VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1812 OF 2025

1 **Ramesh Bapurao Padmawar**
Venus Wine Mart, FL-II Licence No.304
CL/FL/TOD-III No.340
Sanaswadi, Taluka Shirur,
District : Pune

2 **Abhijit Ramesh Padmawar**
Both residing at Kamla Nehru Ward,
Main Road, Ekarjuma, Warora,
Taluka Warora, Dist. Chandrapur

… Petitioners

V/s.

1 **The State of Maharashtra**,
Through Minister of State Excise,
Maharashtra State, Mantralaya,
Mumbai-400 032

2 **The Commissioner of State Excise,**
Maharashtra State, Rajya Utpadan
Shulk Bhavan, Fort, Mumbai-400 001

3 **The Collector of Pune**
(State Excise Department),
District: Pune

4 **Vashumal Lalchand Mankani**

5 **Pradeep Lalchand Mankani**
Both residing at Plot No.16,
Mitra Nagar, Behind Aakashwani Office,
Aurangabad, District : Aurangabad

… Respondents

Mr. Hrishikesh Mundargi with Mr. Vinayak R. Salokhe, Mr. Rohan Dhawad, Ms. Pravada Raut, Megha Jani and Ms. Sampada Khanolkar for the petitioners.

Ms. V. S. Nimbalkar, AGP for the State-respondent Nos.1 to 3.

Hiren Kamod i/by Santosh L. Patil with Arvind Tiwari and Shraddha Kadam for respondent Nos.4 and 5.

Mr. Santosh B. Jagdale, Deputy Superintendent, State Excise Department, Pune is present.

CORAM	:	**AMIT BORKAR, J.**
RESERVED ON		**MARCH 5, 2025**
PRONOUNCED ON	:	**MARCH 25, 2025**

P.C.:

1. The present Writ Petition is filed under Articles 226 and 227 of the Constitution of India challenging the legality, propriety and correctness of the judgment and order dated 10th October 2024 passed by respondent No.1 – the Revisional Authority, in Revision Application No.17 of 2024. By the said judgment, the Revisional Authority has confirmed the order dated 1st July 2024 passed by respondent No.2 – the Appellate Authority, whereby the order passed by respondent No.3 cancelling the transfer of the FL-II license in favour of respondent Nos.4 and 5 came to be set aside. The petitioners are aggrieved by the said orders on the ground that the transfer of license in favour of respondent Nos.4 and 5 is vitiated by fraud and impersonation, and ought not to have been sustained.

2. The facts giving rise to the filing of the present petition, briefly stated, are as under:

3. Petitioner No.1 was the lawful holder of an FL-II license bearing No.FL-II 15 and was operating his licensed business under the name and style of "Venus Wine" in the district of Chandrapur. The Government of Maharashtra, vide Notification dated 10th March 2015, in exercise of its powers conferred under the relevant provisions of the Maharashtra Prohibition Act, declared the entire district of Chandrapur as a "Dry District", thereby directing closure of all liquor vending licenses with effect from 1st April 2015. However, by way of an exception, liberty was granted to holders of FL-II and CL-III licenses to seek transfer of their respective licenses to other districts, with the specific exclusion of Wardha and Gadchiroli districts. Availing of the said liberty, petitioner No.1, vide application dated 18th September 2017, approached the Collector, Chandrapur seeking permission to shift his FL-II license from Kamla Nehru Ward, Warora, District Chandrapur to Shop Nos. 118 and 119, Fortliza, Kalyani Nagar, Yerawada, District Pune. The said request was considered and the Government of Maharashtra, by communication dated 18th July 2018, granted approval for transfer of the license from Chandrapur to Pune.

4. According to the petitioners, since petitioner No.1 was a resident of Chandrapur and was not in a position to personally oversee or manage the day-to-day operations of the business in Pune, he executed a Power of Attorney in favour of one Vyankatesh

Kotalwar, thereby authorising him to act on behalf of petitioner No.1 in respect of the licensed business, including but not limited to operating the bank account pertaining to the said business.

5. The petitioners allege that taking undue advantage of the said Power of Attorney and in furtherance of a fraudulent design, an application came to be made for transfer of the FL-II license from the name of petitioner No.1 to the names of respondent Nos.4 and 5, by impersonating petitioner No.1 and fabricating documents purporting to be executed by him. It is further alleged that, in the process of effecting the said transfer, the original photograph of petitioner No.1 affixed on the license record was removed and replaced with the photograph of a person falsely impersonating petitioner No.1, thereby enabling respondent Nos.4 and 5 to fraudulently secure the license in their names.

