

Hand Delivery Copy

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THE 14<sup>TH</sup> DAY OF FEBRUARY 2024

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.4550/2024 (EXCISE)

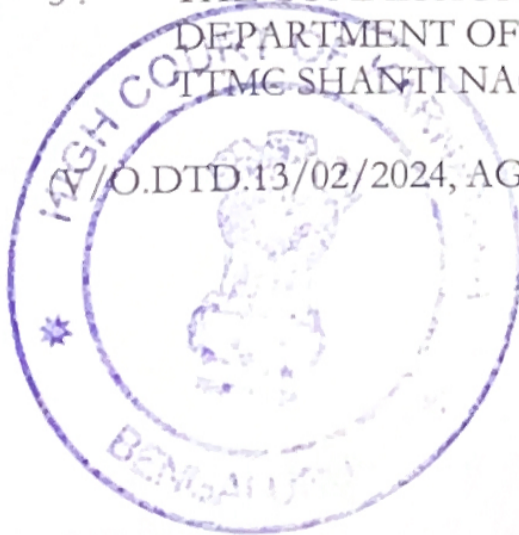
PETITIONERS

1. BRUHAT BENGALURU HOTELS ASSOCIATION  
KSR ACT, 1960  
O/AT NO.87, SHRESTA BHOO MI, UNIT NO.307, 3RD FLOOR,  
K R ROAD, V V PURAM, BENGALURU - 560004.  
REP. BY ITS SECRETARY.

(BY SRI. SUYOG HERELE E)  
VS

RESPONDENTS

1. THE DEPUTY COMMISSIONER/  
DISTRICT EXECUTIVE MAGISTRATE, BENGALURU URBAN,  
O/AT KEMPEGOWDA ROAD, BEHIND KANDAYA BHAVAN,  
BENGALURU - 560009.
2. THE POLICE COMMISSIONER  
BENGALURU URBAN, INFANTRY ROAD,  
BANGALORE - 560001.
3. THE CHIEF ELECTORAL OFFICER, KARNATAKA  
SESHADRI ROAD, AMBEDKAR VEEDHI,  
BENGALURU - 560001.
4. THE ELECTION OFFICER  
BENGALURU TEACHER CONSTITUENCY AND  
REGIONAL COMMISSIONER, BENGALURU ZONE,  
BENGALURU -01.
5. THE COMMISSIONER  
DEPARTMENT OF EXCISE,  
TTMC SHANTI NAGAR, BENGALURU -01.



O.DTD.13/02/2024, AGA ACCEPTS NOTICE FOR RESPONDENTS)

Contd..2/-..

-: 2 :-

Whereas, a Writ Petition filed by the above named petitioner under Articles 226 and 227 of the Constitution of India, has been registered by this Court.

After hearing, the Court made the following:-

(VIDEO CONFERENCING / PHYSICAL HEARING)

ORDER

XEROX COPY OF THE ENTIRE ORDER DATED 14/02/2024 IS ENCLOSED  
HEREWITH SEPARATELY.

RA-140224.10..

WP NO. 4550/2024

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**[BRUHATH BENGALURU HOTELS ASSOCIATION AND OTHERS**  
**VS. THE DEPUTY COMMISSIONER AND OTHERS]**

**SRKKJ**

14.02.2024

(VIDEO CONFERENCING / PHYSICAL HEARING)

**ORDER**

In this petition, petitioners are aggrieved by the Notification at Annexure-A dated 01.02.2024 issued by the 1<sup>st</sup> respondent - Deputy Commissioner, District Executive Magistrate and Notification at Annexure-B dated 06.02.2024 passed by 2<sup>nd</sup> respondent = The Commissioner of Police, Bangalore Urban District, Bangalore.

2. The material on record indicates that on 16.01.2024, the Election Commission of India issued calendar of events for the purpose of filling up a vacancy in Bangalore Teachers' Constituency by holding a Bye Election to the Karnataka Legislative Council. As per the said calendar of events, the date of polling was notified as **16.02.2024**, while the date for counting of votes was notified as **20.02.2024**. In pursuance of the same, the Chief Election Officer issued a communication dated 25.01.2024 to the Returning Officer and the Commissioner of Excise to declare a "Dry day", since the polling



date was notified / fixed as 16.02.2024 in view of Section 135C of the Representation of the People Act, 1951 (for short 'the said Act of 1951'). Pursuant thereto, the Returning Officer of the Teachers' Constituency addressed a communication calling upon the respondents to declare the polling day i.e., 16.02.2024 and counting day i.e., 20.02.2024 as "Dry days" in view of Section 135C of the said Act of 2015.

