

M/s. Alfa Distilleries Pvt. Ltd. and another Vs. The State of Maharashtra and others	...	Petitioners Respondents
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Mr. A. G. Aney, Senior Advocate with Mr. P. B. Gole, Mr. R. N. Deshmukh and Mr. N. C. Walimbe, AGP for Respondent Nos.1, 2 and 4. Mr. Pradeep M. Patil with Ms Revati Tatkare for Respondent No.3.

DATE : JANUARY 16, 2020

P.C. :

Heard Mr. Sen, learned counsel for the petitioners; Mr. Aney, learned senior counsel assisted by Mr. Gole, Mr. Deshmukh and Mr. Walimbe, learned AGP for respondent Nos.1, 2 and 4; and Mr. Patil, learned counsel for respondent No.3.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of order dated 26.09.2001 passed by the Minister of Excise, Government of Maharashtra i.e., respondent No.2.

3. Shorn of details, basic facts may be briefly noted.

4. Petitioner No.1 is a company incorporated under the provisions of the Companies Act, 1956. It is a private limited company carrying on the business of water distillation, mineralization of drinking water and dealing in all types of spirit, alcohol, wines and liquors, etc. Petitioner No.2 is the Managing Director of petitioner No.1.

5. One potable liquor licence i.e., PLL Licence No.18 dated

24.12.1975 was issued by the Excise Department, Government of Maharashtra in favour of respondent No.3. On or about 05.06.1976, it was transferred in the name of M/s. Pen Distilleries, a proprietary firm of respondent No.3.

6. Respondent No.3 could not run the business of Pen Distilleries profitably. As a matter of fact, he was unable to pay even the excise duty, etc. In such circumstances, he entered into an understanding with petitioner No.2 for transfer of the liquor licence. Pursuant thereto, a memorandum of understanding was entered into between the two as per which it was provided that a private limited company would be floated and the liquor licence would be transferred in the name of the company subject to permission by the State Government and other statutory authorities under the Bombay Prohibition Act, 1949, since renamed as the Maharashtra Prohibition Act, 1949 (briefly 'the Prohibition Act' hereinafter).

7. This is how petitioner No.1 was constituted and incorporated. Thereafter application was made for transfer of the liquor licence in the name of petitioner No.1. In addition, request was also made for relocation of the unit from Raigad district to Aurangabad district. It is stated that by letter dated 07.02.1991, Home Department, State of Maharashtra granted permission for such relocation and transfer of the licence in the name of petitioner No.1. Of course, certain conditions were imposed such as no change in the liquor quota, original licensee i.e. respondent No.3 would be a permanent Director of the company during his lifetime, etc.

8. Petitioners paid the requisite transfer fee for transfer of licence from M/s. Pen Distilleries to the name of petitioner No.1. That apart, petitioner No.1 also paid arrears of excise charges, etc. It is stated that after taking over of the business by petitioner No.1, it has started making good profit and generated substantial revenue paid to the Government. It

is further stated that petitioner No.1 never defaulted in making payments under the Prohibition Act, besides adhering to the terms and conditions of licence. Respondent No.3 continued to be a director of petitioner No.1.

9. It is stated that some time around November, 1997, respondent No.3 started creating problems by raising all kinds of demands and making unsubstantiated allegations. He alleged that he was excluded by petitioner No.1 from the affairs of the company and was not paid the amounts due to him. In this connection, he approached Home Department, Government of Maharashtra vide letter dated 20.11.1997 seeking restoration of the original licence in his name.

10. Commissioner of State Excise, Maharashtra by his letter dated 18.12.1997 called upon the petitioners to respond to the allegations made by respondent No.3. Petitioners submitted their reply on 22.12.1997 denying the allegations and making clarifications wherever required.