6. According to the petitioners, respondent Nos.4 and 5, acting in concert with the person who had impersonated petitioner No.1, proceeded to file an application seeking transfer of the FL-II license from its existing location at Kalyani Nagar, Yerawada, Pune to Sanaswadi, Taluka Shirur, District Pune. It is the case of the petitioners that the said application was filed by misrepresenting facts and through the continuation of the fraudulent impersonation of petitioner No.1. The Collector, Pune, vide order dated 20th July 2022, allowed the said application and thereby permitted the transfer of the FL-II license standing in the name of petitioner No.1 to the names of respondent Nos.4 and 5. The petitioners allege that this transfer order was obtained by playing fraud upon the statutory authority. It is further alleged that Mr.

Vyankatesh Kotalwar, who had been entrusted with the authority to look after the business operations of petitioner No.1 under a Power of Attorney and was operating the bank account of petitioner No.1, misappropriated funds to the tune of ₹90,00,000/- by transferring the said amount from petitioner No.1's business account to his own personal account during the period between December 2022 and February 2023.

7. Petitioner No.1, upon becoming aware of the fraudulent and unauthorized transfer of the license in favour of respondent Nos.4 and 5, promptly approached the office of the Superintendent of State Excise, Pune by making an application dated 4th July 2023. In the said application, petitioner No.1 categorically alleged that unknown persons had committed fraud by impersonating him and secured transfer of his license to respondent Nos.4 and 5. He requested that appropriate action be taken, including immediate suspension of the license. Acting upon the said application, the Superintendent of State Excise, Pune issued directions to the Deputy Superintendent of State Excise to conduct a thorough inquiry and submit a detailed report. In pursuance of the said directive, the Deputy Superintendent called upon petitioner No.1 to appear before him for verification and production of documents in support of his claim. Petitioner No.1 accordingly appeared before the concerned officer and produced documents to establish his identity and ownership of the license in question.

8. In addition to the above, petitioner No.1 exercised his statutory rights under the provisions of the Right to Information Act, 2005, and submitted an application seeking access to all documents submitted in connection with the transfer of the said FL-II license in the names of respondent Nos.4 and 5. Upon receiving some of the documents, and being prima facie satisfied about the commission of cognizable offences, the petitioners proceeded to lodge a First Information Report (FIR) bearing C.R. No.276 of 2023 with the jurisdictional police station. The FIR was registered under Sections 417, 419, 465, 467, and 468 read with Section 34 of the Indian Penal Code, 1860 against respondent Nos.4 and 5 and other individuals, namely Dilip Gyanani, Pankaj Khullar, Pankaj Wadikar, and Vyankatesh Kotalwar, who were alleged to have conspired in the commission of the said fraudulent acts. Apprehending arrest in connection with the said FIR, respondent Nos.4 and 5 preferred Anticipatory Bail Application No.2590 of 2024 before the learned Sessions Judge. The said application, however, came to be rejected. Subsequently, this Hon'ble Court was approached and was pleased to grant conditional anticipatory bail to respondent Nos.4 and 5.

9. Pursuant to the directions issued by the Superintendent of State Excise, the Deputy Superintendent of State Excise, Pune, after conducting an inquiry, submitted a report dated 5th April 2024, wherein it was unequivocally recommended that the license transferred in favour of respondent Nos.4 and 5 be cancelled forthwith and that necessary steps be taken to re-transfer the license in the name of petitioner No.1. The said report was placed before the Collector, Pune for necessary action. Upon consideration of the said report and the attendant circumstances, the Collector, Pune, by order dated 5th April 2024, recalled the earlier order dated 17th August 2022, which had permitted the transfer of the license. The Collector further directed immediate suspension of the license in question and ordered restoration of the license in favour of petitioner No.1. Simultaneously, the Collector directed initiation of criminal proceedings against respondent Nos.4 and 5 in view of the serious nature of the allegations and the findings recorded in the inquiry report.

