'place' or 'places' closed 'where' the intoxicant or hemp is sold and the Collector issues the directions in writing to one person or more than one person holding the license for sale of such intoxicant or hemp.

(g) We do not find that the interpretation made by the Division Bench in the judgment under reference to the words 'any place' indicates any restrictions on the powers of the Collector to issue directions to more than one person and to close more than one place within the district under his jurisdiction, provided the parameters as contemplated under sub-section (1) of Section 142 of the said Act are satisfied as recorded by us in the above clauses.

36. The writ petitions be therefore placed before the Division

Bench having the assignment as per the roster for decision on merits.

**(A.S. CHANDURKAR, J.)**

**(GAURI GODSE, J.)**

**(RAJESH S. PATIL, J.)**