



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

**WRIT PETITION NO. 6228/2024**

**Bhartidevi Wd/o Motiram Moryani,**  
Aged about 62 years, Occ. Business,  
R/o. Kashmiri Galli, Dr. Ambedkar Road,  
Panchpaoli, Nagpur

**.... PETITIONER(S)**

**// VERSUS //**

- (1) **State of Maharashtra,**  
Through its Secretary,  
Department of State Excise,  
Mantralaya, Mumbai-32
- (2) **The Collector,**  
Nagpur, having its office at Collectorate  
Building, Civil Lines, Nagpur
- (3) **The Commissioner of State Excise,**  
Old Custom House, Mumbai
- (4) **Chandrabhushan S/o Bajranglala Jaiswal,**  
Dead Through Legal Representatives
- 4(a) **Smt. Sandhya Wd/o Chandrabhushan Jaiswal,**  
Aged about 65 years, Occ. Business,
- 4(b) **Ku. Khushboo D/o Chandrabhushan Jaiswal,**  
**@ Smt. Khushboo Wd/o Rahul Jaiswal,**  
Aged about 41 years, Occ. Business,
- 4(c) **Ku. Shradha D/o Chandrabhushan Jaiswal**  
**@ Smt. Sharda W/o Amar Jaiswal,**  
Aged about 38 years, Occ. Business,

4(d) **Ku. Sarika D/o Chandrabhushan Jaiswal**  
**@ Smt. Sarika W/o Ram Jaiswal,**  
Aged about 37 years, Occ. Business,

4(e) **Shri Ankesh S/o Chandrabhushan Jaiswal,**  
Aged about 37 years, Occ. Business,

All R/o. Plot No. 119, Sant Lahanuji Nagar,  
Jaripatka, Nagpur

**Added LR's of Respondent No. 4 as per the  
Court's order dated 11/12/2024**

(5) **Smt. Sandhya Wd/o Chandrabhushan Jaiswal,**  
Aged about 62 years, Occ. Business,  
R/o. Ring Road, Nara Road, Jaripatka, Nagpur

(6) **Smt. Anita Wd/o Vinod Jaiswal,**  
Aged about 66 years,  
R/o. Rajaji Ward, Ramtek, Tahsil Ramtek,  
District Nagpur

(7) **Mr. Vipin Itankar,**  
The Collector, Nagpur,  
Having its Office at Collectorate  
Building, Civil Lines, Nagpur

**.... RESPONDENT(S)**

Shri Sunil Manohar, Senior Advocate a/w Shri A.S. Manohar and  
Shri Y.N. Sambre, Advocates for the Petitioner  
Shri F.T. Mirza, Senior Advocate a/w Ms. D. I. Charlewar, AGP  
for the Respondent/State  
Shri S.M. Puranik, Advocate for the Respondent No. 5  
Shri M.P. Khajanchi, Advocate for the Respondent No. 6

**CORAM : M.S. JAWALKAR, J.**

**CLOSED FOR JUDGMENT ON :- MARCH 19, 2025**

**JUDGMENT PRONOUNCED ON :- MAY 05, 2025**

**JUDGMENT :-**

. The present Writ Petition is filed by the Petitioner challenging the order dated 24/09/2024 passed by the Hon'ble Minister of Excise, State of Maharashtra rejecting the Revision Petition filed by the Petitioner and the order dated 25/09/2024 passed by the Respondent No. 2 – Collector, Nagpur and its implementation of the order dated 24/09/2024.

(2) The facts giving rise for filing of the present Writ Petition are as under:-

(3) In the year 1974, a CL-III License was issued in the name of Madhav Prasad Jaiswal. The said License remained in a lapsed condition and was later re-validated in the year 1984 by a relative of Madhav Prasad Jaiswal – Smt. Jamunadevi Bajranglal Jaiswal. As soon as the said License was re-validated, Madhav Prasad inducted Jamunadevi Jaiswal as a Partner in the business.

On 08/10/1988, Madhav Prasad expired. Thereafter, on 22/02/1989, the said License was transferred in the name of Smt. Jamunadevi Jaiswal after following the due procedure of law and by obtaining no objection from the legal heirs of Shri Madhav Prasad. On 27/02/1989, the said License was shifted from Kachurwahi to Kandri at the request of Jamunadevi Jaiswal. On 31/03/1989, Smt. Jamunadevi Jaiswal inducted daughter-in-law i.e. Respondent No. 5 – Smt. Sandhya Jaiswal as a Partner, whereas only after six months i.e. in September, 1999, Smt. Jamunadevi Jaiswal withdrew from the License. Thereafter, on 05/07/1999, the License was shifted from Kandri, Ramtek to Shanti Nagar, Nagpur at the request made by Smt. Sandhya Jaiswal. On 31/03/2002, the said CL-III License, which was in the name of Sandhya Jaiswal, was transferred in the name of the present Petitioner by accepting the consideration of Rs. 18 lakhs, whereas the Petitioner had also deposited five times the privilege fees to the State Government i.e. Rs. 5,85,000/- for transfer of the said License. The transfer was made in accordance with Rule 28 of the Maharashtra Country Liquor Rules, 1973.

(4) It is contended that somewhere in the year 2004, i.e. after a period of 17 years from the first transfer of the License in the name of Jamunadevi, the Respondent Nos. 4 and 5, in active connivance and with the help of one Ashish Jaiswal (who is apparently a Member of the Legislative Assembly) developed dishonest intentions and decided to usurp the License of the Petitioner by bending the law and statutory procedures established by law. It is also contended that though the Respondent No. 6 never raised any grievance from 1989 when the License was first transferred, after lapse of around 15 years, raised grievance regarding transfer of the said CL-III License by making various Representations.

(5) It is submitted that on 18/03/2004, the State Government directed the Collector, Nagpur to decide the Representation filed by the Respondent No. 6 within two months. On 20/10/2004, in the meanwhile, the Superintendent, State Excise Department issued a letter evidencing that the records relating to the present case is not available in the office of the State Excise. On 17/05/2005, the Collector, Nagpur passed an order holding that

the transfer of the said CL-III License in the name of Smt. Jamunadevi Jaiswal is legal and proper. The Collector, Nagpur also preferred a communication to the State Government informing that the Respondent No. 6 ought to have preferred an Appeal in case she wants to prosecute the matter.

(6) It is submitted that on 15/07/2005, the State Government called upon the Collector, Nagpur to review his decision. On 12/05/2008, the Respondent No. 2 – Collector, Nagpur passed an order directing immediate suspension of the License in the name of the Petitioner by usurping power of review by observing that the same came to be vested on him by the State Government as per the order dated 15/07/2005. Being aggrieved by the same, the Petitioner filed Appeal under Section 137(2) of the Maharashtra Prohibition Act, 1949 before the Respondent No. 3 wherein the Respondent No. 3 – Commissioner refused to grant interim relief in favour of the Petitioner.

(7) It is submitted that the Petitioner immediately filed a Revision Application before the Respondent No. 1. On 22/10/2008, the Respondent No. 1 granted interim relief in

favour of the Petitioner and the License premise was still being run by the Petitioner. On 06/10/2008, the Respondent No. 3 – Commissioner rejected the Appeal preferred by the Petitioner. On 28/08/2009, the Hon'ble Minister of State for Excise allowed the Revision Petition filed by the Petitioner. On 14/01/2010, the Respondent No. 6 preferred a Writ Petition challenging the said order passed by the Respondent No. 1 before this Court. On 16/09/2022, this Court partly allowed the said Writ Petition and remanded the matter to be decided afresh, however with a rider that in case the Revisional Authority passes an order adverse to the interest of the present Petitioner, the present Petitioner shall be protected for a period of six weeks.

(8) It is submitted that on 14/10/2022, the present Petitioner preferred an SLP bearing No. 19181/2022 before the Hon'ble Supreme Court challenging the order dated 16/09/2022 passed by this Court. On 22/11/2022, the Hon'ble Supreme Court stayed the order dated 16/09/2022 passed by this Court. On 05/08/2024, the Hon'ble Supreme Court confirmed the order passed by this Court and has also extended the protection of six

weeks in favour of the Petitioner in case an adverse order is passed against her. On 29/08/2024, due to her poor medical condition and since she was hospitalized from 29/08/2024 to 16/09/2024, the Petitioner preferred an adjournment application. Even thereafter due to medical ailment, she was not keeping well and required medical attention. It is contended that on 24/09/2024, without granting ample opportunity of hearing to the Petitioner, as directed by the Hon'ble Supreme Court, in a hurried manner, the Minister of State Excise Department rejected the Revision Petition filed by the Petitioner. The said order dated 24/09/2024 is the subject matter of challenge in the present Writ Petition.

(9) Shri Sunil Manohar, learned Senior Counsel for the Petitioner submits that the order dated 24/09/2024 passed by the Minister, State Excise Department is based on conjectures and surmises and in sheer neglect of the correct factual as well as legal position. It seems that the power of Revision is exercised by the Minister in a bid to support MLA Ashish Jaiswal who happens to be the nephew of the Respondent No. 6 and who was

also present in the hearing before the Minister of Excise. It is clear that the order dated 24/09/2024 passed by the Minister, State Excise Department is malafide and was passed for considerations other than legal. The Hon'ble Supreme Court, while disposing of the SLP preferred by the present petitioner, has specifically directed the Revisional Authority i.e. the Minister to grant ample opportunity of hearing to the Petitioner before deciding the issues in question. However, the Minister has failed to grant the effective opportunity of hearing inasmuch as the matter was proceeded without allowing submissions to be made on behalf of the present Petitioner. The Minister ought to have granted appropriate time to the present Petitioner inasmuch as the Petitioner was suffering from Gastro Oesophageal Reflux Disease, Hypertension and had undergone major surgery and was advised complete bed rest. In such circumstances, proceeding with an assumption that the Petitioner has nothing more to submit is not only erroneous but causes grave prejudice to the case of the Petitioner. As such, the order dated 24/09/2024 is passed without following the principles of natural

justice and is liable to be quashed and set aside on this count alone.

(10) It is further submitted that a bare perusal of the impugned order dated 24/09/2024 would show that the Minister of State, Excise Department has left the issue whether the power of review could be exercised by Respondent No. 2 is left unanswered. The Minister, State Excise Department, did not have a valid and legal reason whereby the power of review could have been exercised by Respondent No. 2 and in an attempt to support the case of Respondent No. 6, has left the important issue unanswered. On this count alone, the order dated 24/09/2024 is ex-facie illegal, unlawful and liable to be quashed and set aside.

(11) Shri Sunil Manohar, learned Senior Counsel for the Petitioner, in support of his contentions, relied on the following citations:-

(a) **I.T.C. Bhandrachalam Paperboards & another vs. Mandal Revenue Officer, A.P. & others, (1996) 6 SCC 634;**

(b) **Laxman R. Vajage vs. Collector of Bombay & others, 2004 SCC OnLine Bom 782;**

(c) **Nilesh alias Narayan Y. Jadhav vs. State of Maharashtra & others, AIR 1992 BOMBAY 225; &**

(d) **Writ Petition No. 4994/2004 (Balabai Vasantrao Patil vs. The Collector of Kolhapur & others)**

(12) *Per contra*, Shri F.T. Mirza, learned Senior Counsel for the Respondent/State submitted that the Government, vide its Order No.3685/403/PRO-3 dated 20/03/1986, while inducting Jamunadevi as a Partner, put following conditions as per the then existing Government Policy. (a) the share of the incoming partner shall be less than that of the original partner; and (b) the incoming partner shall have no right whatsoever on the license, in case the original licensee is not related to the license in the event of death or any other reason.

(13) It is submitted that after the death of Madhav Prasad Jaiswal, the partnership deed was required to be terminated and the license could not have been transferred in the name of the partner. Therefore, no justification has been submitted by the Petitioner as to how the license was transferred in the name of the partner by taking a decision contrary to the policy of the Government and inconsistent with the terms of reference. After the death of the original licensee, the license could be transferred in favor of his legal heirs. If after the death of the original licensee there is a dispute between the heirs or no one applies, the license should be suspended without renewal. But in this case, after the death of the original licensee, the action of naming the heirs in the license without bringing the name of the heirs in the license and leaving the licensee in the name of others was completely wrong and illegal.

(14) Further, the Respondent No. 2 is empowered to delete the name of the original licensee. The name of the partner was also included by order of the Government, Respondent No. 6, being the legal heir of the original licensee, was deprived of the right to

the license and the Petitioner is availing the benefit of the license which was wrongly obtained without any legal right by misrepresentation. In this case, the CL-III license of Madhav Prasad Jaiswal could not have been transferred to anyone other than the heirs of Madhav Prasad Jaiswal. Therefore, the process of transferring the names of Smt. Jamnabai Bajrangi Jaiswal, then Respondent No. 5 and then the Petitioner is wrong and needs to be cancelled. The Respondent No. 6 is the legal heir of Madhav Prasad Jaiswal & can only have benefit of the license. Thus, it is submitted that the orders of the Respondent No. 2 - Collector, Nagpur dated 12/05/2008 and Respondent No. 3 - Commissioner, State Excise dated 06/10/2008 are correct, legal and as the case is taken on the merits, there is no need for any intervention or modification and the said orders are rightly upheld by the learned Minister by its order dated 24/09/2024 directing Respondent No. 2 - Collector, Nagpur to remove the name of the Petitioner in the CL-III License.

(15) It is submitted that the order of the Hon'ble Apex Court was passed on 05/08/2024 and thereafter, on 29/08/2024 hearing

was conducted before the Respondent No. 1 and on 24/09/2024, a detailed order was passed by the Respondent No. 1 which later on was implemented by deleting the name of Petitioner from the license. Thus, it cannot be said that the Respondent No. 2 - Collector, Nagpur has hurriedly implemented the order of Respondent No. 1.

(16) Apart from above mentioned facts, the Government order dated 06/07/1989 lays down various provisions and guidelines to meet different contingencies in Annexures A to D. Annexure 'A' provides for the modalities to be followed for restoration of a licence. Annexure 'B' provides for the modalities to be followed for shifting the place of businesses under licenses. Annexure 'C' regulates admitting of partners by the license holders and additions and deletions of the partners by the license holders. Annexure 'D' provides for the manner in which the license can be transferred. Annexure 'D' clearly governs the situation in the matter in hand. It provides that a license standing in the name of a person can only be transferred in the name of his legal heirs after demise of the license holder. If there exists some dispute

among heirs then the license be kept in suspension till resolution of dispute.

