IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.4020 OF 2018
WITH CA/6317/2019 IN WP/4020/2018

1. Shri Prakash Babulal Jaiswal
an Adult, Occ.: Business,
CL-III Licence No.173 at
Hingoli Road, Nanded,
District Nanded. ..Petitioner

VERSUS

1. The State of Maharashtra
Through Principal Secretary (State Excise)
Mantralaya, Mumbai 400 032.

2. The Commissioner of State Excise,
Maharashtra State,
Old Custom House,
Mumbai 400 023.

3. The Collector of Nanded
(State Excise Department),
District Nanded.

4. Satyanarayan Babulal Jaiswal
Died through his L.Rs.

4/1. Ramprasad s/o. Satyanarayan Jaiswal
Age: 45, Occu.: Business,
R/o. Islapur, Tq.Kinwat,
Dist. Nanded.

4/2. Pushpa w/o. Suresh Jaiswal
Age: 48 yrs., Occu.: Household,
R/o.Manatha, Tq.Hadgaon,
Dist.Nanded.

4/3. Pallavi w/o. Rohit Jaiswal
Age: 20 yrs., Occu.: Household,
R/o. Aurangabad, Tq. & Dist.
Aurangabad.

4/4. Aashish s/o Satyanarayan Jaiswal
Age: Minor, under guardianship of
Respondent no.4/1,
Kalpanabai w/o. Satyanarayan Jaiswal
R/o. Islapur, Tq.Kinwat, Dist.Nanded.

5. Ramswarup Babulal Jaiswal
both residing at Islampur, Taluka Kinvat,
District : Nanded. ..Respondents

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Advocate for Petitioner : Shri S.V.Natu h/f. Shri N.S.Shah
AGP for Respondents – State : Shri S.K.Tambe
Advocate for Respondent Nos.4/1 to 4/4 & 5 : Shri R.S. Deshmukh

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CORAM : P.R.BORA, J.
DATE: 12th June, 2019

ORAL JUDGMENT:-

1. With the consent of learned Counsel appearing for the parties, the petition is heard finally.

2. The petitioner has questioned the legality of the order dated 21.02.2018 passed by the Hon'ble Minister for State Excise in Revision Application filed by the present petitioner under Section 138 of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as 'the Act').

3. Brief facts which are relevant for decision of the present petition are thus:

One Babulal Motilal Jaiswal was holding CL-III licence in his name at Nanded. Said Babulal Jaiswal died on 11.12.1973. In the year 1980-1981, the CL-III licence in the name of said Babulal Jaiswal was transferred in the name of his wife Anusayabai Jaiswal. The said Anusayabai Jaiswal in her life time, in the year 2007, transferred her 95% share in the said licence in the name of her son Prakash Jaiswal, who is the petitioner in the present petition. Subsequently, on 31.03.2008, Anusayabai transferred the remaining 5% share also in the name of petitioner Prakash. The material on record reveals that initially some share was proposed to be transferred in the name of Vijayvardhan Gangadhar Ponala, however, the said proposal was dropped and ultimately entire 100% share of Anusayabai was transferred in the name of petitioner Prakash. Said Anusayabai Jaiswal died on 07.01.2009. After the death of Anusayabai, her other two sons namely Satyanarayan Babulal Jaiswal and Ramswarup Babulal Jaiswal made a complaint to the Collector Nanded on 11.12.2009, alleging that since the original licence was in the name of their father Babulal, all the sons of deceased Babulal were having equal share in the said licence and as such transfer of the said licence only in the name of petitioner Prakash was illegal. A request was also made to transfer the licence in the name of all the sons of deceased Babulal. After receiving the complaint, the learned Collector, Nanded, temporarily suspended CL-III licence till decision of the complaint so made by Satyanarayan and Ramswarup. The learned Collector, after having heard the complainant and the present petitioner, passed an order on 22.05.2012, thereby directing that till Prakash Babulal Jaiswal files a Deed of Partnership showing that Satyanarayan and Ramswarup are the equal partners in the said CL-III licence, the said licence would remain suspended in view of the Government directions dated 20.08.1996.

