



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14861 OF 2019

WITH

CIVIL APPLICATION NO.437 OF 2025

WITH

CIVIL APPLICATION NO.8987 OF 2021

Prabhakar Mohiniraj Wabale, (now deceased)

Deceased Through LR's

Smt. Vimalbai Prabhakar Wabale,

Age: 73 Years, Occu. Household,

Partner, M/s. Kailas Wines, Sonai,

Tq. Newasa, District Ahmednagar.

...PETITIONER

(Orig. Opponent)

VERSUS

- 1] **The State of Maharashtra,**
Through its Secretary,
Excise and Drugs Department,
Mantralaya, Mumbai.
- 2] **The Minister of State,**
The Excise and Drugs Department,
Mantralaya, Mumbai.
- 3] **The Commissioner of State Excise,**
Maharashtra State, Mumbai.
- 4] **The Collector (Excise Department),**
Ahmednagar, District Ahmednagar.
- 5] **Vitthal Janardan Phadke,**
Age: 60 years, Occu: Business,
R/o. Sonai, Tq. Newasa,
District Ahmednagar.

...RESPONDENTS

(Resp. No.5-Orig. Applicant)

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Mr. Arun Longani, Mr. S. Mukherjee, Mr. Yogesh Kumar, Advocates for the petitioner.

Mr. K. S. Patil, AGP for Respondent No.1 to 4-State.

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Ashwini Deshmukh i/by Mr. S. V. Natu, Advocate for Respondent No.5.

.....

CORAM : KISHORE C. SANT, J.

RESERVED ON : 1st APRIL, 2025

PRONOUNCED ON : 20th JUNE 2025

JUDGMENT :-

1. Heard Mr. Longani, the learned Advocate for the petitioner, Mr. Patil, Mr. Deshmukh, the learned Senior Advocate appearing for Respondent No.5 and the learned AGP for the Respondent Nos. 1 to 4/State
2. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally at the stage of the admission.
3. Civil Application No.437 of 2025 is filed seeking modification of order dated 23rd September 2024 by which this Court had vacated the interim relief that was granted in the petition. Civil Application No. 8987 of 2021 is filed by the petitioner for fixing early date of hearing of writ

petition and for directing the learned District Magistrate to maintain status quo as per order dated 10th December 2021.

4. This Writ Petition arises out of judgment and order dated 30th July 2019 passed by the Hon'ble Minister, Excise and Drugs Department, Mantralaya, Mumbai, in Revision Application No.FLR-1217/RA-14/RAUSHU-2, thereby allowing the Revision Application filed by Respondent No.5.

5. The dispute is about FL-II and CL-III license standing in the name of petitioners. The learned Minister, by way of impugned judgment and order, has held that Respondent No.5 is entitled to the said license, thereby setting aside the judgment and order passed by the learned Collector, State Excise Department, Ahmednagar, and learned Commissioner, Excise Department, Mumbai.

6. The dispute, in short, is that on 21st December 1973, a license was granted by the State in favour of the petitioner since deceased now through present petitioners. However, for some reason, the petitioner could not operate the said license. On 21st November 1984, the

petitioner entered into a partnership agreement with Respondent No.5 for running business under the name as “M/s. Kailas Wines”. The partnership was at Will. This partnership was not accepted by the learned Collector, and therefore, a fresh partnership was executed between the parties on 28th May 1992. Both partners were shown as working partners. This partnership was also at Will. The license continued to stand solely in the name of the petitioner.

7. On 23rd December 1993, the petitioner issued a legal notice for dissolution of partnership to Respondent No.5 for violation of terms and conditions of the partnership agreement. On noticing this, the learned Collector suspended the liquor license by order dated 27th March 2000. An appeal before the learned Commissioner filed by Respondent No.5 came to be rejected on 31st August 2000. A revision came to be preferred before the Hon’ble Minister against the order in appeal. The learned Minister passed an order dated 30th June 2001 in favour of Respondent No.5, allowing him to continue and operate the liquor business until the partnership dispute is resolved.

