IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3669 OF 2020

HEMLATA VISHWANATH PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.V.P.Latange, Advocate for the petitioner.
Mr.A.S.Shinde, AGP for respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/03/2020

PER COURT :

1. On 09/03/2020, I had passed the following order :-

"1. The Petitioner is aggrieved by the order of the Honourable Minister of State Excise dated 18/07/2019, by which, he has reviewed the earlier order passed by the Honourable Minister renewing the CL III licence of the Petitioner under the Maharashtra Prohibition Act, 1949 and has imposed an interest amount on the renewal fees.

2. The learned Advocate points out the following judgments delivered by the learned Single Judge and the learned Division Bench of this Court :-

(a) Judgment dated 07/01/2011 in Writ Petition No. 199/2006, Smt. Keti Ardeshir Kapadia vs. State of Maharashtra, at Aurangabad.

(b) The judgment dated 21/11/2017 delivered by the learned Division Bench of this Court in the matter of Maheshprasad Dwarkadas Jaiswal and another Vs. State of Maharashtra and others, 2018(1) AIR Bom R 318.

(c) The judgment of the learned Division Bench at Nagpur dated 29/10/2015 in Writ Petition No. 3315/2015, Abhijit Ramrao Bachewar vs. The State of Maharashtra and others and the judgment of the learned Single Judge at Bombay dated 21/11/2019 in Civil Application No. 2300/2019, Ashok Pandurang Rane Vs. State of Maharashtra and Others.

3. It is, therefore, settled that under the amendment to Section 114, the authorities can collect interest at the rate of Rs. 2 % from the date on which the amount became due. So also, it is settled that the Honourable Minister cannot review an earlier order without there being any express provision under the Maharashtra Prohibition Act to cause such a review.

4. The Honourable Apex Court has recently held in the matter of ***Nareshkumar and others Vs. Government (NCT of Delhi), (2019) 9 SCC 416****, that unless any Act specifically prescribes the power of review, no authority can review its earlier decision in the absence of such a power.*

5. The learned AGP submits that he would take instructions and make a statement on the next date.

6. List this petition on 13/03/2020 for "passing orders"."

2. The learned AGP submits on the basis of the Maharashtra Prohibition Act, 1949 and the Maharashtra Country Liquor Rules, 1973 that there is no express provision either in the Act on under the Rules enabling an Hon'ble Minister from reviewing the order of the earlier Minister. He, however, relies upon an order passed by the learned Division Bench of this Court at Nagpur dated 11/08/2014 in

WP No.2758/2014, Vilas Pralhad Ghatol Vs. The State of Maharashtra and others, to contend that after the competent authority which is the Supdt. State Excise passes an order or an appeal before the Commissioner is pending, a litigant cannot directly approach the Minister.

3. The learned Advocate for the petitioner concedes that the petitioner had directly approached the then Cabinet Minister for State Excise u/s 138 of the Maharashtra Prohibition Act for questioning the communication of the Supdt. State Excise, which is the District Collector, Raigad.

4. I find that after an order is passed by the Prohibition Officer, other than a Collector or the Commissioner under this Act, the said order is appellable before the District Collector u/s 137, within 60 days. All orders passed by the Collector and the Commissioner are appellable to the Commissioner and the State Government, respectively. Under Section 138, the State Government can call for and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a license or permit for satisfying itself as regards the correctness, legality or propriety of any order passed.

5. Notwithstanding the above, it is obvious that the Hon'ble Minister, State Excise, could not have reviewed the earlier order of the Hon'ble Minister dated ___/11/2012 (the day is not mentioned).

6. Keeping in view the law laid down in Naresh Kumar and others Vs. Government (NCT of Delhi) [2019(9) SCC 416], this petition is allowed. The impugned order dated 18/07/2019 is quashed and set aside. In the event, the State Government or the Commissioner, State Excise is inclined to challenge the order passed earlier by the Hon'ble Minister (Shri Ganesh Naik) dated ____/11/2012, in RVN No.1112/RA-391/RUSHU-3, they would be at liberty to do so.

7. The amount of Rs.5,39,112/- + Rs.1,60,600/-, shall be refunded to the petitioner, after a period of 60 days.

(Ravindra V.Ghuge, J.)