2024:BHC-NAG:9491

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

WRIT PETITION NO.5636/2023

Rajendrakumar s/o Brijkisor Jaiswal,
aged about 60 years, Occ. Business,
r/o Jatharpeth, Divekar Chowk, Akola,
Tq. Dist. Akola. .....**PETITIONER**

...V E R S U S...

1. Hon'ble Minister, Maharashtra State Excise Department, Mantralaya, Mumbai – 32.

2. Commissioner, State Excise Department, Mumbai.

3. Collector, Akola, Tq. Dist. Akola.

4. Smt. Mandakini Purushottam Gawande, aged 65 years, Occ. Housewife.

5. Shri Amit Purushottam Gawande, aged 44 years, Occ. Service,

6. Pratiksha Ganeshrao Ambadkar, aged 40 years, Occ. Unknown.

Respondent Nos. 4 to 6 r/o Kalashi,
Tq. Daryapur, Dist. Amravati. ...**RESPONDENTS**

AND
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Mr. S. P. Dharmadhikari, Senior Advocate assisted by Mr. A.R. Deshpande, Advocate for petitioner.
Mrs. D. I. Charlewar, A.G.P. for respondent Nos. 1 to 3.
Mr. R. L. Khapre, Senior Advocate assisted by Mr. D. V. Mahajan, Advocate for respondent Nos. 4 to 6.

CORAM:- ANIL L. PANSARE, J.
DATE OF RESERVING THE ORDER: AUGUST 12, 2024.
DATE OF PRONOUNCING THE ORDER: AUGUST 26, 2024.

JUDGMENT

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

Heard Mr. S. P. Dharmadhikari, learned Senior Counsel for the petitioner, Mrs. D. I. Charlewar, learned A.G.P. for respondent Nos. 1 to 3 and Mr. R. L. Khapre, learned Senior Counsel for respondent Nos. 4 to 6.

2. Having heard both sides and having gone through the record, it appears that in the year 1973, the foreign liquor license FL-II was issued in the name of Mr. Purushottam Gawande, husband of respondent No.4 and father of respondent Nos. 5 and 6. In the year 1976, he entered into partnership with Late Shri Brijkishor B. Jaiswal, father of the petitioner. The partnership was under the name and style, 'Vidarbha Wine Shop'. The license was then transferred in the name of partnership firm being license No. FL-II, 15/1976-77. On 19.08.1987 Petitioner's father expired. His partner namely, Purushottam Gawande agreed to enter into fresh partnership with the Petitioner. Accordingly, on 15.09.1987, Purushottam Gawande and present petitioner executed an unregistered partnership deed. The business, thereafter continued. Purushottam Gawande expired on 12.02.2000. The business, however, continued in the name of partnership firm.

3. The petitioner claims that he had no knowledge of death of his partner. He allegedly derived knowledge some time in the year 2011. Thus, an unbelievable claim has been made by the petitioner that he was not aware of death of his partner for 11 years. The petitioner then makes a further claim that though he derived knowledge of death of his partner in the year 2011, he was not aware of his legal representatives/heirs nor was he having any knowledge of their addresses. Nonetheless, by submitting application, he informed the competent authority that his partner Purushottam Gawande is no more and sought necessary correction in the license by deleting name of Purushottam Gawande and to transfer the license in the name of the petitioner. According to the petitioner, the concerned authority apprised him that in such an eventuality notices will have to be issued to the legal representatives of the deceased partner and thus sought their address. Since, the petitioner was not aware of the name and address of the legal representatives, he expressed his inability and withdrew the application.

4. The petitioner then continued to renew the license in the name of partnership firm during the period from 2011 to 2018. The petitioner submits that in the year 2018, a circular was

issued by the State of Maharashtra that in the event of renewal of license, all the interested parties should personally remain present before the competent authority. The petitioner then averred that by that time, he gathered name and addresses of the legal representatives of Purushottam Gawande. The petitioner, however, does not disclose the exact date or the source of his knowledge. It appears that issuance of circular by the State in the year 2018 requiring personal presence of the interested parties, compelled the petitioner to disclose the aforesaid fact.

5. The petitioner then on 31.10.2018 filed yet another application before the competent authority stating therein that since Purushottam Gawande was no more, his name may be deleted and license be transferred in the name of the petitioner. On issuance of notice to the legal heirs of Mr. Gawande viz. Respondent Nos. 4 to 6, they appeared before the competent authority.

6. The petitioner submits that in the meantime, one of the legal representatives namely, Amit Gawande – respondent No.5 approached him and made inquiries about the business of wine shop and allegedly demanded the profit earned during the

interregnum. The petitioner found this demand to be unreasonable on the ground that respondent No.5's father has not contributed anything after his death.

7. It further appears that respondent No.5 on 16.02.2019 procured various documents under the Right To Information Act, 2005 and on 26.11.2021 lodged report against the petitioner with Police Station, City Kotwali, Akola alleging forgery of the documents. Accordingly, First Information Report was registered on 26.11.2021, vide Crime No.537/2021 under Section 420, 461, 468, 477 of the Indian Penal Code, 1860. The charge-sheet is now filed.

8. In the aforesaid backdrop, respondent No.3 – Collector, Akola, on an application made by the petitioner to renew the license in his name, heard both sides and observed that since the petitioner's partner Purushottam Gawande expired in the year 2000, the partnership ceased to exist. He further observed that there is a discrepancy in the original partnership deed and the one which is filed by the petitioner during the course of hearing. Respondent No.3 then took note of the Government policy which provides to transfer liquor license in the name of legal heirs of the

deceased license holder. Respondent No.3 then noted that upon death of Purushottam Gawande, the petitioner ought to have informed the said fact to the office of respondent No.3 but he has informed the said fact after 19 years and further sought permission to delete his name and to transfer the license in the sole name of the petitioner. Respondent No.3 was of the view that such transfer would cause injustice to the other partner. Accordingly, in terms of Section 54 of the Maharashtra Prohibition Act, 1949, (hereinafter referred to as the "Act of 1949"), he suspended the license, sealed the shop, until the decision on partnership is taken by the parties.

9. The legal heirs of Mr. Purushottam Gawande filed appeal before respondent No. 2 - Commissioner, State Excise, Old Custom House, Mumbai under Section 137 (2) of the Act of 1949 with a prayer to include name of respondent No.4 – Mandakini in the license or to suspend the same till the time the dispute is resolved. The petitioner also lodged appeal against the aforesaid order with a request to transfer the license in his name. Respondent No.2, vide common order dated 11.11.2021, observed that both the parties failed to bring to the notice of the excise authorities the death of Purushottam Gawande. Respondent

No.2, however, noted that legal heirs of Mr. Purushottam Gawande were not aware of their father's name being in the license and thus in a way has shifted blame on the petitioner. According to respondent No.2, since Purushottam Gawande's name was recorded as partner in the license, his legal heirs will be entitled to have share in the license. This finding, however, has been recorded without referring to any provision of law or the subordinate legislation. Respondent No.2 then proceeds to record that the petitioner has, for 17-18 years, enjoyed fruits of the license alone and the legal heirs of Purushottam Gawande were in dark. Accordingly, the respondent No.2 quashed and set aside the respondent No.3's order on the ground that the Collector has no powers to suspend the license and directed the petitioner to keep aside 50% share of profit in a separate account and run business as he was doing earlier. The respondent No.2 has then observed that the parties will settle the dispute at the earliest so that the license could be properly endorsed with the appropriate authority.

10. The petitioner then approached respondent No.3 – Collector for renewal of license. Respondent No.3 vide order dated 28.03.2023, noted that though respondent no.2 has permitted petitioner to run the business by depositing 50% of

profit in separate account, he did not furnish any document to that effect and accordingly, refused to renew the license in his favour. This order has been not challenged.

11. In the meantime, both, the petitioner and respondent Nos.4 to 6, had approached respondent No.1 – Hon'ble Minister under Section 138 of the Act of 1949. The Hon'ble Minister, vide order dated 11.08.2023, decided both the revisions. The respondent No.1, by taking aid of Section 42 of the Indian Partnership Act, 1932, has held that on death of one of the partners, the partnership stands dissolved. Thus, on death of Purushottam Gawande on 12.02.2000, the partnership stood dissolved and, therefore, benefits taken thereafter by the petitioner is prejudicial to the legal heirs of Purushottam Gawande (respondent Nos. 4 to 6 herein). Respondent No.1 has further held that the claim of the petitioner that he acquired knowledge of death of Purushottam Gawande in the year 2011 is not acceptable. Respondent No.1 then took note of the FIR lodged against the petitioner and proceeded to allow the revision filed by respondent Nos. 4 to 6 and rejected the revision filed by the petitioner. Respondent No.1 ordered to record names of respondent Nos. 4 to 6 on license and to take further steps.

