

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

WRIT PETITION NO. 2723 OF 2022

PETITIONERS :

1. Smt. Aruna Mohanbabu Jaiswal, Aged Major, Occu.: Partner in CL-III License, R/o. Gurunanak Colony, Near Dental College, Wadali Naka, Amravati, Tq.& Dist. Amravati.
2. Sau. Alka Uday Jaiswal, Aged Major, Occu.: Household, R/o. Dharmashala Ward, Gokul Niketan, Ghatanji, Tq. Ghantanji, Dist. Yavatmal.

-VERSUS-

RESPONDENTS :

1. The Collector, State Excise Department, Amravati.
2. The Superintendent of State Excise, Having office at Railway Station Square, Amravati.
3. Shri Anand Mohanbabu Jaiswal, Aged Major, Occu.: Business, R/o. Bharat Nagar, Banait Plot, Chandur Railway, Tq. Chandur Railway, Dist. Amravati.
4. Shri Ashish Mohanbabu Jaiswal, Aged Major, Occu.: Business, R/o. Bharat Nagar, Banait Plot, Chandur Railway, Tq. Chandur Railway, Dist. Amravati.

Mr.M.M.Agnihotri, counsel for the petitioners.
Mr.N.R.Patil, AGP for respondent Nos.1 and 2.
Ms Ritu Jog, counsel for respondent No.3.
Mr. S.G.Jagtap, counsel for respondent No.4.

CORAM : MANISH PITALE, J.

CLOSED ON: 20.09.2022

PRONOUNCED ON: 27.09.2022

J U D G M E N T

Heard.

2. Rule. Heard finally with the consent of the learned counsel appearing for the rival parties.

3. By this petition, the petitioners have challenged order dated 06/05/2022, passed by the respondent No.1-Collector of State Excise, whereby license for country liquor, i.e. CL-III license has been suspended, as a consequence of which, the business of selling country liquor undertaken by the petitioner No.1 has come to a standstill. The petitioners contend that the impugned order is in the teeth of law laid down by this Court in the context of the provisions of the Maharashtra Prohibition Act,

1949 and the Maharashtra Country Liquor Rules, 1973 (hereinafter referred to as the “said Act and Rules”).

4. The aforesaid license was originally issued in the name of one Laxmibai Narayanlal Jaiswal. It was later transferred in the name of her adopted son Mohanbabu Jaiswal, i.e. the husband of the petitioner No.1. It is the case of the petitioners that the said Mohanbabu Jaiswal inducted the petitioner No.1, i.e. his wife, as a partner and formed a partnership firm. It is further claimed that the said license was then permitted by the Collector to be recorded in the name of the said Mohanbabu Jaiswal and the petitioner No.1 as partners. The partnership deed was executed on 12/12/2014. The said Mohanbabu Jaiswal also executed a registered Will on 24/06/2014, wherein he referred to the said CL-III license and provided as to the manner in which the license would devolve.

5. The said Mohanbabu Jaiswal died on 26/12/2019, leading to dispute amongst the parties i.e. his widow, daughter (petitioners) and two sons (respondent Nos.3 and 4 herein). In fact, the dispute has its origin in a suit bearing Special Civil Suit No.1 of 2015, filed by the respondent No.3 for declaration, partition and perpetual injunction against his parents, i.e.

Mohanbabu Jaiswal and the petitioner No.1. In the said suit, an application for temporary injunction at Exhibit-5 was filed by the respondent No.3, while the defendants, i.e. Mohanbabu Jaiswal and the petitioner No.1 also filed an application for temporary injunction at Exhibit-22. A common order was passed by the Trial Court on the said applications, whereby the application at Exhibit-5 filed by the respondent No.3 was rejected and the application filed by Mohanbabu Jaiswal and the petitioner No.1 at Exhibit-22 was allowed. As a consequence, the respondent No.3 stood restrained from interfering with the peaceful possession of Mohanbabu Jaiswal and the petitioner No.1 over the country liquor shop, being run on the strength of the aforesaid CL-III license. The respondent No.3 was also restrained from obstructing Mohanbabu Jaiswal and the petitioner No.1 from carrying on business of country liquor. The said suit is still pending.

6. The bitterness that ensued due to the orders passed in the said suit stood aggravated upon the death of Mohanbabu Jaiswal on 26/12/2019, as respondent Nos.3 and 4 started asserting rights as legal heirs of Mohanbabu Jaiswal in the country liquor business. The petitioner No.2 is the daughter of petitioner No.1 and she has not raised any claim in respect of the CL-III license and the country liquor business.

