

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1398 OF 2022

Smt. Asima Pravin Jaiswal,
aged about 61 years, Occ. Business,
C/o Sanjay Restaurant, R/o Kamal Chowk,
Nagpur.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
State Excise, Mantralaya, Mumbai;
through its Secretary.
2. The Commissioner, State Excise,
Maharashtra State, Mumbai.
3. The Collector, State Excise,
Nagpur.
4. The Superintendent, State Excise,
Nagpur.

RESPONDENTS

Shri S.G. Jagtap with Shri Sayajee S. Jagtap, Advocate for the petitioner.
Ms. N.P. Mehta, A.G.P. for the respondents/ State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 13 JULY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. C.L. III license that was initially issued to one Shri Chandrakant Thakur in the year 1973 was not renewed after 31/3/1976.

The said licensee applied for renewal of the said license, but that application was rejected by the Collector on 31/5/2014. On 23/6/2014, while exercising revisional powers, the State Government permitted renewal of the said license from 1/4/1976 to 2014-15 on payment of renewal fees.

3. Subject to the aforesaid, the license was permitted to be shifted from Ratnagiri to Nagpur and renewal fees were paid till 31/3/2015. The petitioner, who then stepped into the shoes of the original licensee, made a request on 14/12/2017 for shifting the said license at a different place in the city of Nagpur. When that application was pending, the State Government on 16/8/2018 issued a notice seeking to invoke provisions of Section 138 of the Maharashtra Prohibition Act, 1949 (for short “Act of 1949”). The petitioner was called upon to put forth her say in the matter of exercise of renewal powers. In view of pendency of those proceedings, the Collector on 5/10/2021 rejected the petitioner’s application for shifting of the business. Being aggrieved by this order, the petitioner has preferred an Appeal before the Commissioner of State Excise which is pending. In the said backdrop, the petitioner has challenged the notice dated 16/8/2018 as being without jurisdiction as well as the order passed by the Collector on 5/10/2021.

4. The learned Counsel for the petitioner submitted that there was no authority with the State Government to revise its own order in exercise of powers under Section 138 of the Act of 1949. Since the initial order dated 23/6/2014 could not be revised, the Collector was not justified in rejecting the application for shifting of the business. Mere pendency of the Appeal against that order would not come in the way of the petitioner for challenging the notice dated 16/8/2018 and the order dated 5/10/2021. In that regard, the learned Counsel has placed reliance on the decision in *Shri Abhijit Ramrao Bachewar Vs. The State of Maharashtra & Ors. [Writ Petition No. 3315/2015 decided on 29/10/2015]*. It is therefore prayed that the impugned notice be set aside.

5. The learned Assistant Government Pleader for the respondents relied upon the affidavit-in-reply and supported the notice dated 16/8/2018. It was further submitted that since the Appeal challenging the order dated 5/10/2021 was pending, the Appellate Authority could be directed to decide the same. Hence, no interference with the impugned notice was called for.

6. Having heard the learned Counsel for the parties and having perused the material on record, we find that the notice dated 16/8/2018

issued under Section 138 of the Act of 1949 is without jurisdiction. This is for the reason that this issue has been considered in somewhat similar circumstances by this Court in *Abhijit Ramrao Bachewar (supra)* wherein, a similar notice under Section 138 of the Act of 1949 was issued with a view to revise the earlier order passed by the State Government. In that context, this Court observed as under :

“1 to 5 XXXX

6. XXXX 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.”

7. We find that the facts of the present case are governed by the aforesaid observations. Admittedly, the order dated 23/6/2014 that is sought to be revised has been passed by the State Government. Hence, revision of its own order under Section 138 of the Act of 1949 would not be permissible. On this ground, the notice dated 16/8/2018 is liable to be set aside.

8. We find that the petitioner's application for shifting of the business has been rejected only on the ground that the notice dated 16/8/2018 was issued by the State Government. When that notice is found to be without jurisdiction, the petitioner's request for shifting of the business is required to be reconsidered.

9. In the light of the aforesaid discussion, the following order is passed :

i) The notice dated 16/8/2018 issued by the State Government under Section 138 of the Act of 1949 is set aside.

ii) The order dated 5/10/2021 passed by the Collector rejecting the petitioner's request for shifting of C.L. III license also is set aside. It is directed that the Collector shall re-consider the petitioner's application for shifting of C.L. III license on its own merits and in accordance with law

within a period of eight weeks from the receipt of this judgment.

iii) Since the order dated 5/10/2021 has been set aside, the Appeal preferred by the petitioner before the Commissioner of State Excise is rendered infructuous. It may be disposed of accordingly.

iv) Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit