

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6445 OF 2024

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|-----------------------------------|-----------------|
| 1. Sau. Anjali Arvind Aswani |] |
| Age-36 years, Occ.- Business, |] |
| R/o. Ganesham C.H.S., A-Wing, |] |
| Flat No.604, Pimple Saudagar, |] |
| Pune-411 027. |] |
| |] |
| 2. Sau. Urmila Bharat Ramchandani |] |
| Age-46 years, Occ.-Business, |] |
| R/o. Parwatiai Niwas, P.W.D. 6/7, |] |
| Opp. Anil Photo Studio, Pimpri, |] |
| Pune-411 017. |] ..Petitioners |

Versus

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|--------------------------------------|-----------------|
| 1. State of Maharashtra |] |
| Through its Principal Secretary, |] |
| State Excise Department, Mantralaya, |] |
| Mumbai-400 032. |] |
| |] |
| 2. The Collector, |] |
| State Excise Department, Pune. |] |
| |] |
| 3. The Superintendent, |] |
| State Excise Department, Pune. |] ..Respondents |

Ms. Veena Thadhani a/w. Ms. Rutuja Gaikwad i/b Mr. Dinesh Ramesh Gulabani for the Petitioners.

Mr. Ketan Joshi 'B' Panel for the Respondent-State.

CORAM : **M. S. KARNIK AND**
S. M. MODAK, JJ.

DATED : **28th JANUARY, 2026.**

ORAL JUDGMENT (PER M. S. KARNIK, J.):

1. The challenge in this Petition filed under Articles 226 and 227 of the Constitution of India is to the Order dated 6th May, 2024 passed by Respondent No.2-the Collector, State Excise, Pune. The Petitioners further pray for directions to Respondent No.2-the Collector, State Excise, Pune to record/enter the names of the Petitioners in the C.L.-III License No.355 in place of Shri Jaikishan Chandulal Sugand and Shri Shankarlal Duseja in view of the Order dated 6th July, 2021 passed by Respondent No.2.-Collector.

2. The facts of the case in brief are that the Petitioners are partners of a firm, namely, M/s. Laxmi Country Bar, and are jointly holding C.L.-III License bearing License No.355 for retail sale of country liquor. On 9th March, 2021, Shri Jaikishan Chandulal Sugand and Shri Shankarlal Duseja had made an application to Respondent No.2-Collector for transfer of C.L.-III License to the names of the Petitioners. The said application for transfer of C.L.-III License to the names of the Petitioners was allowed by the Collector vide Order dated 6th July, 2021 and the Petitioners were directed to pay requisite fee of Rs.20,21,270/- as per Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 (the said Rules for short). It is the Petitioners' case that no time limit for payment of privilege fees was mentioned.

3. The Petitioners kept visiting and following up with the Area Inspector, State Excise Department, Pune to issue the challan for paying the privilege fees, but no challan was issued to the Petitioners, with the result the privilege fees remained to be paid.

4. In the meantime, the State Government issued a Notification dated 31st May, 2022 enhancing the amount of privilege fees payable for transfer of CL III Licences from Rs.20,21,270/- to Rs.45,00,000/-. The Petitioners made numerous representations to Respondent No.3 from 3rd June, 2022 to 17th April, 2023 for issuing the Challan for payment of the requisite privilege fees, as per the Order dated 6th July, 2021. A challan was finally issued to the Petitioners on 20th April, 2023 for payment of Rs.20,21,270/- as privilege fees. The said privilege fees were paid by the Petitioners.

5. The Inspector, State Excise, informed the Superintendent, State Excise on 24th March, 2023 that the requisite privilege fees had been paid by the Petitioners and requested him to proceed with other formalities for recording the names of the Petitioners in the CL-III License in place of Jaikishan Chandulal Sugand and Shankarlal Duseja. It is the Petitioners' claim that no steps were taken by the Collector or Superintendent, State Excise despite the Petitioners making several representations from 24th April, 2023 to 12th February, 2024 for recording their names in the CL-III License. The Petitioners sent a final representation-cum-reminder to the

Superintendent, State Excise for recording their names in the CL-III License on 4th March, 2024 since all formalities had been completed and only the names of the Petitioners were required to be endorsed on CL-III License in place of the erstwhile license holders. The Petitioners therefore filed the present Writ Petition on 10th April, 2024 seeking directions to Respondent Nos.2 and 3 to record/enter the names of the Petitioners in the CL-III License and delete the names of the erstwhile License Holders, namely, Jaikishan Chandulal Sugand and Shankarlal Duseja.