12. This order has been challenged by the petitioner by filing two petitions, one on the ground that the revision filed by him has been dismissed and the other that the revision filed by respondent Nos.4 to 6, is allowed.

13. Mr. S. P. Dharmadhikari, learned Senior Counsel for the petitioner, argued that once the license was transferred in the name of partnership firm, the death of a partner would entitle the other partner to seek transfer of license in his name and to continue the business. In support, he has relied upon two judgments ***Karunakumar Mudann Shetty Vs. State of Maharashtra, 1990 SCC Online Bom 649*** and ***M/s. Pamela P. Braganza Vs. Mr. Finlay Braganza, 2006 (3) All MR 696.*** The Division Bench in *Karunakumar's* case, in identical set of facts has, by referring to Rule 40 (1) of the Bombay Foreign Liquor Rules 1953, held thus:

> *"7. The plain reading of this rule indicates that the Collector has been given power to accept the agreement of partnership entered into by the original licensee and entered the name of the partner in the license. In accordance with this provision, the Collector accepted the petitioner as partner in license on application of Tarabai in the year 1975. It is difficult to appreciate how the continuance of the privileges under the license can be denied to the*

petitioner on the death of Tarabai. The Collector declined to continue the privileges only on the ground that the petitioner is not related to Tarabai. We inquired from Shri Yande, learned Government Pleader as to what is the discretion of the Collector to deny the relief and the learned counsel invited our attention to Condition No. 8. The condition prescribes that the licensee, his heirs, legal representatives or assigns shall have no claims whatsoever for the continuance or renewal of the license after the expiry of the period for which it is granted and it shall be entirely within the discretion of the Collector to permit or not assign the license. We fail to appreciate how this condition is relevant to the facts of the present case. The petitioner is neither claiming as heir, legal representative or assignee of the original licensee, but merely as surviving partner and the surviving partner is neither heir, legal representative or assignee. The Collector accepted the petitioner as partner of the license in the year 1975 and it is impossible to appreciate how such a partner can be denied advantage of the license on the death of the other partner who was the original licensee. In our judgment, the order of the Collector of entirely unsustainable and is required to be quashed."

14. Thus, the Division Bench held that once the Collector has accepted the petitioner therein as partner in the license, he

would be entitled for the privileges under the license upon death of the other partner. The Division Bench then referred to condition No. 8 of license (similar such condition exists in the present license as well, which deals with entitlement of legal heirs of deceased partners), to opine that this condition is not relevant because the petitioner therein was claiming benefits as surviving partner and not legal heir of the deceased. Accordingly, the judgment passed by the Collector therein was quashed and set aside and was directed to permit the petitioner therein to enjoy the privileges of license by deleting the name of deceased partners. The Division Bench, however, made it clear that the licensing authority is at liberty to take action against the petitioner therein in case of breach of any other condition of the license. This part of the judgment is crucial in the present matter, which I will comment upon little later.

15. In the case of *Ms. Pamela P. Braganza*, the Coordinate Bench of this Court held that when one of the partners of the firm expires, unless the surviving partner or partners agree to accept the legal heirs of the deceased partner as partner in the firm or the partnership agreement itself during the lifetime of deceased partner provides that on his death his particular legal heir will be

added as partner in the partnership firm, a legal heir succeeding to the estate of the deceased cannot force the other partners to join him in the partnership firm. This pronouncement is helpful to the claim of the petitioners that respondent Nos. 4 to 6 cannot force him to join them in partnership firm.

16. As against, Mr. R. L. Khapre, learned Senior Counsel for the respondent Nos. 4 to 6, relied upon Division Bench judgment of this Court in **The Collector of Bombay and another Vs. Meena Narayan Idnani, AIR 1995 BOM. 363**, which according to him, took a different view in identical situation. The Division Bench, observed thus:

