

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF FEBRUARY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 1692 OF 2025 (EXCISE)

BETWEEN:

1. M/S. KUMAR ENTERPRISES
A PARTNERSHIP FIRM
NO.343, 9TH MAIN
SECTOR - VII, H.S.R. LAYOUT
BANGALORE - 560 102
REP. BY ITS PARTNER
BHARATH S. KUMAR

...APPELLANT

(BY SRI G.K. BHAT, SENIOR ADVOCATE A/W
SMT. SUDHA D., ADVOCATE)

AND:

1. THE COMMISSIONER OF EXCISE
GOVERNMENT OF KARNATAKA
2ND FLOOR, BMTT TMC BUILDING
'A' BLOCK, SHANTINAGAR
BENGALURU - 560 027
2. THE DEPUTY COMMISSIONER OF EXCISE
BENGALURU URBAN DISTRICT (BUD-5)
BENGALURU - 560 002
3. H.S. KRISHNAMURTHY
S/O H.B.S. NAIK
AGED ABOUT 56 YEARS
R/AT NO. 203, OM SAI, SAPPHIRE APARTMENT

Digitally
signed by
SRIDEVI S
Location:
High Court
of Karnataka

GOVINDAPPA LANE, 5TH CROSS
KODIHALLI
BENGALURU - 560 008

...RESPONDENTS

(BY SMT. NAMITHA MAHESH B.G., AGA FOR R-1 & 2;
SRI ASHOK HARANAHALLI, SENIOR ADVOCATE A/W
SRI ANOOP HARANAHALLI, ADVOCATE FOR R-3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR RECORDS ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER DATED 12.09.2025 PASSED BY THE HON'BLE SINGLE JUDGE IN W.P. No.9258/2025 (EXCISE) AND CONSEQUENTLY DISMISS THE SAID WRIT PETITION TO MEET THE ENDS OF JUSTICE.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant, a partnership firm, has filed the present intra-court appeal impugning an order dated 12.09.2025 [**the impugned order**], passed by the learned Single Judge of this Court in W.P.No.9258/2024 (EXCISE). Respondent No.3 [**the licensee**] had filed the said petition assailing the order dated 21.03.2024

passed by Respondent No.1 [**the Commissioner**] dismissing an appeal against the order dated 07.12.2021 passed by Respondent No. 2 [**the Deputy Commissioner**]. The Deputy Commissioner rejected the licensee's request to withdraw his application to transfer his licences. Aggrieved by the same, the licensee had appealed to the Commissioner.

PREFATORY FACTS

2. The licensee was granted a licence in Form CL-9 for the sale of Indian liquor (other than Arrack), foreign liquor, or both, to be consumed on the premises, combined with meals and refreshments in the refreshment rooms (Bars), at the given address.

3. The licensee was also granted a licence for retail vend of beer at the given premises [**RVB licence**]. The CL-9 licence was attached to the RVB licence. The said licences are hereinafter collectively referred to as "the licences".

4. On 18.05.2020, the licensee agreed to transfer the licences in favour of the appellant for a total consideration of ₹2,75,00,000/-, in terms of a memorandum of understanding [**the MoU**] executed on that date.

5. The appellant states that the entire consideration of ₹2,75,00,000/- was paid to the licensee and on receipt of the said consideration, the licensee filed an application before the Deputy Commissioner for transfer of the licences in favour of the appellant under Rule 17B of the Karnataka Excise Licences (General Conditions of Licences) Rules, 1967 **[the Rules]**.

6. On 02.09.2020, the licensee filed a complaint with Indiranagar Police Station alleging that the appellant had not paid the balance consideration for the transfer of the licences after obtaining his signature on the application for transfer of the licences. Thereafter, on 21.09.2020, the wife and children of the licensee filed a representation before the Commissioner, praying that the sanction for transfer of the licences be deferred. She alleged that the partners of the appellant had obtained the licensee's signature on the application for transfer of the licences under coercion. She also claimed that her husband, the licensee, had signed the same without informing her. She requested that the application be returned.