6. During the pendency of the Petition, the Collector passed the Order dated 6th May, 2024, directing the Petitioners to pay the enhanced privilege fees of Rs.45,00,000/-. This Court on 8th May, 2024 directed the Petitioners to deposit Rs.10,00,000/- with the Collector with a further order not to take any coercive steps. The amount of Rs.10,00,000/- was deposited by the Petitioners on 20th May, 2024.

7. Learned counsel for the Petitioners in challenge to the impugned Order submitted that the Collector does not have a power to review his earlier Order dated 6th July, 2021 directing the Petitioners to pay privilege fees as per the said Rules. It is further submitted that the direction of the Collector to pay the enhanced fees of Rs.45,00,000/- on the strength of the Rules which were amended on 31st May, 2022, although the privilege fees were directed to be paid by an Order dated 6th July, 2021, which had

attained finality, is completely uncalled for and unjustified. In support of the submissions, learned counsel for the Petitioners relied upon the following decisions of this Court

(i) **Somras Distillers, Nagpur Vs. State of Maharashtra & Ors.** reported in 1996 (1) Mh.L.J. 782,

(ii) **Nagpur Distillers, Nagpur Vs. State of Maharashtra & Anr.** reported in 2007(2) Mh.L.J. 285,

(iii) **Shubhada Sharad Bhole Vs. The State of Maharashtra & Ors.** in Writ Petition No. 11765 of 2019 of Aurangabad Bench of this Court dated 7th September, 2022 and

(iv) **Balabai Vasantrao Patil Vs. The Collector of Kolhapur & Ors.** in Writ Petition No. 4994 of 2004 of this Court dated 15th June, 2004.

8. Learned AGP on the other hand submitted that there was failure on the part of the Petitioners to pay the privilege fees within a reasonable time. It is submitted that though the Collector had already passed an Order in the year 2021, the Petitioners failed to take any steps to pay the privilege fees and therefore after the amendment came into force on 31st May, 2022, the privilege fees were payable taking into consideration the position as on 31st May, 2022. It is further submitted that the Collector's Order is not in the nature of review but it only gives effect to the amendment to the said Rules on account of the Petitioners having failed to pay the privilege fees as directed as on the date when the amendment

came into force on 31st May, 2022. Learned AGP invited our attention to the Affidavit-in-reply filed on behalf of Respondent Nos. 1 to 3. Learned AGP invited our attention to the provisions of Maharashtra Country Liquor Rules, 1973, especially Rule 3, which provides grant of license and Rule 4 which provides renewal of licence. It is submitted by learned AGP that what is material is the privilege fees that are prescribed by the Rules on the date when an application is made for renewal of license. It is the submission of learned AGP that the Petitioners having failed to pay privilege fees till the date when the amendment came into force, the earlier Order of the Collector dated 6th July, 2021 will loose its efficacy and the fees in such circumstances, will have to be determined on the basis of license fees stipulated by the amended Rules, as virtually the Petitioners are seeking renewal of license.

9. We have heard learned counsel for the Petitioners as well as learned AGP. We have perused the memo of the Petition, materials on record and the Affidavit-in-Reply.

10. The stand taken by the learned AGP is that it is the exclusive privilege of the State Government to grant/issue license to intending parties under the Act. The licenses, so granted by the State, are subject to the Conditions and Regulations framed in that regard. The relevant rules prescribed privilege fees for transfer of license from one name to another.

The grantee of the licenses is obliged to abide by the conditions of license and any direction issued from time to time, in that regard, by the authorities.

