**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**WRIT PETITION NO.11765 OF 2019**

Shubhada Sharad Bhole
CL-III Licence No.156
at Bhadur, Taluka Biloli,
District: Nanded, Through
General Power of Attorney
of Ganesh Yeashwantrao Nandewar,
Age: 48 years, Occu: Business,
R/o Sahyog Nagar, Shelgaon Road,
Naigaon, Khairgaon, Nanded. … Petitioner

Versus

1. The State of Maharashtra,
through Secretary, Government of
Maharashtra, Home (Transport)
Department, Mantralaya,
Mumbai – 400 032.

2. The Minister of State
Excise, Mantralaya, Mumbai-400 032

3. The Collector of Nanded
State Excise Department,
District – Nanded … Respondents

…

Mr. Mukul Kulkarni holding for Mr. V. P. Latange, Advocate for the Petitioner
Mr. S. W. Munde, AGP for the Respondents/State

…

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 7th September, 2022**

**ORAL JUDGMENT :-**

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of parties.

2. Challenge in this petition is to the order passed by respondent no.2 in Revision No.RVD/0918/217/183/EXC-3 by exercising review jurisdiction under the Maharashtra Prohibition Act, 1949 (for short 'the said Act').

. Facts in brief are as follows:

3. CL-III licence was granted to the petitioner's father at Murud, District – Raigad. In the year 1976, petitioner's father applied for renewal of his license. The same was not considered during his life time and therefore, petitioner's mother filed revision before respondent no.2. By order dated 04-12-2013, respondent no.2 allowed revision and directed to renew license by recovering entire licence fee from 01-04-1975 to 31-03-2014 and also granted prayer for shifting of licence in Nanded District.

4. Accordingly, on payment of Rs.10,96,250/-, the Collector, Raigad renewed license upto 31-03-2014. On 19-07-2017, petitioner's mother expired. All legal heirs of petitioner's mother consented for transfer of license in the name of the petitioner on 13-08-2018.

5. On 04-07-2019, respondent no.2 reviewed earlier order dated 04-12-2013 and directed to recover a sum of Rs.19,80,084/- towards interest on the license fee from 01-04-1975 to 31-03-2014 and further directed to recover future interest till payment of the same. This order is impugned in the present petition.

6. The learned Advocate for the petitioner assailed the impugned order by relying on the decisions of **Smt. Keti Ardeshir Kapadia Vs. State of Maharashtra and Ors.** in **Writ Petition No.199/2006**, **Maheshprasad Dwarkadas Jaiswal & Another Vs. State of Maharashtra & Others** reported in **2017 DGLS (Bom.) 1923**, **Ashok Pandurang Rane Vs. State of Maharashtra and Others** in **Civil Application No.2300/2019 in Writ Petition No.13623/2018**, **Shri. Abhijit Ramrao Bachewar Vs. The State of Maharashtra and Ors.** in **Writ Petition No.3315/2015**, **Somnath Pandurang Kate Vs. The State of Maharashtra & Ors.** in **Writ Petition No.12204/2019** and **Shri. Suresh Shantaram Todankar Vs. The State of Maharashtra Through Principal, Secretary (State Excise) & Ors.** in **Civil Writ Petition No.1088/2021 along with connected Civil Writ Petitions**.

7. The learned Assistant Government Pleader has vehemently opposed the petition by placing reliance on the affidavit-in-reply

filed by the respondents. He submits that since the impugned order is rightly passed, after conducting inquiry, by exercising review jurisdiction, the same is not liable to be interfered with.

8. I have duly considered the rival submissions advanced by the learned Advocate for the petitioner and the learned Assistant Government Pleader for the respondents/State.

9. In Maheshprasad Dwarkadas Jaiswal (*Supra*), the Division Bench of this Court has held;

> *"It is quite clear that there is no legal provision to recover interest over the license fees. It is well known concept that the interest can be recovered only on the amount which is lent and the amount which is found due or recoverable as a debt. License fees which was not paid for the period during which the business was not being operated by the petitioner could not have been treated as a legally recoverable debt from the petitioner. The recovery of the interest is not permissible under any contract, usage or other legal provision."*

10. In unreported decision, in Writ Petition No. 3315/2015, the learned Division Bench, at Nagpur has held:

> *"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 F1.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 authorisation, 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."*

11. In similar facts, learned Single Judge of this Court, in Writ Petition No.1088/2021 and connected matters, has held:

*"8. If the very scheme of Section 137 to 139 is appreciated, what can be noticed is, statutory provisions conferring power of Review are conspicuously absent in the Act. Even if we go by Section 137 of the Act which provides for a remedy of Appeal against the order of Prohibition Officer or remedy of Revision as provided, said provisions cannot be stretched to mean and read down conferring powers of review. Power to review an order passed under statutory provisions cannot be exercised in absence of express statutory provisions."*

12. By relying upon the judgment of learned Division Bench at Nagpur, the learned Single Judge of this Court in Writ Petition No.12204/2019 has taken similar view.

13. Case of the petitioner squarely covered by the aforesaid ratios. This Court has consistently held that review jurisdiction is not available to respondent no.2 and interest cannot be levied in exercise of review jurisdiction. Admittedly the petitioner has paid license fee even for the period during which the license was dormant. In this view of the matter and in view of the aforesaid ratios, the impugned decision cannot be sustained. Hence, the following order:

**ORDER**

(i) The writ petition is allowed in terms of prayer clause (a).

(ii) The impugned order passed by respondent no.2 dated 04-07-2019 in Revision No.RVD/0918/217/183/EXC-3, is hereby quashed and set aside.

(iii) Rule is made absolute in the above terms.

**[NITIN B. SURYAWANSHI, J.]**

*Sameer*