10. It is pertinent to note that respondent Nos.4 and 5, being aggrieved by the order dated 5th April 2024 passed by the Collector, Pune, initially approached this Court by filing Writ Petition (St.) No.10612 of 2024. However, said writ petition came to be withdrawn without adjudication on merits. Thereafter, respondent Nos.4 and 5 preferred an Appeal being No.150 of 2023 before the Commissioner of State Excise, challenging the very same order dated 5th April 2024. The Commissioner, by his order, was pleased to allow the said appeal and set aside the Collector's orders dated 5th April 2024 and 19th April 2024, thereby directing restoration of the FL-II license in the names of respondent Nos.4 and 5. The petitioners, being dissatisfied with the said appellate order, filed a revision application before the State Government under the relevant provisions. However, by the impugned order, the State Government was pleased to dismiss the revision application, thereby affirming the order of the Commissioner. Being aggrieved thereby, the petitioners have approached this Court by way of the present writ petition.

11. Learned counsel appearing for the petitioners, by inviting this Court's attention to the various documents forming part of the application submitted for transfer of license—such as the affidavit purportedly signed by petitioner No.1, Power of Attorney dated 10th June 2022, declaration of petitioner No.1 addressed to the Collector, and copy of Aadhaar Card—vehemently submitted that all such documents are forged and fabricated. It was submitted that petitioner No.1 had neither executed nor was aware of the existence of these documents, and that the same had been manufactured by respondent Nos.4 and 5 with the aid of certain associates, including the person impersonating petitioner No.1. Learned counsel submitted that in furtherance of this fraudulent scheme, even the photograph affixed on the documents purporting to be of petitioner No.1 was actually that of an impersonator, and that respondent Nos.4 and 5 went to the extent of creating a forged Aadhaar Card of petitioner No.1—wherein all details such as name, address, and date of birth were identical, save and except the photograph, which was that of the impersonator. In support of this contention, reliance was placed on the original Aadhaar Card, Voter ID, and PAN Card of petitioner No.1. It was submitted that even during the inquiry conducted by the Deputy Superintendent of State Excise, it was revealed that the documents relied upon by respondent Nos.4 and 5 for securing the transfer of the license were forged.

12. The learned counsel for the petitioners submitted that the appellate and revisional authorities, by setting aside the Collector's order, had effectively conferred legitimacy upon a transaction tainted by forgery, thereby granting relief to individuals who had sought to secure a government license through dishonest means.

He, therefore, contended that the impugned orders are perverse, contrary to public interest, and liable to be quashed and set aside.

13. Per contra, learned counsel appearing for respondent Nos.4 and 5 opposed the writ petition. He submitted that petitioner No.1 has not approached this Court with clean hands, having failed to disclose the existence of an agreement and Power of Attorney allegedly executed in favour of Mr. Vyankatesh Kotalwar on 18th and 19th September 2017. According to the learned counsel, the said documents were executed with the intent of circumventing the statutory provisions and avoiding payment of privilege fees. It was further submitted that respondent Nos.4 and 5 had deposited an amount of ₹20,00,000/- into the bank account of petitioner No.1, which fact has not been denied by the petitioners. He submitted that the application for renewal of the vendor's license and the application for transfer of the same were both submitted on 15th June 2022. In view of the Circular dated 23rd February 2021 issued by the Commissioner of State Excise, it was mandatory for the licensee to submit the renewal application in person before the concerned authority. It was accordingly submitted that petitioner No.1 had, on 15th June 2022, appeared in person before the State Excise Department and submitted both applications jointly with respondent Nos.4 and 5, thereby lending authenticity to the proceedings.

14. The learned counsel further contended that the concerned Inspector of State Excise personally met petitioner No.1 and respondent Nos.4 and 5, recorded their statements, and submitted his report dated 18th July 2022 to the Superintendent of State

Excise, along with the purported statement of petitioner No.1. It was, therefore, urged that the entire process culminating in the transfer of the license was duly conducted under the supervision and endorsement of the State Excise Department, and the petitioner is now attempting to backtrack from the position earlier adopted by him. It was further argued that under the provisions of the Maharashtra Prohibition Act, 1949, the Collector does not possess any power of review and, therefore, could not have recalled or set aside his earlier order dated 17th August 2022 permitting the transfer of the license in favour of respondent Nos.4 and 5. The learned counsel thus submitted that the impugned orders passed by the Appellate and Revisional Authorities are well-reasoned, passed in accordance with law, and do not warrant interference by this Court in exercise of its writ jurisdiction.

15. I have considered the rival contentions advanced by the learned counsel appearing for the respective parties. The submissions made raise serious questions not only regarding the procedural legality of the transfer of FL-II license in favour of respondent Nos.4 and 5, but also raise allegations of fraudulent conduct, impersonation, and fabrication of documents in the context of a public license governed by statutory norms. In that view of the matter, the rival contentions fall for determination in the present writ petition.

16. In order to properly adjudicate the controversy between the parties, it is essential to examine the genesis of the dispute, particularly the application submitted by respondent Nos.4 and 5 for transfer of license originally standing in the name of petitioner

No.1. According to the petitioners, the seven documents forming the foundation of the transfer application—including affidavit-cum-declaration, power of attorney, statement of petitioner No.1 dated 30 June 2022, deed of assignment, and supporting identification documents—are alleged to be forged and fabricated. Therefore, the central issue that arises for consideration is whether, on a prima facie examination, these documents bear indications of forgery and whether the statutory authorities failed to discharge their obligation to scrutinize these documents properly prior to acting upon them.

17. In furtherance of the said issue, this Court called for the original file pertaining to the application for transfer of license, as maintained by the State Excise Department, along with all original documents furnished by respondent Nos.4 and 5 in support of their application. Simultaneously, I have also examined the original documents produced by the petitioners in this Court, including the PAN Card, Aadhaar Card, and Passport of petitioner No.1, with specific reference to the photograph and signature appearing thereon, for the purpose of conducting a comparative analysis and verifying the authenticity of the identity of the person who had submitted the transfer application.

18. Upon careful comparison of the photographs affixed to the documents submitted by respondent Nos.4 and 5 with those produced by the petitioner, it is patently evident that the affidavit-cum-declaration submitted along with the application for transfer of license does not bear the photograph of petitioner No.1. A comparison with the photograph on the passport and Aadhaar

Card of petitioner No.1 establishes, beyond any reasonable doubt, that the person depicted in the application for transfer is not the same individual. Further, the Aadhaar Card annexed with the transfer application bears biographical details matching those of petitioner No.1 but bears a different photograph, indicating that it was a forged document containing authentic demographic information but falsely identifying a different individual as petitioner No.1.

19. Likewise, the statement dated 30th June 2022 purportedly recorded by one Nandkumar S. Jadhav, Inspector of State Excise, also contains a photograph that does not match the photograph of petitioner No.1 as available on his passport and Aadhaar Card. More significantly, the signature appearing on the said statement differs materially from the signature of petitioner No.1 as reflected on his PAN Card, Passport and other authentic documents placed on record. These variations are not minor or clerical in nature, but are of such magnitude that they cast serious doubt on the genuineness and authenticity of the documents relied upon by respondent Nos.4 and 5.

20. The record further reveals that an inquiry was duly directed by the Superintendent of State Excise, Pune, in response to the complaint lodged by petitioner No.1 alleging fraudulent transfer of the FL-II license. The Deputy Superintendent of State Excise, who was entrusted with the task of conducting the inquiry, recorded the statement of the concerned Excise Inspector, Mr. Nandkumar S. Jadhav. In his deposition, Mr. Jadhav candidly admitted that he had verified the identity of the person accompanying respondent

Nos.4 and 5 at the relevant time based on the Aadhaar Card produced by that person, and that he believed the said person to be petitioner No.1. However, upon being confronted with the genuine Aadhaar Card and other identification documents of petitioner No.1 during the course of the departmental inquiry, Mr. Jadhav conceded that the person who appeared before him was not, in fact, petitioner No.1. This crucial admission by the Excise Inspector corroborates the petitioners' case that an impersonator was produced in place of petitioner No.1 and that the Excise Department was misled into accepting forged documents and recording a false identity.

21. This admission not only discredits the original inquiry undertaken by the Excise Inspector at the time of processing the transfer application, but also underscores the fundamental procedural lapses committed by the Department in verifying the identity of the applicant before effecting a transfer of a government-issued license. It is trite law that any administrative order obtained by fraud is a nullity in the eyes of law and is liable to be recalled once fraud is established.

22. This Court, upon perusal of the inquiry report submitted by the Deputy Superintendent of State Excise, finds substance in the contention of the petitioners. The said report records specific findings to the effect that several crucial documents annexed by respondent Nos.4 and 5 in support of their request for transfer of the FL-II license—including the deed of assignment, affidavit of petitioner No.1, statement dated 30th June 2022, and Power of Attorney—were not genuine and appeared to be forged and fabricated. It was in this background that the Collector, Pune exercised his authority to recall the order of transfer, as the very basis for such transfer—i.e., the documents relied upon—was vitiated by fraud.