11. It is stated that respondent No.3 taking advantage of the fact that he was a former member of the State Legislative Assembly was trying to put undue influence and pressure and in this connection had approached the Excise Minister, Government of Maharashtra as well as the Hon'ble Chief Minister. Petitioners have stated that Shri Prakash Mehta, the then Minister of Excise had granted a hearing whereafter an order was passed on 09.07.1999 rejecting the application of respondent No.3 for transfer of licence in his individual name. It is stated that the said order was not communicated to the petitioners but petitioners came to know about such order when they got a copy of letter dated 02.11.1999 addressed by respondent No.3 to the Hon'ble Chief Minister, Maharashtra State wherein respondent No.3 had requested the Hon'ble Chief Minister for setting aside of the order dated 09.07.1999 stated to have been received by him on 27.07.1999.

12. It further appears that respondent No.3 also relied upon opinion dated 14.08.1999 of the learned Advocate General, State of Maharashtra.

13. A meeting was called by Hon'ble the Chief Minister on 10.07.2000. However, no notice of such meeting was given to the petitioners. Therefore, petitioners are not aware as to what transpired in such meeting. However, the then Minister of Excise, Shri Vasant Rao Chawan fixed a hearing on 09.11.2000 in respect of the application dated 02.11.1999 made by respondent No.3. When petitioners pointed out that they did not receive any copy of application made by respondent No.3, the same was forwarded to the petitioners by the Secretary to the Government of Maharashtra, Home Department on 15.12.2000. Petitioners submitted their reply on 12.01.2001. Though hearing was held on 12.01.2001, further hearing was held on 07.06.2001. Ultimately, respondent No.2 i.e., Shri Anil Deshmukh, Minister of Excise, Government of Maharashtra passed the impugned order dated 26.09.2001 granting permission for transfer of the PLL Licence in favour of respondent No.3 and the Commissioner of State Excise was directed to take appropriate steps to effect such transfer.

14. Aggrieved by the said order dated 26.09.2001, the present writ petition has been filed assailing the legality and correctness of the same.

15. Basic contention of the petitioners is that respondent No.2 had passed the said order without any authority. In other words, it was an order passed without jurisdiction. Petitioner No.1 was not heard. There was no violation of any of the conditions of the licence. The premises on which the directions were issued by respondent No.2 are wholly untenable in law. Earlier on 09.07.1999, respondent No.2 had rejected the request of respondent No.3 for transfer of the licence to his individual name. Therefore, respondent No.2 could not have passed the impugned order subsequently which amounts to review of the earlier

order dated 09.07.1999 which power is not available to respondent No.2 under the Statute.

16. By order dated 12.10.2001, this Court had stayed the impugned order dated 26.09.2001.

17. State of Maharashtra has filed affidavit in reply through Shri. C. B. Choudhari, Under Secretary to the Government of Maharashtra, Home Department. In paragraph 2 of the said affidavit, it is admitted that petitioner No.1 is a private limited company. It is stated that the order dated 26.09.2001 was modified by the Hon'ble Minister of Excise on 09.10.2001. It is admitted that the PLL Licence was initially granted in favour of respondent No.3. Subsequently, on his request, it was allowed to be used in the name of M/s. Alfa Distilleries Private Limited i.e., petitioner No.1. It is stated that petitioner No.2 and respondent No.3 are directors of the said private limited company. State Government vide letter dated 07.02.1991 had granted permission for conversion of licence on condition that respondent No.3 shall be a lifetime director of the company and had also allowed shifting of the unit from Raigad district to Aurangabad district. However, the licence was in the name of respondent No.3 as an individual.

17.1. The affidavit has clarified that the order under challenge was subsequently modified on 09.10.2001 and was passed under the provisions of Section 138 of the Prohibition Act. Referring to condition No.7 of the transfer letter dated 07.02.1991, it is stated that right of the original licensee i.e., respondent No.3 is protected. Provisions of the Prohibition Act would prevail and not the provisions of the Companies Act. Grant of licence is an exercise of privilege by the State. User of the licence can use the licence only on the terms and conditions on which it is approved. Since the licence was granted in favour of respondent No.3, it was attached to him only. It is open to the State to take the view that if respondent No.3 resigned from the Board of Directors, the licence could

no longer be used by petitioner No.1. Therefore, there is no illegality in the impugned action of the State and the writ petition is liable to be dismissed.

