

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

55 WRIT PETITION NO.12204 OF 2019

Somnath Pandurang Kate
Age 47 years, Occ. Business
R/o. Pimple Saudagar,
Tq. Haveli, District Pune

...Petitioner

versus

1. The State of Maharashtra
Through the Secretary,
State Excise department
Mantralaya, Mumbai 32.
2. The Collector,
State Excise Department,
Ahmednagar, Dist. Ahmednagar
3. The Commissioner,
State Excise, Old Octroi House
12nd floor, Shahid Bhagatsingh Marg
Mumbai 23.
4. The Superintendent of State Excise
Ahmednagar Range, Ahmednagar
District Ahmednagar

...Respondents

.....
Advocate for Petitioners : Mr. R.R. Mantri h/f Mr. R.R. Sancheti
AGP for Respondents: Mr. S.N. Morampalle
.....

CORAM : V. K. JADHAV, J.
DATED : 18th JANUARY, 2021

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent of the parties, heard finally at admission stage.
2. At the request of learned counsel for the petitioner, leave to correct the prayer clause "B". Correction be carried out forthwith.

3. Learned counsel for the petitioner submits that initially one Vitthalrao Nagwade was granted FL-II licence by respondent No.1 State. However, the said licence was not renewed by Shri Vitthalrao Nagwade. Thereafter, respondent No.1 State took a policy decision to re-validate and re-instate those licences, which were not brought into operation. In consequence thereof, said Vitthalrao Nagwade has filed an application and by order dated 7.7.1999 respondent No.3-Commissioner has directed its validation. Though there was some controversy as to which authority has to pass the order of renewal of the licence, however, finally by order dated 19.1.2016 the concerned Minister has allowed the revision and quashed and set aside the order passed by the Collector, Ahmednagar in the year 2015 and further directed renewal of the licence from 1973 to 1999 by accepting the licence fees from 1973 and also further directed to transfer of the said licence from Ahmednagar district to Pune district. Thereafter, in compliance with the said direction, the FL-II licence was renewed by accepting the licence fees till the date and ultimately the said FL-II licence was transferred in the name of the present petitioner. The same is also not disputed. However, after the change of Government, the concerned Minister took suo moto proceedings and by order dated 20.9.2019 has not only cancelled the earlier order passed by the earlier Minister dated 19.1.2016 but also cancelled the FL-II licence issued in favour of the petitioner or his predecessor, permanently.

4. Learned counsel for the petitioner submits that the earlier order passed by the Minister on 19.1.2016 was by taking recourse to the provisions of Section 138 of the Maharashtra Prohibition Act and the State Government is entitled to revise any order of a Prohibition Officer relating to the grant or refusal of a licence or permit, pass or authorization under the Act. The learned counsel submits that it is clear from the combined reading of the provisions of Sections 138, 139 and 2(35) of the Prohibition Act that the State government is entitled to examine the record of any proceedings before the Prohibition Officer only and would not be entitled to revise its own order.

5. Learned counsel for the petitioner in order to substantiate his submissions placed reliance on the following cases:-

- i) The judgment and order dated 29.10.2015 passed by the Division Bench of this Court (Coram: Smt. Vasanti A. Naik and A.I.S. Cheema, JJ.) in writ petition No. 3315 of 2015 (Abhijit Ramrao Bachewar vs. State of Maharashtra and others)
- ii) The judgment and order dated 01.03.2016 passed by this Court (Coram: Prasanna B. Varale, J.) in writ petition No. 5460 of 2015 (Rajesh Matadinlalji Jaiswal vs. The State of Maharashtra and others);
- iii) The order dated 16.4.2008 passed by the Division Bench of

this Court (Coram: S.B. Mhase and S.S. Shinde, JJ.) in writ petition No. 8776 of 2007 (Mrs. Kamladevi Satyanaran Gupta vs. The State of Maharashtra and others);

6. I have also heard the learned A.G.P. at length. The learned A.G.P. has not pointed out any other view expressed by this Court or the Supreme Court in this regard.

7. The provisions of Sections 138 and 139 of the Maharashtra Prohibition Act, 1949 are reproduced 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.”

139: General powers of (State) Government in respect of licences, etc. (1) Notwithstanding anything contained in this Act or the rules made thereunder, the (State) Government may, by general or special order,-

(a) to (m)

(n) Issue such other instructions in any matter pertaining to the grant or otherwise of licenses, permits, passes or authorizations under this Act, as the (State) Government may

deem proper.

(2)"

8. It is thus clear that in terms of the provisions of Sections 138 and 139 of the Maharashtra Prohibition Act, the State Government can revise the orders and examine the record of any proceeding before any Prohibition Officer including that relating to the grant or refusal of a licence, permit, pass or authorization 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. However, in any case, the State Government would not be entitled to revise its own order.

9. In the cases cited above, particularly the judgment and order passed by the Division Bench of this Court in writ petition No. 3315 of 2015, the facts of the same are similar to the facts of the present matter. The Division Bench of this Court (Nagpur Bench) in para No.6 of the said judgment has made the following observations:-

“6. In our considered view, the State Government could not have passed the impugned order, dated 24.9.2015, under the provisions of Section 138 or Section 139(1) (n) of the Act.

It is apparent from a reading of Section 138 of the Act that the State Government is entitled to revise any order of a Prohibition Officer relating to the grant or refusal of a licence or permit, pass or

authorization under the Act. The Prohibition Officer is defined under Section 2 (35) of the Act.

It is clear from a combined reading of the provisions of Sections 138, 139 and 2(35) of the Act that the State Government is entitled to examine the record of any proceedings before the Prohibition Officer only and would not be entitled to revise its own order. The order passed by the State Government, permitting the petitioner to transfer the FL-II license from Mumbai to Nagpur dated 31.03.2015 cannot be revised by the State Government under Section 138 of the Act. Though the order mentions that the same has been passed by taking recourse to the provisions of Section 138 of the Act, a lame attempt is made by the respondent no.1 to support the order, as being passed under Section 139(1)(n) of the Act. Under Section 139 (1) (n), the State Government is empowered to issue such other instructions in any matter pertaining to the grant or otherwise of license, permit, pass or authorization, under the Act, that are not contemplated by the other clauses of Section 139(1). Under the said provision, the State Government cannot stay the effect and operation of an order permitting the transfer of license from one District to another. We do not find that the State Government could have issued the impugned order, under section 139(1)(n) of the Act.”

10. In view of the above, I am inclined to allow this writ petition as no other view is possible. Hence, I proceed to pass the following order:-

O R D E R

I. Writ petition is allowed as per prayer clause “B” and disposed of in terms of the following directions:-

- a) Restore the FL-II licence No. FL-II/52/2016-17, and
- b) The respondents to comply with the order dated 19.01.2016 passed by the Minister of State for State Excise Department, Mantralaya, Mumbai in Revision No. FLR-1215/RA-34/SE-2.

II. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/