8. The petitioner, thereafter, filed Writ Petition No.4308 of 2001. The said came to be allowed in favour of the petitioner on 23rd October 2001. Thereafter the Respondent No.5 filed Letters Patent Appeal (for short “LPA”) No.51 of 2002. By order dated 7th February 2003, the Division Bench held that the dispute regarding the dissolution of the partnership is pending in the Civil Court, as that time, arbitration proceeding was going on. The business of Respondent No.5 was protected to save the Government Revenue. The respondent No.5 was allowed to continue the business.

9. The State Government filed Review Application seeking review of the judgment in LPA. In the review proceedings, the Division Bench clearly held that the Respondent No.5 had no right to apply for a fresh license or any license independently. It is the petitioner who had to apply for renewal of licence afresh. The respondent No.5 carried the order passed in review by filing an SLP in the Hon’ble Supreme Court. However, the same came to be dismissed. On 17th March 2010, the Arbitration Tribunal, by a majority, ruled in favour of the petitioner. The

Principal District Judge, Ahmednagar, turn down the objections of the respondent No.5 against the arbitration award, in so far as declaration of dissolution of partnership is concerned.

10. Thereafter on 31st March 2012, the learned Collector again suspended the license. The Respondent No.5 then preferred an appeal to the learned Commissioner. There was no stay granted by the learned Commissioner. The Respondent No.5, thereafter, preferred revision to the Hon'ble Minister. The Hon'ble Minister granted stay directing respondent No.5 to continue the license during the pendency of the appeal before the learned Commissioner. The petitioner, therefore, filed Writ Petition No.4914 of 2012. This Court in the said writ petition, directed the Collector to decide the issue and passed order within four weeks. Against this order also, LPA was preferred.

11. In LPA, the learned Collector was directed to decide applications for grant of licenses in the name of petitioner in view of dissolution of partnership. Respondent No.5 was allowed to continue the business only till 31st March 2013. On this order, the learned Collector passed an

order on 22nd January 2013 holding that the name of the Respondent No.5 be dropped. The license be retained only in the name of this petitioner. In the meantime, LPA No.146 of 2012 also came to be dismissed. This order was also challenged by Respondent No.5 by filing Special Leave Petition (C) No.13990-13991 of 2013 before the Hon'ble Apex Court. In the SLP proceeding, an agreement by both the parties, the learned Collector was directed to take a fresh decision without disturbing orders passed in LPA No.146 of 2012 and in Review Application.

12. Pursuant to this, the learned Collector passed an order dated 31st December 2016, holding that the Respondent No.5 cannot have license in his name. Since the license was continued, the respondent No.5 was allowed to continue the license only till 31st March 2017. This order again came to be challenged before the learned Commissioner. The said appeal also came to be dismissed on 17th February 2018. The Hon'ble Minister, by way of impugned order dated 30th July 2019, passed an order in a Revision by Respondent No.5 which is now a subject matter of

this writ petition. In the year 2017, the original petitioner (father of the present petitioner) died on 4th March 2015, and thereafter, present petitioner was brought on record. The learned Minister has now directed to delete the name of the present petitioner and directed to continue the license in the name of Respondent No.5.

13. Mr. Longani, the learned Advocate for the petitioner, submits that the petitioner, Prabhakar Wabale, was granted license in his individual name. Though he entered into partnership with Respondent No.5, the license still was continued in his name only. At no point of time, it was transferred in favour of the partnership firm. The license was never issued in the name of partnership i.e. "M/s. Kailash Wine". As it is, the license is non-transferable. The license was never property of the partnership firm. The partnership firm was only for the purpose of carrying out business. By issuing due notice, the partnership was dissolved. After dissolution of partnership firm, there is no question of Respondent No.5 getting any right in the business or in the license. This Court, in earlier two rounds, has clearly held that the respondent no.5

does not have any right to continue with the business. Only he was allowed to continue the business till end of respective financial year, that will not create any interest in his favour. Orders passed by this Court were confirmed even by the Hon'ble Apex Court. Now, the arbitration award is also passed in favour of the petitioner. The learned Collector and the learned Commissioner rightly passed the orders. The Hon'ble Minister has passed the order totally in defiance of observations made in the orders passed by this Court and the Apex Court.

