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WP-8072-2019 modified

order is corrected pursuant to speaking to minutes order dt.24.03.2025.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8072 OF 2019

1. Rajaram Gopichand Advani

Age : major Occu: Business

2. Sanjay Rajaram Advani

Age: 45 years, Occu: Business

3. Shailesh Rajaram Advani

Age : Major, Occu: Business,

All residing at B-504, Royal Imperi,
Kokane Chowk, Pimplesaudagar, Pune,
Dist. Pune and carrying their business
under the name and style of Raja Wines
at Tuljabhavani Shopping Complex, Osmanabad,
District : Osmanabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra

Through The Minister of State Excise,
Mantralaya, Maharashtra State, Mumbai.

2. The Commissioner of State,

Excise, Maharashtra State,
Old Custom House, Mumbai-400 023.

3. The Collector of Osmanabad

(State Excise Department),
Dist. Osmanabad.

4. Sheetal Shreeram Naik,

Age: Major, Occu: Household,

5. Vinayak Shrikrishna Lavar

Age: Major, Occu. Business,
both residing at Pandharpur Galli,
Tuljapur, District: Osmanabad.

...RESPONDENTS

Mr.V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal and
Mr. A. K. Tiwari, a/w Mr. A. D. Khedkar, Advocates for the Petitioners.
Mr.K. B. Jadhavar, AGP for Respondent Nos. 1 to 3/State.
Mr. S. A. Wakure, Advocate for Respondent Nos. 4 and 5.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 30th JANUARY 2025
PRONOUNCED ON : 18th MARCH 2025

ORDER :-

1. Heard the learned Advocate for the parties. By consent of the parties, the petition is taken up for final disposal.
2. This petition arises out of Judgment and Order dated 26th June 2019, passed by the Hon'ble Minister, State Excise. The dispute is about the license bearing Nos. F.L.-II/2, C.L./F.L./TOD-III/2 of the year 1973-74.
3. By way of impugned Judgment and Order, the revision of the

Petitioner came to be rejected and it is directed to include the names of the present Respondent Nos.4 and 5 in the license within two weeks from the date of the order.

4. The Petitioner No.1 is the person in whose name the original license was standing. Petitioner No.2 and 3 are the sons of Petitioner No.1. Respondent No.1 is the State Government. Respondent No.2 is the Commissioner of State Excise, State of Maharashtra. Respondent No.3 is Collector of Osmanabad, State Excise Department, and Respondent Nos. 4 and 5 are the persons, who are directed to be shown as partners while renewing the license.

5. The facts giving rise, in short, to the petition are that, the Petitioner No.1 was having FL-II license. Petitioner Nos.2 and 3 are the sons of Petitioner No.1, who were added as a partner in the said license with prior approval of the Collector. The names of Respondent Nos.4 and 5 were deleted from the partnership firm. Original license, Petitioner No.1 was having license in his individual name, the present Respondent Nos.4 and 5 were added as partners by executing

Partnership Deed dated 5th November 1983. However, the said Partnership Deed was not approved by the Collector as larger portion was in the Partnership Deed was shown of Respondent Nos.4 and 5. Partnership Deed dated 5th November 1983 was, therefore, not accepted. The Petitioner on realizing that the partnership with Respondent Nos.4 and 5 was in violation of guidelines issued by the Government vide circular dated 26th March 1984. There was also communication dated 2nd May 1984 by the Collector informing this to the Petitioner No.1. In view of that, the Superintendent of State Excise by communication dated 21st November 1984 directed the Petitioner No.1 to submit fresh partnership.