23. Upon meticulous examination of the material placed on record, particularly the statement purportedly made by petitioner No.1 dated 30th June 2022 before the Inspector of State Excise; the Power of Attorney dated 10th June 2022; the declaration allegedly made by petitioner No.1 addressed to the Collector (page 80 of the record); the deed of assignment (page 89); the affidavit(s) of petitioner No.1 at pages 95 and 98; and the Aadhaar Card annexed at page 107, I am satisfied that these documents do not bear the genuine signatures or photographs of petitioner No.1. A comparative analysis with the authenticated documents produced by the petitioner, namely his Passport, Aadhaar Card, and PAN Card, clearly establishes significant discrepancies in both the signatures and the photographs. These discrepancies are not minor or incidental, but fundamental and material, going to the root of the matter. The signatures on the impugned documents do not match those on the genuine documents of petitioner No.1, and the photograph annexed with the Aadhaar Card filed by respondent Nos.4 and 5, as well as the statement recorded by the Excise Inspector, visibly depict a different individual altogether. The inference, therefore, is inescapable that these documents were forged and fabricated to impersonate petitioner No.1 and to unlawfully secure transfer of the FL-II license.

24. Once it is demonstrably established that the foundational documents forming the basis of the transfer application were forged and fabricated, the inevitable consequence in law is that any benefit derived therefrom must be reversed. The principle of "fraud vitiates all" is well-settled in Indian jurisprudence. An act founded on fraud has no legal sanctity and cannot be permitted to sustain itself in law. A fraudulent act cannot be permitted to stand validated merely because it succeeded in passing through administrative scrutiny at an earlier stage. As the Hon'ble Supreme Court has held time and again, fraud unravels everything. The benefit derived by respondent Nos.4 and 5 on the strength of forged and fabricated documents is, therefore, liable to be annulled and restored to status quo ante.

25. As regards the contention urged on behalf of respondent Nos.4 and 5 that the Collector lacked the statutory authority to review or recall his earlier order permitting the transfer of license, the same is without merit. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550, the Hon'ble Supreme Court authoritatively held that an order obtained by fraud—whether from a judicial, quasi-judicial, or administrative authority—can always be recalled by the same authority, even in the absence of an express statutory power of review. It was held:

> "No judgment of a court, no order of a tribunal can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.

> Once it is established that any order was obtained by fraud, the authority concerned is duty-bound to recall it to maintain the sanctity of the process of law."

26. Thus, even assuming for the sake of argument that there is no express provision under the Maharashtra Prohibition Act, 1949, empowering the Collector to review or recall his own order, he is nonetheless conferred with inherent power to do so where the order has been obtained through fraud and impersonation. Such power flows not from statute alone but from the fundamental duty of the adjudicating authority to ensure that its own orders are not used as instruments of fraud or deceit.

27. It further appears that the Revisional Authority, i.e., respondent No.1, has laid undue reliance upon a report submitted by the Commissioner of Police to arrive at a conclusion that the documents were not forged. However, a bare perusal of the said report reveals that it is vague, inconclusive, and does not undertake any forensic or comparative analysis of the documents alleged to be forged. The report merely states in general terms that no conclusive evidence of forgery was found, without dealing with the inconsistencies in photographs, signatures, or other relevant material. While the outcome of criminal proceedings will depend upon detailed trial and adjudication of evidence, this Court, while exercising powers under Article 226 of the Constitution, is not precluded from forming a prima facie opinion based on material available on record, including original documents and the outcome of administrative inquiries conducted under the Excise Act.

28. In *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221, the

Supreme Court once again reiterated that fraud vitiates even the most solemn proceedings. It observed:

> "It is a settled proposition of law that a judgment or decree obtained by fraud is a nullity and non est in the eye of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court... Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss."

29. Thus, once forgery is prima facie established, this Court cannot remain a mute spectator and is duty-bound to exercise its constitutional powers to prevent abuse of statutory processes and uphold the rule of law.

30. In view of the foregoing discussion, this Court is of the considered opinion that the impugned orders passed by respondent Nos.1 and 2, namely the Commissioner of State Excise and the State Government, cannot be sustained in law. These orders are vitiated by complete non-application of mind to the material discrepancies and forged documents, and by failure to appreciate that the Collector was well within his powers to recall an order tainted by fraud. The appellate and revisional authorities have, in effect, legitimized a fraudulent transfer of a statutory license, which is impermissible in law.

31. Rule is made absolute in terms of prayer clause (a). No costs.

32. Pending interlocutory application(s), if any, stand disposed of.

33. At this stage, learned advocate for the respondents prayed for stay of this judgment and order. However, the considering the reasons assigned in the judgment, request for stay is rejected.

(AMIT BORKAR, J.)