

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4739/2018

(ASHOK RAMCHANDRA CHANDPURKAR **VERSUS** THE STATE MINISTER OF STATE EXCISE, M.S.,
 MANTRALAYA, MUMBAI & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri N.L. Jaiswal, counsel for petitioner.
 Shri S.B. Bissa, A.G.P. for R-1 to 3.
 Shri S.W. Sambre, counsel for R-4.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 12, 2019.

In the light of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The challenge raised in the present writ petition is to the order passed by the Hon'ble Minister, State Excise in proceedings under Section 138 of the Maharashtra Prohibition Act, 1949 (for short, 'the said Act'). By the said order, the revision application that was filed by the petitioner has been dismissed and after setting aside the orders dated 11.04.2016 passed by the Collector and the order dated 30.08.2016 passed by the Commissioner, the petitioner and the respondent no.4 who are brothers have been directed to operate the CL-III license in partnership with equal share.

The facts in brief are that initially the CL-III license was standing in the name of one Ramchandra who was the father of the petitioner as well as the respondent no.4. After his death, the license was transferred in the name of his widow. The said widow expired on 25.10.1998. There was however a dispute pending in regard to the said license with one partner, Abdul Khalid which dispute continued till the year 2015. Writ Petition No.2838 of 2000

that was preferred by said Abdul Khalid was admitted on 18.08.2000 with a direction that both brothers should operate the said license by maintaining accounts. Ultimately by the order dated 27.02.2015, the name of the said partner Shri Abdul Khalid came to be deleted from the said license. It is the case of the petitioner that a Will was executed by the widow in favour of the petitioner and on the strength of that Will, it was the petitioner alone who was entitled to operate the said license. The dispute in that regard resulted in proceedings before the Collector who on 11.04.2016 suspended the said license from 01.04.2016 till the dispute amongst the legal heirs was resolved. Liberty was granted to the brothers that in case there was some agreement between them a proposal to operate the license in partnership could be moved. On 07.05.2016 the respondent no.4 filed Appeal No.116 of 2016 challenging the order passed by the Collector on 11.04.2016. As the prayer for stay was not considered by the Commissioner, the respondent no.4 filed a revision application dated 12.05.2016 challenging the aforesaid order dated 11.04.2016 before the State Government. In the meanwhile, the petitioner also filed Appeal No.115 of 2016 before the Commissioner. The petitioner being aggrieved by the filing of revision application by the respondent no.4 before the State Government challenged the same by filing Writ Petition No.3665 of 2016. This Court on 25.07.2016 set aside the order of stay that was granted on 12.05.2016 by the State Government in the revision application preferred by the respondent no.4. Thereafter the Commissioner was directed to decide the appeals that were pending before the said Authority. Thereafter by the order dated 30.08.2016 both the appeals came to be dismissed. The order passed by the Collector on 11.04.2016 was confirmed. The respondent no.4 on 12.09.2016 filed a revision application

challenging the aforesaid order before the State Government. On 06.03.2018, the petitioner also filed a revision application challenging the same order passed by the Commissioner. The Hon'ble Minister of State by the impugned order dismissed the revision application that was preferred by the petitioner and modified the order passed by the Collector as confirmed by the Commissioner. As stated above, the brothers were directed to operate the license in partnership with equal share. Being aggrieved the said order has been challenged in the present writ petition.

Shri N.L. Jaiswal, learned counsel for the petitioner submitted that the revision application that was preferred by the respondent no.4 before the State Government was dismissed by this Court while deciding Writ Petition No.3665 of 2016. As the said revision application stood dismissed, there was no occasion for the State Government to have considered the grievance of the respondent no.4 in the revision application that was preferred by the petitioner. By ignoring this aspect the Hon'ble Minister proceeded to treat the revision application preferred by the respondent no.4 as pending and further proceeded to modify the orders passed by the Collector and the Commissioner. He then referred to the legal heirs certificate that was issued by the Civil Court on 25.05.2017 recognizing the petitioner and his sister as legal heirs of Ramchandra. Moreover, in the light of the Will executed by the mother in favour of the petitioner, it was submitted that the petitioner alone was entitled to operate the said license. Though these facts were brought to the notice of the State Government, the same have not been considered in the proper perspective. The petitioner alone being the legal heir of Manjulabai he alone was entitled to operate the said license. It was thus

submitted that the impugned order passed by the State Government was liable to be set aside and the petitioner ought to be permitted to operate the said license in its entirety.