11. Vide Notification dated 31st May, 2022, the State Government in exercise of powers vested under the proviso to Section 143(3) of the Maharashtra Prohibition Act, 1949 (hereinafter 'the Act' for short) has amended the Bombay Prohibition (Privilege fees) Rules, 1954 and thereby sub rule (b) of Rule 5 of the said Rules, 1954 has been substituted as (b)(i) and (b)(ii), wherein the fees payable by any licensee for the privilege of transfer of his license under Form of CL-III granted under the Maharashtra Country Liquor Rules, 1973 have been increased. By virtue of the amendment, the Rules have prescribed Rs.45 Lakhs as the transfer fees. The said Notification has been brought into force with immediate effect from 31st May, 2022 by the State of Maharashtra and accordingly from that day recovery of privilege fees at the said rate has been initiated throughout the State.

12. In the present case, as indicated earlier, Shri Jaikishan Sugandh and Mr. Shankarlal Duseja decided to transfer the said license to the Petitioners. The Petitioners had filed an application dated 9th March, 2021 with the Collector for seeking permission to transfer the license in their names. Respondent No.2 passed an Order as per Rule 5(b) of the said

Rules on 6th July, 2021 by which Petitioners were asked to pay Rs.20,21,270/- as privilege fees for transfer of license to the names of the Petitioners. The Petitioners paid the amount on 20th April, 2023, around 10 months after the Notification dated 31st May, 2022 and 21 months after the Order dated 6th July, 2021.

13. The question is, whether the Collector is justified in insisting the Petitioners pay the privilege fees at the rate prescribed by virtue of the amendment of Rule 5 which came into force w.e.f. 31st May, 2022. No doubt the Petitioners have given an undertaking that they will abide by all rules and regulations, terms and conditions and orders made under Maharashtra Prohibition Act, 1949. It is therefore the stand of learned AGP that the Petitioners were well aware about the fact that they were supposed to abide by the existing Rules stipulating the privilege fees at the time of renewal of the license under the Rules, 1954.

14. Let us examine the relevant provisions in the context of the present case. Rule 5 as it stood prior to the coming into force of the amendment w.e.f. 31st May, 2022 reads thus:-

“5. Fees for transfer of a licence from one name to another.—(a) the fee payable by any licensee for the privilege of having the transfer of his licence, in Form ‘CL-1’, granted under the Maharashtra Country Liquor Rules, 1973, ‘PLI’ or ‘I’. granted under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, from one name to another, shall be five times of the fee chargeable for grant or renewal or continuance of such licence whichever is higher ;

(b) the fee payable by any licensee for the privilege of having the transfer of his licence, in Form ‘ CL-III ’, granted under the Maharashtra Country Liquor Rules, 1973, “FL-II” or “FL-III”, granted under the Bombay Foreign Liquor Rules, 1953 shall be as follows :—

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| <p><i>(i) In the areas of Municipal Corporation of Mumbai, New Mumbai, Thane, Bhiwandi, Mira-Bhayander, Virar-Vasai, Kalyan, Dombivali and Pune.</i></p> | <p><i>Eight times of the fee chargeable for grant or renewal or continuance of such licence, whichever is higher.</i></p> |
| <p><i>(ii) In the area of other Municipal Corporations [excluding those mentioned in clause (i) above], and all Municipal Councils.</i></p> | <p><i>Five times of the fee chargeable for grant or renewal or continuance of such licence, whichever is higher.</i></p> |
| <p><i>(iii) In all other areas [excluding those mentioned in clauses (i) and (ii),].</i></p> | <p><i>Four times of fee chargeable for grant or renewal or continuance of such licence, whichever is higher.</i></p> |

15. The amended provisions of the said Rule w.e.f. 31st May, 2022, reads thus:

“2. In rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 (hereinafter referred to as “principal Rules”), for clause (b), the following clause shall be substituted, namely: -

“(b) (i) The fee payable by any licensee for the privilege of having the transfer of his licence, in Form CL-III granted under maharashtra Country Liquor Rules, 1973 shall be rupees forty-five lakhs per transfer.

(ii) The fee payable by any licensee for the privilege of having the transfer of his licence, in Form FL-II granted under Bombay Foreign Liquor Rules, 1953 shall be rupees one crore per transfer.”

16. Thus, it is not in dispute that after the amendment, the fee payable by any licensee for the privilege of transfer of his license, in Form CL-III

granted under Maharashtra Country Liquor Rules, 1973 shall be rupees forty-five lakhs per transfer.