18. No affidavit has been filed by respondent No.3.

19. Mr. Sen, learned counsel for the petitioners submits that though the impugned order suffers from multiple infirmities, the main challenge is that the said order is passed without jurisdiction. From the affidavit of the State, it is clear that the Minister had acted under Section 138 of the Prohibition Act. He submits that Section 138 of the Prohibition Act provides for revisional jurisdiction to the State Government. Under no circumstances, the original order passed by the Minister can be construed to be an order passed in revision so as to bring it within the ambit of Section 138. That apart, the Excise Minister had already passed an order on 09.07.1999 rejecting the claim of respondent No.3 by holding that it was an internal issue of the company and the dispute ought to be resolved under the provisions of the Companies Act. After the Minister had passed this order on 09.07.1999, it was not open to his successor to pass the impugned order. The Minister could not have exercised revisionary powers over his own order. It amounts to review of the earlier order but power of review is not available to respondent No.2. There was no violation of any of the conditions of the licence. Resignation of respondent No.3 from the directorship of petitioner No.1 was not a condition of the licence. There is no question of any conflict between the Prohibition Act and the Companies Act; the issue did not arise at all.

20. On the other hand, Mr. Aney, learned senior counsel representing respondent Nos.1 and 2 explained the meaning of the expression “licence” more particularly with reference to the provisions of the Prohibition Act. His contention is that licence under the Prohibition Act is a property which cannot be sold. He has referred to various provisions

of the Prohibition Act and also provisions of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 and contends that entry of company as a licensee is not permissible. The licensee has to be a natural person. He has also referred to Section 139 of the Prohibition Act and submits that the Minister exercised his powers under Section 139(n) of the Prohibition Act.

20.1. In support of his contentions, Mr. Aney has placed reliance on two decisions of the Bombay High Court in *State Vs. Mahadev Anand Vaidya*, AIR 1956 Bombay 238 and Writ Petition No.1360 of 2015, *Rajendrakumar Dixit Vs. State of Maharashtra* and other connected cases decided on 07.01.2016. He has also placed reliance on a decision of the Supreme Court in *Commissioner of Income Tax Vs. Vatika Township Private Limited*, (2015) 1 SCC 1.

21. In reply, Mr. Sen submits that the licence of the petitioner was not cancelled for violation of licence conditions. He submits that the licence which stood in the name of respondent No.3 was already transferred to petitioner No.1. Therefore, the State cannot now contend that a licence cannot be issued or granted to a company. The expression 'person' in the context of the prohibition law cannot be construed narrowly to confine it to natural persons only. Finally, he submits that power cannot be exercised by the Hon'ble Minister under Section 139 of the Prohibition Act as contended by Mr. Aney.

22. Submissions made by learned counsel for the parties have been considered.

23. At the outset, impugned order dated 26.09.2001 may be adverted to, relevant portion of which is extracted hereunder:

“ As per Advocate General, Bombay Prohibition Act 1949 is superior to Companies Act 1956. Shri Anant Parshuram Shetye has been granted license under Bombay Prohibition Act 1949. All the provisions of the Prohibition Act 1949 are

applicable. Shri Shetye has been given licence as per 1949 Act and not to the Alfa Distilleries which is a company. Although Shri Shetye has been given permission for the transfer of the licenses, as per Advocate General, Shri. Shetye being original licensee as per the provisions of Bombay Prohibition Act 1949 and as per the Government letter dated 7.2.1991, Shetye's right on the license has been accepted. Similarly, Shri. Shetye has resigned from the directorship of the Alfa Distilleries Ltd. As per the Bombay Prohibition Act 1949 original licensee Shri. Bhai Shetye's request for transfer of issuing license to his name is being accepted. Commissioner State Excise Maharashtra State to take necessary action to this effect."

