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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1088 OF 2021**

SHRI. SURESH SHANTARAM TODANKARPETITIONER

V/s.

**THE STATE OF MAHARASHTRA THROUGHRESPONDENTS
PRIN. SECRETARY (STATE EXCISE) AND ORS**

**WITH
CIVIL WRIT PETITION NO. 9136 OF 2021**

MOHAMED YAYA MOHAMED SAYEDPETITIONER

V/s.

**THE STATE OF MAHARASHTRA THROUGHRESPONDENTS
PRIN. SECRETARY (STATE EXCISE) AND ORS**

**WITH
CIVIL WRIT PETITION NO. 9134 OF 2021**

SMT. ANJANA NARAYAN WAGHPETITIONER

V/s.

**THE STATE OF MAHARASHTRA THROUGHRESPONDENTS
PRIN. SECRETARY (STATE EXCISE) AND ORS**

**WITH
CIVIL WRIT PETITION NO. 9137 OF 2021**

JAYDEEP DILIP KALBHORPETITIONER

V/s.

THE STATE OF MAHARASHTRA THROUGH ..RESPONDENTS
PRIN. SECRETARY (STATE EXCISE) AND ORS

**WITH
CIVIL WRIT PETITION NO. 9135 OF 2021**

SHRI. CHETAN RAJENDRA NANDWALKARPETITIONER

V/s.

THE STATE OF MAHARASHTRA THROUGH ..RESPONDENTS
PRIN. SECRETARY (STATE EXCISE) AND ORS

Mr. A. K. Tiwari a/w Ms. Shraddha Kadam i/b Mr. Santosh L. Patil for
the Petitioners
Mrs. M. S. Bane AGP for Respondent nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATE: JUNE 20, 2022.

P.C.:

1) Impugned in the Petition is an order passed by Minister of State Excise on 18/07/2019 whereby earlier order dated 26/02/2014 came to be reviewed. Shifting of the licence issued under the Maharashtra Prohibition Act (Hereinafter referred to as 'the Act' for the sake of brevity) came to be confirmed, however, Petitioner is directed to pay interest over the licence fess.

2) In all these bunch of petitions, common issue is involved. Hence,

for the purpose of disposal of all petitions to be decided by this common order, facts in Writ Petition No. 1088/2021 are considered.

3) Petitioner is holding a CL III licence which was issued in 1973 and was renewed up to 31/03/1974. In other petitions also Petitioners are holding licences under the Act.

4) Since further renewal was not carried out, Petitioner approached State Government seeking said dormant licence to be renewed in accordance with law and accordingly vide order dated 26/02/2014, State Government directed renewal of the said licence in accordance with law after accepting licence/renewal fees.

5) It appears that after the aforesaid order was passed, State Government on its own reviewed the said order and directed the Petitioner to pay interest on the outstanding licence fees. However, order to the extent of permitting relocation was maintained. Said order dated 26/02/2014 which was passed on suo-moto Review proceedings is under challenge on the ground that levy of interest is illegal.

6) Counsel for the Petitioner while drawing support from the provisions of Section 137 and 138 of the Maharashtra Prohibition Act would urge that though said provisions confer powers of entertaining

Appeal and Revision in the State Government, the Statute in express terms has not conferred any power of Review and that being so, order impugned is not sustainable. So as to substantiate the said arguments, Petitioner has drawn support from the Judgment of this Court in the matter of **Somnath Pandurang Kate V/s. The State of Maharashtra and others** in Writ Petition No. 12204 of 2019 at Aurangabad on 18/01/2021 which is informed to be confirmed by the Apex Court. My attention is also invited to order of this Court passed in Civil Application No. 2300 of 2019 in Writ Petition No. 13623 of 2018 on 21/11/2019. Counsel for the Petitioner while relying on the aforesaid order would urge that even if the provisions of Section 114 of the Act empowers State Government to levy interest, this Court has read down said provisions to mean that unless Section 149 of the Act provided for levy of interest, provisions of Section 114 cannot be taken recourse to by reading same in the interpretation of said provision.

7) While countering aforesaid submissions, learned AGP would urge that order passed in Writ Petition 13623 of 2018 referred above, is assailed by the State Government before this Court in review jurisdiction which is pending adjudication. Further contentions are,

loss of revenue to the State Government by way of payment of interest has prompted the State Government to exercise powers under Section 139 (1) (n) of the Act so as to make Review entertain-able. As such, according to her, Petitions since lack merits are liable to be dismissed.

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 provision.

9) If the claim of Assistant Government Pleader is appreciated, section 139 of the Act enables the State Government to issue such other instructions in any matter pertaining to grant or otherwise licence, permits, passes or otherwise under the said Act as the State Government may deem proper. What can be noticed in the case in hand is, the order passed by the Prohibition officer under the provisions of Section 138 are reviewed thereby adding condition of

payment of interest on the outstanding licence fees to be paid by the Petitioner to the State Government.

10) Fact remains that in absence of express powers to entertain a Review, State Government is not empowered to entertain a Review as is done in the case in hand. Rightly so, counsel for the Petitioner has placed reliance on the Judgment of this Court in the matter of **Somnath Pandurang Kate** [cited supra] which is confirmed by the Apex Court in SLP (Civil) No. 11007/2021 on 16/08/2021. This Court in the above referred Judgment while dealing with scope of provisions of Section 138 and 139 of the Maharashtra Prohibition Act has held that Respondent Government can revise orders and examine record of proceedings which are pending before Prohibition Officer provided such record pertains to refusal or grant of licence permit, pass or authorization. Power of State Government to examine record which is pending on the file of prohibition officer has to be read in context to definition of prohibition officer as provided under sub-section 35 of Section 2 of the said Act. Admittedly, record in present case is not pending before the prohibition officer but the State Government on its own has reviewed the order which was passed in 2014. Such power to

review cannot be read in Section 138 or 139 of the Prohibition Act.

11) As regards pendency of Review Application at the behest of State Government in the above matter before this Court is concerned, even if such Application is allowed and State Government is held to be entitled to levy interest, such interest cannot be levied in exercise of review jurisdiction as the order was passed by the State Government in 2014 thereby directing recovery of licence fees for the purpose of making a dormant licence alive and approving shifting.

12) That being so, pendency of Review Application will have hardly any effect or bearing over the merits of the present Petitions. As such, contention of learned AGP is rejected.

13) In the aforesaid background, having regard to the fact that Respondent State Government lacks statutory powers to entertain the Review, orders impugned are not sustainable. As such, same are hereby quashed and set aside to the extent of directing the petitioners to pay interest on the licence renewal fees.

14) Petitions stand allowed in the above terms.

15) If during pendency of Petitions, any of the Petitioners have deposited amount of interest which is illegally recovered/received by

Respondent State, same be refunded within period of three months from the date of order or be adjusted in future licence fees payable to the Respondent State by the Petitioner.

[NITIN W. SAMBRE, J.]

IRESH SIDDHARAM
MASHAL

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SIDDHARAM MASHAL
Date: 2022.06.27 10:56:30 +0530