7. While, the application for transfer of the licences was pending consideration before the concerned authorities, the

appellant filed a writ petition being W.P.No.13507/2020 (EXCISE), *inter alia*, praying that directions be issued to the Commissioner and the Deputy Commissioner (arrayed as respondent Nos.1 and 2) to immediately transfer the licences standing in the name of the licensee, as requested in terms of the application dated 14.08.2020. The said petition was disposed of by an order dated 18.12.2020, with a direction to the respondents to consider the application for transfer of the licences within two (02) weeks of the date the copy of the order is produced, and further to inform the appellant of the result of the said consideration.

8. The Deputy Commissioner issued an endorsement dated 05.12.2020 rejecting the application for transfer of licences under Rule 17B of the Rules. The Deputy Commissioner also advised the concerned parties to settle their disputes amicably, and that requests for the transfer of the licences would be considered only upon submission of a fresh application.

9. Thereafter, on 08.01.2021, the Commissioner, Excise Department, granted its approval for the transfer of the licences under Rule 17B of the Rules for the year 2020-2021, subject to the prescribed conditions. In conformity with the said order, the Deputy Commissioner passed an order dated 11.01.2021, transferring the

licences with immediate effect, in accordance with Rule 17B of the said Rules, for the remaining period of the year 2020-2021. It also directed that the alterations be made in the original licence.

10. The licensee filed a writ petition, W.P.No.2756/2021 (EXCISE), impugning the order dated 11.01.2021, whereby the Deputy Commissioner transferred the licences after the Commissioner granted approval for such transfer. The licensee challenged the said order, essentially on two grounds. First, he had not been heard by the court while disposing of the writ petition preferred by the appellant (WP.No.13507/2020); and second, the licensee's application for withdrawal of the application to transfer the licences (application dated 24.09.2020) had not been disposed of. This Court held that the order dated 05.12.2020 rejecting the application dated 14.08.2020 for transfer of the licences ought to have been brought to the Court's notice. The Court faulted the concerned officials for not affording the licensee an opportunity to be heard before issuing orders, approving and transferring the licences. The court also noted that the official respondents had not taken note of the endorsement dated 05.12.2020, in which the licensee was asked to furnish a fresh application for the transfer of the licences. The said petition was partly allowed by an order

dated 21.06.2021. The court set aside the orders dated 11.01.2021 and 08.01.2021 passed by the Deputy Commissioner and Commissioner, respectively, and directed the licensee to submit his explanation in support of the withdrawal of the application dated 14.08.2020. The appellant was also permitted to furnish the necessary statement along with documents, if any. The parties were directed to maintain status quo till the final decision is taken. The court also clarified that the appellant is at liberty to challenge the endorsement dated 05.12.2020.

11. Additionally, the court also directed that in the meantime the licences be renewed in the name of the licensee, since the same had expired in the month of June 2021.

12. The appellant, aggrieved by the order dated 21.06.2021, passed by the learned Single Judge in W.P.No.2756/2021, filed an appeal (WA.No.794/2021) before the Division Bench of this Court. This court dismissed the said appeal by an order dated 07.09.2021.

It is apposite to refer to the following extract from that order.

"8. In view of the dispute between the parties, the Deputy Excise Commissioner, by an order dated 05.12.2020, held as follows:

Subsequently, the Licensee HS Krishnamurthy and his family members Smt.R.Sujatha while submitting the complaint/request petition under Ref (8) and (9) has objected to the said transfer of license and requested for

refund of payment of license transfer fee. Also similar complaint was filed before the Excise Inspector, Indiranagar Police Station, Police Commissioner, Bangalore, ACB Department. In this regard, the excise commissioner Karnataka State, Bangalore in letter under Ref (6) above, has instructed to issue suitable endorsement on the said complaint informing to ensure compliance of Rule 17-B and submit clear opinion with recommendation for transfer of license upon which further action would be taken in this regard.

For the foregoing reasons, it is hereby inform that licensee and transferee to mutually settle the dispute and if new application for transfer is filed the same will be considered. The complaint petitions disposed of accordingly.

9. However, in the writ petition preferred by the appellant, the appellant neither challenged the aforesaid order nor impleaded the Respondent No.3. The learned Single Judge has therefore, disposed of the writ petition preferred by the appellant with a direction to decide the application for transfer of license. The excise commissioner by an order dated 08.01.2021 directed that both the parties should be heard. However, the order passed by the Excise Commissioner was also not complied with. The Deputy Excise Commissioner by an order dated 11.01.2021, without hearing the Respondent No.3 passed an order directing the transfer of license in favour of the appellant. The order dated 05.12.2020 enured to the benefit of Respondent No.3 and aforesaid benefit could not have been taken away without affording an opportunity of hearing to the Respondent No.3.

