

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 71 OF 2005

Suryakant B. Khaladkar

.. Petitioner

VS.

The Collector of Pune and Ors.

.. Respondents

.....

Ms. Veena B. Thadani for petitioner.

Mr. Neelesh V. Kalantari for respondent no.3.

**CORAM : M. S. SONAK, J.**

**DATE: 22 NOVEMBER 2016**

**P.C :**

1. Heard learned counsel for both the parties.
2. Since, this is an old matter and the petitioner is stated to be 81 years of age, it is not possible to adjourn the matter any further. The challenge in this petition is to the orders dated 15-03-2003, 03-04-2003 and 09-08-2004 made by the Collector, Commissioner and the State Government respectively, which have the effect of grant of FL-II licence to the respondent no.3 and the rejection of the petitioner's application for grant of the same.
3. The original licensee in the present case, was one Balkrishna Ramchandra Wadkar and respondent no.3 is his widow. Prior to Mr. Wadkar's demise, the petitioner and his father entered into partnership with Mr. Wadkar, in order to carry on the business of M/s S.B Wines, in pursuance of the FL-II licence issued for the first

time on 24-08-1973. In the year 1979 or thereabouts, even the names of the petitioner and his father were entered on the licence, in their capacity as partners.

4. on 23-12-1985, Mr. Balkrishna Ramchandra Wadkar expired. Thereafter, the applications were made by the widow as well as the petitioner for transfer of licence in their name. By order dated 31-10-1988, the Collector held that, the licence is liable to be transferred in the name of widow. For this purpose, the Collector relied upon Condition No.8 of the FL-II licence and Rule 61-A of Bombay Foreign Liquor Rules 1953 (said Rules). This order was challenged by the petitioner and his father by instituting Writ Petition No.5375 of 1988.

5. By judgment and order dated 20-11-2002, the aforesaid Writ Petition was allowed and both the parties were granted liberty to apply for licence under Rule 25 of the said Rules and the authorities were directed to dispose of such applications, within a period of 3 months from the date of receipt of the same, in accordance with the policy in existence on the date of their applications dated 07-01-1986 and 03-02-1986, in accordance with law.

6. In pursuance of judgment and order dated 20-11-2002, the petitioner as well as respondent no.3 applied to the collector. The applications were disposed of by the Collector vide order dated 15-

03-2003 transferring the licence in favour of respondent no.3. The Commissioner and Hon'ble Minister (Excise) have refused to interfere with the Collector's order dated 15-03-2003. Hence, the present petition.

7. Ms. Thadani, learned counsel for the petitioner, submits that, in terms of the judgment and order dated 20-11-2002, there was no question of transferring the licence issued to the deceased Balkrishna Ramchandra Wadkar in favour of his widow. She submits that, this court had categorically held that neither Condition No.8 of the FI-II licence nor Rule 61-A of the said Rules was attracted to the present petition. She submits that, despite such clear ruling, the authorities have once again purported to exercise powers in terms of Condition No.8 of the FI-II licence and Rule 61-A. This according to Ms. Thadani constitutes a clear error of jurisdiction and in any case, amounts to total non-application of mind. Ms. Thadani submitted that in fact, respondent no.3, by her application dated 17-12-2002 applied for transfer of licence, despite, the clear ruling of this court that there was no question of any transfer except in respect of unexpired period of the licence. For these reasons, Ms. Thadani submitted that, the impugned orders are liable to be set aside.

8. As against this, Mr. Neelesh Kalantari, learned counsel for

respondent no.3, has submitted that the application dated 17-12-2002 was in fact, an application in terms of Rule 25 of the said Rules, particularly, since the application in terms stated that the same was being made in pursuance of the order dated 20-11-2002 made by this court in Writ Petition No.5375 of 1988. Mr. Neelesh Kalantari submits that, respondent no.3 is the widow of late Balkrishna Ramchandra Wadkar, therefore, it is only proper that she be accorded the priority in the matter of grant of licence. Further submitted that, revisional authorities have concurrently held that the respondent no.3 deserves the licence and in the absence of any jurisdictional error or perversity, this court may not interfere with the impugned orders in the exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

9. The rival contentions now fall for my determination.

10. This court by its judgment and order dated 20-11-2002, after referring to the undisputed facts has already held in Condition No.8 of the FI-II licence was not at all applicable and on the basis of the same, there was no question of transfer of licence in favour of respondent no.3. This court has further held that, Rule 61-A of the said Rules could also not be invoked, since, in the present case, the existing licensee i.e. Balkrishna Ramchandra Wadkar had already expired on 23-12-1985. Upon due consideration of the provisions of

the said Rules, this court concluded that the Collector has no discretion to transfer the licence to respondent no.3, either by virtue of Condition No.8 of the FI-II licence or Rule 61-A of the said Rules. The discussion on this aspect is contained in paragraphs 6 to 10 of the judgment and order dated 20-11-2002 and the same reads thus:

*"6. On a plain reading of Condition No.8 of the licence, it is clear that the Collector had no discretion to transfer the licence in the name of respondent no.4 has been done. The discretion extends only to transferring the benefit of the licence for the unexpired portion of the term for which it is granted.*

*7. The question that remained is whether the licence could have been transferred under Rule 61-A of the Rule to respondent No.4, as has been done, or to any other person. This in turn depends on the existence of the licence. The licence itself stood expired upon demise of the original licensee i.e. Balkrishna Wadkar and dissolution of the firm. There is no dispute that the firm stood dissolved by virtue of section 42 of the Partnership Act which provides that subject to a contract a firm stands dissolved upon the death of a partner. Admittedly, the partnership deed in the present case does not contain a contract. The question is, what happens to a licence upon death of the licensee.*