(17) Shri F.T. Mirza, learned Senior Counsel for the Respondent/State, in support of his contentions, relied on the following citations:-

(a) **Yashwant S/o Motiram Patel & another vs. State of Maharashtra & others, 2009(6) Mh.L.J., 555; &**

(b) **Rameshreddy Muttyamreddy Muttalwad vs. State of Maharashtra & others, 2021(6) Mh.L.J. 733**

(18) Shri S.M. Puranik, learned Counsel for the Respondent No. 5 submitted that the liquor license has chequered history. Initially, the CL-III license was sanctioned in the name of Madhavprasad Jaiswal in 1974, but he did not start the liquor shop. Thereafter, in 1984-85, Madhavprasad, in partnership with Jamunabai Jaiswal, started the liquor shop at Kachurwahi. Madhavprasad passed away on 08/10/1988. It is submitted that

Smt. Jamunadevi Jaiswal had met the family members of Madhavprasad in order to include their names in the said liquor licence. All the legal heirs of Madhavprasad had given a consent letter to the Excise Officials and their statements were recorded by the Department. After completing all the formalities, the Excise Department transferred the said CL-III license in the name of Jamunadevi Jaiswal on 20/03/1989.

(19) It is further submitted that from 1989 to 1999, the said CL-III license was operational at Kandri. On 31/03/1999, Jamunadevi inducted her daughter in law - Sandhya Jaiswal as a partner in the said license, and after six months, she withdrew from the partnership and Sandhya became the licensee for the said CL-III license. On 05/07/1999, Sandhya sought permission from the Excise Department and got it transferred to Shanti Nagar, Nagpur. It needs to be mentioned here that Ashish Jaiswal, nephew of Anita Jaiswal, was elected as MLA from Ramtek and by misusing his position as MLA managed to remove the file pertaining to the transfer of CL-III license from the name of Madhavprasad Jaiswal to Jamunadevi Jaiswal, and thereafter,

raised objection to transfer of said license from Madhavprasad to Jamunabai and then to Sandhya Jaiswal. Even as the Excise Officials were completing the formalities, the Petitioner had deposited the license fee as well as the privilege fee in Reserve Bank of India. The reason for such undue haste was the fact that from 01/04/2002, the license fee was raised by 3 times by the State Government.

(20) It is submitted that Ashish Jaiswal, by misusing his Authority as an MLA, compelled the Collector, Nagpur to transfer the said CL-III licence from the name of the Petitioner to the name of Smt Anita Vinod Jaiswal and shifted it to Kandri. This action of the Collector, Nagpur was challenged by the Petitioner before the Hon'ble Minister of State for State Excise. The said minister had ordered the transfer of said CL-III license in the name of the Petitioner.

(21) It is submitted that in a related matter, the then Minister for State Excise Shri Ganesh Naik had remanded the Revision filed by Smt Sandhya Jaiswal to Collector, Nagpur to make a thorough inquiry and take a decision. Accordingly the then

Collector, Nagpur had conducted a thorough inquiry and had come to a conclusion that the CL-III license was illegally transferred from the name of Smt Sandhya Jaiswal to the name of the Petitioner. However, he did not pass any order in view of the pendency of Writ Petition No. 405 of 2010 pending final decision before this Court.

(22) It is submitted after the matter was remitted back to the Minister by the Hon'ble Supreme Court, the Respondent No. 5 herein had filed her reply. The Minister for State Excise has on 24/09/2024 has passed the order thereby without considering the reply of Respondent No. 5, has transferred the said CL-III license in the name of Smt. Anita Jaiswal. The very next day, the Collector, Nagpur closed down the shop at Nagpur and ordered its shifting to Kandri.

(23) Shri M.P. Khajanchi, learned Counsel for the Respondent No. 6 submitted that the Petitioner has suppressed the material documents from this Court and has made false suggestions and pleadings in the Petition so as to suit the own purposes of the Petitioner. The original licensee Madhav Jaiswal expired leaving

behind the Respondent No. 6 and other legal heirs. Hence, in view of the order dated 20/03/1986, the said Jamnabai had no authority to continue with the license and that the license ought to have been devolved upon the legal heirs of deceased Madhav Jaiswal. But Jamnadevi illegally transferred the license in her own name and got the shop shifted from village Kachurwahi to Kandri. It is submitted that the transfer fees for transferring the license from Kacharwahi to Kandri was paid on 04/03/1989. The entire process was done illegally and in utter disregard to principles of law by one Chandrabhushan B Jaiswal, husband of Respondent No. 5 with connivance of the then Clerk Smt. Neral, Department of State Excise, Nagpur. The transfer of license and shifting of shop was done by Jamnabai within a short span of four months from the date of death of original licensee Madhav Prasad Jaiswal. The said act of transfer of license and shifting of shop is totally illegal and against the Policy of Government existing at the relevant time. It is also in clear violation of the conditions imposed at the time of inducting Jamnabai as incoming partner.

(24) It is submitted that as per the then existing policy of the State Government, it is beyond the jurisdiction of Collector to enter and/or delete the name of partner, when in fact the name of Jamnabai was inducted as an incoming partner by imposing two conditions mentioned herein above. It is relevant to note that the State Government had issued Circulars directing the Collector and Superintendent of State Excise Department not to transfer the license in the name of partner and/or not to renew the license, if the application is not signed by the original licensee. Prior to 1996, powers to add, delete and transfer the name of existing partner were not at all vested with the Collector. It is only, as late as on 20/08/1996, the aforesaid powers were given to the Collector.

(25) It is submitted that the same has been done with ulterior motives to deprive the Respondent No. 6 of her valuable legal right to succeed to the license held by original licensee Madhav Prasad Jaiswal. Smt. Jamnabai has not stopped here and put a step forward and illegally, on 31/03/1999 inducted her daughter in law Smt. Sandhya i.e. Respondent No. 5 as a partner, and

thereafter, within a span of six months in or about September 1999, withdrew her name from the license and thereby transferred the license in the name of her daughter-in-law. When transfer of license in name of Smt. Jamnabai itself was *void ab initio*, induction of Respondent No. 5 as partner by Smt. Jamnabai is also *void ab initio*. The Respondent No. 5 - Sandhya again illegally transferred the said license in the name of the Petitioner and transferred it to Shanti Nagar, Nagpur.

(26) It is submitted that in the year 2003, the disputes amongst the legal heirs of deceased Madhav Prasad Jaiswal were resolved and it was decided that the Respondent No. 6, being the widow of son of Madhav Prasad, the original licensee, the said license should be transferred in her name. Hence, in accordance with the policy of the State Government, as the legal heir of original licensee deceased Madhav Prasad Jaiswal, in her legal right, the Respondent No. 6 approached the office of State Excise to get the license transferred in her name. At that time, it revealed to Respondent No. 6 that, behind her back and even at the back of other legal representatives of original licensee deceased Madhav

Prasad Jaiswal, the illegal transfers and shifting of shop as mentioned above was done by Jamnabai and Sandhya fraudulently and with ulterior motives to deprive the rightful persons, i.e, the legal heirs to succeed the license.

(27) It is submitted that the Collector after giving opportunity of hearing to all the parties, passed a reasoned order dated 12/05/2008 as per the directions of State Government and in exercise of powers under section 54 (i) (e) of the Maharashtra Prohibition Act 1949, and thereby suspended the license and directed to transfer the same in the name of Respondent No. 6 and further directed to shift it back to Kacharwahi i.e. to its original place.