14. In support of his submissions, the learned Advocate for the Petitioner relied upon the following judgments.

- (i) *Addanki Narayanappa and Anr. Vs. Bhaskara Krishtappa and Ors.*¹;
- (ii) *Ramesh s/o. Shrikrishna Dhore and Ors. Vs. The Commissioner of State Excise and Ors.*²;
- (iii) *Ramchandra Namdeo Chonde Vs. The State of Maharashtra and Ors.* Writ Petition No.8671 of 2005 (Aurangabad).

1 1966 AIR 1300

2 1997(1) ALL MR 272

15. Mr. Patil, the learned AGP appearing for Respondent No.1 to 4/State, supported the order passed by the Hon'ble Minister and prayed for dismissal of the writ petition.

16. Mr. Deshmukh, the learned Senior Advocate appearing for Respondent No.5, strenuously argued that the learned Minister has rightly passed the impugned order. It is clear from the record that the petitioner was not in a position to carry on the business, though the license was in his name. It is submitted that the petitioner entered into partnership with Respondent No.5 since he was not in a position to carry on business on his own. The respondent No.5 thus became entitled to run the business. Though this Court held against the petitioner in earlier round of litigation, the respondent No.5 was allowed to continue the business. The existence of a partnership was never disputed. The petitioner himself filed a Civil Suit bearing Special Civil Suit No.354 of 2009 seeking rendition of accounts. The arbitration proceeding is not yet finalized. There are two arbitration appeals still pending. A challenge is pending before the learned District Judge. Though the High Court's

orders are not disturbed by the Hon'ble Apex Court, the Hon'ble Apex Court has clearly directed the learned Collector to take fresh decision without looking to the earlier orders passed by this Court. It is further submitted that, the license is, in fact, an asset of the partnership firm. He submits that in the year 1984, the deceased Prabhakar Wabale himself filed an application before the learned Collector requesting to add the name of Respondent No.5 in the license in the capacity of partner. He had also given a statement to that effect before the Collector.

17. In support of his submissions, Mr. Deshmukh, the learned Senior Advocate relied upon the following judgments:

- (i) ***Addanki Narayanapa and Anr. Vs. Bhaskara Krishtappa and Ors.***³;
- (ii) ***Sachin Jaiswal Vs. Hotel Alka Raje and Ors.***⁴;
- (iii) ***Yunnus Abdulla Shaikh Vs. The Collector, State Excise and Ors.*** Writ Petition No.4086 of 1994 (At Bombay).
- (iv) ***Laxman V. Kamble Vs. Collector, Latur and Ors.*** Writ Petition No.2924 of 2000 (Aurangabad).

3 (1966) 3 SCR 400

4 2025 SCC OnLine SC 446

(v) *Pamela P Braganza Vs. Mr. Finlay Braganza*,
Writ Petition No.147 of 2005 (Aurangabad).

18. The short question involved in this petition is as to whether the Respondent No.5 has any right to have license in his name?. Merely because he happened to be partner for some time.

19. To answer this question we need to consider following; So far as the license is concerned, there is no dispute that the license was granted to deceased Prabhakar Wabale. It was only for some reason, the deceased Prabhakar Wabale could not start business though he had the license in his name. He therefore entered into a partnership with Respondent No.5. From the clauses of the agreement, it is clear that the partnership was at Will. There was notice issued dissolving partnership firm. In the arbitration proceedings, there is an award now passed in favour of the petitioner. The appeals are pending. By looking to the orders passed by this Court in earlier round of litigation, it is clearly seen that this Court in Writ Petition as well as in LPA clearly held that the Respondent No.5 had no right to continue with the business. The

said orders are not disturbed by the Hon'ble Apex Court in both the rounds. What is directed is to decide the application of both the parties by directing the learned Collector to decide the same uninfluenced by the observations in earlier orders passed by this Court.