For the aforementioned reasons, we don't find any ground to differ with the view taken by the learned Single Judge.

In the result, the appeal fails and is hereby dismissed."

13. In terms of the directions issued by the learned Single Judge by an order dated 21.06.2021 in WP.No.2756/2021 – which was

upheld by the Division Bench of this Court by an order dated 07.09.2021 in WA.No.794/2021 – the Deputy Commissioner issued notices to both the contesting parties, and they filed their written representations. The said representations were disposed of by an order dated 07.12.2021. The Deputy Commissioner held that there was no provision for withdrawal of the application once it was filed. The licensee filed an appeal against the said decision before the Commissioner (Appeal No.81/2021).

14. In the meantime, the licensee also filed applications to renew the licences and to relocate the licence premises. The request for renewal was rejected by an order dated 01.06.2022 on the ground that an appeal was pending before the Commissioner. The licensee filed the writ petition, being WP.No.13485/2022 (EXCISE), challenging the order dated 01.06.2022, whereby its request for renewal of the licences was not acceded to. The learned Single Judge of this court allowed the said writ petition by an order dated 21.07.2022. The orders impugned in the said petition were quashed, and the Deputy Commissioner was directed to consider the licensee's application for the shifting of the CL-9 licence in accordance with the law.

15. The licensee's appeal (Appeal No.81/2021) was dismissed by the Commissioner by an order dated 08.06.2023.

16. The licensee challenged the order dated 08.06.2023 in an appeal (Appeal No. 238/2023) filed before the Karnataka Appellate Tribunal [KAT]. While these proceedings were pending, the licences expired on 30.06.2023. The Deputy Commissioner declined to renew the same. This decision was subject matter of a challenge in WP.No.13419/2023, which was disposed of by an order dated 28.06.2023, whereby the court passed interim directions to the Deputy Commissioner to consider the application for renewal prior to the expiry of the licences on 30.06.2023.

17. The official respondents transferred the licences in favour of the appellant on 01.07.2023, pursuant to the orders dated 08.06.2023 passed by the Commissioner in Appeal No.81/2021.

18. The licensee challenged the said order in a writ petition being W.P.No.14129/2023. The learned Single Judge passed an interim order dated 06.07.2023, staying the Deputy Commissioner's order 01.07.2023 transferring the licences in favour of the appellant. The learned Single Judge disposed of the said petition by an order dated 04.08.2023, requesting the learned

KAT to dispose of the licensee's appeal (Appeal No.238/2023) against the Commissioner's order dated 08.06.2023 in Appeal No.81/2021. The order transferring the licences (Order dated 01.07.2023) was directed to be kept in abeyance until the learned KAT disposed of the said appeal (Appeal No. 238/2023).

19. The learned KAT allowed the said appeal (Appeal No.238/2023) by an order dated 31.10.2023. It set aside the Commissioner's order dated 08.06.2023 and remanded the matter to the Commissioner for consideration afresh.

20. One of the grounds on which the learned KAT allowed the appeal was that the order dated 05.12.2020, whereby the Deputy Commissioner had directed that the transfer of licences would be considered on the parties filing a fresh application, had not been considered.

21. Pursuant to the learned KAT's orders dated 31.10.2023, remanding the matter and restoring the appeal (Appeal No.81/2021), the Commissioner once again heard the parties and passed an order dated 21.03.2024 dismissing the appeal.

22. The licensee challenged the said order by filing a writ petition being W.P.No.9258/2024, which was allowed by the impugned order.

REASONS AND CONCLUSION

23. As noted above, the dispute involved has a chequered history and has been considered by the authorities and the court on multiple occasions. However, the controversy is in a narrow compass; it centres on whether the licensee had the right to withdraw an application after it had been filed.

24. We may also note that one of the principal grounds urged by the licensee for questioning the orders passed by the Excise Officials (the Commissioner and the Deputy Commissioner) is that the order dated 05.12.2020, passed by the Deputy Commissioner, holding that the question of transfer would be considered on the licensee filing a fresh application. According to the licensee, this order had attained finality, and, by virtue of the said order, the application dated 14.08.2020 filed by the licensee for the transfer of the licenses did not survive.

