IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3926 OF 2014

Alka Anil Chaudhari
Age 38 years, Occ. Business,
R/o. Shop Nos. 45 and 47,
Narayanwadi, College Road,
Chopda, Tq. Chopda
District Jalgaon
Through its Power of Attorney Holder
Lalchand s/o Hiralal Chaudhari
Age 38 years, Occ. Business
R/o. Shop Nos. 45 and 47
Narayanwadi, College Road,
Chopda, Tq. Chopda
District Jalgaon. ...Petitioner

versus

1. The State of Maharashtra
Through its principal Secretary,
State Excise Department,
Mantralaya, Mumbai.
(Copy to be served on Govt.
Pleader, High Court of Judicature
at Bombay, Bench at Aurangabad)

2. The Hon'ble Cabinet Minister,
State Excise Department,
Mantralaya, Mumbai.

3. The Collector,
State Excise,
Old Custom House
S.B. Road, Mumbai.

4. The District Superintendent
Of State Excise, Mumbai.

5. The Collector,
State Excise, Jalgaon.

6. The District Superintendent
State Excise, Jalgaon.

7. Arjunlal Narsilal Ahuja
Age 70 years, Occ. Business,
R/o. 201, Ahuja Palace,
96, Richmand Road,
Bengalaru (Karnataka State)
At present R/o. A-12, Juhu Apartment,
Juhu Road, Santacruz (W), Mumbai.

8. The Commissioner of State Excise
Old Custom Home Bhavan,
2nd floor, S.B. Road, Mumbai.

9. Prem s/o Chandrakant Advani
Age : adult, Occ. Busienss
R/o. Ring Road, LIC Colony Road,
Jalgaon ...Respondents

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Mr. R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for the petitioner
Mr. G.O. Wattamwar, A.G.P. for respondents 1 to 6 and 8
Mr. A.B. Kale, advocate for respondent No.7
Mr. V.D. Hon, senior counsel i/b Mr. A.V. Hon, advocate for respondent No.9.

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**CORAM : V. K. JADHAV, J.**

**Date of Reserving the Judgment: 29.02.2016**

**Date of pronouncing the Judgment: 12.04.2016**

**JUDGMENT**:-

1. Heard learned counsel for the respective parties.

2. By way of this petition, the petitioner is seeking to quash and set aside the order dated 18.10.2013 passed by the respondent Hon'ble Minister thereby renewing the licence so also transferring the FL-II licence to Jalgaon District along with letter dated 13.03.2014

issued by the Desk Officer, Maharashtra State, Mantralaya, Mumbai and further seeking to quash and set aside the order dated 29.3.2014 passed by the Collector, State Excise, thereby renewing the said licence, which was in the name of deceased Jankibai, in favour of respondent No.7.

3. Brief facts, giving rise to the present petition, are as under:-

a) The petitioner is licence holder of FL-II, CL-III and FL-III under the provisions of Maharashtra Prohibition Act and is the owner of Shanti Wines running business at Chopda Municipal Council, Taluka Chopda, District Jalgaon. It is not necessary to reproduce here as to how the petitioner has become sole proprietor of the said licence. However, suffice it to say that on 26.3.2010, the Collector has permitted to delete the names of four other partners from the said licence and the petitioner, at present is the sole proprietor of the said licence bearing FL-II which is renewed up to 31.3.2016.

b) One Jankibai Narsilal Ahuja was holding FL-II licence No. 315 and was running shop at Dadar (West), Mumbai. Said Jankibai Ahuja expired on 18.1.1997. The said shop was illegally run by one Smita Raju Deokar and she has not paid any sales tax for the period 2.9.2000 to 31.3.2001. Consequently, the Sales Tax Officer has informed the District Superintendent of State Excise, Mumbai, specifically requesting therein not to renew the licence of said defaulter till issuance of No Objection Certificate from Sales Tax Officer.