> *"5. .....In view of the rival contention, the first question which requires determination is whether the death of one of the partner out of the two results into dissolution of the firm and whether the surviving can carry on the business as sole proprietor without seeking transfer of license. In our judgment, the answer to the question is obvious. As mentioned hereinabove, Rule 21 demands that when the license is sought by more than one person who are carrying on business in partnership, then the partnership is required to be declared to the Collector before the license is granted and the names of the partners are entered jointly in the license. It is obvious that the*

license is secured by the respondent and her husband in the capacity as partners of the firm and not in their individual capacity. On the death of one of the partners out of the two, the partnership automatically stands dissolved and it is not open for the surviving partner to carry on business in the character of a partner of a dissolved firm. It is always open for surviving partner to carry on business as a sole proprietor but the capacity as the sole proprietor is different and distinct from the capacity of partner in dissolved firm. In case the sole proprietor desires to hold license by deletion of the name of the deceased partner, then such request amounts to transfer of the license. It is not in dispute that the present policy of the State Government is not to issue fresh licenses and for transfer of license as prescribed by Rule 5, the fees chargeable shall be the same as for grant of renewal or continuance of the license. Rule 6 of the Bombay Prohibition (Privilege Fees) Rules 1954 also lays down the same principle. The contention of Smt. Thadani. that the appellants permitted the respondent to carry on business till the end of March 31 should be construed as accepting the claim that there is no transfer of the license, cannot be accepted. The rules permit the Collector to allow the surviving partner to continue the business till the end of the year. obviously with a view to prevent immediate closure of the business. The enabling provision is to minimize the hardship due to death and the facility granted by *the Collector cannot be construed as accepting the claim that on the death of one of the partner out of two, the license is not required to be transferred. In our judgment, the objection raised by the Government Auditor was absolutely correct and in accordance with law and the learned single Judge, with respect, was in error in assuming that the appellants were recovering large amounts from innocent citizens. The learned single Judge was also in error in observing that view taken by the Commissioner of Excise and Prohibition by order dated September 26, 1988 in appeal preferred by M/s. Ruby Wines was correct. The observation of the Commissioner that in case the partner expires, the change required to be effected is natural one and the license is not transferred from one name to another by deleting the name of the deceased partner is entirely incorrect and unsustainable in law. The learned single Judge was in error in holding that the observations of the Commissioner were accurate."*

17. As could be seen, the Division Bench has held that upon death of one of the partners out of the two, the partnership automatically stands dissolved and it is not open for the surviving partner to carry on business in the character of partner of a dissolved firm. It is, however, open for the surviving partner to carry on the business as a sole proprietor and in case he desires to

hold license by deleting the name of the deceased partner, then such request amounts to transfer of the license.

18. To my mind, upon careful reading of both the judgments viz. *Karunakumar* and *Meena Idnani* delivered by Division Bench, the law laid down could be reconciled. What has been held by the Division Bench in *Karunakumar's*, is that upon the death of one partner, the benefit under the license cannot be denied to the surviving partner. Similar is the view taken in the subsequent judgment but is differently expressed, in the sense, the Division Bench has held that it is open for the surviving partner to carry on the business as a sole proprietor and in that eventuality the surviving partner will have to make request to transfer the license in his name.

19. Thus, it was open for the petitioner herein to seek transfer of license, for which, in fact, he moved an application in the year 2011 but has withdrew the same. Most importantly, the petitioner carries a blame of continuing the business of partnership, despite knowing the fact that his partnership has expired. Section 54 of the Act of 1949 empowers the authority granting license to cancel or suspend the license, if it is obtained

through willful misrepresentation or fraud. In my view, the expression, ‘granting license’, would include in itself the renewal of license. The record speaks in volumes that the petitioner herein has, by misrepresentation, continued the business in the name of partnership firm for the period from 2011 onwards, if not prior thereto. The respondent No.3 was, therefore, well within its power to cancel/suspend the license. The respondent No.2 has erroneously held that respondent No.3 has no such powers. He appears to have ignored the provisions under Section 54 of the Act of 1949.

20. Respondent No.1, in revisions filed by both the parties, allowed the request made by respondent Nos. 4 to 6 to record their names in the license and rejected the request made by the petitioner to renew the license in his name. Respondent No.1 has, however, set aside the orders passed by respondent Nos. 2 and 3.