7. On 31/01/2020, the respondent No.3 moved an application before the respondent No.2, i.e. the Superintendent of State Excise, for inclusion of names of all the legal heirs of Mohanbabu Jaiswal in the CL-III license. The respondent No.2 directed the Inspector of Excise to investigate into the matter and to place his report for consideration. The petitioner No.1 filed a detailed objection before the respondent No.2. On 03/03/2021, the respondent No.4, being the other son of petitioner No.1, approached the respondent No.2, stating that the CL-III license should not be renewed without his written consent.

8. Eventually, the respondent No.1-Collector conducted hearing on the applications moved by respondent Nos.3 and 4 and the objection raised by the petitioner No.1. By order dated 05/04/2021, the Collector allowed the applications of respondent Nos.3 and 4, directing their names to be inducted in the license and they be given share in the same. The petitioner No.1 did not agree with the same and filed appeal before the Commissioner. The challenge raised by the petitioner No.1 met with failure, but it was observed by the Commissioner that specifying shares may not be appropriate. The names of legal heirs of Mohanbabu Jaiswal, including the petitioner No.1, were incorporated in the CL-III license. The

petitioner No.1 has filed revision application against the said order, which is admittedly pending before the Competent Authority of the State.

9. In this backdrop, when the license came up for annual renewal, the respondent No.3 filed an objection. The same was opposed by the petitioner No.1. According to the petitioner No.1, no effective hearing was granted by the Collector and by the impugned order dated 06/05/2022, the Collector recorded that there was a dispute between legal heirs of Mohanbabu Jaiswal in the context of the CL-III license and that in terms of the relevant circulars issued by the department, in such a situation, the license deserved to be suspended. Accordingly, it was directed that till the dispute amongst the legal heirs was resolved, the license would remain suspended.

10. The petitioners filed the present writ petition challenging the said order, wherein notice was issued and the respondents entered appearance through counsel.

11. Mr. M. M. Agnihotri, learned counsel appearing for the petitioners, submitted that the Collector could not have suspended the CL-III license,

merely by observing that there was a dispute amongst legal heirs of deceased Mohanbabu Jaiswal. It was submitted that the Collector had committed a fundamental error in treating the present case as one in which the CL-III license was in the name of an individual and upon his death, there was a dispute amongst his legal heirs. According to the learned counsel, the Collector completely failed to appreciate the effect of the partnership deed executed by Mohanbabu Jaiswal, whereby the petitioner No.1 was inducted as a partner in the firm and with the approval and order of the Collector, the license was in the name of Mohanbabu Jaiswal and the petitioner No.1, as a consequence of the partnership deed coming into existence. It was submitted that therefore, the present matter ought to have been appreciated as a case where one partner had expired and the surviving partner, i.e. petitioner No.1 was entitled for exclusive incorporation of name as the license holder, even if, the partnership firm stood dissolved by operation of section 42 of the Partnership Act and circular of the department dated 19/03/1985, ought to have been implemented by the Collector. It was further submitted that the Collector did not properly apply the recent circular dated 09/02/2022, although it was mentioned in the impugned order, whereby in such a case of dispute concerning a CL-III license, temporary renewal in the name of petitioner No.1 could certainly have been granted. It was submitted that suspension

of the license did not accrue to the benefit of either party or even the State as it entailed loss of revenue and this was particularly relevant in the light of the circular dated 09/03/1985, issued by the Competent Authority.

12. The learned counsel for the petitioners relied upon judgment of learned Single Judge of this Court in the case of **Ms. Pamela P. Braganza v Mr. Finlay Braganza**, reported in **2006 (3) ALL MR 696**, which in similar circumstances held that the liquor license ought to be recorded in the name of the surviving partner, when there were two partners, one of whom expired. It was emphasized that no party could impose on another party a partner to run the business. It was further submitted that circular dated 20/08/1996, referred to in the impugned order was inapplicable to the facts of the present case, because it pertained to an individual licensee dying and dispute arising amongst his legal heirs. It was further submitted that the petitioner No.1 was bound to submit accounts of the business under Rules 33 and 42 of the said Rules before the Competent Authority. It was submitted that the petitioner No.1 was ready to place copies of such accounts and returns even before the Civil Court in the aforesaid pending suit, so that the profits earned by running the business of country liquor on the strength of the said CL-III license would always be available and

eventually, if it was found that the respondent Nos.3 and 4 were entitled to be included in the CL-III license, they could certainly claim appropriate share in the profits of the business. Reliance was also placed on the judgment of this Court in the case of **Vidarbha Bottler Private Limited v. Honorable Minister of State, State Excise, State of Maharashtra and others**, reported in (2020) 2 Bom. C.R. 326, wherein this Court held that license could be suspended only by operation of the provisions of the said Act and if there was violation of conditions on which the license was issued. It was submitted that since no such situation existed, the Collector erred in suspending the license, merely because there was dispute amongst the parties as regards the CL-III license. It was submitted that the circulars could not override the substantive provisions of the said Act and the Rules.