17. Learned AGP heavily relied upon Rule 3 and 4 of the Maharashtra Country Liquor Rules, 1973 in support of his submission. We deem it appropriate to reproduce Rule 3 and 4 for the facility of convenience, reading thus:

“3. Grant of Licence.—Grant of Licence. (1) Any person holding a licence for constructing and working a distillery for the manufacture of spirit [in Form I appended to the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 and also] a licence for the possession and use of rectified spirit in Form R.S. II appended to the Bombay Rectified Spirit Rules, 1951], and desiring to manufacture country liquor shall make an application in Form C.L.A. for a licence in that behalf to the Director along with a challan evidencing payment of a fee of [five hundred Rupees (Rs. 500)] for such application. The application shall be accompanied by a plan in quadruplicate containing a full description of the premises and material, utensils, implements or apparatus required for manufacturing country liquor. The applicant shall also submit with the application four signed copies of a statement explaining the process which he desires to adopt for manufacturing each kind of country liquor.

(2) If the Director is satisfied, that the materials utensils, premises, plant and implements or apparatus to be used in connection with the manufacture of Country Liquor and arrangements for the storage and issue thereof are suitable, he may, with the previous sanction of the State Government, grant a licence in Form C.L.I. to the applicant (hereinafter referred to as manufactory licensee) on payment of a 5[fee (inclusive of consideration) of [rupees One Lack fifty thousand (Rs. 1,50,000)] or may, after recording the reasons therefor refuse to grant it, and inform the applicant of the decision. On a licence being granted, the Director shall retain with him the original of the plan and of the statement explaining the process forwarded by the applicant, forward the duplicates and triplicates thereof to the Manufactory Officer and the Superintendent respectively, and return the

quadruplicates together with the licence to the applicant duly signed and stamped with the seal of the of the Director

(3) No licence shall be granted for a period beyond 31st March next following the date of the commencement of the licence:

Provided that in respect of licences granted prior to 1st April, 1973, the period of the licence shall stand extended upto 31st March, 1974.

4. Renewal of Licence.—(1) Any licence granted under Rule 3 may subject to the provisions of this rule be renewed by the Director with the previous sanction of the State Government for a period not exceeding one year at a time on payment of renewal fee [inclusive of consideration) of rupees fifty thousand Rs 50,000)) unless the State Government or the Director has reason to believe that there has been a breach of any of the terms and conditions of the licence or that the manufactory licensee has not been working the licence property.

(2) An application in Form CLA. [along with a challan evidencing payment of a fee of Rs. 25] for renewal of a licence shall be made two months before the expiry of the licence or such other extended period as the Director may by order specify in this behalf, through the Manufactory Officer and the Superintendent concerned provided that where there is no change in the particulars furnished in the original application, they need not be furnished afresh, but it shall be certified accordingly.

18. Rule 3 and 4 in our opinion will not apply as present is not a case for grant of a license or for renewal of a license. This is a case of transfer of a license.

19. Reading of the amended provisions makes it clear that by virtue of Rule 5 of the amendment w.e.f. 31st May, 2022, the fees payable by any licensee for the privilege of having the transfer of his licence, in Form CL-III granted under Maharashtra Country Liquor Rules, 1953 shall be rupees forty-five lakhs per transfer. However, it is pertinent to note that in the

present case, the application for transfer of license was already made in the year 2021, on the basis of which application, the Order dated 6th July, 2021 was passed by the Collector permitting such transfer. Thus, present is not a case where application for transfer of the license was made after coming into force of the amendment of Rule 5 on 31st May, 2022, but this is a case where the application for transfer was already made prior to coming into force of the amendment. Not only was the application made but the Collector had passed an Order on 6th July, 2021, directing payment of privilege fees for transfer of license. It is only that the transfer fees were paid by the Petitioners post coming into force the amendment of 31st May, 2022.