25. It was earnestly contended on behalf of the licensee that, as the endorsement dated 05.12.2020 had not been set aside, the

application for transfer of the licences could not be processed. He further submitted that although liberty had been granted to the appellant to challenge the same, the appellant had not exercised its remedy in respect of the said order.

26. In view of the above, the first and foremost question to be addressed is whether the orders passed by the Commissioner approving the transfer of the licences and the order of the Deputy Commissioner transferring the licences are vitiated on the ground that the licensee's application dated 14.08.2020 for the transfer the licences did not survive in view of the endorsement dated 05.12.2020.

27. A straightforward reading of the endorsement dated 05.12.2020 suggests that the Deputy Commissioner considered the complaints made by the licensee and his family in compliance with the Commissioner's letter dated 06.11.2020, which directed that the complaints be examined and disposed of in accordance with the Rules. The Deputy Commissioner was instructed to submit a proposal with clear recommendations if the licences were to be transferred under Rule 17B of the Rules. After reviewing the complaints, the Deputy Commissioner ordered that the disputes be mutually resolved and that the application for the transfer of

licences would be considered only once the disputes were settled. However, before the issuance of this endorsement, the appellant had lodged a writ petition in WP.No.13507/2020 inter alia, praying that the Commissioner and Deputy Commissioner be directed to immediately effect the transfer of the licences, pursuant to the application dated 14.08.2020. Therefore, when the endorsement dated 05.12.2020 was issued, the said writ petition was still pending. As noted earlier, that petition was disposed of by an order dated 18.12.2020, after hearing the parties involved. The licensee was not a party to that petition.

28. We consider it relevant to refer to the following extract of the said order dated 18.12.2020:

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

a) prima facie, the application for transfer of the CL Licence is entitled to be considered on merits, as rightly contended by the counsel for the petitioner; relevant part of Sub-Rule (1) of Rule 17B of 1967 Rules reads as under;

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b) the above provision has been interpreted by a Coordinate Bench of this Court in W.P.No.17393/2012 between Sri S.A.SURESH VS. THE DEPUTY COMMISSIONER disposed off on 19.07.2012 holding that pursuant to amendment of law w.e.f. 01.04.1995, the licences of the kind which were otherwise not

transferable earlier have been made transferable; the requirement for such a transfer is : (i) there should be an application by the licensee seeking transfer of his licence, (ii) the payment of transfer fee equivalent to the annual licence fee, (iii) the named transferee should be eligible for the grant of a licence under the Karnataka Excise Act, 1965 and the Rules made thereunder & (iv) the approval of the Excise Commissioner; there is force in the contention of the petitioner that the requirement of law is complied with going by the documents produced on record, more particularly the applications in the prescribed form supported by the Certificate of Attestation of signatures of the Licensee by the jurisdictional officers & Consent Deed drawn on Rs.50 non-judicial stamp paper; and,

c) learned AGA on instructions from Mr.Hidayath Khaleel, the Excise Inspector present in the Court submits that there will be no difficulty for considering the subject applications in terms of Rule 17B, if a reasonable period is prescribed for the same by this Court.

In the above circumstances, this writ petition succeeds; a Writ of Mandamus issues to the second respondent to consider and to the first respondent to cause to be considered subject applications/request for licence within a period of two weeks from the date a copy of this judgment is produced and to inform the petitioner of the result of such consideration.

The delay in consideration shall entail the second respondent a cost of Rs.5,000/- per week personally payable to the petitioner.”

29. In view of the said order, the endorsement dated 05.12.2020 could not impede the Excise authorities from examining the application for transfer of the licences.

30. In compliance with this court's order dated 18.12.2020, the Commissioner considered the application for transfer of licenses

and granted its approval by an order dated 08.01.2021. Following the said approval, the Deputy Commissioner passed an order dated 11.01.2021.