6. In view of communication, fresh Partnership Deed dated 18th February 1985 was executed in which the Petitioner No.1 was shown to be the share holder to the extent of 34% and Respondent Nos.4 and 5, each were shown to have 33% share. This Partnership Deed was accepted. However, thereafter certain disputes started between Petitioner No.1 and Respondent Nos.4 and 5. The Petitioner No.1 sent a message to Respondent No.4 and 5 on 20th April 1991 and informed that

the partnership firm is dissolved. Pursuant to that, the Petitioner requested the Collector to delete the names of Respondent Nos.4 and 5 from the license. It was clearly stated that, he do not wish to continue partnership business with them. The Collector, in view of this, called Petitioner No.1 and Respondent Nos.4 and 5 directing to show cause as to why license should not be suspended pending dispute between them. By communication dated 24th February 1992, the Collector directed the Petitioner No.1 to get the dispute resolved from Civil Court. The Respondent Nos.4 and 5 filed a Suit. It was prayed for mandatory injunction against the Collector and Superintendent not to withhold the renewal of the license for want of signature of Petitioner No.1. The suit was dismissed for default on 21st November 1995. The said order attained finality as it was not challenged.

7. The Petitioner No.1 apprehending that the Collector may renew the license in the name of Respondent Nos.4 and 5, filed a writ petition in this Court and prayed for writ of certiorari and for quashing orders adverse to the interest of the Petitioner, therein the interim relief was

granted. He was required to file one civil application in the said petition for direction to the Collector and Superintendent to renew the license in the name of Petitioner No.1 only. The said application also was allowed. Ultimately, the petition was withdrawn by the petitioner. The interim relief however was extended. In the meantime, the Collector was pleased to delete the names of Respondent Nos.4 and 5 by order dated 10th April 1993. The said order was never challenged by the Respondent Nos.4 and 5.

8. In 2001, the Petitioner No.1 filed an application admitting Petitioner Nos.2 and 3 as partners in the business. The Collector allowed the said request by order dated 28th July 2001. The said order also attained finality. The Respondent Nos.4 and 5 filed an application with the Collector and prayed for insertion of their names into the license without any prayer to delete the names of Respondent Nos.2 and 3 from the said business. The Collector directed to continue licence in the name of petitioners and directed respondent No.4 and 5 to approach Civil Court. The Respondent Nos.4 and 5, however lateron approached

the Appellate authority for insertion of their names. The authority allowed the application. The said was challenged by the Petitioner before the Hon'ble Minister. It is the main grievance of the Petitioner's that though revision filed by the Petitioner, the orders passed by the Collector and the Superintendent are set aside. However, direction is given to insert names of Respondent Nos. 4 and 5 in the business and therefore, petitioners are before this Court.

9. Mr.Sapkal, the learned Senior Advocate appearing for Petitioners argued that the partnership between Petitioner No.1 and Respondent Nos.4 and 5 was partnership at Will. Clause (7) is specific showing this. Thus, every partner was having right to dissolve the partnership by giving prior notice to other partners. The Petitioner No.1, therefore, had issued a notice to the Respondent Nos.4 and 5. The partnership, therefore, stood dissolved. As it is, the said Partnership Deed dated 5th November 1983 was never acted upon. The Petitioner No.1, thereafter, executed fresh deed on 30th March 1985. Notice was issued for renewal of license. The Petitioner No.1 on 20th April 1991 sent a notice to

Respondents by telegraphic message expressing his intention to dissolve the partnership. The said was never challenged. Thus, the Respondent Nos.4 and 5 ceased to be the partners. In that view, the suit was filed by Respondents. However, the suit was filed against the authorities and Respondent No.1. In that view, the Collector issued show cause notice as to why the license should not be suspended. The Collector, therefore, sent a communication to the Petitioner No.1 to get the dispute resolved from the Civil Court. After dismissal of suit of respondent for default, no rights remained with the Respondents. In the said suit, there were no prayer against Petitioners No. 2 and 3. However, because of the order passed by the Collector, the Petitioner No.1 was required to approach this Court by filing writ petition in 1992 praying for direction to the Collector and the Superintendent not to renew the license at the instance of Respondent Nos. 4 and 5. The said petition was disposed off with direction to approach the Collector by continuing interim relief.