24. From the above, it is seen that the Hon'ble Minister had passed the order on the premise that the Prohibition Act is superior to the Companies Act; licence was given to respondent No.3 and not to petitioner No.1; though permission was granted for transfer of licence, respondent No.3 being the original licensee, the licence continues to vest in him. Therefore, contention of respondent No.3 for re-transfer of the licence to him was accepted.

25. Petitioners in the writ petition have contended that the Hon'ble Minister had no jurisdiction to pass such an order under the Prohibition Act. In the affidavit in reply filed on behalf of the State, a specific stand has been taken that the impugned order as modified on 09.10.2001 was passed under Section 138 of the Prohibition Act. This is the pleaded stand of the State.

26. In view of the categorical stand taken, it would be apposite to advert to Section 138 of the Prohibition Act. Section 138 reads as under:

"138. Revision :- The State Government may call for and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a licence, permit or authorization under this Act for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of, any such proceeding and may when calling for such record, direct that the order be not given effect to pending the examination of the record. On examining the record, it may either annul, reverse, modify or confirm such order, or pass such other order as it may deem fit."

27. The heading of Section 138 is “revision”. A careful analysis of Section 138 would go to show that exercise of power under the said provision is really an exercise of revisional jurisdiction. For invocation of jurisdiction under Section 138, there must be a proceeding before any prohibition officer and the State Government in order to satisfying itself as to the correctness, legality or propriety of any order passed in such proceeding and as to the regularity of such proceeding, may examine such proceeding and may either annul, reverse, modify or confirm such order or pass such order as it may deem fit. Therefore, for exercise of power under Section 138, there must be a pending proceeding before a subordinate authority. The jurisdiction under Section 138 is not an original jurisdiction.

28. If that be the position then there is no question of invoking jurisdiction under Section 138 of the Prohibition Act to pass the impugned order.

29. Mr. Aney, learned senior counsel for the respondents had referred to the general powers of the State Government in respect of licences, etc. as provided under Section 139 of the Prohibition Act and submitted that the impugned order was passed under sub-section (n) thereof which empowers the State Government to issue such instructions in any matter pertaining to the grant or otherwise of licenses, permits, passes or authorizations under the Prohibition Act, as the State Government may deem proper.

30. The power conferred on the State Government under Section 139(n) of the Prohibition Act is basically a residuary power and certainly cannot be applied in a situation like the present case. That apart, when the respondents have themselves categorically stated on oath that the source of power for passing the impugned order is Section 138, it is not necessary to digress from such a stand taken by the State.

31. In so far contention of Mr. Aney that a licensee under the Prohibition Act has to be a natural person, such a stand cannot be accepted for the simple reason that it contradicts the very action of the State in as much as the State had permitted the licence to be transferred in the name of petitioner No.1 which is a juristic person being a company. Resignation of a Director of a company or difference between the Directors is an internal matter of the company and in the absence of any violation of the terms and conditions of the licence, any change within the company would have no impact on the subsisting licence. In such a scenario, question of the Prohibition Act being superior to the Companies Act as observed by respondent No.2 does not arise. In any case, the Prohibition Act and the Companies Act operate in different fields and there is no question of one Act being superior to the other. The decisions cited by Mr. Aney lay down general principles and are not applicable to the facts of the present case.

32. Before parting with the record, it also needs to be mentioned that respondent No.2 had already taken a decision on 09.07.1999 rejecting the application of respondent No.3 for transfer of the licence to his name. In such circumstances, respondent No.2 could not have taken a different view *vis-a-vis* the impugned order.

33. In the light of the discussions made above, Court has no hesitation to hold that the impugned order dated 26.09.2001 as modified on 09.10.2001 is wholly without jurisdiction and is clearly unsustainable in law.

34. Consequently, impugned order is set aside. Rule is made absolute. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)