



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

Writ Petition No.3995 of 2022

Prashant Manoharrao Ratnaparkhi,

Aged about 49 years,

Occupation – Business,

C/o Vasant Bhavan, Jatpura Gate,

Chandrapur.

... **Petitioner**

Versus

1. The State of Maharashtra,

State Excise, Mantralaya,

Madam Cama Road,

Hutatma Rajguru Square,

Mumbai, through its Secretary.

2. The Collector,

State Excise, Civil Lines, Nagpur.

3. The Superintendent,

State Excise,

Near Cotton Market,

Nagpur.

... **Respondents**

Shri Sayajee Jagtap, Counsel for Petitioner.

Ms Deepali Sapkal, Assistant Government Pleader for Respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 22nd JANUARY, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. After invalidation of CL-III licence, the same was permitted to be shifted to the Nagpur District on payment of privileged fee.

3. The licence came to be transferred and shifted to Nagpur and accordingly the shifting was recorded in CL-III licence in the name of the petitioner.
4. The order of shifting came to be stayed on 24-9-2015, which was quashed by this Court in Writ Petitions No.3315 and 5460 of 2015.
5. The State Government accordingly issued a notice on 16-8-2018 thereby scheduling the hearing for reconsideration of the matter of granting permission in favour of the petitioner for shifting the licence from Ratnagiri to Nagpur in exercise of the power of review.
6. The petitioner after having appeared before the State Government objected to the same on the ground of absence of express power to review its own order. It is also claimed that for want of express provision under the Maharashtra Prohibition Act, 1949, the very proceedings taken out by the respondent-State are without jurisdiction.
7. Since the respondents have not dropped the proceedings, the petitioner is prompted to approach this Court questioning the same.
8. Our attention is invited to the judgment passed by the Division Bench of this Court in Writ Petition No.1398 of 2022 in the matter of *Smt. Asima Pravin Jaiswal Versus The State of Maharashtra and others* on 13-7-2022. According to the learned counsel for the petitioner, the issue that the State Government *sans* express power to review its own order under the Maharashtra Prohibition Act is no more *res integra* and is governed by the aforesaid judgment.
9. The learned Assistant Government Pleader for the respondents would urge that the State can always look into its own decision and the power cannot be said to be not available to that effect. However, she would submit that the

position of law as laid down in the case of *Smt. Asima Pravin Jaiswal* (supra) is not disputed.

10. In the matter of *Smt. Asima Pravin Jaiswal* (supra), while dealing with the issue, this Court has observed in Paragraphs 6 and 7 as under :

“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 Fl.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.”

11. It is a settled position of law that the power to review an order has to be in express way. Implied power cannot be said to be sufficient enough to claim that the Authority has a power to review its own order.

12. In the case in hand, the State Government (the Minister, State Excise) has directed the revalidation of the licence of the petitioner upon acceptance of the requisite fee and upon compliance of all the formalities. The State Government further directed that the legal heirs of the original licensee be brought on the record, that is on the licence in question. It has further directed that the CL-III licence of the petitioner after following due procedure and compliances be shifted to the Nagpur District.

13. As a sequel of above order of the State Government, the Collector, Ratnagiri has issued a consequential order and after revalidation of the CL-III licence, the names of the legal heirs are taken on the licence in question. The licence was accordingly transferred in the Nagpur District.

14. Vide Annexure-P2 dated 16-8-2018, the State Government has addressed a communication to the petitioner to attend the office of the Cabinet Minister as regards the review of the order dated 18-8-2014.

15. The fact remains that the notice does not contain any provision under which the review proceedings are taken out by the State Government.

16. This Court has called upon the respondent-State to show the power under which it has not only issued the notice dated 16-8-2018, which is impugned herein, but also the proceedings taken out thereunder.

17. The fact remains that the respondent-State is unable to pinpoint any provision of law whereby the power of review could be exercised so as to reconsider the earlier decision dated 18-8-2014.

18. In the aforesaid background, it has to be held that the impugned communication at Annexure-P2 dated 16-8-2018 and the proceedings taken out based on the same are without jurisdiction. That being so, not only the said notice dated 16-8-2018 but also the proceedings initiated thereunder are hereby quashed and set aside.

19. Rule is made absolute in the aforesaid terms. No order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)