

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 245 OF 2020

DATTARAM GOVIND NAIK

... Petitioner

Versus

STATE OF GOA, REP. BY CHIEF ... Respondents
SECRETARY AND ANR.

Mr. C.A. Coutinho with Mr. Ivan Santimano, Advocates for the
Petitioner.

Mr. S.P. Munj, Additional Government Advocate for
Respondents No.1 and 2.

Mr. J. Mulgaonkar with Mr. Akshay Shirodkar, Advocates for
Respondents No.3 and 4.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 15th June 2023

P.C.:

1. Heard Mr. C.A. Coutinho with Mr. Ivan Santimano, learned Counsel for the petitioner, Mr. S.P. Munj, learned Additional Government Advocate for Respondents No.1 and 2 and Mr. J. Mulgaonkar with Mr. Akshay Shirodkar, learned Counsel for Respondents No.3 and 4.

2. The petitioner is challenging the impugned order dated 24/09/2018 passed by the Commissioner of Excise who cancelled the liquor licence bearing No.RS/FCL/161 for the retail sale of IMFL & CL for consumption standing in the name of Late Mr. Joaquim

C.Souza Ferrao resident of Calcondem, Margao-Goa. The petitioner filed an appeal against the said order passed by the Commissioner of Excise, however, the Appellate Authority /Chief Secretary rejected the same appeal vide order dated 02/05/2019 which is also impugned in the present petition.

3. The main contention raised by the learned Counsel for the petitioner is that by way of a Deed of Partnership executed on 21/12/2009 between the petitioner and Mr. Joaquim C.Souza Ferrao, the petitioner was permitted to operate a bar and restaurant wherein the sale of liquor was undertaken on the basis of a licence issued in the name of Joaquim C.Souza Ferrao.

4. This Deed of Partnership was executed on 21/12/2009. However, on 25/11/2013 Mr. Joaquim C.Souza Ferrao expired. Admittedly, the licence was issued in the name of said Joaquim C.Souza Ferrao.

5. The contention of the learned Counsel for the petitioner that in view of clause No.15 of the Deed of Partnership, the petitioner was entitled to transfer the licence in his name. However, respondents No.3 and 4 being the legal heirs of late Joaquim C.Souza Ferrao applied for cancellation of licence with the Excise Department on 19/06/2018. Though the petitioner challenged the said order in appeal, the same was rejected by the Appellate Authority.

6. Clause 15 of the Deed of Partnership, which reads as follows:

“15. That the death or retirement of the First Party shall not cause the dissolution of the partnership business, but his legal heirs shall be joined as partners and shall have same right as the First Party. However, in case of death of the Second Party, the partnership shall come to an end and the rights of the Second party shall have no right to the business. And in such case, the entire business shall belong to the First Party and shall be free to transfer the license in his name.”

7. It is crystal clear that the said clause nowhere permits the petitioner to apply for transfer of the liquor licence in his name in the event of the death of the licence holder. At the most such clause shows that the legal heirs were supposed to join as partners upon the death of the original licence holder and in that case, the licence was required to be transferred in the name of such legal heirs.

8. The interpretation which has been tried to be projected by the petitioner of clause 15 cannot be accepted. First of all transfer of liquor licence is at the discretion of the concerned authority and when the legal heirs of the deceased licence holder applied for cancellation, the excise Commissioner was duty bound to cancel it.

9. The appellate authority in its impugned order has rightly observed that the petitioner is trying to mix the issues with regard to the Deed of Partnership with that of transfer of licence under the provisions of the Goa Excise Duty Act.

10. The petition is therefore devoid of merit and hence stands rejected. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

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