



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1304/2021

Vasanta s/o Parasram Bhandarkar and others

...Versus...

The Commissioner of State Excise, Maharashtra State, Fort, Mumbai – 400023
and others

WITH

WRIT PETITION NO.917/2021

Vilas s/o Parasram Bhandarkar

...Versus...

State of Maharashtra through the Commissioner of State Excise, Maharashtra
State, Fort, Mumbai – 400023 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.S. Manohar, Advocate for petitioners in W.P No.1304/2021 and for
respondent nos.3 to 5 in WP No.917/2021
Mr. C.A. Lokhande, AGP for respondent nos.1 and 2 in both petitions
Mr. Anand Parchure, Advocate for respondent no.3 in WP No.1304/2021 and
for petitioner in WP No.917/2021

CORAM : AVINASH G. GHAROTE, J.

DATE : 30/10/2023

1. The petitions question the order dated 28/12/2020, passed by the respondent no.1 in an appeal filed by the respondent no.3 under Section 137 (2) of the Maharashtra Prohibition Act, 1949 challenging the order dated

21/12/2018 passed by the Collector, Bhandara, whereby CL-III licence, which was originally in the name of Shri Parasram Bakaram Bhandarkar was cancelled, which cancellation has been set aside in appeal.

2. Mr. Manohar, learned counsel for the petitioners submits that CL-III licence No.11, which was in the name of Parasram Bakaram Bhandarakar the father of the petitioners and the respondent no.3 was closed down on 01/04/2017 in view of the restrictions imposed by the Hon'ble Apex Court in ***State of Tamil Nadu Represented by its Secretary Home, Prohibition and Excise Department and others Vs. K. Balu and another (2017) 2 SCC 281***, directing all liquor vends and licences to be shifted beyond the distance of 500 meters from outer edge of the National Highways and the State Highways and thereafter was not renewed at all. It is, therefore, contended that the application dated 06/03/2018 by Parasram Bakaram Bhandarkar to include the name of the respondent no.3 as a partner having share of 55% in the licence on the basis of the partnership-deed dated 04/04/2018 was clearly not maintainable in absence of the licence being in force. He, therefore, submits that the order dated 22/06/2018 passed by the Collector which initially admitted the respondent no.3 as a partner was rightly recalled by the order dated 21/12/2018 (pg.32) and the Commissioner therefore was not justified in passing the order dated 28/12/2020 (pg. 66), on the ground that payment of fees can be construed to be a renewal of

licence. He submits that there is no provision in the Maharashtra Country Liquor Rules, 1973 (for short hereinafter, "Rules of 1973"), which indicates such a position. The position is rather to the contrary, as indicated by Rule 24 (2-A). He, therefore, submits that in view of the aforesaid provision, the order passed by the learned Commissioner cannot be sustained.

3. Mr. Parchure, learned counsel for the respondent no.3 supports the impugned order and contends that once the licence fee is received, it tantamounts to renewal of licence and therefore, the order of the Commissioner was clearly sustainable. It is also contended that the Collector, could not have reviewed his own order on account of lack of authority.

4. Mr. Lokhande, learned Assistant Government Pleader for the respondent nos.1 and 2 in both petitions supports the impugned order.

5. It is necessary to note that the impugned order, which holds that the respondent no.3 has 55% share in the licence also holds that 45% share in the licence would go to the legal representatives of the deceased, which part of the order has been challenged by respondent no.3 in Writ Petition No.917/2021.

6. Rule 24 of the Rules of 1973 deals with grant of licence. Rule 24 (2-A) thereof mandates that any person desiring to renew a licence shall, 30 days before the date of expiry of the licence, apply for the renewal thereof, which shall be accompanied by a challan evidencing payment of fee of

Rs.25/-. Any such application therefore, for renewal of licence has to comply with the requirement of Rule 24 (2-A) of the Rules of 1973, which obviously in the instant case does not appear to have been done. On that ground, the impugned order passed by the Commissioner which holds that payment of fees can be construed to be renewal of licence cannot be sustained, as any renewal has to be within the four corners of the Rules, providing for such renewal.

7. In that view of the matter, the impugned order will have to be quashed and set aside. Since the impugned order also does not consider the plea of absence of power in the Collector for review/recall that will have to be considered by the Commissioner, on account of which, the matter is remitted back to the Commissioner to decide the plea, in light of the ground raised in the appeal in that regard after hearing the learned counsels for both the sides. The matter is, therefore, remitted back to the Commissioner for deciding the appeal afresh by affording opportunities to the parties to advance their arguments. The parties shall appear before the Commissioner 20/11/2023, who shall decide the appeal within thirty days therefrom. All contentions, whether the order of the Collector dated 21/12/2018 would amount to a recall or a review, are kept open and shall be addressed by the Commissioner while deciding the appeal. It is only if the Commissioner holds that the order dated 21/12/2018 was an order of review without any authority, the need for going into the respective share

would arise.

8. The writ petitions are partly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar