

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.11600 OF 2014

Shradha w/o Nitesh Jaiswal & ors. ...PETITIONERS

VERSUS

Nandanagaur Nuragaur Upatutualla
& ors. ...RESPONDENTS

.....
Shri D.P. Palodkar, Advocat eholding for
Shri V.A. Bagdiya, Advocate for petitioner
Shri A.H. Kasliwal, Advocate for respondent No.1
Shri A.V. Deshmukh, A.G.P. for State
.....

**CORAM: SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATED : 11th March, 2019

ORAL ORDER :

1. Heard learned counsel appearing for the parties. The factual position, as would emerge from record is, a CL-III licence had been standing since 1998-1999 in the name of Bhikulal Ratanlal Jaiswal and Vyankatesh Narsayya Mamaiwar. Around 2003, it appears that, some distance intervened between aforesaid persons. It appears to be the case of present respondent No.1 that some transactions had taken place between Bhikulal and respondent No.1. While the dispute between original

partners Bhikulal and Vyankatesh had further widened, it culminated into suspension of the licence in 2005. It would be worthwhile to note that, there had been no recognition of transactions which are claimed to have been entered into between Bhikulal and respondent No.1.

2. In 2007, it appears, name of Vyankatesh had been deleted and name of Mrs. Shradha Nilesh Jaiswal, had been entered in the licence. In this regard, document dated 13.7.2017 annexed to present writ petition, at page No.96 is referred to, on behalf of petitioner.

3. The licence had been shifted to some other place subsequently. It is being claimed by the petitioner that thereafter Bhikulal's name had been deleted under order dated 31.10.2007 as would be appearing from Page 98 of the petition papers. On 28.3.2008, husband Nitesh Rameshlal Jaiswal of petitioner No.1 Shradha had entered partnership according to page 99 and subsequently, in May 2008, the name of Shradha is stated to have been deleted as would emerge from Page 101.

4. Writ Petition bearing No.5736 of 2012 had been moved by respondent No.1 seeking directions to licensing authority to include his name as partner in the licence and

seeking restraint on the authorities from entering third party name in the licence. It has been claimed by respondent No.1 in said Writ Petition since legal heir of Bhikulal – respondent No.4 (Writ Petition No.5736 of 2012) had been intending to incorporate his name in the licence as partner and respondent No.1's enquiry was not being responded to, the Writ Petition had been moved. In reply to said petition, the Superintendent of State Excise, Hingoli has referred to as under :

“ 9. *The deponent submits that, the Commissioner of State Excise, M.S., Mumbai on 25.6.1999 revalidated the licence of the respondent No.4 and also allowed the admission of Vyankatesh Mamaiwar as a partner. Since then the licence was run by the respondent No.4 along with partner Vyankatesh Mamaiwar till 31.10.2003 and on 31.10.2003 the partnership between respondent No.4 and Vyankatesh Mamaiwar was dissolved by executing the dissolution deed.*

10. *The deponent submits that, there was a dispute between respondent No.4 and Vyankatesh Mamaiwar in respect of which proceedings were went up to the State Government and the said licence was suspended in the year 2005. Thereafter vide order dated 15.6.2007 passed by Collector, Hingoli the name of Vyankatesh Mamaiwar was deleted and the name of new partner Sau. Shraddha Nitesh Jaiswal was incorporated by following the due procedure of law and since 2007 the*

respondent No.4 and Sau. Shraddha Nitesh Jaiswal are running the said business.

*11. The deponent submits that, considering all these facts it is crystal clear that though partnership between respondent No.4 and the present petitioner is executed on 30.10.2003 but same was never approved by the Collector as required under Rule 28 of the Maharashtra Country Liquor Rules, 1973 therefore his name never appeared in the licence. The copy of CL-III licence is annexed herewith and marked as **EXHIBIT R-1**.*