c) One fictitious and fraudulent person had applied to the Superintendent of State Excise in the name of Jankibai Ahuja to re-start the FL-II licence by letter dated 16.8.2013., However, the said request was not considered by the authorities. The said licence was already cancelled on 7.1.1997. Thereafter, the said fictitious person then applied to the respondent Hon'ble Minister by filing Revision stating therein that said licence should be renewed in the name of Jankibai Narsilal Ahuja. Even said Jankibai Narsilal Ahuja is shown as revision petitioner. Even on the basis of said revision application, a show was made to issue notice to said Jankibai Narsilal Ahuja and notice was tried to be served through Superintendent of State Excise Mumbai city, however, the said notice returned unserved with a report that said Jankibai was not residing on the given address. However, the said fictitious person appeared at the time of hearing and even though revision was filed only for the purpose of renewal of said FL-II licence, respondent Minister has not only renewed the said licence but even accorded permission to transfer the said licence from Bombay to Jalgaon without following due procedure. The Hon'ble Minister by order dated 18.10.2013 allowed the revision permitting renewal after 16 years without there being any application for condonation of delay.

d) Thereafter the Desk Officer has communicated the said order to the Superintendent of State Excise, Mumbai and the Collector has directed said revision petitioner Jankibai to remain present for verification of the documents and for transferring the said licence in Jalgaon District. Thereafter, affidavit came to be prepared in the name of revision petitioner Jankibai Ahuja on 13.11.2012 before the notary.

e) The Collector, State Excise Department, Mumbai, on 17.11.2013 issued a letter to the Assistant Medical Officer/Sub Registrar, Birth and Deaths, Mumbai Municipal Corporation, informing therein that the legal representatives have made an application to the collector in respect of the said licence excluding the four legal heirs and therefore, it is necessary to verify death certificate issued by the said department. In pursuance to the said letter, the Medical Officer has informed that death certificate issued by the Municipal Corporation and the death certificates annexed along with the said application are different and the same are not finding place in the SAP system.

f) In view of this, the Deputy Superintendent of State Excise has written a letter to the Commissioner to the State Excise specifically pointing out the above position as to how fraudulent documents are prepared to renew the licence in the name of said Jankibai Narsilal Ahuja. Thus, the order passed by the State Government is kept in abeyance. Thereafter, necessary report dated 1.1.2014 came to be submitted to the office of Principal Secretary through the office of Commissioner. However, said report submitted by the Superintendent contends that said Jankibai Narsilal Ahuja expired on 18.4.1997 and false application came to be submitted for renewal of licence along with false death certificate of three other persons.

g) On 11.2.2014, another application was made to the Minister for State Excise by respondent No.7 Arjunlal Narsilal Ahuja stating therein that he was not aware that revision is not maintainable in the name of deceased person and further contended in the said application that he along with is sister Nanda Ahuja are the only surviving heirs of said Jankibai. It is also further sated in the said application that his sister has given no objection to transfer the said licence in his name and accordingly he prayed in the said application that said licence be renewed in his name as Arjunlal Narsilal Ahuja. The Desk Officer, by his letter dated 13.3.2014 has however, informed that if the holder of licence is expired then the Collector is competent authority to transfer the licence in the name of legal heirs. In view of the said letter dated 13.3.2014 issued by the Desk Officer, Superintendent of State Excise has issued letter to respondent No.7 Arjunlal Ahuja and further directed the Deputy Superintendent of State Excise to conduct necessary enquiry and submit report. In pursuance to the said directions, the Deputy Superintendent has submitted report contending therein that after death of Jankibai, Arjunlal and Nanda are the legal heirs and since Nanda has given No Objection Certificate/Affidavit to transfer the said licence in the name of Arjunlal Ahuja, the licence may be transferred in the name of respondent Arjunlal Ahuja in accordance with law. On 29.3.2014, the Collector directed renewal of licence in favour of respondent No.7 Arjunlal Ahuja and in pursuance of the same, name of respondent no.7 is entered in the licence.

h) The collector, State Excise Mumbai has written a letter on

10.4.2014 to the Collector, Jalgaon State Excise stating therein that the licence in the name of Jankibai Narsilal Ahuja is renewed by the State Government and the said licence is renewed subject to the decision taken by the Sales Tax Office. It is further requested to make necessary compliance in respect of the same. Hence, this writ petition.