(28) It is submitted that the State Government had put forth conditions while inducting Jamnabai as partner in the license. As per those conditions, in the event of death of original licensee, the incoming partner shall have no right to transfer the license in his/her favour. Hence, Jamnabai had no authority to get the license transferred in her favour. Moreover, Jamnabai had never obtained any "No Objection" from any of the legal heirs of

deceased Madhav Prasad including the Respondent No. 6. It is pertinent to note that the order of the then Additional Collector whereby the name of Smt. Jamnabai was inducted as partner was void ab initio as in terms of the prevalent Government policy. Even the State Government did not have the jurisdiction to delete the name of original licensee and induct someone else as partner. The said order of induction of Smt. Jamnabai as partner was obtained by fraud and misrepresentation, as would be clear from the observations of Hon'ble Collector in its order dated 12/05/2008.

(29) It is submitted that to fortify the said fraud and misrepresentation, even the records were tampered and got removed from the custody of Officials to enable Jamnabai to hide her misdeeds. This was done in connivance with Smt. N.M. Neral, the then clerk in State Excise Department who had misled the then Superintendent, State Excise. Said Smt. Neral was ordered to be suspended after the Departmental Enquiry. The Respondent No. 6 had also approached the concerned Authority at relevant time making a complaint that access to the record of

the license was not being provided to her and had also requested the Authorities to take criminal action against the concerned persons for missing of the records. On the basis the applications made by the Respondent No. 6, on 14/03/2005, the State Government had appointed Divisional Deputy Commissioner, State Excise to enquire in the matter. In response thereto, the Divisional Deputy Commissioner State Excise had submitted his report to the Principal Secretary, State Excise and had also issued a communication dated 29/07/2006 in this regard to the Superintendent of State Excise, Nagpur. By the said report, the Divisional Deputy Commissioner State Excise has specifically highlighted the illegalities committed by Shri Kaple and also the special favour shown by him to the Petitioner. Due to the fraudulent and illegal acts of Jamnabai, Sandhya and Petitioner, the Respondent No. 6 was required to run from pillar to post to contest many litigations without any fault on her part.

(30) The Respondent No. 6 submits that the Hon'ble Minister State Excise has passed a reasoned order by giving ample opportunity of being heard to the Petitioner. The Petitioner has

tried to raise a lame ground that sufficient opportunity was not granted to the Petitioner. It is submitted that the impugned order clearly reflects that the Petitioner herself had sought 15 days' time to file written submissions. The impugned order also demonstrates that even during the said period of 15 days as sought by Petitioner, she did not file her written submissions. As such, ample and reasonable opportunity was granted to the Petitioner and despite that she did not place on record the written submissions. Insofar the allegations made in the Petition regarding the nephew of the Respondent No. 6, namely MLA Ashish Jaiswal, they are without any substance since the Petitioner has raised the said allegations without an iota of material on record. Hence, it is submitted that the present Petition filed by the Petitioner is false, frivolous and vexatious and liable to be dismissed with heavy compensatory costs.

(31) Shri M.P. Khajanchi, learned Counsel for the Respondent No. 6, in support of his contentions, relied on the following citations:-

(a) **Uttam Shamlal Jaiswal vs. State of Maharashtra & others, 1998(1) Mh.L.J., 333;**

(b) **Prabhakar S/o Mohiniraj Wable vs. The State of Maharashtra & others, 2002(2) ALL MR 921; &**

(c) **United India Insurance Co. Ltd., vs. Rajendra Singh & others, (2000) 3 SCC 581;**

(32) Heard learned Counsel for the respective parties at length, perused the impugned order, documents placed on record and considered the citations relied on by the parties.

(33) Originally, in the year 1974, a CL-III License was issued in the name of Madhav Prasad Jaiswal. The said License remained in a lapsed condition and was later re-validated in the year 1984 by a relative of Madhav Prasad Jaiswal – Smt. Jamunadevi Bajranglal Jaiswal. Madhav Prasad inducted Jamunadevi Jaiswal as a Partner in the business. On 08/10/1988, Madhav Prasad expired. The said License was transferred in the name of

Smt. Jamunadevi Jaiswal. It is the contention of the Petitioner that the said transfer was done after following the due procedure of law and by obtaining no objection from the legal heirs of Shri Madhav Prasad. The said License was shifted from Kachurwahi to Kandri at the request of Jamunadevi Jaiswal. The said License was further transferred in the name of the Petitioner by accepting the consideration of Rs. 18 lakhs and the Petitioner paid five times the privilege fees to the State Government for transfer of the said License.

(34) It appears that in the year 2004, i.e. after a period of 15 years from the first transfer of the License in the name of Jamunadevi, the Respondent Nos. 4, 5 & 6 never raised any grievance from 1989 and raised a grievance after 15 years regarding transfer of the said CL-III License by making various Representations and allegation.

(35) The Superintendent, State Excise Department informed that the records relating to the present case is not available in the office of the State Excise. On 17/05/2005, the Collector, Nagpur passed an order holding that the transfer of the said CL-III

License in the name of Smt. Jamunadevi Jaiswal is legal and proper. Thereafter, the Collector, Nagpur passed an order directing suspension of the License in the name of the Petitioner by usurping power of review. The Petitioner filed Appeal before the Respondent No. 3 for grant of interim relief. Immediately, the Petitioner filed Revision before the Respondent No. 1 – State. The Respondent No. 1 – State granted interim relief in favour of the Petitioner and thus the License premise is still being run by the Petitioner. The order passed by this Court in the Writ Petition, whereby the matter was remanded to be decided afresh, is challenged by the present Petitioner in Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court confirmed the order passed by this Court and extended the protection of six weeks in favour of the Petitioner. On 24/09/2024, the Minister, State Excise Department rejected the Revision.

(36) There is no dispute that the Government, vide order dated 20/03/1986, while inducting Jamunadevi as a Partner, following conditions were imposed:- (a) the share of the incoming partner

shall be less than that of the original partner; and (b) the incoming partner shall have no right whatsoever on the license, in case the original licensee is not related to the license in the event of death or any other reason.

(37) It is the contention of the Respondent No. 6 that the CL-III license of Madhav Prasad Jaiswal could not have been transferred to anyone other than the heirs of Madhav Prasad Jaiswal, and therefore, the process of transferring the names of Smt. Jamunabai Bajrangi Jaiswal, then to Respondent No. 5 and then the Petitioner is wrong and needs to be cancelled.

(38) Perusal of the extract register maintained by the Excise Department makes it clear that the name of Jamunabai Jaiswal was inducted as per the order of Government vide CLR 3685/403/PI-3 dated 20/03/1986, upon the conditions referred above. It also reveals that the said License was shifted to Mansar Kandri from Kachurwahi. After the death of Madhav Prasad Jaiswal, the said License was transferred in the name of Jamunabai Jaiswal. Thus, the transfer is effected as per the order dated 20/02/1989 by the learned Additional Collector on

payment of the charges. It appears that the first Representation was made by one Anita Jaiswal on 11/11/2003 claiming that she is the legal heir of the Deceased Madhav Prasad Jaiswal. Thereafter, on 10/03/2004 and 19/03/2004, similar Representations were made. In the Representation dated 18/01/2005, she claimed that after the death of original License Holder, the said License ought not to have been transferred to the Partner, but requires to be transferred in the name of the legal heirs and even if there is any dispute, till the time the dispute gets resolved, the License should be kept suspended. She had also alleged that such transfer of the License is effected in collusion with the Officers of the State Excise Duty and the Employees. It is informed by the Superintendent, State Excise Department that the record of the said License is not traceable. It is alleged by her that the responsible Officer and the Employees, fearing to face action or revealing of the truth, have deliberately disappeared the record of the License.