Shri S.W. Sambre, learned counsel for the respondent no.4 supported the impugned order. According to him, the respondent no.4 had filed revision application before the State Government on 12.09.2016 after Writ Petition No.3665 of 2016 was decided on 25.07.2016. The said revision application preferred by the respondent no.4 was adjudicated alongwith the revision application preferred by the petitioner on 06.03.2018. This fact is clear from the order passed by the State Government. It was not therefore correct to urge that the revision application preferred by the respondent no.4 having been dismissed by virtue of the order passed in Writ Petition No.3665 of 2016, the impugned order could not have been passed. It was then submitted that M.J.C. No.117 of 2004 had been filed seeking revocation of the legal heirs certificate issued in favour of the petitioner. In those proceedings, a compromise was entered into between both the brothers wherein they had agreed to share the profits with regard to the CL-III license that was in the name of the mother. Hence, by virtue of revocation of the legal heirs certificate coupled with the fact that the brothers had agreed to operate the said license in partnership equally, the order dated 30.01.2008 was binding on the petitioner. He also referred to the deed of partnership dated 07.08.2000 between the petitioner and the respondent no.4 and submitted that till the year 2015 they were doing business together. The petitioner was therefore not justified in urging that he alone had a right to operate the said license to the exclusion of the respondent no.4. Hence, there was no reason to interfere with the impugned order.

Shri S.B. Bissa, learned Assistant Government Pleader for the respondent nos.1 to 3 relied upon the affidavit filed on record and supported the impugned order.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. Perusal of the impugned order indicates that the State Government entertained the revision application filed by the respondent no.4 on 12.09.2016 as well as the revision application filed by the petitioner on 06.03.2018 together. The endorsement on the memorandum of the revision application preferred by the respondent no.4 which was made available for perusal indicates that it was presented before the State Government on 12.09.2016 and receipt of its copy has also been acknowledged on 19.11.2016 by the counsel for the petitioner herein. In the order dated 25.07.2016, it has been stated that the revision application that was preferred by the respondent no.4 had been dismissed. This revision application had been filed on 12.05.2016 as according to the respondent no.4 no order of stay were passed in the appeal that was filed by the respondent no.4 on 07.05.2016. It is thus clear that the State Government entertained the revision application that was filed on 12.09.2016 which is much after the passing of the order in Writ Petition No.3665 of 2016. Hence, the contention raised by the petitioner that the revision application that was preferred by the respondent no.4 had already been dismissed vide order dated 25.07.2016 is not borne on record. The impugned order has been passed on the revision application that was filed on 12.09.2016 by the respondent no.4. Hence, the entertainment and adjudication of both the revision applications by the State Government was permissible.

It is further seen that the legal heirs certificate relied upon by the petitioner stands revoked in view of the orders passed

by the Civil Court on 30.10.2008. In the compromise that was entered into between the brothers, it was agreed that the license would be operated by them in equal partnership. The Will on which the petitioner seeks to rely is required to be duly proved before the claim of the respondent no.4 is disallowed. Presently, in the light of the deed of compromise which continues to operate, it is found that the Hon'ble Minister was justified in directing both the brothers to operate the CL-III license in partnership each having equal share.

It is thus found that in the light of the dispute between the petitioner and the respondent no.4 the impugned direction of permitting both the brothers to operate the license equally is just and proper. Since the legal heirs certificate now stands revoked, the right of both the brothers to operate the license together with equal share having been accepted by them while entering into the compromise would bind them. In that view of the matter, there is no jurisdictional error committed by the Hon'ble Minister while passing the impugned order. There is no case made out therefore to interfere in writ jurisdiction.

The Writ Petition is therefore dismissed with no order as to costs.

JUDGE

APTE