4. Learned counsel for the petitioner submits that Jankibai Narsilal Ahuja expired in the year 1997 and licence was cancelled on the application made by Jankibai by letter dated 2.12.1996. The said licence was cancelled during the life time of Smt. Jankibai and on the face of record, there is no question of renewal of said licence after a period of almost 16 years. Though said Jankibai, who was original holder of licence, expired in the year 1997, she shown to have made an application on 16.8.2013 stating therein that the said licence is closed from 1997 and now she intends to renew the said licence. The said revision came to be filed in the name of Jankibai and a show was made for issuance of notice to her. An order dated 18.10.2013 came to be passed in favour of deceased Jankibai. The said application is allowed consequent to the fraud played and therefore, the order dated 18.10.2013 itself is nullity. Learned counsel submits that the respondent Hon’ble Minister, without making any proper enquiry into the matter and without application of mind, has not only

renewed the licence after a period of 16 years but also permitted the dead person to transfer her licence to Jalgaon District. The respondent Minister has not perused the record, relevant documents and it also seems that no personal hearing had taken place in the matter. After filing of said revision in the name of deceased person, only in three dates, without calling any record, without perusing the documents and without giving personal hearing in the matter, the respondent Minister has passed the impugned order dated 18.10.2013. Smt. Jankibai Ahuja, who was original holder of licence, expired in the year 1997, yet fabricated record was prepared to show that application was made on behalf of her making false averments in the said application that licence is closed in the year 1997 and now she intends to renew the said licence.

5. Learned counsel for the petitioner further submits that the Superintendent of State Excise had written a letter dated 1.1.2014 (Exhibit L) to the Commissioner of State Excise specifically pointing out that fraudulent documents have been prepared to renew the licence in the name of deceased Jankibai. It was also informed that said order dated 18.10.2013 is kept in abeyance, in view of the same. It was also informed by the said communication that necessary report is also submitted to the Principal secretary, through the Office of Commissioner. However, on 12.2.2014, an application

was made before the Hon'ble Minister for State Excise by respondent Arjunlal Ahuja, wherein it is stated that the respondent Arjunlal was not aware that revision was not maintainable in the name of dead person and further requested that he being the sole survivor of deceased Jankibai and since his sister Nanda has given no objection to transfer the said licence in his name, the said licence should be renewed in his name as Arjunlal Narsilal Ahuja. Even though there is specific endorsement on the said application date 12.2.2014 to the effect that entire facts shall be brought to the notice of Hon'ble Minister and hearing shall be kept on 17.2.2014, the Desk Officer by letter dated 13.3.2014 has informed to the Collector, Mumbai City that the Collector is competent authority to transfer the licence in the name of legal heirs and after verifying the documents, as per the order passed by the Government dated 18.10.2013 the licence be renewed and issued in the name of legal heir by obtaining necessary charges. The Superintendent of State Excise, Mumbai who has informed by his letter dated 1.1.2014 to the Commissioner, State Excise, Maharashtra State that renewal of licence has been obtained in the name of deceased Jankibai Ahuja fraudulently and order of Government dated 18.10.2013 is thus kept in abeyance, in view of letter issued by the said desk Officer dated 13.3.2014, further directed the Deputy Superintendent of State Excise to make necessary enquiry and submit report. Learned counsel submits that in the light of the so called enquiry conducted by the Deputy Superintendent of State Excise and the report dated 26.3.2014 in this regard, the Collector by order dated 29.3.2014 directed renewal of the licence in favour of respondent No.7. Learned counsel submits that the Collector, State Excise Mumbai by letter dated 10.4.2014 informed to the Collector, Jalgaon, State Excise that licence in the name of deceased Jankibai has been renewed by the State Government and said renewal is subject to decision taken by the Sales Tax department. Learned counsel submits that a fraud is being played all throughout and the same is evident from the documents submitted before the authorities concerned. Even though it was revealed during the course of enquiry that fraudulent documents came to be submitted for renewal of licence, in view of the letter issued by the Desk Officer dated 13.3.2014, instead of taking any action in respect of said fraud played on the authorities, the licence was renewed in the name of respondent No.7 Arjunlal Ahuja. Learned counsel submits that nothing was brought to the notice of the Minister about fraud played while obtaining renewal and even though there was no order passed by the Minister granting renewal in favour of respondent No.7 Arjunlal Ahuja, the Collector has renewed the licence in the name of respondent No.7 Arjunlal Ahuja and transferred it to Jalgaon District. Learned counsel submits that the licence continued to run on forged and fabricated documents.

