

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3489 OF 1998

Udaykumar M. Pandey & Others .. Petitioners.
v/s.
The Collector of Jalgaon
& Others .. Respondents.

WITH
CIVIL APPLICATION NO.2115 OF 2011
IN
WRIT PETITION NO.3489 OF 1998

Mohanlal C. Pandey & Another .. Applicants.
v/s.
The Collector of Jalgaon
& Others .. Respondents.

WITH
CIVIL APPLICATION NO.1215 OF 2006
AND
CIVIL APPLICATION NO.1214 OF 2006
IN
WRIT PETITION NO. 3489 OF 1998

Renuka Pandey .. Applicant
v/s.
The Collector of Jalgaon & Others .. Respondents.

Mrs. Veena S. Thadhani with Mr. Vishal Thadhani, for the Petitioners/
Applicant.
Mr. V. S. Gokhale 'B' Panel Counsel for the State.
Mr. D. B. Sawant with Ms. Amrita Singh, for Respondent No.2A & 2B.

CORAM: G.S. KULKARNI,J.
DATED : 16th NOVEMBER, 2021.

PC:-

Heard learned Counsel for the parties.

2 The challenge in this Petition is to an order dated 8th July, 1998 passed by Commissioner, State Excise, Maharashtra State, Mumbai whereby the Petitioner's Appeal filed under Section 137 of the Bombay Prohibition Act, 1949 (the 'Act') against order passed by Collector, Jalgaon rejecting Petitioner's application to delete the names of Respondent Nos. 2 & 3 from the partnership deed of CL.III licence was dismissed.

3 The Petitioner's case before the Collector was to the effect that Respondent Nos.2 & 3 could not have been included as co-licensee's in the licence in question on the basis of the alleged partnership deed, under which they were claiming such inclusion as the same was not a registered document. The Petitioner further contended that the inclusion of Respondent Nos. 2 & 3 as co-licensee's was illegal and their names ought to have been deleted.

4 The Collector, Jalgaon did not accept the Petitioner's contention and rejected the said application by an order dated 16th February, 1998. Being aggrieved by the said order passed by the Collector, Petitioner filed an Appeal before the Commissioner, who partly allowed the Petitioner's appeal by quite a peculiar order. The operative part of the said order reads thus:-

*“ The appeal is partly allowed. The order of the Collector is set aside with the directions **that the name of the appellant and the respondent No.4 shall be deleted from the licence.** The respondent No.2 and 3 are allowed to continue to run the country liquor shop, provided they form a new partnership within a month of the receipt of this order; thereafter the licence will be formally transferred to the new partnership firm on the payment of the necessary privilege fee.”*

(emphasis supplied)

5 In my clear opinion, the Commissioner completely mis-

appreciated his jurisdiction in passing the above order as impugned. The subject matter of adjudication before the Commissioner, was limited namely to examine the validity of the order passed by the Collector in rejecting Petitioner's application to delete the names of Respondent Nos.2 & 3 from the licensee. However, the Commissioner as an Appellate Authority directed deleting the Petitioner's name from the licence, when to that effect there was no application from Respondent Nos. 2 & 3. No oral plea could have been accepted in such appeal for the first time. Thus, to make such an order was certainly not the jurisdiction of the Commissioner in the Petitioner's appeal. On this sole ground, in my opinion, the impugned order passed by the Commissioner cannot be sustained in law and hence deserves to be set aside.

6 Be that as it may, this Writ Petition is of the year 1998. It has unfortunately remained pending. During the pendency of the Petition, the Petitioner namely Fulabai C. Pandey expired. The learned Counsel for the Petitioner has pointed out that after the Petitioner expired, the legal heirs of the Petitioner namely – Udaykumar M. Pandey, grand son of the original Petitioner who is now pursuing this Petition had made an application to the Excise Authority for inclusion of his name and in pursuance of an interim order passed by this Court, his name was included on the license.

7 It is, however, pointed out by Mrs. Thadani that, after Respondent Nos. 2 & 3 expired, no such steps have been taken by the legal heirs of Respondent Nos. 2 & 3 so as to enter their names on the license. The legal heirs of Respondent Nos.2 & 3 are required to take steps, if permissible to them in law, to enter their names on

the license. If such an application is made, the licensing authority would be required to consider such application and decide the same after hearing all the parties.

8 Mr. Gokhale, learned Special Counsel for the State has drawn my attention to paragraphs 3 & 4 of the reply affidavit filed on behalf of the State to contend that the Petitioner was conducting the business under the CL-III licence for retail sale of Country Liquor business at Jalgaon and that business of retail sale of Country Liquor under CL-III Licence was transferred from Pimparkhed, Tal Bhadgaon, Dist. Jalgaon. Paragraph Nos. 3 & 4 are reads as under:-

“3:- I say that the Petitioner is now conducting CL-III Lincense for retail sale of Country Liquor business at Jalgaon. I say that the Petitioner has transferred the business of retail sale of Country Liquor under CL-III License from Pimparkhed, Tal – Bhadgaon, Dist- Jalgaon at Pimprala (Jalgaon) since about 6 months.

4:- I say that at present the Petitioner is now conducting the business along with Mrs. Renuka Udaykumar Pandey under the CL-III License. I crave leave to refer to and rely upon the said licence. I say that the said order of transfer of CL-III license has not challenged by Respondent Nos. 2 and 3. I say that the Petitioner is running the business of retail sale of Country Liquor at Pimprala (Jalgaon) under the duplicate copy of CL-III Licence.”

9 In the circumstances, this Writ Petition would not require any further adjudication and would be required to be disposed of by the following order:-

- (i) Writ Petition is partly allowed by setting aside the order dated 8th July, 1998 passed by the Appellate Authority to the extent that it directs the deletion of names of original Petitioner;
- (ii) So far as Respondent Nos. 2A and 2B are concerned, it would be

permissible for these Respondents to make an application for inclusion of their names in the license as the original lincensees have been expired;

- (iii) If such an application is made, concerned authority shall decide said application in accordance with law after hearing the parties including the Petitioner;
- (iv) All contentions in that behalf are expressly kept open.

10 Petition is accordingly, disposed of in the above terms. No order as to costs.

11 In view of the disposal of the Petition, nothing survives in the Interim Applications, and the same are disposed of.

(G.S. KULKARNI,J.)