10. It is in this view, he submits, the Respondent Nos.4 and 5 approached the Collector for renewal of license in their names. The

Collector however, rejected the application holding that the Respondents were no more partners of the partnership firm and continued the license in the name of Petitioner No.1. They were directed to obtain orders from the Civil Court. He submits that, the said order was challenged by the Respondents before the learned Commissioner. The learned Commissioner directed the parties to make fresh Partnership Deed giving suitable percentage in the share and directed to delete the names of Petitioner Nos. 2 and 3. It is the submission that the direction for deletion of the names of Petitioner No.2 and 3 could not have been passed by the learned Commissioner. It is, therefore, the Petitioners approached the Minister in which the Hon'ble Minister has passed an order. He submits that the order is totally illegal. The learned Minister has exceeded the jurisdiction by directing to insert the names of Respondent Nos.4 and 5 by deleting the names of Petitioner Nos.2 & 3. By relying upon the circular of the Government. There was communication by the Joint Secretary, Home Department, State of Maharashtra dated 6th July 1989 giving direction for issuance/renewal of license. The order of the Minister is against the legal position. The

Respondents could not have made prayer before the Commissioner for inserting their names as the said prayer was not made before the Collector. However, that was directed to be done by the order of the Commissioner. The Commissioner exercised that power and directed to delete the names of the petitioner Nos. 2 and 3 and has, thus, exceeded the jurisdiction while directing the parties to enter into an agreement. He has wrongly observed that the names of Respondents were renewed in view of interim relief granted by this Court in writ petition No.626 of 1992. He further submits that, before the Minister, clause (2) of the order passed by the Collector, was not challenged. Thus, the order against the Petitioner is without jurisdiction. At the most, the revision could have been dismissed but no further order could have been passed. The learned Senior Advocate for the petitioners relied upon the following judgments:-

- (i) *Ajit Majur Kamgar Sahakari Sanstha Vs. State of Maharashtra and Ors.*¹;
- (ii) *Ramesh Shrikrishna Dhore and Anr. Vs.*

1 2006 (6) Bom. C.R. 402

- Commissioner of State Excise Bombay and Ors.*²;
(iii) *Shamlal Jaglal Jaiswal Vs. The State of Maharashtra and Ors.*³;
(iv) *Uttam s/o Shamlal Jaiswal Vs. The State of Maharashtra and Ors.*⁴;
(v) *Prabhakar s/o. Mohiniraj Wable Vs. The State of Maharashtra and Ors.*⁵;
(vi) *Banarsi Vs. Ram Phal* ⁶;
(vii) *Budheswar Barua Vs. Jatindra Nath Barua*⁷.

11. The learned Senior Advocate for the petitioner relied upon Section 23 of the Contract Act and Section 43 of the Partnership Act in support of this submission and submits that when the partnership was at Will, it was open for any of the partners to dissolve the partnership by giving notice to other partner.

12. Mr.Wakure, the learned Advocate for the Respondents opposed the petition. He submits that the writ petition of the Petitioner was dismissed. After dismissal of writ petition, the earlier position would continue i.e. Respondent Nos. 4 and 5 would be treated as partners and

2 1998 (2) Mh.L.J. 939

3 1998 (1) Bom.C.R. 13

4 1998 (1) Bom C.R. 437

5 2002 (2) ALL MR 921

6 2003 DGLS(SC) 190

7 AIR 1976 Gauhati 12

the license was required to be continued in their names. The partnership, therefore, shall be treated in existence. The Collector had directed the Petitioner No.1 to get the dispute resolved from the Civil Court. The Petitioner instead of filing civil suit, approached this Hon'ble Court. After the Petition was withdrawn, the *status quo ante* would come into force. Even after dismissal of writ petition, the Petitioner No.1 did not approach civil Court. He submits that when the names of Respondents were directed to be added as partners, the names of Petitioner Nos. 2 and 3 would automatically stand deleted as necessary consequence without any order. Since last 30 years without getting the rights adjudicated before the proper forum, the Petitioner is renewing the license in his name all alone. He submits that the suit was filed on 30th March 1991 by the Respondent whereas the telegraph giving intimation of dissolution of partner sent by the Petitioner No.1 was on 20th April 1991. In this view, the suit became infructuous and, therefore, was not prosecuted. None prosecution of the suit would not help the Petitioner in any way. He submits that till the rights are adjudicated by the proper authority, the earlier position before filing the writ petition