20. What we find is that by virtue of the amendment, fees for the transfer of license has been enhanced from the date of the amendment. There is nothing in the amendment which indicates that such a provision has retrospective operation affecting applications where transfer has been ordered but the fees remain to be paid. In the absence of such indication in the Rules, the Rule will have a prospective application. As indicated earlier, present is a case where not only the application for transfer was made prior to the date of the amendment coming into force but even the Collector had passed an order permitting such transfer on payment of privilege fees prior to coming into force of the amendment. The amended

Rules do not provide any consequence as to what is the effect of such amendment on those applications which have already been decided permitting transfer of license on payment of privilege fees on the basis of Rules which were in force on the date when the application was considered. In such circumstances, the only consequence that can arise in the event the Petitioner pays the privilege fees belatedly would be payment of interest in terms of Section 114 (1) of the Bombay Prohibition Act. Section 114 (1) reads thus:-

“[114. Recovery of duties, etc.- (1) All duties, taxes, fines (except fines imposed by a Court) and fees leviable under any of the provisions of this Act or in respect of any licence, permit, pass or authorization granted under it and the cost of the supervising staff appointed under section 58A [if not paid within the due date or the prescribed period, shall be recovered from any person liable to pay the same or from his surety, if any, with simple interest at the rate of 2 per cent. per month, from the date it has become due, as if they were arrears of land revenue].

(emphasis supplied)

21. The next contention urged by the learned counsel for the Petitioners is that by the impugned Order the Collector virtually amounts to review of the Order passed by him on 6th July, 2021. This, according to learned counsel for the Petitioners, is impermissible. Though learned AGP submitted that this is not a review of the order but it is only giving effect to the amended provisions of the Rules, we are not persuaded by such submission made on behalf of the AGP. The Collector had already passed an Order on 6th July, 2021 permitting such a transfer on payment of

privilege fees. The consequence of paying interest in case of delayed payment is provided in Section 114(1). The Order is not revoked. We are inclined to hold that the impugned Order passed by the Collector after coming into force of the amendment virtually amounts to the review of his earlier order, which is impermissible. Present is not a case where the application is pending and the Collector passes an Order after the amendment comes into force. This is not the question before us. Present is a case where the application was made and the Order permitting transfer was made prior to the coming into force the amended Rules. Thus, the application was dealt with and decided in terms of unamended Rule 5. The proceedings thus had concluded prior to the amendment.

22. In support of her submission, learned counsel for the Petitioners relied upon the decision of this Court in **Balabai Vasantrao Patil Vs. The Collector of Kolhapur & Ors.** (supra). The relevant portion of paragraph No.3 reads thus:-

“The only question that arises in the present matter is whether the Collector has power either suo moto or on the application made by third party, to reopen the proceedings and take a view different than already taken in the concluded proceeding before him. There is no provision atleast brought to my notice that such a course is open to the Collector. The Counsel appearing for the contesting Respondent fairly accepts that there is no power of review invested in the Collector and if it is so, the Collector could not have on his own or for that matter on the application filed by the third party reconsidered his earlier decision.”

23. The decision in **Balabai Vasantrao Patil** (supra) is in support of the

Petitioners' contention. We are, thus, inclined to hold that the Collector could not have, on his own, reconsidered his earlier decision.

24. In such view of the matter, we are inclined to hold that the Order passed by the Collector directing the Petitioners to pay the privilege fees for transfer of license in terms of the amended provisions of Rule 5 of the Rules is unwarranted. The Petition, therefore, succeeds. The impugned Order is, therefore, quashed and set aside. The Petition is allowed in terms of prayer Clauses (a) and (a-1) which read thus:-

“a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondent No. 2-The Collector, State Excise, Pune and/or the Respondent No. 3 The Superintendent of State Excise Department, Pune to record/enter the names of the Petitioners in the C.L.-III License No. 355 in place of Shri. Jaikishan Chandulal Sugand and Shri. Shankarlal Duseja in view of the order dated 6th July, 2021 passed by the Respondent No. 2. order dated 6th July, 2021 passed by the Respondent No.2.

a-1) That this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby quashing and setting aside the impugned order dated 6th May, 2024 bearing No. CLR 112020/1616 passed by the Respondent No. 2 - The Collector, State Excise, Pune.”

25. It is, however, made clear that the Petition is allowed subject to the Petitioners paying interest in terms of Section 114 of the of the Bombay Prohibition Act.

26. Learned counsel for the Petitioners, on instructions, undertakes to

pay the interest as directed by the Collector in accordance with the Rules.

27. The amount of Rs.10,00,000/-, which is paid to the Collector in terms of directions of this Court, be duly adjusted.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)