3. In pursuance of the aforesaid communication, the 1<sup>st</sup> respondent issued the impugned Notification imposing a ban on sale, distribution, serving of liquor from 5 p.m. on 14.02.2024 to 6 a.m. on 17.02.2024, which was reiterated by the Notification dated 06.02.2024 issued by the 2<sup>nd</sup> respondent, who also imposed the ban on the counting day i.e., on 20.02.2024 from 6 a.m. to 12 p.m. mid night of that day. Aggrieved by the impugned Notifications and seeking other reliefs, petitioners are before this Court by way of the present petition.

4. Heard learned Senior counsel for the petitioners and learned Addl. Advocate General for respondents 1, 2 and 5 as well as the learned Standing counsel for respondents 3 and 4.



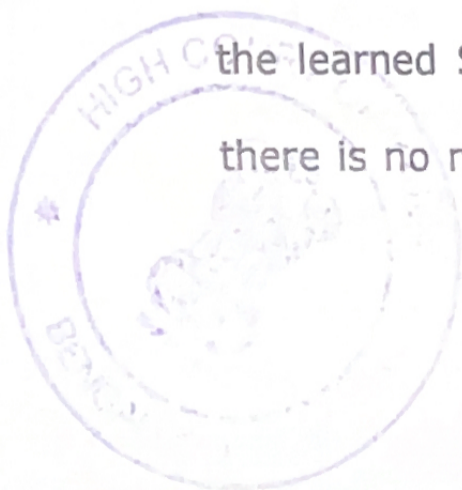
5. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioners submits that the ban imposed for a period / days other than the date of polling and date of counting is illegal, arbitrary and contrary to the provisions contained in Section 135C of the said Act of 1951 as well as Rule 10B of the Karnataka Excise Licences (General Conditions) Rules, 1967 (for short 'the said Rules of 1967') and the same deserve to be set aside. In support of his contentions, learned Senior counsel placed reliance upon the following judgments:-

**(i) Gondia District Liquors Sellers Association vs. State of Maharashtra & others - W.P.No.673/2023 dated 27.01.2023;**

**(ii) All India Wine Producers Association vs. Deputy Chief Secretary and others - W.P.No.2457/2023 dated 25.01.2023;**

**(iii) Hotel Owner Association of Thane vs. District collector & others - W.P.No.1346/2017 dated 01.02.2017;**

6. Per contra, learned Addl. Advocate General as well as the learned Standing counsel for the respondents submit that there is no merit in the petition and that the same is liable to



be dismissed. It is submitted that subsequent to the impugned Notification at Annexure-A, the 1<sup>st</sup> respondent has issued a revised order, whereby the ban has been imposed from 4 p.m. on 14.02.2024 to 4 p.m. on 16.02.2024. It is submitted that the ban is perfectly legal and proper and in conformity / consonance with Section 135C of the said Act of 1951 and Rule 10B of the said Rules of 1967 as well as the guidelines issued by the Election Commission of India and therefore, the impugned orders / Notifications do not warrant interference in the present petition. Reliance is placed upon the following judgments:-

**(i) Khoday Distilleries Ltd., vs. State of Karnataka - (1995)1 SCC 571;**

**(ii) Sadanand Shetty vs. Deputy Commissioner - W.P.No.18689/2000 dated 31.05.2000;**

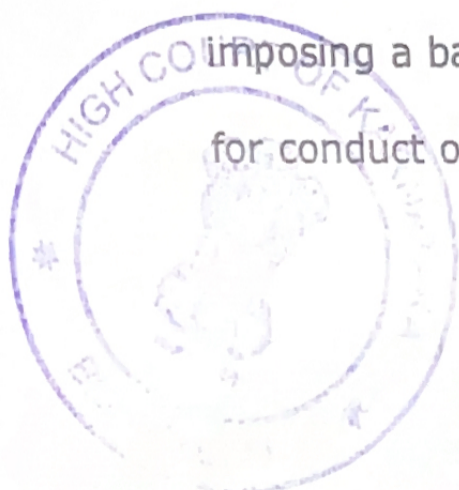
**(iii) Jagpal Singh vs. Union of India - CWP 3024 /2022 dated 17.02.2022.**

7. I have given my anxious consideration to the rival contentions on the prayer for a interim relief and perused the material on record.



