IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3002 OF 2024

Smt. Geeta Narayan Kshirsagar,
Age:-44 years, Occu:-Business,
R/o Patoda, Tq. Patoda, Dist Beed,
Through Power of Attorney Holder
Namely Apparao S/o Bhonba Salgar,
Age:-78 years, Occu:-Private service,
R/o Patoda, Tq. Patoda, Dist. Beed … **Petitioner.**

Versus

1. The State of Maharashtra
Through the Secretary of State Excise
Duty Department, Mantralaya,
Mumbai-32.

2. The Commissioner of State Excise,
Maharashtra State, Fort, Mumbai-23.

3. The Collector, (State Excise Duty)
Department, Beed, Palwan Chowk,
Dhanora Road, Beed.

4. Smt. Satyabhama Rangnath @ Baburao Shinde,
Since deceased through Her L.Rs.

4A. Ankush S/o Rangnath Shinde,
Age:-64 years, Occu:- Nil,
R/o Manur, Tq. Shirur (Kasar), Dist. Beed.

4B. Vimal W/o Gangadhar Kshirsagar,
Age:-60 years, Occu:- Household,
R/o Bale Peer Beed, Tq. And Dist. Beed.

4C. Sangita W/o Sandip Rajmane,
Age:-45 years, Occu:- Majalgaon,
Tq. Majalgaon. Dist. Beed.

4D. Appasaheb S/o Rangnath Shinde,
Age:-40 years, Occu:- Nil,
R/o Manur, Tq. Shirur (Kasar),
Dist. Beed … **Respondents.**

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Advocate for Petitioner : Mr. Tungar H. V.
AGP for Respondents-State : Mr. P. D. Patil.
Advocate for Respondent Nos.4A to 4D : Mr. C. V. Dharurkar.

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CORAM : S. G. MEHARE, J.
DATE : 22.03.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner has impugned the order of the Hon'ble Minister, State Excise, Maharashtra, passed in case No.CL-0622/Pra.Kra.146/RA-18/SED-3, dated 14.10.2023.

3. The brief facts of the case were that the present respondents/legal heirs of original respondent No.4 are the sons and daughters of Rangnath Laxman Shinde. He had a partnership with one Nanda Narayan Kshirsagar, the mother of the present petitioner. They had an unregistered written partnership deed dated 27.07.1990. Accordingly, respondent No.3 had issued a country liquor licence in their joint names as partners. However, on 29.11.1996, there was a new partnership, and the petitioner replaced her mother, Nanda Narayan Kshirsagar. The partnership firm started the business.

Thereafter, on 18.12.1996, the original partner, Rangnath, relinquished his rights of the partnership business of the country liquor in favour of the petitioner. He has also sworn in an affidavit to that effect. Rangnath and Geeta's statements were also recorded before the Sub Inspector (Excise). Thereafter, the Sub Inspector submitted a proposal to delete the name of deceased Rangnath from the license. Pursuant to the proposal, the Collector Excise, by order dated 24.12.1996, informed deceased Rangnath that his request to delete his name from the license had been accepted. After that, the petitioner continued the business in her sole name. Rangnath died in 2006. Narayan (the father of the petitioner) died in 2018.

4. It was the case of original respondent No.4 that, till the death of Narayan, he was regularly paying the share of Rangnath. However, after Narayan's death, the payment of the share was stopped. Hence, deceased respondent No.4 inquired with the office of the Excise and learnt that fraud was played with Rangnath. Rangnath never disclosed that he had relinquished the partnership in favour of the petitioner. Therefore, they moved an application before the Excise Collector on 12.03.2018 and 11.10.2018. The Excise Collector

entertained the said application and passed the orders on 06.12.2019 in case No.CLR-112018/554/Supdt./1365. He observed that on 17.12.1996, the name of the petitioner was inserted as a partner in the license. However, she did not comply with the age criteria. He also recorded the findings that the deceased respondent No.4 raised the objection to the order of the Collector dated 17.12.1996 after 22 years. She had to prefer the appeal under Section 137(2) of the Maharashtra Prohibition Act ('the Act' for short) to the Commissioner (Excise), State of Maharashtra. Finally, he ordered the examination of the signatures of Rangnath, from the handwriting expert, on the application dated 29.11.1996, his signature on the statement dated 01.12.1996, his signature on the partnership deed dated 29.11.1996 and on the application dated 18.12.1996. He granted liberty to deceased respondent No.4 to prefer an appeal against the order of the District Collector (Excise) dated 17.12.1996 to the Commissioner, State Excise Department, State of Maharashtra, with an application to condone the delay.

5. Dissatisfied with the said order, the deceased respondent No.4 preferred the appeal under Section 137(2) of the Act before the Commissioner of State Excise, Maharashtra State,

Mumbai. The Commissioner again recorded some observations on the age of petitioner Geeta. He has specifically observed that unless and until the Competent Court decides whether fraud has been committed, the criminal action is a subsequent procedure. The complainant, who feels that she and her late husband have been cheated, may take up the matter before appropriate forum. He has specifically observed that the evidence on record does not prove that there is any mischief.