In support of his arguments, learned counsel for the petitioner places reliance on the following judgments

1) ***Suryakant Baburao Khaladkar and Anr. vs. State of Maharashtra and others***, reported in ***2003 (1) All MR 691,***

2) ***Smt. Pushpa Jivatram Mihani vs. State of Maharashtra and others***, reported in ***2007 (5) ALL MR 608,***

3) ***Govind s/o. Rameshwar Agrawal vs. State of Maharashtra and others***, reported in ***2009 (5) ALL MR 663,***

4) ***Ragho Singh vs. Mohan Singh and others***, reported in ***2001 AIR SCW 2351***,

5) ***T. Vijendradas and Anr. vs. M. Subramanian and Ors.,*** Reported in ***2008 (1) ALL MR 446 (SC)***,

6) ***A.V. Papayya Sastry and Ors. vs. Government of A.P. and others***, reported in ***AIR 2007 SC 1546*** and

7) ***Kishun @ Ram Kishun (dead) through L.Rs. vs. Bihari (D) by L.Rs.***, reported in ***AIR 2005 SC 3799***.

6. Learned counsel for respondent No.7 Arjunlal Ahuja submits that the original FL-II licence was issued in favour of mother of respondent No.7 and said licence was used and operated in the

name of “Wine Plaza” Wine shop at Dadar in Mumbai. Since husband of original licencee i.e. father of respondent No.7 was expired and since nobody was there to look after the business, deceased Jankibai had decided to surrender said licence and accordingly surrendered it to the Government by application dated 2.12.1996. The District Collector has passed order on the said application on 7.1.1997 for closing down the said licence. The father of respondent No.7 was expired in the year 1998, mother Jankibai was also expired in the year 1997. Respondent No.7 and his sister Nanda are only legal heirs of deceased Jankibai. Since respondent No.7 had shifted to Karnataka during all this period, by taking advantage of this situation, some bogus persons by making application to the concerned authority had requested for renewal of said licence. Learned counsel submits that said application was made in the name of mother of respondent No.7 and on the very same day, District Collector has rejected the said application. Learned counsel submits that being aggrieved by said order of the Collector, the very persons have approached the Minister by filing revision under Section 138 of the Maharashtra Prohibition Act in the name of mother of respondent No.7. After considering the record, the Hon’ble Minister was pleased to allow the said revision by order dated 18.10.2013. Learned counsel submits that while deciding the said revision, Hon’ble Minister has directed the respondent authorities to verify the status as well as to verify the Government dues. The Minister has also considered various provisions of law and circulars. Then the matter was considered by the respondent Officers and from investigation, it revealed that Smt. Jankibai Ahuja is no more and by taking advantage of this situation, bogus proceedings came to be initiated in her name and licence was tried to be renewed.

7. Learned counsel for respondent No.7 submits that till that time respondent No.7 was not aware about the happening of said proceedings. He had noticed this fact only during the course of enquiry conducted by respondent No.4. Consequently, respondent No.7 approached the Government by filing an affidavit and an application requesting the said authorities to renew the licence in his name being legal heir of deceased Jankibai. Respondent No.2 after enquiry, considering the documents placed on record by respondent No.7 along with affidavit of his sister giving No Objection Certificate to renew the licence in the name of respondent No.7, by order dated 13.3.2014 has maintained the said order dated 18.10.2013 but in the name of respondent No.7. So far as the order passed by the Minister dated 18.10.2013 is concerned, the same was maintained by substituting the name of respondent No.7 being legal heir of deceased Jankibai. By no stretch of imagination it can be said that

fraud alleged, has been played by respondent No.7. After the order passed by the Minister on 13.3.2014, respondent Nos. 3, 4 and 6 have conduced close scrutiny of the documents and have inquired into the matter thoroughly and after satisfaction, order of renewal came to be issued in favour of respondent No.7. Even the authorities have imposed renewal charges to the tune or Rs.58,65,000/- (Rupees fifty eight lacs sixty five thousand only) on respondent No.7 and the same has already paid by respondent No.7 with Treasury of the Government.

8. Learned counsel for the respondent No.7 submits that the petitioner has no *locus standi* to challenge the orders passed by the authorities as above. The State Government has taken policy decision that no licence should be issued afresh and the licences issued earlier are to be made operative. The petitioner is the person who is having liquor shops licence in Chopda, District Jalgaon and he is the only person who is holding licence at present, and therefore created monopoly in Chopda city. All sorts of allegations have been made against respondent No.7 with some ulterior motive. The order dated 10.4.2014 transferring the licence to Jalgaon from Mumbai is not challenged by the petitioner. **The order dated 29.3.2014 creates right in favour of respondent No.7 and same is not challenged by the petitioner**. Learned counsel submits that there is no

substance in the writ petition and the writ petition is liable to dismissed. Learned counsel in the alternate submits that the matter may be remanded to the respondent Minister for conducting enquiry afresh and to take appropriate decision in the matter for renewal of licence in the name of respondent No.7. Learned counsel for respondent No.7 places reliance on the Government Resolution dated 20.8.1996 issued by the Government.