8. As noticed above, while it is the specific contention of the petitioners that the declaration of "Dry day" is to be restricted / confined / limited only to the date of polling and date of counting, the respondents contend that in the absence of any such restriction contained either in Section 135C of the said Act of 1951 or Rule 10B of the said Rules of 1967 or the Guidelines issued by the Election Commission, the respondents were fully justified in issuing the impugned Notifications / orders. In this context, it is relevant to state that the legality, validity and correctness of the impugned Notifications *qua* the relevant statutory provisions, guidelines etc., would necessarily have to be decided at the time of final disposal of the petition. At this stage, suffice it to state that it would be just and appropriate to restrict / confine / limit the ban on sale, distribution and serving of liquor only on the date of polling and the date of counting between 6 a.m. to 12 p.m. midnight on the both the dates for the following reasons:-

- (i) A *prima facie* examination of the provisions contained in Section 135C of the said Act of 1951 and Rule 10B of the said Rules of 1967 will indicate that the aim / object of imposing a ban is by taking measures relating to law and order for conduct of peaceful and fair election in order to ensure that



the electorate is not influenced in any manner; the object of imposing ban on liquor is obviously to ensure that partaking of liquor would not have the effect of influencing the voters. In the instant case, it is an undisputed fact that the subject Bye Elections relates to Bangalore Teachers' Constituency which has about 16,063 voters in a total population of 85,20,435 people in Bangalore Urban. Out of the said total number of voters, there are only about 10,106 who are women and the remaining voters comprise of men and transgender persons. It is *prima facie* clear that having regard to the nature of elections and the electorate involved in the elections, the impugned Notifications / orders imposing a ban on liquor on days other than the day of polling and day of counting is clearly excessive and does not have any nexus with the aims and objects sought to be achieved by the Act and the Rules and consequently, the ban deserves to be reduced only to be imposed on the date of polling and date of counting.

(ii) Under somewhat identical circumstances, the High Court of Bombay has taken a view that despite the provisions contained in Section 135C of the said Act of 1951, the ban on liquor is to be restricted only to the date of polling and the date of counting and has not extended it to other days and on this





ground also, the ban on liquor deserves to be reduced by way of an Interim arrangement.

(iii) As stated supra, in view of the fact that all the 16,063 voters are Teachers among whom, 10,106 are women, the ban imposed on days other than the day of polling and the day of counting does not appear to have any nexus with the probability / possibility of liquor having an impact / influence on the peaceful, free and fair conduct of the subject elections and in the peculiar / special facts and circumstances of the instant case, it would be just and appropriate to reduce / confine the ban only to the date of polling and date of counting.

(iv) Insofar as the other contentions urged by both sides and the decisions relied upon by both sides, the same would necessarily have to be dealt with at the time of final disposal of the petition.

9. In the result, by way of an interim arrangement, pending disposal of the petition, I issue the following directions:-

(i) The ban on the sale, distribution, serving of liquor etc., in all Retail shops, Hotels, Bars, Bar and Restaurants etc., imposed in the revised order dated 13.02.2024 is confined,



limited and restricted only from 6 a.m. on 16.02.2024 up to mid night of 16.02.2024 and also only from 6 a.m. on 20.02.2024 till mid night of 20.02.2024.

(ii) It is clarified that the aforesaid ban will not apply to any other day / period other than the day / period referred to above.

(iii) It is needless to state that the aforesaid ban as directed in this order as stated supra, will not have the effect of preventing, prohibiting or banning on sale, distribution or service of food etc., during the aforesaid dates i.e., 16.02.2024 and 20.02.2024 in any manner whatsoever.

10. It is made clear that this order is passed in the special / peculiar facts and circumstances of the instant case and shall not be treated as precedent nor shall have any precedential value for any purpose whatsoever.

List after two weeks.

Statement of objections to be filed by the next date of hearing.



Copy

*9/12/24*

Assistant Registrar  
High Court of Karnataka  
Bengaluru - 560 001

*[Handwritten signatures]*

Bd/-  
JUDGE