4. The aforesaid order was challenged by the petitioner before the Commissioner of State Excise under Section 137(2) of the Act. The learned Commissioner of State Excise decided the said Appeal vide the order passed on 27.10.2014. The learned Commissioner partly allowed the Appeal and remitted the matter to the Collector, Nanded to make a detailed enquiry and then take necessary decision about the transfer of licence standing in the name of Anusayabai. A further direction was given that until the learned Collector reaches to a conclusion, CL-III licence No.173 shall remain suspended.

5. The petitioner challenged the said order by filing Revision Application before the Hon'ble Minister for State Excise. The

Hon'ble Minister, after having heard the parties to the revision before him, decided the Revision Application vide order dated 21.02.2018. The Hon'ble Minister dismissed the Revision Application and set aside the order passed by the Commissioner for State Excise on 27.10.2014 and confirmed the order passed by the Collector, Nanded dated 22.05.2012. Aggrieved thereby, the present petition has been filed.

6. Shri S.V.Natu, learned Counsel appearing for the petitioner assailed the impugned order on various grounds. The learned Counsel submitted that without appreciating the entire facts, which have come on record, merely relying on the report received from the fingerprint expert suggesting that thumb impression of deceased Anusayabai on some of the documents submitted before the Excise Authorities were suspicious, the Hon'ble Minister has confirmed the order passed by the Collector. The learned Counsel taking me through the documents filed on record, which contain the report from the fingerprint expert and the applications time to time filed by the present petitioner and the application filed by deceased Anusayabai in her lifetime, submitted that when the thumb impression on only one such document was found to be suspicious by the fingerprint expert, whereas thumb impressions of Anusayabai on other documents

were tallied, no such conclusion could have been arrived at by the Collector and the Hon'ble Minister that there was some fraud played by the present petitioner in getting transferred CL-III licence in his name depriving the other two sons of deceased Anusayabai.

7. The learned Counsel also brought to my notice that deceased Anusayabai was residing with the present petitioner and present petitioner was only looking after deceased Anusayabai till her death. The learned Counsel further submitted that the entire share in CL-III licence was transferred by deceased Anusayabai in the name of present petitioner in her lifetime and till she was alive, neither Satyanarayan nor Ramswarup raised any dispute as about the said transfer. The learned Counsel also brought to my notice that in the statements recorded of Anusayabai by the Excise Authorities, it was clarified by Anusayabai that with consent of all legal heirs, her share in CL-III licence was transferred in the name of Prakash. The learned Counsel submitted that Satyanarayan and Ramswarup both possess CL-III licence independently in their names and they are holding such licence for the period more than about 20 years and only Prakash was not having any source for his livelihood and that was the reason that CL-III licence in her name

was transferred by Anusayabai in the name of Prakash. The learned Counsel further submitted that in fact the mistake was committed by the learned Collector in suspending CL-III licence on some incorrect appreciation of the facts and thereafter, the Hon'ble Minister has wrongly confirmed the said order.

8. The learned Counsel submitted that the order passed by the Commissioner of State Excise in fact shows that he was convinced about the averments and pleadings made by the present petitioner, however, instead of outrightly setting aside the order passed by the Collector, he preferred to remit the matter to the Collector to conduct fresh enquiry into allegations made by Satyanarayan and Ramswarup. In the circumstances, the learned Counsel prayed for setting aside the order passed by the Hon'ble Minister for State Excise as well as by the Collector, Nanded.

9. Shri R.S.Deshmukh, learned Counsel appearing for respondent Nos.4/1 to 4/4 and 5 supported the order passed by the Hon'ble Minister. The learned Counsel submitted that the original licence was undisputedly in the name of Babulal and after his death must have been transferred in the name of all the three sons and not in the sole name of present petitioner

Prakash. The learned Counsel submitted that deceased Anusayabai was pretty old at the relevant time when applications for transferring her share in CL-III licence in the name of Prakash were made. The learned Counsel further submitted that deceased Anusayabai was also blind and was unable to file any application at her own. The learned Counsel further submitted that taking undue advantage of her blindness as well as her oldness, the petitioner filed forged applications before the Excise Authorities and fraudulently got transferred the entire share of Anusayabai in his sole name. The learned Counsel relying upon the provisions under the Act as well as the orders issued by the Excise Departments submitted that the Collector as well as the Minister have rightly ordered that unless the dispute between the legal heirs of the licence holder is amicably resolved, the licence in the name of deceased has to be kept in suspension. The learned Counsel, in the circumstances, prayed for dismissal of the petition.

