IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5716 OF 2015

Tirathram Kashiram Arora	)	
Age:-Major, Occu:-FL-II Licence No.84	)	
CL/FL/TOD-III Licence No.82,	)	
At Deola, Tq:-Deola, Dist:-Nashik	)	.. Petitioner

Versus

1. The State of Maharashtra	)	
Through Minister of State Excise,	)	
M. S. Mantralaya, Mumbai-32.	)	
2. The Commissioner of	)	
State Excise, M. S., Mumbai.	)	
3. The Collector,	)	
(State Excise Department), Nashik.	)	
4. The Superintendent of,	)	
State Excise, Nashik.	)	
5. Shri. Vijay Aher	)	
Age:-Major, Occu:-Business,	)	
R/o:-Deola, Tq:-Deola, Dist:-Nashi.	)	.. Respondents

Mr. P. S. Dani, Senior Advocate i/by Mr. Samrat K. Shinde, for the Petitioner.

Mr. S. S. Aradhye, for the Respondent No.5.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.
DATE : 30th JUNE, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 27.05.2015 passed by the Hon'ble Minister, State Excise, Government of Maharashtra, by which order the order dated 04.03.2015 passed by the Commissioner of State Excise has been stayed pending the consideration of the Revision Application filed by the Respondent No.5 before the State Government. The genesis of the proceedings lie in the cancellation of the licence by the Collector by order dated 03.02.2015 on the ground that the Gramsabha has cancelled the earlier resolution dated 15.08.2014 by which it had resolved that it had no objection to the shop of the Petitioner, wherein the business under the FL-II and CL/FL/TOD-III licence is to be conducted. The said order passed by the Collector Nashik was challenged by the Petitioner before the Commissioner of State Excise, Maharashtra. The Commissioner of State Excise for the reasons recorded in his order set aside the order passed by the Collector dated 03.02.2015 and restored the licence to the Petitioner. Against the said order dated 04.03.2015 passed by the Commissioner the Respondent No.5 herein filed a Revision before the State Government. The said Revision was filed sometime in April 2015. In the said Revision a notice came to be issued to

the Petitioner to remain present for hearing of the stay application filed in the Revision. The said notice is undated. It is the case of the Petitioner that the said notice was received on 12.05.2015 for the hearing which was to take place on 13.05.2015 as per the said notice. The fact of the Petitioner having received the said notice on 12.05.2015 is seen endorsed on the copy of the said notice which is annexed to the above Petition. It is unclear as to whether the stay application was heard on 13.05.2015 or thereafter. It appears that in fact the Revision Application itself was kept for hearing, but without hearing the said Revision Application it appears that the impugned order came to be passed staying the order passed by the Commissioner State Excise dated 04.03.2015.

3. The principal ground on which the said order is challenged is that the said order has been passed without affording an opportunity to the Petitioner. As indicated above, it is the case of the Petitioner that the notice of the hearing which was to take place on 13.05.2015 was received on 12.05.2015 at Deola and therefore, it was not possible for the Petitioner to remain present for the hearing which was to take place on 13.05.2015. It is the case of the Petitioner that in a matter as serious as granting stay of the order passed by the Commissioner the Petitioner was required to be heard as the grant of stay has got serious consequences for the Petitioner who at present is conducting the said FL-II and CL/FL/TOD-

III licence in the premises in question. The Learned Counsel appearing for the Respondent No.5 does not seriously dispute the fact that the Petitioner was not present for the hearing, but stated that his Advocate was present. It seems that a copy of the Revision Application was furnished to the Advocate on the said day, and hence he could not proceed with the hearing. In my view, since the impugned order has been passed in breach of the principles of natural justice i.e. without hearing the Petitioner the same is required to be quashed and set aside and is accordingly quashed and set aside. The matter is relegated back to the Revisionary Authority i.e. the Hon'ble Minister for Excise, Government of Maharashtra for a de-novo consideration of the application for stay. On remand, the parties to appear before the Revisionary Authority on 14.07.2015. The Petitioner to file his reply to the stay application by 28.07.2015. The Revisionary Authority to hear and decide the application for stay by 31.08.2015. Needless to state that the contentions of the parties are kept open for being urged before the Revisionary Authority. The Revisionary Authority to consider the application for stay on its own merits and in accordance with law. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute. Parties to bear their respective costs.

[R.M. SAVANT, J]