(39) On 18/03/2004, taking cognizance of the Complaint of the Respondent No. 6 – Anita, the Under Secretary, State of

Maharashtra, Home Department, issued a letter to the Collector, Nagpur. In the said communication, the Secretary referred to the Government policy and claimed that induction of the name of Jamunadevi was subject to the conditions mentioned therein. As such, after the death of Madhav Prasad Jaiswal, the said License ought to have been transferred in the name of the legal heirs or if there is any dispute, till the said disputes were resolved, the License ought to have been suspended. As per the policy then existing, it was mandatory that request to issue License in the name of the Partner should not be considered. It is also mentioned in the said letter that after the death of the License Holder, the License only can be transferred in the name of the legal heirs, otherwise not and directed to the Collector to take fresh decision after granting opportunity to all the concerned and review its order.

(40) The Collector, Nagpur, by its communication 17/05/2005, informed to the Respondent No. 6 that the said License was transferred prior to 14-15 years back and whatever decision taken by the then Officer is correct, copies thereof were sent to the

Under Secretary - Home Department, Jamunadevi Jaiswal and the Petitioner. Therefore, the request of the Respondent No. 6 was rejected. Again by letter dated 17/05/2015, the Superintendent, State Excise Collector, Nagpur informed to the Under Secretary, Home Department that the CL-III License was transferred in the name of Jamunadevi Jaiswal long back i.e. 14 to 15 years ago. The said decision was taken by the then Collector, and if there is any grievance to the Respondent No. 6 in respect of the said decision of the then Collector, she is free to file Appeal. The Under Secretary, in its communication dated 15/07/2005, directed the Collector, Nagpur to take decision. It also appears from the said communication that as there was question raised in the legislative assembly and the MLA is pursuing the matter, the Collector, Nagpur was directed to take concrete decision as early as possible. It also appears that the legal opinion was sought by the Superintendent, State Excise, Nagpur from the Law and Judiciary Department. The opinion was sought in the matter of transfer of CL-III License.

(41) The Superintendent (Legal) informed to the Superintendent, State Excise, Nagpur that with reference to the transfer of CL-III License, Appeal is pending before the Collector, Nagpur. Hence, the questions raised in the matter are hypothetical in nature. He is, therefore, directed to verify from their Administrative Department that policy of the Government in question is published in the Official Gazette as required by Section 139(2) of the Bombay Prohibition Act, 1949 or not, so as to restrict power of the Collector in respect of the transfer of License as per Rule 28 of the Maharashtra Country Liquor Rules, 1973. It was informed to the Counsel for the Petitioner by the Superintendent, State Excise Duty, Nagpur that the information sought for is not available as the original files are not in the record. Thus, if the Respondent No. 6 is aggrieved by any order passed by the Collector, she has the remedy of Appeal under Section 137 of the Bombay Prohibition Act, but, in spite of availing that remedy, it appears that politically motivated actions are being taken by the Respondent No. 6.

(42) Perusal of Rule 28 of the Maharashtra Country Liquor Rules, 1973 makes it very clear that the Collector may permit transfer of License from one name to another or admit or delete the name of any Partner after the License is granted. Thus, there is no restriction as per the Rules that after the death of original License Holder, the same should be transferred in the name of legal heirs. Moreover, from the record, it appears that said Anita Jaiswal has not placed any document to show that she is the legal heir of original License Holder Shri Madhav Prasad Jaiswal. Once an order is passed by the Collector, Nagpur, there was no reason to insist the Collector to pass another order, that too without challenging the earlier order by any of the Respondents.

(43) So far as missing of the original files is concerned, as informed, are not traceable, there cannot be any conclusion in favour or against the Petitioner. There was order by the Collector transferring the License in the name of Jamunadevi Jaiswal, who is also a relative of late Shri Madhav Jaiswal. Therefore, the possibility of extending the no objection by the legal heirs cannot be ruled out. In the order dated 12/05/2008, the Collector,

Nagpur observed that it is absolutely pertinent to note here that although no record of this case for transfer is available, except the entry in License register, the then accorded sanction is not as per the then existing Government policy. It was held that the order is *void ab-initio*, without there being any file on record. On what basis, the Collector came to the conclusion that the order passed is *void ab-initio*. It also reveals that the blame is shifted on one Clerk namely Smt. N.M. Neral, who was chargesheeted for misleading the then Superintendent, State Excise and the Additional Collector, Nagpur, however, the said enquiry never come to any logical conclusion. The said Smt. Neral stood retired also. As such, the observation made in this Paragraph by the Collector is having no basis at all.

(44) So far as the reference of Government policy then existing is concerned, the Respondent No. 6 failed to place on record any Government Notification published in the Official Gazette, so as to get its sanctity. As already referred, the Superintendent (Legal), by the communication dated 13/18.07.2006, informed to the Superintendent, State Excise, Nagpur that with reference to

the transfer of CL-III License, Appeal is pending before the Collector, Nagpur. Hence, the questions raised in the matter are hypothetical in nature. He is, therefore, directed to verify from their Administrative Department that policy of the Government in question is published in the Official Gazette as required by Section 139(2) of the Bombay Prohibition Act, 1949 or not so as to restrict the power of Collector in respect of the transfer of License as per the Rule 28 of the Maharashtra Country Liquor Rules, 1973. Section 139(2) of the Bombay Prohibition Act specifically provides that an order made under sub-section (1) shall, if it is of a general nature of affecting a class of persons, be notified in the Official Gazette.

(45) It appears that such an action after 15 years cannot demolish everything simply, because for 15 years, they slept over. There is neither any misrepresentation on the part of Jamunadevi nor any fraud is substantiated by the Respondents herein. Drawing inference by the Collector that the Petitioner in collusion with the staff, disappeared the files as it would result into quashing of the order passed earlier, however, the said

presumption can be drawn against the Respondent No. 6 and legal heirs also that the files might be disappeared at their behest, as they might be aware that their no objection for transfer of the License in the name of Jamunadevi is on record. So one cannot say who will be benefited by disappearing the relevant files. In fact, Excise Department was custodian of record. Moreover, if at all, there was any departmental enquiry initiated against the Employee Smt. Neral, it was not concluded and kept pending for no reasons. It is also not established that whether there was involvement of any Employee in disappearing the files. Though some circulars were placed on record by the Respondent No. 6, there is nothing on record to show that they are published in the Official Gazette.