10. The learned AGP appearing for the State has submitted for passing appropriate orders having regard to the material on record.

11. I have given due consideration to the submissions made by

the learned Counsel appearing for the respective parties. I have perused the orders passed in the present matter firstly by the Collector, Nanded, thereafter, by Commissioner of State Excise and lastly by the Hon'ble Minister. I have perused other material on record. It is not in dispute that the original CL-III licence was in the name of Babulal Jaiswal. It is further not in dispute that after the death of Babulal, the said licence was transferred in the name of Anusayabai in the year 1980-1981. It is also not in dispute that the transfer of the said licence in the name of Anusayabai was not opposed or disputed by any of the sons of deceased Babulal. It is further not in dispute that Anusayabai in her lifetime first transferred 95% of her share in the name of her youngest son Prakash and subsequently transferred the remaining 5% share and thereby impliedly withdrew herself totally. It is further not in dispute that transfer of the licence in the name of present petitioner was objected to for the first time after the death of Anusayabai that too about 10 or 11 months after her death in January, 2009.

12. The perusal of the order passed by the Collector reveals that he has mainly relied upon the report submitted by the fingerprint expert and after having noticed that some suspicion has been expressed by the fingerprint expert in the said report

as about one of the thumb impressions, he directed suspension of the licence till the dispute between the legal heirs of deceased Anusayabai is resolved by the Competent Authority.

13. The said order, as noted herein above, was challenged by the present petitioner by filing Appeal before the Commissioner of State Excise. The learned Commissioner of State Excise, after having considered the facts brought before him and considering the documents, which were filed on record before him, remitted the matter to the Collector, Nanded to make a detailed enquiry and take a fresh decision about the transfer of the licence. A further direction was given that until the Collector reaches to a conclusion, the said CL-III licence shall remain suspended.

14. In light of the order passed by the Commissioner of State Excise and the Collector, if the order passed by the Hon'ble Minister is perused, it appears that the Hon'ble Minister has implicitly relied upon the report of the fingerprint expert and though in the report of the fingerprint expert suspicion is raised about only one of the thumb impressions, the Hon'ble Minister has confirmed the order dated 22.05.2012 passed by the Collector and has thereby impliedly upheld the objection raised by Satyanarayan and Ramswarup that Prakash has fraudulently

got transferred the CL-III licence from the name of Anusayabai in his sole name.

15. After having considered the submissions made on behalf of the learned Counsel appearing for the respective parties and on perusal of the material placed on record, it is apparently revealed that none of the three authorities have fully and correctly appreciated the facts and the evidence involved in the matter. It is not in dispute that CL-III licence was initially issued in the name of Late Babulal Jaiswal. It is also not in dispute that Babulal Jaiswal died in the year 1973 and thereafter, the said CL-III licence was transferred in the name of his wife Anusayabai sometimes in the year 1980-1981. It is further not in dispute that till the year 2007, there was absolutely no dispute pertaining to the said licence. The documents on record reveal that in her lifetime deceased Anusayabai transferred her entire share in the said licence in the name of present petitioner. The documents on record also reveal that some grievance was made by respondent Nos.4 and 5 as about the transfer of share by Anusayabai in the name of petitioner Prakash, when Anusayabai was alive. The documents on record reveal that on such complaint made by respondent Nos.4 and 5, the statement of Anusayabai was recorded by the Officers of the Excise Department and the

statement so recorded reveals that deceased Anusayabai had given statement before the Excise Officers confirming that she had transferred 95% of her share in the name of her youngest son Prakash.

16. The material on record also reveals that after the death of Anusayabai, dispute was raised by respondent Nos.4 and 5 about the transfer of licence in the name of petitioner Prakash alleging that petitioner Prakash had got transferred the licence in his sole name by making false applications in the name of deceased Anusayabai by fabricating her thumb impressions. The record also reveals that on receipt of such complaint from respondent Nos.4 and 5, enquiries were directed by the Collector (Excise) to be conducted by the Sub-ordinate Officers in the said Department. Some of such applications were disposed of by the Collector (Excise) and the licence was time to time renewed in the name of petitioner Prakash. The record further reveals that after repeated complaints from respondent Nos.4 and 5 to the effect that petitioner Prakash has forged the thumb impressions of deceased Anusayabai, some such applications were forwarded to the fingerprint expert.