*8. Under the scheme of the Bombay Prohibition Act, the State Government retains the exclusive privilege to import, export, transport, manufacture, bottle, sell, buy, possess or use any intoxicant including liquor. The Government has the power to part with this exclusive right of privilege in favour of any person or any of the above purposes by charging fee. This is done by means of a licence. In the present case, the licence is issued under Rule 25 of the Bombay Foreign Liquor Rules, 1953 which enables the person to apply for the licence. The Rule requires the Collector to verify the particulars given therein. It further empowers the Collector to grant the licence after satisfying himself upon making such*

*enquiries as he deems necessary and satisfying himself that the premises proposed for location of the shop are in conformity with the provision of the Rules, to grant such a licence. The Form F.L.II prohibits the licence to be granted in favour of the person named therein, referred to in the licence in the form as the licensee. It is clear that the licensee can only be a specific person or persons. Therefore, where the licence is in the name of a specific person the only conclusion can be that upon the death of such a person the licence must be considered as having come to an end or extinguished.*

9. *In the present case, there is no dispute that the licence was only in the name of Balkrishna Wakar i.e. the deceased husband of respondent no.4: It is, therefore, clear that the licence came to an end upon his demise. If that is the position, it is clear that there is no question of operation of Rule 61-A which provides for the transfer of licence. That rule obviously contemplates the transfer of a subsisting licence. In the present case, that Rule could not have been invoked since the licence itself had come to an end.*

10. *It is, therefore, clear that the Collector had no discretion to transfer the licence either by virtue of Condition No.8 or Rule 61-A in favour of respondent no.4. He, therefore also had no discretion to transfer the licence in favour anyone else.*

11. Finally, this court in its judgment and order dated 20-11-2002 issued following directions in paragraphs 11 and 12.

*"11. In the circumstance, the petition must succeed. The impugned order of the Collector transferring the licence in the name of respondent no.4 is set aside. However, this would not preclude the petitioners and the respondent no.4 for applying for a licence under Rule 25. That application must be considered as on the date on which these parties made their application for transfer i.e. on 7th January, 1986 and 3rd February, 1986. As regards the parties i.e. the*

*petitioners and the respondent no.4 are at liberty to make applications within a period of four weeks from today. If, such an application is made the Collector shall decide the said applications within a period of three months from the date of receipt of the said applications in accordance with the policy in existence on the date of their applications dated 7th January, 1986 and 3rd February, 1986, in accordance with the law.*

*12. It is an admitted position that the licence has been renewed in favour of M/s. S.B. Wines i.e. the partnership firm of deceased Balkrishna Wadkar and the petitioners. Till the applications proposed to be made by the parties are decided, the existing arrangement shall continue without conferring any right on the petitioners."*

12. In terms of the aforesaid, there was no question of transferring the licence in the name of respondent no.3, by resort to Condition No.8 of the FL-II licence or Rule 61-A of the said Rules. If the impugned orders are perused, including in particular, the Collector's order dated 15-03-2003 it is clear that the Collector has once again purported to exercise powers under Condition No.8 of the FL-II licence and Rule 61-A of the said rules. This is clearly an exercise in excess of jurisdiction. This exercise is also indicative of non-application of mind and suggests that the Collector has not even bothered to read the judgment and order dated 20-11-2002 made by this court in Writ Petition No.5375 of 1988. The appellate and the revisional authorities have, almost mechanically upheld the Collector's order dated 15-03-2003. The exercise of their power is also equally vitiated by error of jurisdiction and non-application of

mind. Accordingly, the impugned orders liable to be set aside and are hereby set aside.

13. The direction contained in paragraph 11 of the judgment and order dated 20-11-2002 is reiterated. Accordingly, both the petitioner as well as respondent no.3 are once again granted liberty to make fresh applications under Rule 25 of the said Rules within a period of 4 weeks from today. If such applications, under Rule 25 of the said Rules are made within 4 weeks from today, the Collector is directed to decide the same within a period of 3 months from the date of receipt of such applications, in accordance with law and in accordance with the policy in existence on 07-01-1986 and 03-02-1986.

14. It is clarified that even though, liberty is granted to make fresh applications under Rule 25 of the said Rules in reality, such applications will be nothing but continuation of the applications made on 07-01-1986 and 03-02-1986. On this occasion, however, it is clarified that, the Collector shall not treat such applications as applications for transfer either in terms of Condition No.8 of the FL-II licence or Rule 61-A of the said Rules. Rather, such applications are required to be considered in terms of Rule 25 of the said Rules and disposed of in term of the policy in that regard.

15. In case, respondent no.3 does make an application within 4

weeks from today, then, the existing arrangement shall continue until, the Collector disposes of the applications made by the petitioner and the respondent no.3 within a period of 3 months from the date of such applications. In case, respondent no.3 fails to make any such applications under Rule 25 of the said Rules within a period of 4 weeks from today, respondent no.3 shall not have the benefit of continuing the operations on the basis of existing arrangements, now that the impugned orders have been set aside. Since, the petitioner is stated to be 81 years of age and since, the parties have been in dispute for last several years, directions are issued to the Collector to dispose of the applications within 3 months from the date of their receipt positively.

16. Both the parties to co-operate in the matter of disposal of such applications. In case, respondent no.3 delays or stalls the disposal of such applications, the petitioner shall be at liberty to apply to this court for vacation of the indulgence granted in paragraph 15 above.

17. Rule is, accordingly, made absolute to the aforesaid extent. There shall, however, be no order as to costs.

18. All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**