31. These orders were questioned by the licensee in writ petition being WP.No.2756/2021. As noted above, this petition was allowed in part by an order dated 21.06.2021. The impugned orders dated 08.01.2021 and 11.01.2021, passed by the Commissioner and the Deputy Commissioner, respectively, were set aside. The licensee was directed to submit his explanation in support of the withdrawal of his application dated 04.08.2020. The appellants were also permitted to furnish statements along with any documents, and the competent authority was directed to pass a detailed speaking order after due consideration of the rival pleas. It was further directed that *status quo* would be maintained till the final decision was taken. The operative part of the said order is as under:

“1) Impugned orders dated 11.01.2021 bearing No.EXE/BUD-5/VALAYA-31/IML/15/2020-21 passed by respondent No.2-The Deputy Commissioner (Excise) vide Annexure-A and dated 08.01.2021 bearing No.Excise/11014/156/2020 issued by respondent No.1-The Commissioner of Excise vide Annexure-A1 are set aside.

2) The petitioner is hereby directed to submit his explanation in support of withdrawal of application dated 14.08.2020. Respondent No.3 is also permitted to furnish necessary statement along with documents, if any. They are directed to exchange their statements along with documents, if any.

3) The competent authority is hereby directed to pass a detailed speaking order after due consideration of each of the plea of the petitioner and respondent No.3 and communicate the same to the respective parties within a period of three months from the date of receipt of this order.

4) Till final decision is taken, parties are hereby directed to maintain status quo.

5) Respondent No.3 is at liberty to challenge the order dated 05.12.2020 by which petitioner's application dated 14.08.2020 to transfer CL-9 and RVB licenses is rejected."

32. It is important to note that the endorsement dated 05.12.2020 was brought to the court's notice in Writ Petition No.2756/2021 and was one of the grounds for challenge. It is also necessary to bear in mind that the aforesaid endorsement was of no relevance in view of the court's order dated 18.12.2020 in Writ Petition No.13507/2020 (EXCISE). However, the order dated 18.12.2020 was passed without hearing the licensee and without the parties bringing the endorsement dated 05.12.2020 to the court's attention. In this context, the court in Writ Petition No.2756/2021 directed the competent authority to issue a detailed speaking order after considering the opposing arguments. Clearly,

the said order concerned the application for the transfer of licences. A plain reading of these directions clearly contradicts the argument that the application for transfer of licences did not survive by virtue of the endorsement dated 05.12.2020. The orders issued by the learned Single Judge of this Court in WP.No.13507/2020 and WP.No.2756/2021 explicitly state that the Commissioner and Deputy Commissioner were required to consider the application for transfer of licences. The import of licensee's claim that the application for transfer of licences is accepted would make the subsequent directions issued by the court unnecessary.

33. The licensee's contention that the appellant was merely granted the liberty to challenge the order dated 05.12.2020, whereby the application for transfer of the licences was rejected, rests on direction no. (5) issued by the learned Single Judge as noted above in the order dated 21.06.2021. However, the said directions are to be read in conjunction with the other directions issued by the court. Thus, the expression 'liberty to challenge' the order dated 05.12.2020 has to be construed as liberty to advance contentions to assail the said view – namely, that the application for transfer can be considered after the parties settle their disputes – before the Excise officials. The said direction cannot be construed

to mean that the appellant was granted liberty to file a separate appeal or a writ petition to challenge the said endorsement. A meaningful reading of the directions is quite to the contrary to what is canvassed by the counsel for the licensee. The said directions issued by the court expressly reserve the liberty to the appellant to advance submissions – which were required to be considered by the competent authority – contrary to the order dated 05.12.2020. In other words, the court merely clarified that the order would not impede the appellant from advancing its submissions for the transfer of the licences pursuant to the application dated 14.08.2020. Any other interpretation would militate against the plain tenor of the orders passed by this Court. If the licensee's contention that the application dated 14.08.2020 did not survive in view of the endorsement dated 05.12.2020 is accepted, there was no occasion for the court to issue elaborate directions for affording the parties an opportunity to be heard and for the competent authority to pass a detailed speaking order.

34. The second and main question to be addressed is whether the licensee had the right to withdraw the application for transfer of the licences after the same has been accepted by the Excise authorities.