6. Against the order of the Commissioner dated 11.04.2022, deceased respondent No.4 again preferred a revision before the Hon'ble Minister (State Excise), who has passed the impugned order. The Hon'ble Minister, recording the facts and mentioning the orders of the High Court, finally allowed the revision application without quashing and setting aside the orders of the Collector and the Commissioner. He directed the Collector to add the legal heirs of the original licence holder, and the Collector should proceed.

7. Learned counsel for the petitioner raised the first question that the Hon'ble Minister exceeded his jurisdiction. The original order of the Collector deleting the name of deceased Rangnath dated 17.12.1996 is still in existence and was never impugned. He would submit that the Hon'ble

Minister, exceeding its jurisdiction, has directed the Collector Excise to enter the names of the legal heirs of Rangnath. The respondent had no case before the Authorities that Geeta is a fictitious woman. Geeta is the alias name of Shubhangi. The respondent cannot force her to appear in person. She has a right to appear through the Power of Attorney. The criminal case about playing fraud with Rangnath and the State is sub-judiced before the Court. The order of the Hon'ble Minister was like a review. There is no provision for review in the Act. Unless the powers are conferred by law, the Authority cannot review. The remedy, if any, respondent No.4 wanted to exercise was the appeal under Section 137 of the Act. The gist of his argument is that unless the competent Authority examines the original order deleting the name dated 17.12.1996, the orders passed by the Collector, Commissioner and the Hon'ble Minister are meaningless. It was a futile attempt. The Hon'ble Minister has merely referred to the Government Resolution dated 19.08.1989. He submits that he searched for the said G.R. on the website but did not find it. Perhaps it may be a G.R. dated 6th July 1989. During the arguments, the learned advocate Vikram Undre, sitting in the Court Hall, rendered the assistance to the Court by supplying the subsequent Government Resolution dated 20.08.1996. The Court must appreciate his assistance, which helped the Court to arrive at the correct judgment. By the said, G.R. G.R. dated 06.07.1989 was superseded. The G. R. will be discussed at the relevant part of the order. He submits that since the order is without jurisdiction and against the law, it be quashed and set aside.

8. Per contra, the arguments of learned counsel Mr. Dharurkar for the legal heirs of original respondent No.4 revolves around the fictitious existence of a lady, namely Geeta. He has vehemently argued that the petitioner played a fraud not only with his family but also with the Government. Under a fictitious name, the original partner is running the business. The original partner, Nanda, knew that two liquor licenses with the same name were not allowed. She had another licence. Therefore, she has projected a fictitious woman, Geeta. Geeta, in fact, is not in existence. From time to time, she was directed to appear in person, but she avoided appearing in person before the Authorities. It is sufficient to believe that fraud has been played. He further argued that Geeta was deliberately appearing through the POA. Another inference that may be drawn from the conduct of Geeta was that Shubhangi the daughter of Nanda was minor at the relevant time, and she knew well that a minor under 21 is not entitled to claim the

liquor licence. Hence, a fictitious woman, namely Geeta, was born on 01.06.1980. This has been done conveniently, keeping the Government in the dark. A cognizance should be taken of such serious misdeeds. Soon after knowing about the fraud played with the family of respondent No.4, they immediately rushed to the Collector. Therefore, there was no delay in taking an action. The alleged shop, run under the disputed liquor licence, has been closed down for the last three years. He also added that detailed submissions were made before the Collector about the fraud played. He also strenuously argued that fraud vitiates everything. The facts and circumstances of the case are *prima facie* sufficient to accept the submissions of deceased respondent No.4 and her family. Therefore, the Hon'ble Minister, in his solitary jurisdiction, correctly passed the impugned order directing the Collector to proceed with adding the legal heirs of Rangnath to a liquor licence.

9. Learned counsel for the petitioner, in reply, argued that the Collector, Commissioner and Hon'ble Minister cannot record the findings unless those are tested under the provisions of law. Objecting to the competence of the Hon'ble Minister, he relied on the case of ***Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji ; LEX (SC) 1970 3 67***. He

further relied on the case of ***Ms. Pamela P. Braganza Vs. Mr. Finlay Braganza ; 2006 (3) All MR 696***, and argued that partnership is an agreement between the parties to carry on the business. No party can impose a partner on another party to run a business. He would argue that the partnership was dissolved long ago, during Rangnath's lifetime. During his lifetime, he never raised objections. After 1996, the licence was exclusively in the name of Geeta. He never approached the Authority to renew the licence in his name. Therefore, the story put forth by respondent No.4 that after the death of Narayan, the receiving share was stopped, and they made the inquiry and rushed to the appropriate Authority is imaginary.