(46) Learned Senior Counsel for the Petitioner relied on **I.T.C. Bhandrachalam Paperboards (supra)** wherein the Hon'ble Apex Court, while interpreting Section 11 of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 is mandatory or directory, held as under:-

*“13. ....The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the government. Publication of an order or rule in the Gazette is the official confirmation of making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspaper or may be broadcast by radio or television. If a question arises when was a particular order or rule was made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media.....”*

(47) The Hon'ble Supreme Court also referred the judgment in the case of **B.K. Srinivasan vs. State of Karnataka, (1987) 1 SCC 658** and made the following observations:-

*“But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take*

*effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.*

*15. The above decisions of this Court make it clear that where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and that such a requirement is imperative and cannot be dispensed with.”*

(48) Learned Senior Counsel for the Petitioner placed reliance on the judgment in the case of **Laxman R. Vajage (supra)** wherein this Court, in Paragraph Nos. 7 & 11, has held as under:-

*“7. It is also to be noted that the orders specifically prohibit revalidation after a particular cut-off date. In other words, though the statute entitles the parties to know the orders and/or the instructions in relation to any restrictions to be imposed, including relating to the cut-off date, by having published such orders in the official gazette, the said statutory right is sought to be denied on account of failure on the part of the authorities to publish such orders in the manner statutorily required, the point that it is not a fundamental right to have liquor business is totally different and immaterial. When the statute*

*specifically prescribes the mode in which the rule or order to be issued by the Government in exercise of power under section 139(1) is to be made known to the public and the mode prescribed is by way of publication of such rule or order in the official gazette, the Government cannot be justified in issuing the rules in violation of the said statutory provision. The said provision of law essentially enures to the benefit of the people in the business or in the field in relation to which such orders are passed, and hence they cannot be kept in the dark or cannot be denied an opportunity to know such orders and rules in the manner in which they are required to be made known under the statutory provisions. The word "shall" in the said provision of law is to be construed as disclosing the mandatory requirement of the publication of such rules and orders in the official gazette. I am fortified in this view by the decisions sought to be relied upon by the learned Advocate for the petitioners and cited above.*

11. The law thus is very clear that whenever any order or circular is issued in exercise of power under section 139(1) of the said Act by the Government, the same is required to be published in the official gazette in order to have legal sanctity to such circular, and in the absence of compliance of mandatory provision of sub-section (2) of section 139, in relation to publication of such rule or order

*in the official gazette any decision based on the circular which is not so published in the official gazette, cannot be enforceable in law and it would be bad in law ab initio. Certainly therefore, once it is not disputed that the circular based on which the order rejecting the applications for revalidation was passed, was not published in the official gazette in terms of section 139(2) of the said Act, the said order also will have to be quashed and set aside being bad in law ab-initio....”*

(49) It is the contention of the Petitioner that Rule 28 of the Rules of 1973 empowers the Collector to refuse the transfer, however, the word ‘may’ used in Rule does not authorize the Collector to refuse the transfer at his own Will, he must act reasonably.

(50) The learned Senior Counsel for the Petitioner relied on the judgment in the case of **Nilesh alias Narayan Y. Jadhav (supra)**. The facts of the said case are similar to the facts involved in this matter. In the said matter, one More, the License Holder, take the Petitioner with him for conducting the business covered by the CL License granted to him. There was nothing surreptitious or secretive. By complying all the conditions, they

succeeded in getting the Petitioner's name incorporated in the License as a partner of More. Thereafter, More had died and this fact has been duly intimated to the Respondent No. 2 therein. In spite of this knowledge of passing away of More, the Respondent No. 2 addressed the notice to the said dead person. This Court, in this situation, held as under:-

*“6. The policy referred to in Exh. A has no statutory force. All that could be referred to in remote support of the so-called policy was Rule 28 of the Maharashtra Country Liquor Rules, 1973, and a term of the licence under which More was doing business. Rule 28 speaks of the Collector permitting the transfer of a licence from one name to another or admitting or deleting the name of any partner after the licence has been granted. According to the learned Counsel for the respondent, the rule speaks of may which implies that the Collector has the discretion to either permit or refuse to permit the transfers contemplated by the rule. But ‘may’ does not mean that Collector can do what he wants and that too without any rhyme or reason. The authorities have to act reasonably. Here, the petitioner was permitted to join More in the running of the business for which a licence had been issued in the name of More alone. More's death was intimated and More himself wanted to retire from the business because of the failing*

*health. His death was duly intimated to the authorities and the petitioner was allowed to carry on the business for 5 to 6 years after More's passing away. Until then the Collector saw no reason to prohibit the carrying on of the business covered by the licence standing in More's name. Nothing had been done by the petitioner to suddenly sway the Collector's mind into the giving of the show cause notice and proceeding to decide that it was contrary to Government's policy to transfer any excise licence to the name of a person who was not a member of the original licensee's family. Words used in Exh.-A -- if they correctly reflect the Government's policy -- give room to believe that the Government wants to perpetrate dynasties in the liquor trade. That, I hope, is not the intention of the Government for if any such idea is being entertained by it, it would be a gross violation of a public principle for which the Indian Constitution stands. But apart from that the policy has not been reduced to anything acceptable in law and cannot therefore be given countenance to.*"

(51) Learned Senior Counsel for the Petitioner, by way of Pursis, also placed reliance on copy of the order which was passed after remand by this Court vide order dated 28/03/2012 in Writ Petition No. 1183/2011. Pursuant to this the remand order, the District Collector passed an order dated 26/09/2012 which has

not been placed on record along with the additional affidavit filed by the Respondent Nos. 1, 2, 3 & 7. This order has not been challenged by the contesting Respondents, and therefore, it has attained finality. By this order, it was held that the order passed by the Collector dated 31/03/2002 was legal and proper. It was directed to the Non-Applicants therein to deposit the Special Privilege Fees. This decision was given subject to decision in pending Writ Petition No. 405/2010 filed by the Smt. Anita Jaiswal.

(52) Shri F.T. Mirza, learned Senior Counsel for the Respondent/State submitted that while inducting Jamunadevi as a Partner, certain conditions, as per the then existing Government Policy were imposed. In view of this Policy, after the death of original Licensee, the license could not have been transferred in the name of the partner. It is contended that the Respondent No. 2 is empowered to delete the name of the original Licensee. The name of the partner was also included by order of the Government. Respondent No. 6, being the legal heir of the original licensee, was deprived of the right to the license. It

is also contended that the CL-III License of Madhav Prasad Jaiswal could not have been transferred to anyone other than the legal heirs of Madhav Prasad Jaiswal. While making this submission, Shri F.T. Mirza, learned Senior Counsel relied on the Government order dated 06/07/1989 which provides for the modalities to be followed for restoration of a license, for shifting the place of businesses under licenses, admitting of partners by the license holders and additions and deletions of the partners by the license holders and the manner in which the License can be transferred.

(53) Shri F.T. Mirza, learned Senior Counsel relied on the judgment in the case of **Rameshreddy Muttyamreddy Muttalwad (supra)** wherein this Court held that after demise of the original License Holder, all his legal heirs are equally entitled to succeed to License. It is held that the license can be transferred after demise of the license holder in the name of his heirs as per the Government orders and if there is a dispute amongst them, the heirs can be asked to enter into a partnership or the dispute may be got resolved from a Civil Court. The order

holding the legal heirs to be entitled to succeed to the License was held as proper. However, the facts involved in the said matter are different. In the said case, Muttamreddy, during his life time, submitted an Application for transfer of the License in the name of the Petitioner therein on 17/10/2005. The Respondent Nos. 4 to 7 therein i.e. his remaining son, two daughters and wife objected to such transfer. The statements of Muttamreddy were recorded by the Inspector of the Central Excise Department twice. On the basis of the same, the Collector transferred the same in the name of the Petitioner therein. Muttamreddy preferred an Appeal disputing the genuineness of the earlier Application for transfer. The Commissioner in Appeal, remanded the matter back to the Collector for fresh decision. The Collector suspended the License considering the dispute between the License Holder Muttamreddy and the Petitioner and the other Respondents. In view of the same, Muttamreddy, by the Application dated 20/04/2006, has specifically disputed his signature on the Application under which the License was initially transferred in the name of the Petitioner. Thereafter, Muttamreddy died on 17/10/2005 even while the dispute raised

by him was not finally decided. When the Government orders have been issued pursuant to the provisions of Section 139 of the Bombay Prohibition Act, this cannot be branded as merely administrative order and would not partake a law. However, there is no discussion on Section 139(2) of the Bombay Prohibition Act which makes it mandatory that if an order made under sub-section (1) of the same section is of a general nature or affects a class of persons, it must be notified in the Official Gazette. In my considered view, the facts involved in the case of **Nilesh Jadhav (supra)** are similar to the facts involved in the present matter.

