

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAW) NO.1384 OF 2015
IN
WRIT PETITION NO.216 OF 2014 (D)

Rajendranath Manindranath Bose, Dharampeth Extension, Nagpur.

-vs-

State of Maharashtra, Secretary, State Excise Dept. Mantralaya, Mumbai 32. and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Voditel, Advocate for applicant-Ori. respondent No.5.
Shri Niraj Patil, AGP for non-applicants-Ori respondent Nos.1 to
6.
Shri N. A. Padhye, Advocate for non-applicant-Ori. petitioner.

CORAM : S. B. SHUKRE J.
DATE : October 14, 2016

Heard the learned counsel for the applicant-ori.
respondent No.5 and learned counsel for non-applicant-
original petitioner.

This Court by order dated 05/05/2016 recalled the
order of this Court passed on 07/04/2016 whereby the
order passed by this Court previously on 25/02/2014
was clarified by observing that the parties shall approach
the Collector before whom the dispute between the
parties regarding their respective claim over CL-III
license was pending for adjudication with each of them
contending that he was the legal heir eligible and
qualified to get the license transferred in his name after
the demise of late Smt. Anusuya Bose. It was further
directed that the Collector shall accordingly adjudicate

the matter in accordance with law and directed that the applicant-ori. respondent No.5 would continue to run the license.

Learned counsel for the applicant/original respondent No.5 has invited my attention to the Government Circular dated 20/08/1996, in particular Clause-(10) which lays down the procedure for transferring the license. The learned counsel for the applicant submits that according to this clause, the Collector is empowered to take a decision regarding all issues concerning the transfer or non-transfer of the license and that the Collector would be having power to decide as to who amongst the several legal heirs will be eligible to be allotted or transferred the license. He also submits that this Court, while disposing of the writ petition, has already taken a view that the Government has the power to deviate from Clause 10 of the Circular in the interests of the revenue of the State and it would be also in the interests of the parties that the liquor license is allowed to be run by the respondent No.5 till the decision by the Collector in terms of Clause 10 of the Circular is taken and so, appropriate clarification be issued. He also submits that the Collector has not taken any decision so far.

The learned Assistant Government Pleader for the non-applicants-original respondent Nos.1 to 4 submits that the decision has already been taken by the Collector in this regard on 28/04/2014 which was carried in appeal before the Commissioner and the Commissioner

has decided the appeal by passing the order on 03/03/2015. He submits that the Commissioner has directed that till the dispute between the legal heirs is decided, the order of the Collector dated 28/04/2014 could not be reversed. He submits that by order dated 28/04/2014, the Collector has suspended the license. He submits that when the decision has been taken in the matter and even the appeal filed against the decision of the Collector has been dismissed, nothing has remained in this case to be finally adjudicated upon by the Collector. He further submits that this fact was not brought to the notice of this Court and that was the reason why the clarification of the order dated 07/04/2016 was issued by this Court. He further submits that this Court has taken into consideration all these facts while recalling the order dated 07/04/2016 and there is no reason for this Court again to consider the same aspect.

On going through the order of this Court passed on 05/05/2016, I find that whatever submitted by the learned counsel for the applicant as well as by the learned counsel for the non-applicants has already been considered by this Court while passing that order. Not only the Collector but also the Commissioner has taken a decision in the matter of competing claims made by the applicant and non-applicants and it has been found that there is a specific observation made by the Commissioner in his order dated 03/03/2015 that order of the Collector dated 28/04/2014 can not be upset till

the dispute between the legal heirs is settled. It has also been found that a decision as regards the dispute between the legal heirs in terms of the Clause (10) of the Circular was already taken which fact was not brought to the notice of this Court when the clarification of earlier order was made. This would make it clear that when the decision has been taken, there would be no reason for this Court to make any clarification.

In view of above, I am of the opinion that the application is not tenable. The application stands rejected.

JUDGE