17. Perusal of the orders passed in the matter reveal that those

are based on the report given and the observations made by the fingerprint expert. The report of the fingerprint expert is thus a crucial document to be appreciated for deciding the controversy involved in the matter. The report of the fingerprint expert is filed on record (Page Nos.66 to 70 of the Paper-book). The fingerprint expert has opined that disputed print “A” is not identical with admitted prints marked at B, B-1, B-2, B-3, B-4, B-6, B-7, B-8 and B-9. The fingerprint expert has further opined that the admitted prints marked B-5 and B-10 are both unfit for comparison and passing any opinion thereon. The detail description of disputed print concerned in the application of Anusayabai dated 31.03.2008 in the office of Inspector, State Excise Duty Flying Scod Nanded, is given in Annexure-A, whereas the detail description of admitted thumb impressions below the applications of Anusayabai submitted in the office of State Excise and below her statements recorded by the Excise Officers, are provided in Annexure-B. Annexures-A and B are the part of the report of the fingerprint expert. The statement recorded of Anusayabai on 30.05.2007 is the document at B-2 in Annexure-B. The copy of the said statement is at Page Nos.31 and 32 of the Paper-book. Perusal of the statement so given by Anusayabai reveals that she has denied the allegations made by respondent Nos.4 and 5 i.e. Satyanarayan and Ramswarup that the application submitted in Excise Department on 15.07.2006 was bearing her forged thumb impression. She has also specifically deposed that the application dated 09.04.2007 submitted by Satyanarayan and Ramswarup was not having any substance.

18. The statement recorded of Anusayabai by Sub-Inspector, State Excise, Nanded on 14.08.2007 is also an important document, which is incorporated as B-4 in Annexure-B. In the said statement, Anusayabai had reiterated that the application submitted by her on 13.08.2007 for transfer of 95% of her share in the name of her son Prakash bears her thumb impression and the contents of said application were true and correct. As per the report of the fingerprint expert the finger print below the said statement recorded on 14.08.2007 is the genuine thumb impression of Anusayabai. Thus, in so far as the transfer of 95% share in the name of petitioner Prakash is concerned, in her lifetime Anusayabai has confirmed the said fact by giving statement on 14.08.2007. It is true that the statement recorded of deceased Anusayabai on 30.11.2007 whereby she has transferred her remaining 5% share in the name of petitioner Prakash is concerned, the thumb impression below the said statement is held to be unfit by fingerprint expert for comparison and passing any opinion thereon.

19. From the material on record thus the dispute can be said to be in respect of that 5% share allegedly transferred by deceased Anusayabai in the name of Prakash. However, in so far as transfer of 95% of her share, as stated herein above, deceased Anusayabai in her lifetime had confirmed the said fact by giving her statement on 14.08.2007. Perusal of the order dated 22.05.2012 passed by the Collector, Nanded reveals that he was swayed by the observations and conclusion recorded in the opinion given by the fingerprint expert to the effect that thumb impression below application for renewal of licence dated 31.03.2008, was not tallying/matching with the admitted thumb impression of deceased Anusayabai. In the circumstances, the Collector, Nanded, in his aforesaid order, has observed that the opinion given by the fingerprint expert has raised a question mark whether the applications in respect of transfer of her share were infact given by Anusayabai or otherwise. The Collector has further observed in the next paragraph that while transferring the remaining share in the name of petitioner Prakash, deceased Anusayabai was required to obtain consent from her other two sons namely Satyanarayan and Ramswarup. The observations so made have led to passing of the order by the Collector, Nanded that the alleged CL-III licence in the name of Prakash be kept suspended till the dispute between

the legal heirs of original licence holder is decided by the competent Court.