In support of his submissions, learned counsel for respondent No.7 places reliance on the following judgments:-

I) ***Shivaji Tulshiram Thakre vs. State of Maharashtra and others***, reported in ***2012 (6) Bom.C.R. 593*** and

II) Unreported judgment of this Court dated 7.1.2011, in ***writ petition No. 199 of 2006 (Smt. Keti Ardeshir Kapadia vs. State of Maharashtra and others)***.

9. Learned A.G.P. for respondent Nos. 1 to 6 and 8 submits that entire action in the present matter is completed at Mumbai and the same is done under the order passed by the Collector and Superintendent of State Excise at Mumbai, so also under the order of Hon’ble Minister. Learned A.G.P. submits that after passing of the order by the Minister dated 18.10.2013, correct facts came to the knowledge of the department and accordingly Superintendent of

State Excise, Mumbai has submitted his report dated 1.1.2014 to the Commissioner State Excise and also to the Principal Secretary, State Excise department. Learned A.G.P. submits that it is an admitted position that in the year 1996 itself, original licencee Smt. Jankibai Ahuja filed an application dated 2.12.1996 along with affidavit and surrendered the licence and the collector, by its order dated 7.1.1997 permanently cancelled the said licence. Thus, there is no question of Sales Tax amount for the period of 2000 to 2001. So far as the revision before the Minister is concerned, the same is filed through advocate and under such circumstances, there is no requirement to personally call the party for hearing as the advocate was attending the hearing. It is the regular practice in revision before the Minister to issue notice to the parties through Superintendent of State Excise and the same is served on the concerned party through the Inspector or Sub Inspector. Learned A.G.P. further submits that hearing took place on 27.8.2013 and representative of original licencee and the advocates were present. Furthermore, Inspector of State Excise from Mumbai was also present and by following procedure as laid down in Government Circular dated 13.2.2012, revision was decided.

10. Learned A.G.P. submits that the writ petition is misconceived because the letter issued by the Desk Officer, Home Department is only in the form of covering letter for supply of copies of order of

Minister and further, the letter dated 2.11.2013 is issued by the Collector, Mumbai to original licencee calling for necessary compliance of the documents. After receiving the application filed by respondent No.7 Arjunlal, the Desk Officer has informed the concerned authority that pursuant to the order dated 18.10.2013, name of legal representative can be inserted in the licence by the Collector and informed the Collector to include the name of legal representative of deceased original licencee by following due procedure of law. The learned A.G.P. further submits that the question of condonation of delay does not arise because renewal of FL-II licence was brought by the Government Circular dated 13.2.2012 and further, for entertaining revision application under Section 138 of Maharashtra Prohibition Act 1949 no period of limitation is prescribed. In the revision petition itself, there was prayer for renewal of licence and also for shifting of licence. Learned A.G.P. submits that the licence was renewed by the orders of the Minister and the department got knowledge of death of original licencee only at the stage of compliance of order of the Minister. Accordingly necessary information was given to the Higher Officer. Learned A.G.P. submits that considering all these facts, and considering the fact that FL-II licence is renewed by the Minister and after necessary compliance, the same is transferred in the name of respondent No.7 Arjunlal Ahuja being legal representative of original licencee, no interference is necessary in the matter so far as the renewal of licence is concerned.

11. I have also heard learned counsel for respondent No.9. Learned counsel for respondent No.9 submits that respondent No.9 was not party to the revision application filed on behalf of Jankibai Ahuja nor he had signed Vaklatnama in the capacity as power of attorney. Learned counsel submits that the allegations made by way of carrying out amendment in the petition against respondent No.9 are totally baseless. Learned counsel for respondent No.9 has no objection if any enquiry is directed in the matter.