No.626 of 1992 would prevail. He further submits that the partnership firm could not have been dissolved by sending only telegraph. He relied upon the judgments in the case of *Addanki Narayanappa and Anr. Vs. Bhaskara Krishnappa and Ors.*⁸ and in the case of *Shripat s/o. Chaituji Mahajan Vs. Sanjay Radheshyam Jaiswal and Ors.*⁹

13. In rejoinder, the learned Senior Advocate Mr.Sapkal submits that looking to the clauses of the Partnership Deed, it is clearly seen that the Partnership was at Will and, therefore, can be dissolved by giving notice by any partner.

14. In the case of *Banarsi Vs. Ram Phal* (supra), the Hon'ble Apex Court considered the provisions of Sections 96 of and 100 of the Code of Civil Procedure, 1908. In the said case, there were cross suits filed on the basis of agreement to sale. The Court considered the question about the power of the appellate court to interfere with and reverse or modify the decree appealed against by the appellants in the absence of any cross-appeal or cross-objection by Respondent under Order 41 Rule 22 of

8 AIR 1966 SC 1300

9 2002 (3) Bom.C.R. 752

the CPC. It was held that in absence of cross objection, no decree under appeal can be altered or varied to the advantage of the Respondent or to the disadvantage of the appellant. In the present case, though it was only the revision by the Petitioner therein, the learned Minister not only dismissed the revision but has passed an order to the disadvantage of the Petitioner. This is done so by directing to insert the names of Respondent Nos.4 and 5 in the license. This Court finds that, at the most, the revision could have been dismissed. There was no reason for the learned Minister and Commissioner to pass an order in favour of Respondent Nos.4 and 5 when they had not preferred any revision against the impugned order passed by the Commissioner. Same principle is applicable to the revision as well. This Court finds that the Petitioner has rightly relied upon this case. In the case of *Ajit Majur Kamgar Sahakari Sanstha* (supra), this Court has relied upon the judgment in the case of *Banarsi* (supra) and held that in an appeal filed by the Petitioner therein no prejudicial order could have been passed by the Appellate Court.

15. So far as judgment in the case of *Budheswar Barua* (supra) is concerned, it was the case involving question of Section 43 of the Partnership Act, and the clause “Partnership at Will”. It is held that one’s intention to dissolve the firm is sufficient to dissolve the firm. Thus, in this case, this Court finds that once notice was issued by the Petitioner to Respondent Nos.4 and 5 declaring his intention to dissolve the firm it was sufficient and no further action was required.

16. So far as the judgment in the case of *Addanki Narayanappa and Anr.* (supra), The Hon’ble Apex Court considered various sections of the Partnership Act. It is held that after property is brought in by the partners in the partnership, the same becomes the property of the partnership firm. Thereafter, partners are entitled only to his share of profits, accruing to the partnership from realization of the property. Even after dissolution, the property will vest in all the partners and in that sense every partner has an interest in the partnership. Considering this case, there is no dispute about the same proposition. In the present case, there is nothing to show that any property as such was owned by the

partnership firm. Partnership was only to run the business.

17. The question in the present is that whether the license is brought by the partners-Respondent Nos.4 and 5, it is the case that the license is already standing in the name of Petitioner No.1. The Respondent No.4 and 5 were merely were taken as partners. There is no dispute about the property. The dispute is only with regard continuation of the license. The partnership is at Will and Petitioner No.1 has issued notice to Respondent Nos.4 and 5 dissolving the partnership firm. As such after dissolution of partnership firm, nothing remained as property of the firm. This Court finds that the judgment in the case of *Shripati Mahajan* (supra) is not applicable in the present case in the reasons that since beginning license was only in the name of Petitioner No.1.

18. Considering all above and in view of the above discussion, this Court finds that case is made out to allow the writ petition. Hence, the following order:-

ORDER

- (i) Petition stands allowed in terms of prayer clause (B).
- (ii) No order as to costs.

[KISHORE C. SANT, J.]