35. Rule 17B of the Rules, which concerns the transfer of licences, is relevant and is set out below.

“RULE 17B

17-B. Transfer of licence in other cases - (1)
Notwithstanding anything contained in Rule 2. licences issued.-

(i) for Sale of Indian Liquor (other than arrack) or Foreign Liquor or both, in Form No.CL-1 (Wholesale licence) or CL-2 (retail shop licences) [CL-6A (Star Hotel Licence) or CL-7 (Hotel and Boarding House Licences) or CL-9 (Refreshment room (Bar) Licence under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968; or

(ii) for sale of Beer under the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976;

The Deputy Commissioner may on an application by the licensee and subject to payment of transfer fee equivalent to twice the annual licence fee specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retail Vend of Beer, Rules, 1976, as the case may be, and with the prior approval of the Excise Commissioner, transfer such licence in favour of any person named by such licence, if such person is eligible for grant of a licence under the Karnataka Excise Act, 1965 or the rules made thereunder:

(2) Nothing in this rule shall apply to transfer of licence under Rule 17-A.

36. A plain reading of the aforesaid Rule indicates that the Deputy Commissioner may transfer the licences on an application being filed by the licensee. However, the said transfer would be subject to the satisfaction of the following conditions:

“a) the transfer fee as specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retail Vend of Beer) Rules, 1976 is paid;

b) the Excise Commissioner has approved the transfer;
and

c) The transferee is a person who is otherwise eligible for the grant of a license under the Karnataka Excise Act, 1965 and the rules made thereunder.”

37. Plainly, if the aforementioned conditions are satisfied, the Deputy Commissioner is required to transfer the licence. These contentions are also noted by the learned Single Judge in the case of **Suresh v. the Deputy Commissioner: WP 17393/2012 (EXCISE)**, which was also noted by the learned Single Judge in the order dated 18.12.2020 in WP.No.13507/2020 (EXCISE).

38. There is no dispute that an application for transfer of a licence had been made. Thus, clearly, the Deputy Commissioner had the jurisdiction to transfer the licences under Rule 17B of the Rules.

39. It is a well-established position of law that a licence for liquor is a privilege granted by the State to the licensee. It is well settled that no person has a fundamental right to carry on the trade in liquor. Trading in liquor is *res extra commercium* (outside commerce) as held by the Constitution Bench of the Supreme Court in **Khoday Distilleries Ltd. v. State of Karnataka**¹. This principle was reiterated by the Supreme Court in **Uga Sugar Works Ltd vs Delhi Administration and Ors**²; **State of T.N vs K. Vinayagamurthy**³; **State of Punjab vs Devans Modern Breweries Ltd.**⁴; **State of Bihar vs Nirmal Kumar Gupta**⁵; **State of Kerala vs Kandath Distilleries**⁶ and **State of Tamil Nadu vs K. Balu and Anr.**⁷ It is necessary to bear in mind the aforesaid principle while considering the orders passed by the Excise Authorities to transfer the licences. Thus, the question has to be viewed from the perspective of whether the Deputy Commissioner had the jurisdiction to transfer the licences in accordance with the Rules.

¹ (1995) 1 SCC 574

² (2001) 3 SCC 635

³ (2002) 7 SCC 104

⁴ (2004) 11 SCC 26

⁵ (2013) 2 SCC 565

⁶ (2013) 6 SCC 573

⁷ (2017) 2 SCC 281

40. Concededly, there is no provision for withdrawing an application once it is filed. It is also necessary to bear in mind that the orders, which are impugned in the writ petition, were passed by the Commissioner and Deputy Commissioner in exercise of their statutory power. It is well settled that no interference with such orders is permissible under Article 226 of the Constitution of India, unless this Court finds that the decision is (i) rendered by a person lacking the competence or authority to pass such orders; (ii) contrary to the statutory provisions; or (iii) offends any legal or constitutional right of person(s).

41. We may now examine the order dated 07.12.2021. The Deputy Commissioner had at the outset noted as under:

1. Sri H.S. Krishnamurthy, residing at No. 88, Survey No. 97, Inorbit Mall, 2nd Floor, EPIP Area, Hoodi Village, K.R. Puram Hobli, Bengaluru East Taluk, Bengaluru, has submitted a petition as per Reference (1) seeking transfer of the CL-9 certificate along with the corresponding RVB licence standing in his name for the year 2020-21, to the names of the partners of M/s Kumar Enterprises, namely Sri Bharat S. Kumar and Sri Rohit S. Kumar. In this connection, the aforesaid partners were personally present before me in this office on 31-08-2020, and in my presence, mutually consented and signed the request for transfer of the licence under Rule 17(B). Videography of this proceeding has been carried out.