12. I find substance in the allegations made in this writ petition. The following are the admitted instances indicating fraud, misrepresentation and suppression of material facts, highhandedness and collusive approach of the authorities, besides total violation of the provisions of law:-

I) FL-II licence bearing No. 315 at Dadar (West), Mumbai named M/s. Wine Plaza which was granted in favour of deceased Jankibai Ahuja and she expired on 18.4.1997. On 16.8.2013, an application was filed before the Superintendent of State Excise singed by Jankibai Ahuja pretending to be an application filed by Jankibai before the said authority for renewal of licence. The said request was not considered by the Collector, State Excise, Mumbai on the ground that the said licence was already cancelled on 7.1.1997 permanently. It is stated in the communication dated 16.8.2013 by the Collector State Excise, Mumbai that Smt. Jankibai Ahuja was not interested in continuing with the licence and on her own request, the licence issued in her name came to be cancelled.

II) Thereafter same person pretending to be Smt. Jankibai Ahuja filed revision before the Minister for renewal of the licence.

III) On the basis of the said revision application, notice was issued to Jankibai and it was tried to be served through the Superintendent of State Excise Mumbai city, however, said notice was not served and it was informed that the applicant Jankibai Ahuja is not residing on the given address. It is thus informed that the person, who has field revision was not traceable.

IV) The revision petition was filed by Mrs. Veena Thadani, advocate for the revision petitioner before the Minister and general power of attorney shown to have been prepared by Smt. Jankibai Ahuja in the name of present respondent No.9 and one Rajan Suryabhan Sonkawde. In the said revision petition of the year 2013, the fact is suppressed that said FL-II licence bearing No. 315 was permanently cancelled by the authorities. It is stated in the revision application that the said licence was functioning till 1.7.1997 and licence thereafter remained inoperative and has not been renewed.

V) The revision application was filed on 5.8.2013 and it was heard finally on 27.8.2013 wherein the presence of general power of attorney holder Rajan Suryabhan Sonkawde and advocate Smt. Veena Thadani was shown for hearing and by order dated 18.10.2013 the Minister has allowed the said revision application with certain directions.

VI) It is recorded in the order dated 18.10.2013 that the husband and daughter of Jankibai Ahuja died and therefore the applicant Jankibai Ahuja being an old aged lady has no independent source of income. It is also recorded that on account of death of husband and daughter, none else was there in the family to support her and the said licence was given on lease to other person, who had not paid sales tax and other taxes and therefore, the said licence is closed since 7.1.1997. It is further recorded in the order that the Collector, State Excise Mumbai city has cancelled the said licence w.e.f. 7.1.1997 by his order dated 16.8.2013. Further it is noted that in view of the Government circular dated 13.2.2012, the Government has framed policy to renew the FL-II licence which have been closed. Accordingly, revision was allowed with the directions to the Collector, Mumbai city to verify all documents and after complying with the terms and conditions by charging renewal fees, necessary orders be issued for renewal of the licence. The Minister has also directed the authorities to shift the said licence in Jalgaon District as per the provisions of Rules in this regard.

VII) Pursuant to the order dated 18.10.2013 passed by the Minister and the subsequent communication issued by the Desk Officer, Mantralaya, Mumbai, the authorities of the State Excise set in motion. Thereafter the Superintendent of State Excise, wrote a letter on 1.1.2014 to the Commissioner of State Excise, specifically pointing out therein that fraudulent documents have been prepared to renew the licence in the name of Jankibai Ahuja and that said Jankibai Ahuja expired on 18.4.1997 and bogus persons have filed application for renewal of licence alongwith the false death certificates of three other legal heirs of Narsilal Ahuja. It was also informed to the superior officers that the order passed by the State Government is therefore, kept in abeyance.

VIII) On 11.2.2014 an application was made before the Hon'ble Minister of State Excise by respondent No.7 Arjunlal Ahuja stating therein that he was not aware that revision is not maintainable in the name of deceased person and that he alongwith his sister Nanda are the sole surviving heirs of deceased Jankibai. It is further stated in the said application that his sister has given no objection to transfer said licence in his name and licence should be renewed in his name. Respondent No.7 Arjunlal has substituted himself in the order dated 18.10.2013 passed by the Minister in revision shown to have been preferred by Jankibai.

IX) The Desk Officer by his letter dated 13.3.2014, informed to the authorities of the State Excise department that in terms of the Government order dated 18.10.2013, the documents submitted along with application filed by respondent Arjunlal be verified and after recovering the charges, the licence shall be transferred in the name of legal heir in terms of provisions of Maharashtra Prohibition Act and Rules made there under. The said order dated 13.3.2014 and the communication made to the Collector, Mumbai stated to have been made as per the approval by the Minister.