20. The learned Collector considered the notification issued by the Home Department, Mantralaya, Mumbai, dated 20th August 1996 by which the learned Collector is vested with the power to take decision on induction or deletion of partners in a license. The learned Collector also considered Rule 40(1) of the Bombay Foreign Liquor Rules, 1953. This Rule requires that for the purpose of license in the name of partnership, a person has to apply to the Collector prior to issuance/grant of license. In case the license is already granted, the name of the partner cannot be inserted in the license. He, thus, held that the license was granted only in the name of Prabhakar Wabale and the same can not be granted in favour of Respondent No.5. The learned Collector considered that now the partnership is dissolved by award of the Arbitrator. He, therefore, allowed Respondent No.5 to continue the license only till 31st March

2017. The learned Collector further ordered that the renewal of license in the name of petitioner be considered thereafter.

21. The learned Commissioner in appeal filed by respondent No.5 referred to all previous orders passed by this Court in LPAs, wherein it was clearly held that the deceased Prabhakar Wabale alone was entitled to renew the license. By observing this, the learned Commissioner held that Prabhakar Wabale is entitled to hold FL-II license and confirmed the order passed by the learned Collector.

22. Looking to the order passed by the Hon'ble Minister, it is seen that the learned Minister considered the judgment in the case of ***Addanki Narayanappa*** (supra), and observed that, if a partner brings capital then such capital becomes property of the partnership firm. After the said capital becomes property of the partnership firm, every partner has a right over the property of the firm. He further held that the petitioner does not have any right in the license while passing the impugned order.

23. Respondent No.5 has brought on record a letter dated 29th November 1984 by the deceased Prabhakar Wabale addressed to the

learned Collector wherein he has clearly stated that in the license, the name of Respondent No.5 be shown as partner. He had also given a statement to the Collector on 1st May 1984 stating that the Respondent No.5 is providing finance in the business. He is having three years experience in the business and therefore, he be added as partner in the license. Attention of the Court is also invited to guidelines dated 2nd September 1989 and clause (iv) which gives power to the Collector to add the name of the partner and notification dated 2nd December 1989 and 30th August 1993 issued by Home Department, Mantralaya, Mumbai.

24. Rule 40(1) of the Bombay Foreign Liquor Rules, 1953 reads as follows:

“No person shall be recognized as partner of the holder of a vendor’s licence for the purposes of his licence, unless the partnership has been declared to the Collector before the licence is granted and the names of the partners have been entered jointly in the licence or if the partnership is entered into after the granting of the licence, unless the Collector agrees on application made to him, to alter the licence and to add the name or names of the partner or partners in the licence”.

A reading this Rule, makes it clear that it is for the Collector to consider entering the name of the partners in the license.

25. In the case of *Addanki Narayanappa* (supra), there was dispute between two families entered into partnership for the purpose of carrying on business of hulling rice, decorticating groundnuts etc. Both the families had equal shares in the business. The lands belonging to the families were the capital of the partnership. In the business, some more lands were acquired by the partnership. The plaintiff's family i.e. Addanki family filed a suit for various reliefs claiming equal rights over all the properties of the partnership firm. The Hon'ble Apex Court considered that properties of the partners were used as capital in the business. The property was therefore directed to be divided rateably among all the partners after settlement of account between partners and upon dissolution of the firm. This was to be done after debts and liabilities are made out from the property of the firm. It was the case that, the capital was brought by all the partners. Thereafter, some more lands were acquired by the partnership firm and naturally those became

properties of the partnership firm. In the present case, the partnership firm was only to run the business, that will not make license a property of the partnership firm. The statement and the letter of the petitioner, Prabhakar Wabale, to the Collector would only show that he had desire to run the business alongwith Respondent No.5. However, the fact remains that, at no point of time, the license was granted or renewed in the name of partnership firm.