42. We may also consider the stage at which the licensee attempted to withdraw the application. The Deputy Commissioner

observed that, upon reviewing the said applications, the relevant Excise Inspector and the Deputy Superintendent of Excise (Sub-Division-10) were called to furnish a detailed report, which they submitted on 31.08.2020. Subsequently, the proposal dated 31.08.2020 was forwarded to the Commissioner for prior approval. At that stage, the licensee submitted a complaint dated 28.08.2020 seeking to withdraw the application, which the Office of the Deputy Commissioner received on 01.09.2020. The Deputy Commissioner noted that the transfer process had already begun and the required fees had been paid. He held that once the licence transfer process under Rule 17B of the Rules has started, the procedure must follow the prescribed course. Once a licence holder has paid the prescribed fee and submitted a transfer application, the certificate holder may not revoke or retract the application. The Deputy Commissioner recorded that the parties had appeared before him and had made a request for the transfer of the licence, which was also videographed. The Deputy Commissioner concluded that any dispute between them regarding the payment of consideration falls outside the statutory framework and does not justify halting the proceedings. He further noted that Rule 17B only refers to the term 'transfer' and does not include the word 'sale'. There is no provision for a licence holder to sell licences.

43. As noted above, the licensee appealed the decision before the Commissioner, which was ultimately rejected by a detailed order dated 21.03.2024. The Commissioner stated that once an application under Section 17B is submitted, it cannot be withdrawn unless a transferee is disqualified. It was also noted that the licensee had paid the licence transfer fee, prompting and initiating the transfer process in accordance with the law. The Commissioner held that the Department cannot interfere in disputes that arise after the transfer and thus must accept the validity of the application once both parties appear and affix their signatures. The Commissioner observed that the parties had, on multiple occasions, requested time to settle their disputes concerning financial transactions outside of court. It was further noted that the licensee had no objection to the transfer of the licences to the appellant, provided their financial disputes are resolved, which the Commissioner recognised as being beyond the scope of the Excise Department.

44. We find no infirmity in the said decision that would warrant interference by this Court.

45. As noted, at the outset, there is no inherent right of the licensee to apply for transfer and withdraw such an application at will.

46. The licence is a privilege granted by the State, and the State can withdraw or transfer it, subject to the statutory framework. There is no provision in the statute which contemplates a licence as a saleable commodity. Thus, once the application is filed with the requisite fees and the transfer process is triggered, the authorities must act in accordance with the statutory framework. Thus once the transfer is initiated upon filing of the requisite application for transfer, the licensee can no longer control the process.

47. We are unable to accept that the impugned orders passed by the Deputy Commissioner and the Commissioner fall foul of Rule 17B of the Rules. The said orders also do not violate any legal or constitutional right of the licensee. In view of the above, there is no scope for interference with the impugned orders in exercise of powers under Article 226 of the Constitution of India.

48. The learned Single Judge had proceeded on the basis that a person who files an application would also be vested with the right

to withdraw the same. We are unable to concur with this view, given the nature of the right of a licence holder and the statutory framework.

49. We are unable to accept that a licence holder can control the transfer of a licence once an application has been filed and the Deputy Commissioner is in seisin of the same under Rule 17B of the Rules. The learned Single Judge had also proceeded on the basis that the appellant was not entitled to pursue its claim under the application without establishing that the application was irrevocable on account of the consideration paid, in whole or in part. Additionally, the learned Single Judge had observed that the memorandum of understanding between the licensee and the appellant is only an agreement to enter into an agreement and thus would not be enforceable.

50. The question of whether the application filed by the licensee is revocable or irrevocable is not contingent on whether he has received consideration for it. The dispute or controversy regarding the agreement between the licensee and the appellant is clearly outside the scope of the Rules. As rightly held by the Deputy Commissioner as well as the Commissioner, the Excise

Department cannot be drawn into any such dispute. Thus, the right of any licensee to withdraw his application for transfer of a licence is required to be examined solely with reference to the statutory framework and not in the context of a private agreement between the licensee and the appellant.

51. In view of the above, the present appeal is allowed and the impugned order is set aside.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

SD