21. In my view, the authorities below have committed certain obvious errors which would require setting aside orders passed by respondent Nos.1 and 2 and to modify the order passed by respondent No.3. It is so because neither respondent No.1 nor respondent No.2 have taken note of the provisions of law as

regards, partnership firm and effect of death of one out of two partners. As held by the Division Bench in the cases noted above, upon death of one partner, the partnership firm stands dissolved automatically. In such an eventuality, the petitioner was under an obligation to disclose the death of partner to respondent No.3 and then seek transfer of license in his name as proprietor of the firm. The petitioner, however, did not disclose the death of his partner for about 11 years on an unacceptable ground that he was not aware of his death. He has conveniently not disclosed as to what did he do of the accounts of partnership firm and entitlement of his partner to receive 50% profit derived out of the business. If his partner did not approach him for accounts, the petitioner at least ought to have disclosed the effort made by him to meet his partner. It is unbelievable and, therefore, cannot be accepted that the petitioner was not even aware of the contact details of his partner. The petitioner has, in the year 2011, filed application to delete name of his partner and to transfer the license in his favour but withdrew the same and on the top of it, continued the business in the name of partnership firm from the year 2011 to 2018. This conduct of the petitioner is rightly taken note of by respondent No.3 and cancelled/suspended the license in terms of Section 54 of the Act of 1949.

22. The respondent No.2 has, thus, committed error of law to hold that respondent No.3 has no such powers. Respondent No.2 then permitted the petitioner to continue the business by keeping aside 50% profit until the partnership dispute is resolved. The petitioner however, did not keep the account of profit and sought to renew the license in his name, which request has been rightly refused by respondent No.3 by noting that the petitioner failed to adhere to the order passed by the respondent No.2. This order is not challenged and thus attained finality.

23. Thus, it appears that the petitioner has no respect to the provisions of law, so also the orders passed by the authorities and has in greed of money, by deceitful means, continued the business in the name of partnership firm. The business ethics as also the provisions of law have been set at naught.

24. Be that as it may the, respondent No.1 has set aside the order passed by respondent Nos.2 and 3, despite noting the fact that the petitioner acted in blatant violation of the provisions of law and by ignoring powers of respondent No.3, under section 54 of the Act of 1949. The respondent No.1 further committed a mistake by directing the respondent No.3 to record names of legal

representatives of Purushottam Gawande viz. respondent Nos.4 to 6 in the license under question. This direction is contrary to the judgments cited by both sides, more relevantly, the judgment in *Meena Idnani's* case which holds that upon death of partner, the legal representatives cannot force the surviving partner to join them in partnership business. Thus, the aforesaid direction could not have been issued by the respondent No.1.

25. Respondent No.1 has taken recourse to the Government policy, the details of which are not disclosed. If there is a policy of State Government that deals with rights of legal representatives of deceased partner, respondent No.1 ought to examined it in the light of the provision of law. Having not done so, the names of legal heirs of deceased partner cannot be taken on the license.

26. The petitioner has placed reliance on the judgment of *Karunakumar,* however, it will be of no help inasmuch as the Division Bench has given liberty to the licensing authority to take action against the petitioner therein, in case of breach of other conditions of license. In the present case, the petitioner has not only breached the conditions of license but also provisions of law by not disclosing the death of his partner and further by

continuing the business in the name of partnership firm by misleading the authorities below. The petitioner has further disobeyed the order passed by the respondent No.2 as well. This act is highly deprecable and requires stringent action. Hence, I proceeded to pass the following order.

ORDER

(i) Writ Petition No.5636/2023 is partly allowed and Writ Petition No. 5637/2023 is dismissed.

(ii) Order dated 11.08.2023, passed by respondent No.1 and order dated 11.11.2021, passed by respondent No.2 are quashed and set aside. Prayer of the petitioner to transfer the liquor license in his name is rejected.

(iii) Order dated 28.08.2023, passed by respondent No. 3, to the extent it kept in abeyance the decision of renewal of license until the parties decide on their partnership, is quashed and set aside. The order to cancel/suspend the license under question is upheld.

(iv) Respondent No.3 shall, however, examine the Government policy in this regard and shall take a decision afresh on the rights of legal representatives of Purushottam Gawande to inherit the license, in the light of the provisions of law, judgments cited in this order as also the observations made hereinabove.

(v) The petitioner shall pay exemplary costs of Rs.5,00,000/- to the State of Maharashtra for continuing the business in the name of partnership firm by misleading the Government authorities. He shall deposit the aforesaid amount with respondent No.3 within eight weeks from today, failing which respondent No.3 shall proceed to recover the same as land revenue.

(vi) Respondent No.3 is further at liberty to proceed against the petitioner in terms of Section 54(2) of the Act of 1949, if contingency so arises.

Rule is disposed of in the above terms.

(Anil L. Pansare, J.)

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