20. While deciding the Appeal preferred against the order passed by the Collector, Nanded, the learned Commissioner of State Excise in his order dated 27.10.2014, in paragraph Nos. 8 and 9, has made the following observations;-

> 8. It appears from the impugned order of the learned Collector that he had suspended the CL-III licence No.173 on the ground that there was some doubt as to whether the Appellant had taken over 5% share of his mother inappropriately. The learned Collector also mentioned that the thumb impression of the Appellant's mother did not match and the statement of the Appellant's remaining brothers were not recorded when the 5% share was transferred in favour of the Appellant. It is pertinent to note that deletion of the name of the Appellant's mother late Anusayabai Babulal Jaiswal from the CL-III licence was granted by the Collector, Nanded itself on the report of the subordinate Excise authorities.
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> 9. If now the learned Collector had reasons to believe that this grant has not been done properly, it is in the fitness of things that the Collector should make proper enquiries as to who is responsible in submitting the forged documents, who were the concerned State Excise officers who had recorded the statements of the late Anusuyabai Babulal Jaiswal

> and who had scrutinized the papers. It is thus clear from the impugned order that there was a dispute between the legal heirs of late Anusuyabai Babulal Jaiswal and who had scrutinized the papers. It is thus clear from the impugned order that there was a dispute between the legal heirs of late Anusuyabai Babulal Jaiswal on the 5% share in the licence.

and in view of the observations so made, has passed the following order:-

> 10. In view of above facts, the Appeal is partly allowed. The case is remanded back to the learned Collector Nanded to make a detailed enquiry and then take necessary action as to how the transfer of licence was affected when there is a dispute between the legal heirs of the Appellant and until he reaches to a conclusion, the said CL-III licence No.173 shall remain suspended.

21. In the Revision filed before the Hon'ble Minister for State Excise, it was the contention of the present petitioner that the Commissioner of State Excise must have set aside the order passed by the Collector instead of remanding the matter to the Collector by directing fresh enquiry. However, while deciding the Revision Application, the Hon'ble Minister has confirmed the order dated 22.05.2012 passed by the Collector, Nanded. The

perusal of the order passed by the Hon'ble Minister demonstrates that he has utterly failed in understanding and appreciating the report of the fingerprint expert. It is also revealed that the Hon'ble Minister has failed in taking into account the documents, the thumb impressions below which were certified to be matching with the admitted thumb impressions of deceased Anusayabai in the report of the fingerprint expert. The order passed by the Hon'ble Minister also reveals that he has failed in appreciating the import of the guidelines issued by the Home Department of the State on 20.08.1996 in respect of the transfers of CL-III licence. The third guidelines in the said letter dated 20.08.1996 provides that 'it would be open for the licence holder to transfer his share and while transferring his share, 'no objection' from the legal heirs of the original licence holder may not be required.' The aforesaid guidelines *prima-facie* supports the contention of the petitioner that while Anusayabai transferred her share in his name, she was not required to obtain 'no objection' from respondent Nos.4 and 5, who claimed themselves to be the legal heirs of Babulal i.e. original licence holder.

22. After having considered the entire material on record and the facts as discussed herein above, it appears to me that the Commissioner of State Excise has rightly remanded the matter to

the Collector, Nanded to make a detailed enquiry in respect of transfer of licence in the name of petitioner Prakash and until he reaches to a conclusion, to keep CL-III licence No.173 under suspension. In the circumstances, I deem it appropriate to set aside the order passed by the Hon'ble Minister on 21.02.2018 and confirm the order passed by the Commissioner of State Excise on 27.10.2014 in Appeal No.236 of 2012.

23. The parties are directed to appear before the Collector, Nanded on 24.06.2019, so that no fresh notices are required to be issued by the Collector, Nanded, requiring presence of the parties before him.

24. The Collector, Nanded shall hear and decide the matter within eight weeks by giving due opportunity of hearing to the parties concerned. Pending Civil Application stands disposed of.

25. At this juncture, it is submitted by Shri Natu, learned Counsel appearing for the petitioner that in the pending proceedings throughout the interim relief was operating in favour of the present petitioner, on the strength of which, CL-III licence transferred in his name was functional. The learned Counsel, in the circumstances, prayed for continuing the same relief till the

matter is re-enquired by the Collector, Nanded and the conclusion is recorded by him.

26. Having regard to the fact that during pendency of the earlier proceedings, CL-III licence, transferred in the name of petitioner, was kept functional, I deem it appropriate to accept the request made by the petitioner to continue the same practice. Accordingly, it is directed that the CL-III licence, transferred in the name of petitioner, shall be kept functional till the matter is re-decided by the Collector, Nanded, as directed in the present order.

(P.R.BORA)
JUDGE

SPT