X) In view of the said letter, dated 13.3.2014, the same Superintendent of State Excise, who has given earlier report of fraud played for obtaining renewal of licence by a person who is not alive, directed enquiry through Deputy Superintendent of the State Excise and accordingly on 29.3.2014 the Collector, Mumbai State Excise directed renewal of the licence in favour of respondent No.7 Arjunlal. In pursuance to the same, name of respondent No.7 is entered in the licence.

13. It appears that fraud has been played all throughout and above facts and circumstances specifically indicate the same. Smt. Jankibai expired in the year 1997 itself and the licence to run FL-II bearing No. 315 was cancelled on the application made by Smt. Jankibai herself, during her lifetime. Therefore, on the face of record, there is no question for renewal of said licence in the year 2013. It also appears

that an application was submitted within the knowledge of respondent No.7 in the name of deceased Jankibai Ahuja for renewal of licence and also the revision application after the said application came to be rejected. It is also part of record that false address of deceased Jankibai was shown in the revision application and false documents of G.P.A. was prepared. It is also a part of record that false affidavits have been prepared and false death certificates have also been procured. Further, the Minister has also hastily decided the revision application without verifying the documents etc. It further appears that even though fraud was unearthed and reported by the State Excise authorities to the superiors, the same was not considered by the Minister and respondent No.7 Arjunlal has been permitted to be substituted in the proceeding of revision application by way of allowing his application dated 12.2.2014.

14. It is also a matter of record that at the time of verification of documents in terms of order passed by the Minister dated 18.10.2013, one woman pretending herself Jankibai Ahuja remained present before the Excise authorities along with her affidavit. It was also revealed that death certificates of husband, son and daughter of Jankibai produced before the Excise authorities are fake death certificates. It is necessary to repeat here that renewal of licence was obtained under the pretext that Jankibai is the sole surviving

member and all her family members are no more and therefore, renewal of the licence is sought. The statement of respondent No.7 was recorded on 25.3.2014 and he has admitted in his statement that said licence was in operation till 1997. He has also admitted the communication dated 2.12.1996 by Jankibai to the collector, State Excise Mumbai for cancellation of licence and the order passed by the Collector, dated 7.1.1997 thereby cancelling the licence permanently. In the application dated 12.2.2014, it is stated that respondent No.7 Arjunlal Ahuja was not aware that revision was not maintainable in the name of dead person. Learned counsel for respondent No.7 submitted that said application is not happily drafted, however, I do not find any substance in the submissions and it appears that respondent No.7 was knowing about all earlier proceedings and the same reflects from the contents of his application dated 12.2.2014. It also appears that the Desk Officer of Mantralaya, has also played prominent role in this case. The order passed by the Minister on the application of respondent No.7 is not placed before this Court, however, letter issued by the Desk Officer dated 13.3.2014 indicates that the decision has been approved by the Minister and accordingly excise authorities have been directed to consider the application of respondent No.7 dated 12.2.2014 for renewal of licence in continuation with the order dated 18.10.2013 passed in the said revision application. It also appears that the order according sanction for shifting of shop is passed without following due procedure of law.

15. In view of the above discussion, in my considered opinion, the order dated 18.10.2013, which is obtained by fraud in favour of dead person, itself is nullity. Consequently, subsequent order passed by the Excise department dated 29.3.2014 and the order dated 10.4.2014 according sanction for shifting of licence to Jalgaon District does not survive being collusive, tainted with scandal. I do not find any substance in the submission that the matter may now be remanded to the Minister. Undisputedly, the petitioner is licence holder and is proprietor and owner of Shanti Wines and conducting business of Chopda, District Jalgaon. I thus find that the petitioner has locus to challenge the impugned orders as the transfer of licence by the authorities affects the right of the petitioner.

16. Accordingly, I proceed to pass the following order:-

**O R D E R**

I. Writ petition is hereby allowed in terms of prayer clause "B" and "C".

II. The Principal Secretary of State Excise Department, Mantralaya, Mumbai is hereby directed to make enquiry into the matter himself or through any responsible subordinate officer and take necessary legal action against erring officials/officers of the State Excise department and based upon the conclusion of the said enquiry, may also propose legal action against respondent Nos. 7 and 9 within a period of six months from today.

III. Rule is made absolute in the above terms. Writ petition is disposed of.

**( V. K. JADHAV, J.)**

rlj/