*12. The deponent submits that, while deleting the name of Vyankatesh Mamaiwar and admitting the name of Shraddha Nitesh Jaiswal as a partner with respondent No.4 a detail enquiry was made by the Deputy Collector, Hingoli and who, vide its report dated 4.6.2007 informed the Collector that there was a partnership deed between respondent No.4 with present petitioner but during that period the licence was suspended and due to which the said partnership deed was never approved and therefore the application of inclusion of name of petitioner in the licence was rejected and the name of the new partner Sau. Shraddha Nitesh Jaiswal was added. The copy of said report dated 4.6.2007 is annexed herewith and marked as **EXHIBIT R-2**. ”*

5. While the situation is such, it appears that, when said Writ Petition No.5736 of 2012 had been before this Court, it has

been impressed upon that, respondent No.4 (Writ Petition No.5736 of 2012) had accepted present respondent No.1 as the partner and rather partner of his father Bhikulal and that the respondent No.3, Superintendent, State Excise (Writ Petition No.5736 of 2012) had acceded to incorporation of name of respondent No.1 herein in the licence. Accordingly, the court had directed inclusion of name of respondent No.1 in the licence under its order dated 28.11.2014 and not disposed of the Writ Petition.

6. Subsequently, the present petition has been moved and the very Division Bench had directed to maintain status quo as on 19.12.2014.

7. Learned counsel Mr. Palodkar for the petitioner submits that, order dated 28.11.2014 has been result of fallacious claims on behalf of respondent No.1 while the factual position has been absolutely different. The court ought not to have been persuaded to pass the order dated 28.11.2014. He submits that, the document annexed as copy of original licence being relied upon is not the original document as then had been subsisting. It is a fake photo copy of the licence. He submits that, since 2007, the record would bear that present petitioners have been the licence holders. It is being referred to that, though the writ

petition had been filed in the year 2012, that had not been moved until 2014. He submits that, the Writ Petition had been moved deliberately keeping back reference to the events which had occurred from 2005 and onwards. He submits that, in the interregnum, there had been changes in holders of licence resting with from 2008 in favour of petitioner No.3 and the petitioner No.3 had been accordingly running the business, since then all along without any interruption. He submits that, the petitioners had not been made parties to the petition strategically with a view to obtain a favourable order from the court, although the affidavit-in-reply filed by the Superintendent of State Excise does show that the name of petitioner No.1 had been added to the licence in 2007 and to the same attention of the court had not been drawn while the order was being passed.

8. Mr. Palodkar submits that, apart from the above, one more glaring fact fallacy has emerged, that despite Bhikulal being not alive in 2012, Bhikulal had been made party, is a clear depiction of evil intent underlying filing of petition. Subsequently, some amendment has been made to the writ petition, arraying his son in the petition as respondent. Yet, there is an attempt to mislead the Court on that count. He contends that, the order had been brought about by playing fraud.

9. On the other hand, learned counsel Mr. Kasliwal appearing for respondent No.1 submits that, record would bear that, since 2003 Bhikulal had entered into transaction with respondent No.1 and accordingly documents were submitted with the licencing authority. It was being referred to on behalf of the Superintendent of State Excise that since the licence had been suspended, no movement can be made in furtherance of those transactions. However, he had been actually running business pursuant to the transactions. There had been dispute between Bhikulal and Vyankatesh, with which he had not been concerned. He had continued to run the business barring the period of suspension. He submits that, it is not a case of playing fraud at all. Respondent No.1 had never been given to understand about changes in record being allowed since 2007. Thus, while some disturbance to his running business had been perceived under the garb of introduction of Bhikulal's son in the licence, he had moved the court accordingly in the Writ Petition.

10. Learned counsel for the respondent No.1 submits that, there had been no deliberation at all. Perhaps it appears that there may be some misappreciation of instructions and Bhikulal's name has been shown instead of his son's name.

11. Be that as it may, immediately on realising that there

is error in passing order dated 24.11.2014, the very Division Bench of this court had passed order directing maintenance of status quo.

12. Factual aspects taken into consideration in chronological order lead to a situation rendering order dated 20.11.2014 untenable and is accordingly recalled. Writ Petition No.5736 of 2012 eventually stands restored for decision afresh affording opportunity to parties. Present petitioners be added party to said (Writ Petition No.5736 of 2012).

13. The present Writ Petition accordingly succeeds to aforesaid extent and stands disposed of.

(R.G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/