(54) Shri F.T. Mirza, learned Senior Counsel also placed reliance on the judgment in the case of **Yashwant S/o Motiram Patel (supra)** wherein this Court held that if the entire scheme of grant of licenses for selling liquor is considered, it would be at once clear that licenses to sell liquor were not to be issued as transferable commercial papers. Eligibility of the applicants was to be examined and then from the eligible applicants selection was to be made by a draw. If admission of new partners and

subsequent detection of original licensee were to be permitted, the very purpose of process of selection and draw would be defeated. Unscrupulous cartels would tempt eligible persons to apply, participate in draw, get a license allotted and then admit cartels to partnership, easing out the licensees. However, in the present matter, it is not the challenge that the Petitioner was not eligible nor there was any Application for transfer apart from the Application of the Petitioner.

(55) Shri S.M. Puranik, learned Counsel for the Respondent No. 5 partially supports the case of the Petitioner. It is contended that all the legal heirs of Madhavprasad had given a consent letter to the Excise Officials and their statements were recorded by the Department. Since 1989 to 1999, the said CL-III license was operational at Kandri. On 31/03/1999, Jamunadevi inducted her daughter in law - Sandhya Jaiswal as a partner in the said license, and after six months, she withdrew from the partnership and Sandhya became the licensee of the said CL-III license. On 05/07/1999, Sandhya sought permission from the Excise Department and got it transferred to Shanti Nagar, Nagpur. It is

alleged that Ashish Jaiswal, nephew of Anita Jaiswal, was elected as MLA from Ramtek and by misusing his position as MLA managed to remove the file pertaining to the transfer of CL-III license from the name of Madhav Prasad Jaiswal to Jamunadevi Jaiswal, and thereafter, raised objection to subsequent transfers.

(56) Shri M.P. Khajanchi, learned Counsel for the Respondent No. 6 submitted that the said act of transfer of license and shifting of shop is totally illegal and against the Policy of the Government existing at the relevant time. It is also in clear violation of the conditions imposed at the time of inducting Jamunabai as incoming partner.

(57) Though the Respondent No. 6 was granted liberty to place on record the then existing policy of the Government, he has placed on record some Circulars, but there is no Government notification placed on record which is publicly notified. It is contended by learned Counsel for the Respondent No. 6 that prior to 1996, the powers to add, delete and transfer the name of existing partner were not at all vested with the Collector. However, in my considered view, it is totally incorrect. If Rule 28

of the Rules of 1973 is perused, it provides about the authority of the Collector to transfer the License. Rule 28 of the Rules of 1973 reads as under:-

*“28. Transfer of licence. The Collector may permit the transfer of a licence from one name to another or admit or delete the name of any partner after the licence is granted.”*

It is not there by way of any amendment, it is there since the Rules are framed as per the provisions of law.

(58) On the first place, when there is no record available, the contention of the Respondent No. 6 that it was tampered itself has no substance. Consequently, it is alleged that this was done in connivance with Smt. Neral, the then Clerk in the State Excise Department, who had misled the then Superintendent, State Excise. However, there is nothing on record to show as to what was the finding of the departmental enquiry. In fact, it was informed that the departmental enquiry was not concluded and said Smt. Neral stood retired.

(59) On perusal of the register of the Excise Department produced at Annexure-A (Page No. 72 of the Petition), it is specifically mentioned that in the CL-III License No. 16/86-87, the name of Jamunadevi is added as per the Government Order bearing No. CL-III 3685/403/PI-3 dated 20/03/1986. It is also transferred in the name of Jamunadevi Jaiswal vide order of the Additional Collector. These entries produced at Page Nos. 72, 73 and 74 are not disputed. However, it is alleged that these entries are contrary to the policy of the Government then existing and by playing fraud on the Collector.

(60) There is legal opinion of the Law and Judiciary sought by the Department wherein it is specifically stated that said Smt. Neral was suspended and departmental enquiry was initiated. However, it is not concluded to its logical end. The said Smt. Neral also stood retired. As such, there is no basis for holding Jamunadevi obtaining License in her name by playing fraud. It is stated in the additional affidavit filed by the Respondent Nos. 1, 2, 3 and 7 that daughter-in-law of the original Licensee - Anita filed a Representation in the year 2003 that after the death of her

father-in-law (08/10/1988), the dispute arose amongst the legal heirs is resolved. That, the legal representatives of Shri Madhav Prasad Jaiswal executed affidavits in the name of the Respondent No. 6 - Anita Jaiswal as rightful Claimant on 11/06/2004. The said NOCs were submitted to Superintendent of State Excise, Nagpur on 29/06/2004. However, nothing is placed on record to show that Anita is the legal representative of Deceased Madhav Prasad. The claim of Anita Jaiswal was raised after 15 years that she is the legal representative of Madhav Prasad without placing any document with regard to the legal heirship.

(61) Learned Counsel for the Respondent No. 6 relied on the judgment in the case of **Uttam Shamlal Jaiswal (supra)**. The facts involved in the said case are all together distinguishable on facts. In the said matter, permission to induct partner was granted by the Government on condition that the original Licensee would remain beneficiary and that incoming partner would not have any claim to License in the event of death or retirement of original Licensee. On account of some differences arising between Licensee and partner, partnership which was in

nature of “partnership at will” came to be dissolved by Licensee in accordance with the provisions of Partnership Act. Consequently, the Excise Authorities deleted name of partner from License. The said order was challenged in the Revision in which the Secretary to Government, Home Department set aside the well reasoned orders of the Excise Authorities for deletion of the name of partner. No justifiable reasons given by Secretary and his order was based on extraneous considerations and far stretched facts and therefore Court held that the order by the Secretary in Revision was not maintainable. There is no such issue involved in the present matter.

(62) Learned Counsel for the Respondent No. 6 also relied on the judgment in the case of **Prabhakar S/o Mohiniraj Wable (supra)**. Even in this matter also, the facts are different. The License Holder entered into the partnership with other persons for doing business. Partnership was dissolved when the dispute arose. No provision was made in partnership deed about property in License or as to what would happen in case of retirement or death of a partner. It is held that it is unfair and erroneous on the

part of the State Minister for Excise & Drugs Department to observe that civil dispute, which would ultimately resolve the dispute between the parties, would take a long time, the Respondent No. 5 therein, whose name was subsequently added in the license as a partner of the firm, which was dissolved by the Petitioner and who was not the original grantee of the license, should be allowed to run the liquor business. It is held that original Licensee should have been permitted to carry on the business. However, it is not the case that there was any dispute between Madhav Prasad and Jamunadevi Jaiswal in his lifetime.

