

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4594 OF 1994

Omprakash s/o Ramgopal Jaiswal,  
Age-46 years, Occu-Business,  
R/o 'Krushna-Vandan' Block No.2,  
Murli Nagar, College Road, Jalna

-- PETITIONER

VERSUS

1. The State of Maharashtra,

2. The Collector,  
Dist. Jalna,

3. The Commissioner,  
State Excise, Maharashtra State,  
Old Custom House,  
Bombay

-- RESPONDENTS

Mr.Rajendra Deshmukh alongwith Mr.Amol Joshi, Advocate for the  
petitioner.

Mr.S.P.Deshmukh, AGP for respondents/State.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 07/07/2017

ORAL JUDGMENT :

1. The petitioner by this petition has put forth prayer clause 16-B  
and 16-C as under :-

“B. This Hon’ble Court be pleased to issue a writ of certiorari  
or any other writ direction or order in the nature of writ of  
certiorari quashing and setting aside the order passed by the  
respondent No.2 dated 19/11/1993 filed at Exhibit-D.

C. This Hon'ble Court be pleased to issue a writ of certiorari or any other writ direction or order in the nature of writ of certiorari quashing and setting aside the order dated 05/09/1994 passed by the Respondent No.3 in File No.CLR.1994/6164/56/I."

2. This Court has granted interim relief to the petitioner on 20/12/1994 and the petition was admitted 20/04/1995.

3. I have heard Mr.Deshmukh, learned Advocate for the petitioner and have gone through the grounds for challenge, as well as the affidavit in rejoinder. I have heard the learned AGP on behalf of the State Authorities and have perused the affidavit in reply.

4. The issue is that the father of the petitioner Ramgopal had a CL-III license in his name. He subsequently entered into a partnership with his son, the petitioner. After the demise of Ramgopal, the petitioner approached the competent authority for seeking transfer of the CL-III license in his name on the basis of a Will-Deed. By order dated 19/11/1993, respondent No.2/District Collector rejected the request of the petitioner on the ground that due to the passing away of his father, the partnership firm would come to an end and the license cannot be transferred in his name only on the

basis of a Will-Deed purportedly executed by his deceased father.

5. The petitioner filed an Appeal No.56/1994 before respondent No.3/Commissioner, State Excise, Maharashtra u/s 137 of the Bombay Prohibition Act, 1949 and prayed for quashing of the order of the Collector and transfer of the license in his name. By the impugned order, respondent No.3 concluded that besides the petitioner, there was at least 1 known LR of the deceased Ramgopal, namely Vedprakash Ramgopal Jaiswal. He is the real brother of the petitioner. An affidavit was tendered as having been executed by Vedprakash mentioning that the license be transferred in the name of the petitioner.

6. Learned Advocate submits on instructions that besides the petitioner and Vedprakash, there are 6 more siblings. Respondent No.3 rejected the appeal on the ground that the Collector was right in insisting for the details of all the LR's of deceased Ramgopal and an heir ship certificate which is supposed to be the best piece of evidence.

7. Learned Advocate for the petitioner submits that respondent No.3 / Commissioner or for that reason even the District Collector,

should have scrutinized the Will and on the basis of the said will, he should have believed that the petitioner has inherited the license. Despite the strenuous submissions of Mr.Deshmukh, I am not convinced for the reason that the Collector or the Commissioner of Excise does not have the powers of the Civil Court to decide the legality and the validity of a Will on the basis of which one out of the 8 siblings i.e. the petitioner, who claims to have inherited the CL-III license, could be said to be entitled. The Collector as well as the Commissioner were therefore justified in demanding a proper evidence and insisting for a heir ship certificate. This cannot, therefore, be termed as being an abuse of authority by the said authorities.

8. Notwithstanding the above, subsequent events that have occurred after the lodging of this petition will have to be taken into consideration. By the ex-parte relief granted by this Court, the petitioner is said to have continued with his CL-III license and is operating the shop. None of his 7 siblings have approached this Court to intervene in the matter and oppose the continuation of the interim relief, which ex-facie indicates that they are not objecting to the petitioner running the shop which was earlier operated by the deceased father. In these 23 years, during the pendency of this

petition, they have not intervened in this matter to contend that either of them desires to have the CL-III license in his or her name. This would indicate that at least for the present, the siblings of the petitioner are not opposing the license to be transferred in his name.

9. It, however, cannot be ignored that the procedure laid down by the Government vide the circular dated 25/02/1994 issued by the Home Department, requires the competent authority to scrutinize whether there is any dispute in between the LR's as regards the transfer of the CL-III license. Exceptions cannot be carved out for the fear of diluting the rules and the procedure applicable.

10. I, therefore, find it appropriate, in the peculiar facts as recorded above and without laying down a precedent, that the petitioner shall now approach the competent authority by filing an application for transfer of CL-III license in his name. He shall file individual affidavits of his siblings to evidence that none of his siblings desire the transfer of the license in their name. Besides this, the petitioner shall have a notice published in "Marathi Daily Lokmat", Jalna Edition calling for objections, if any, and such objections shall be addressed to the competent authority.

11. At this juncture, Mr.Deshmukh interjects and submits that instead of following the procedure as stated above, the petitioner is willing to obtain an heir ship certificate with regard to the CL-III license from the competent Court at Jalna. This was the direction set out in the impugned order.

12. By recording the abovesaid statement, this petition is partly allowed as under :-

[a] As the renewal of the license is due from 1<sup>st</sup> April of each year, it shall be presumed that the shop operated by the petitioner would continue with the operations till 31/03/2018.

[b] The interim relief granted by this Court shall continue to protect the petitioner in so far as his present status of the CL-III license is concerned till 31/03/2018.

[c] The petitioner shall file an appropriate proceedings for seeking an heir ship certificate, on or before 29/07/2017.

[d] After being granted the heir ship certificate, if so granted by the competent court, he shall produce the said certificate before the competent authority for seeking the renewal of his license on or before the 01/03/2018.

[e] The protection granted to the petitioner shall not create any right or equity in his favour.

[f] If any of the above directions are not complied with, the CL-III license of the petitioner shall expire on 31/03/2018 and shall not be renewed.

[g] The petitioner shall not seek extension of time in this

matter for any reason.

13. Since respondent Nos. 2 and 3 had issued the direction to submit an heir ship certificate, the impugned orders do not call for any interference, except with the modifications as above. Rule is made partly absolute in these terms.

( Ravindra V.Ghuge, J.)