26. In the case of ***Ramesh Dhore*** (supra), it was held that the license to run the retail country liquor shop was granted in the name of individual. The said individual, later, had entered into partnership. The names of partners, thereafter, were included in the license. It was held that the Collector can grant renewal of license in favour of original grantee by deleting the names of other partners. The license was ultimately renewed in the name of original grantee. Deletion of names of other two partners was held to be valid.

27. In the case of ***Ramchandra Chonde*** (supra), on similar facts, it was held that it is only an individual in whose name the license was granted

is entitled to hold a licence. The order passed on an application to add the Respondent as partner passed by the Superintendent of Excise held to be ineffective. From reading of judgment, it is clear that after dissolution of partnership firm, the license would continue only in the name of original grantee.

28. In the case of ***Sachin Jaiswal*** (supra), the facts were that the individual partners converted their property into partnership property. In view of Section 40 of the Partnership Firm, the property became property of the partnership firm. In the present case, the license cannot be said to be the property of the firm as the name of the partner or the partnership firm was never entered in the license.

29. In the case of ***Yunnus Abdulla Shaikh*** (supra), the rights of the parties were not determined by the Civil Court in the Civil Suit. In the case of ***Laxman Kamble*** (supra), the matter was disposed off by directing that the application be considered within eight weeks. In the case of ***Pamela P. Braganza*** (supra), the FL-II license was in the name of partnership firm. One partner namely, Peter Braganza was having 60%

share and Pamela Braganza had 40% share. Peter Braganza expired on 9th May 2002. He bequeathed his share in the partnership firm. Pamela Braganza was entitled to have 30% share of the 60% share of the Peter Braganza. One respondent was to get 40% of share of the Peter Braganza and respondent No.1 was to be 30% of share of Peter Braganza. The respondent No.1 thereafter applied for liquor license as he had 30% in the share of Peter Braganza. The learned Collector passed an order that till the dispute is resolved by the appropriate Court, the license was to remain suspended. This Court ultimately held that on death of Peter Braganza, who was partner, the partnership stood dissolved and the firm becomes sole proprietary concern of the surviving partner Pamela Braganza. This Court find that in the present case it is not the question when the license itself was not in the name of partnership firm. In the present case, the said judgment is not applicable. So far as the decisions in *Sachin Jaisawal*, *Yunus Abdulla* and *Laxman Kamble* are also not applicable to the facts of the present case.

30. Ultimately, this Court has to see as to whether the license was ever standing in the name of partnership firm. The answer is clearly no. The learned Collector and the learned Commissioner had rightly passed the orders. The learned Minister, however, passed an order without looking into the earlier orders passed by the this Court and the Hon'ble Apex Court. The order therefore certainly calls for interference.

31. The impugned judgment and order needs to be quashed and set aside. Hence, the following order:

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (A).
- (ii) The impugned order dated 30th July 2019 passed by the Hon'ble Minister, Excise and Drugs Department, Mantralaya, Mumbai, in Revision Application No.FLR-1217/RA-14/ RAUSHU-2, are quashed and set aside.
- (iii) The respondent No.5 has no right to get the license in his favour. The petitioner shall be entitled to apply for and

obtain renewal of the license in accordance with law.

(iv) In view of disposal of writ petition, Civil Applications do not survive and are accordingly disposed off.

(v) Rule is made absolute in the above terms.

[KISHORE C. SANT, J.]

32. At this stage, the learned Advocate for the Respondents seek stay to the effect and operation of this order for a period of six (6) weeks from today.

33. In view of the same, to take effect and operation of this order after four (4) weeks from today.

[KISHORE C. SANT, J.]