(63) Learned Counsel for the Respondent No. 6 also placed reliance on the judgment in the case of **United India Insurance Co. Ltd., (supra)**. However, it is not applicable to the present set of facts. In the said matter, after passing of the Award, the Insurance Company came to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, it would not be possible for the company to file a statutory appeal against the Award. Not only because of bar of limitation to file the Appeal but the

consideration of the Appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then. The Hon'ble Supreme Court held that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation.

(64) From the impugned order dated 24/09/2024 passed by the Respondent No. 1, the conclusions drawn are summarized as under:-

“(a) The order deleting the name of original license holder namely Madhav Prashad Jaiswal could not be deleted as per prevailing policy of 20/03/1986;

(b) It is unclear under whose instructions and Application, the name of the late Shri. Madhav Prashad Jaiswal came to be deleted;

(c) As per the policy, the Collector has no power to approve transfer of name;

(d) It was necessary that the license was suspended in absence of an Application by the legal heirs of the original

license holder. The act of not adding the names of legal heirs is in direct conflict with the law;

(e) The right of the incoming partner has lapsed on the death of the original license holder.

(f) The legal heirs of late Shri Madhav Prasad Jaiswal was misrepresented and misguided. The entries in the name of Jamunabai Jaiswal, Sandhya Jaiswal and the Petitioner are illegal, and therefore, liable to be deleted;

(g) There is no limitation for adding name of the legal heir, as such there is no delay;"

(65) It appears that there was request made before the Hon'ble Minister for grant of time as the Petitioner was suffering from Gastro Oesophageal Reflux Disease, Hypertension and had undergone major surgery. Only 10 days' time was granted and Revision was proceeded with the assumption that the Petitioner has nothing more to submit. As such, it violates the principles of natural justice. It also appears that the Collector has passed an order transferring the said CL-III License after receiving due fees. Thereafter, he cannot review its own order and the Respondent

No. 6 ought to have availed the remedy of Appeal. This legal position was duly communicated by the Collector that he has no power to review his own order. The Respondent No. 1 – Minister directed the Respondent No. 2 to review the earlier order. In fact, there is no any statutory power vested with the Respondent No. 2 to review its own order. Even Minister has no power directing the Collector to review its order beyond the provisions of law. The conclusion of the Minister is that the Respondent No. 6 i.e. the legal heir of late Shri Madhav Prasad Jaiswal was misguided and misrepresented, she could approach the appropriate Authority after the death of Shri Madhav Prasad Jaiswal. However, there is nothing on record to show how the Respondent No. 6 was misguided and misrepresented. On the contrary, as per her contention in Representation that there were disputes between the legal heirs, and therefore, after the disputes were resolved, she filed an Application in the year 2003 for the first time. In absence of any material in this regard, the finding of the Minister is perverse and erroneous. Moreover, the order of the Minister placed emphasis on the Circular whereby the name of Jamunadevi Jaiswal could not have been entered. However, the

said Circular was never published in the Official Gazette by the State Government. However, as held in **Nilesh alias Narayan Y. Jadhav (supra)**, if the Policy has not been reduced to anything acceptable in law has no statutory force unless it is published in the Government Gazette as per Section 139(2) of the Bombay Prohibition Act. Section 139(2) of the Bombay Prohibition Act reads as under:-

*“139(2). An order made under sub-section (1) shall, if it is of a general nature of affecting a class of persons, be notified in the Official Gazette.”*

(66) The Minister also failed to appreciate that in view of Rule 28 of the Rules of 1973, the Collector alone is entrusted to permit transfer of License from one name to another and/or delete the name of partner. The Hon’ble Minister also failed to appreciate that the Representation Application of the Respondent No. 6 was filed after 15 years. She has not produced any supporting documents stating that she is the legal heir of Deceased late Shri Madhav Prasad Jaiswal. She has also not produced anything regarding the ongoing disputes between the family members of

Shri Madhav Prasad Jaiswal. As such, the order is passed without any evidence in favour of the Respondent No. 6. The finding is recorded by the Hon'ble Minister that the legal heirs of Shri Madhav Prasad Jaiswal were unaware about the license, however, as observed above, the Respondent No. 6 herself stated in her Application that after the death of Shri Madhav Prasad Jaiswal, there was family dispute with regard to the CL-III License and when they got resolved, she applied after 15 years of the death of Shri Madhav Prasad Jaiswal. This concocted story, without any supporting documents, is imaginary and unbelievable. There is no evidence on record to show that any fraud is played by Jamunadevi while transferring the License in her name.

(67) It also appears that after passing of the order dated 24/09/2024, immediately on the next date, the Collector implemented the order and seized the License premises as well as the goods. In fact, there was order passed by the Hon'ble Supreme Court. The protection of six weeks was granted to the Petitioner in case of any adverse order by the Revisional Authority against her, by the High Court which was confirmed by

the Supreme Court. Even then, after passing of the order passed by the Minister, on the next date, in a hurried manner, the Respondent No. 2 – Collector executed the order.

(68) It is contended that misrepresentation itself is fraud, however, there is also no evidence in respect of any misrepresentation. If the record from the State Excise Department is disappeared, it may be at anyone's fault or behest, however, it is not proved that how the record is disappeared. There is nothing on record to show that Smt. Neral, the then Clerk of Department of State Excise, Nagpur in connivance with the Petitioner misled the Authorities, as departmental enquiry never concluded by the Department. Thus, the ground of fraud and misrepresentation are never established. If the file is disappeared, no inference against the Petitioner as well as the Respondent No. 6 can be drawn, as it is alleged by the Respondent No. 5 that there was no objection certificate obtained from the legal representatives of Shri Madhav Prasad Jaiswal while transferring the License in the name of Jamunadevi Jaiswal. So, without any basis, no conclusion can be drawn that

the files were disappeared at the instance of the Petitioner. Moreover, as the Policy was not notified, there is no question of Jamunadevi Jaiswal having knowledge about any Government Policy.

(69) As such, the impugned order dated 24/09/2024 passed by the Hon'ble Minister, State Excise Department is patently erroneous, without considering the provisions of law. The Minister has recorded a perverse finding and failed to appreciate that in spite of knowledge regarding the License for 15 years, the Respondent No. 6 slept over about her rights, no evidence is there to come to the conclusion as held by the Minister that the Respondent No. 6 is the legal heir and entitled for transfer of License in her name. As such, the Petition succeeds and the impugned order passed by the Hon'ble Minister needs to be quashed and set aside.

(70) Hence, I proceed to pass following order:-

### **ORDER**

(a) The Writ Petition is **allowed**.

(b) The order dated 24/09/2024 passed by the Minister of State Excise Department, Maharashtra State, Mumbai in rejecting the Revision Application bearing No. CRL-1022/Pra.Kra.226/Raushu-3 is hereby quashed and set aside.

(c) Consequently, the order dated 25/09/2024 passed by the Respondent No. 2 – Collector, Nagpur implementing the order dated 25/09/2024 is also quashed and set aside.

(d) The Respondent No. 2 – Collector, Nagpur is hereby directed to restore the possession as existed immediately before passing of the order dated 24/09/2024 by the Minister of State Excise Department, Maharashtra State, Mumbai, and open the liquor shop of the Petitioner immediately.

The Petition stands **disposed of** in the above terms.  
Pending Application(s), if any, stand(s) **disposed of**.

**(M.S. JAWALKAR, J.)**