10 After a Marathon argument by both learned counsels, the first question is how the alleged fraud could be determined. To prove fraud, respondent No.4 has already lodged a criminal case against the petitioner, her mother and two others. A crime has been registered with Police Station Shivaji Nagar, Beed.

11. The documents placed on record are old documents. Admittedly, the partnership was unregistered. However, the acts done by the Officer in the discharge of his duty are presumed to be correct and genuine. Such an act cannot be doubted at once. It does not mean that the acts of the public

servant done in discharge of the duties are always genuine, true and correct. But, it requires thorough investigation. The Collector Excise, in his power, directed the examination of the signature of Rangnath on the alleged documents, through the handwriting expert. He passed the order that the order of the Collector dated 17.12.1996 is appealable. Be that as it may, the fact remains that the order dated 24.12.1996 is still in force and existence. The learned counsel for respondent No.4 is correct in stating that the jurisdiction of the Civil Court under the Act has been barred. However, the provisions of the Act reveals that there is an appeal and revision against the order of the Collector or the Commissioner. Every order of the Collector is appealable under Section 137(2) of the said Act before the Commissioner, and the order of the Commissioner is revisable before the State/Hon'ble Minister. Unless the quasi-judicial order is quashed, no authority, including the Hon'ble Minister, has the power to pass the order like an impugned order. The law binds every Authority in a democratic State of India. Every Officer empowered by law should exercise their powers within the four corners of the law. No one is bigger than the law. Therefore, the impugned order appears arbitrary. The law has already been taken care of by providing the remedy of appeal and revision. Though the Collector has specifically observed the availability of the remedy, respondent No.4 challenged the order until the Hon'ble Minister. In the facts and circumstances of the case, there appears substance in the argument of the learned counsel for the petitioner that the impugned order is in the form of review.

12. The Hon'ble Supreme Court, in the case of Patel (supra), has observed that it is well-settled that the power to review is not inherent. It must be conferred by law either specifically or by necessary implication. The opening line of the judgment was significant. The Hon'ble Supreme Court opened paragraph No.1 with the observation that this case illustrates the consequence of entrusting judicial work to those who had no judicial training and background. In this case, also neither the law has been correctly applied nor the facts and circumstances of the case have been properly examined. Just the petitioner came before the Hon'ble Minister, and he passed the impugned order. The law applicable to the facts and circumstances of the case is not tested.

13. As far as the G.R. dated 06.07.1989 is concerned, it was superseded by G. R. dated 20.08.1996. The said G.R. conferred the exclusive powers on the Collector Excise to deal with the issue of a partnership between two independent persons and

interse the family members in bringing the legal heirs of the license holder. It has been specifically directed to the Collector that he should scrupulously observe the directions issued in the said G.R. and take the decision at his level. He should not send such matters to the Commissioner, State Excise Department or Government for orders. The facts of this case are a little bit different. On the basis of the documentation, the name of the deceased Rangnath was deleted from the licence, and the Collector had passed the order and addressed the letter to the deceased Rangnath that his request to delete his name has been accepted. Whether this order is fake is a question of fact that the competent Authority may decide. Learned counsel for the petitioner is correct that partnership is an agreement between the parties, and no party can impose a partner on another party to run the business. It is a contract, and the partnership is governed under the Partnership Act.

14. Learned counsel for respondent No.4 submits that pursuant to the impugned order, the amount of Rs.14,00,000/- (Rupees Fourteen Lacs) was deposited with the Collector State Excise, Beed. The Court is tilting towards setting aside and quashing the impugned orders. Therefore, the position of the right to withdraw is made clear in the order.

15. The above discussion led this Court to conclude that the Hon'ble Minister's impugned order is illegal, perverse and arbitrary. Hence, the following order :

ORDER

(i) Writ Petition is allowed.

(ii) The impugned order of the Hon'ble Minister (State Excise) passed in Case No.CL-0622/Pra.Kra.146/ RA-18/SED-3, dated 14.10.2023, stands quashed and set aside.

(iii) It is made clear that the observations in this case are limited for the purpose of this writ petition.

(iv) Any observation regarding the fraud as alleged by respondent No.4/her legal heirs, if put for consideration before any Authority, such Authority should not be influenced by this order. The Authority should make an independent decision thereon.

(v) So far as the right to appeal is concerned, the District Collector has already intimated respondent

No.4/her legal heirs about the right to prefer the appeal.

(vi) Respondent No.4/legal heirs are not precluded from exhausting the legal remedy available under the provisions of law.

(vii) Pursuant to the impugned judgment and order, the amount has been deposited, if any, with the Collector, State Excise, Beed, and the Collector may refund it to the appropriate person/s if the law permits.

(viii) The rule is made absolute in the above terms.

(ix) No order as to costs.

(S. G. MEHARE, J.)

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