13. On the other hand, Ms. Ritu Jog, learned counsel appearing for the respondent No.3 and Mr. S. G. Jagtap, learned counsel appearing for the respondent No.4, submitted that since there was a clear dispute between the legal heirs of deceased Mohanbabu Jaiswal, circular dated 20/08/1996, was correctly applied by the Collector to suspend the license, till the dispute was resolved. It was submitted that, as on today, the names of the respondent Nos.3 and 4 were already incorporated in the CL-III license as

per orders passed by the Collector and the Commissioner and that even if the revision application preferred by the petitioner No.1 was pending before the State, renewal of the license could not be undertaken without the written consent of respondent Nos.3 and 4. It was submitted that the petitioner No.1, although being the mother of the said respondents, wanted to usurp the entire country liquor business on the strength of the said CL-III license. It was submitted that reliance placed on the aforesaid judgment of the learned Single Judge of this Court in the case of **Ms. Pamela P. Braganza v Mr. Finlay Braganza** (supra) was misplaced and that the position of law was clearly covered in favour of respondent Nos. 3 and 4, as per the Division Bench judgment of this Court in the case of **Shamlal Jaglal Jaiswal v. State of Maharashtra and others**, reported in 1993 (2) Mah. LR 808.

14. According to the learned counsel for the said respondents, the circular dated 20/08/1996, was passed upon exercise of statutory power and hence, it prevailed over the circular dated 19/03/1985. It was further submitted on behalf of the said respondents that in the face of the admitted facts regarding dispute between the legal heirs of deceased Mohanbabu Jaiswal, there was no alternative for the Collector, but to suspend the CL-III

license. On the aspect of the petitioner No.1 undertaking to comply with Rules 33 and 42 of the said Rules and offering to place details of accounts of profits in the pending suit, it was submitted that the petitioner No.1 was not running the business herself and that the respondent Nos.3 and 4 had serious doubt about the proposal made on behalf of the petitioners. On this basis, it was submitted that the writ petition deserved to be dismissed.

15. Mr. N.R.Patil, learned AGP appearing on behalf of respondent Nos.1 and 2, submitted that there was a clear dispute amongst the petitioners and the respondent Nos.3 and 4. In such a situation, it could not be said that the Collector had erred in passing the impugned order, for the reason that suspension of CL-III license was necessary till the *inter se* dispute between the parties was resolved. By relying upon orders passed by the Collector and the Commissioner, on the applications filed by the respondent Nos.3 and 4 for incorporation of their names in the CL-III license and the objection raised by the petitioner No.1 in that context, it was submitted that even though the matter was now pending in revision before the State, two concurrent orders were existing in favour of respondent Nos.3 and 4 and in such a situation renewal of the license only

in the name of petitioner No.1 was not justified. In this situation, suspension of the license was the only alternative.

16. Having heard the learned counsel for the rival parties and upon perusal of the material on record, this Court is of the opinion that a short issue arises for consideration. The only issue that crops up in the backdrop of the claims made by the rival parties, is as to whether the Collector was justified in suspending the CL-III license, in view of the dispute between the parties. It is obvious that suspension of the CL-III license enures to the benefit of none of the parties, including the State. It is perhaps for this reason that the circular dated 19/03/1985, specifically observes that the direction contained therein was considered necessary, so as to safeguard government revenue. The respondent Nos.3 and 4 have a serious apprehension that if renewal of the CL-III license in the name of petitioner No.1 is permitted, they would be left high and dry, despite concurrent orders passed by the Collector as well as the Commissioner for incorporating their names in the CL-III license.

17. Perusal of the impugned order shows that the Collector has referred to the circular dated 20/08/1996, and the recent circular dated

09/02/2022. Having taken note of the serious dispute that has arisen between the parties, the Collector thought it fit to suspend the CL-III license itself, as a consequence of which the question of renewing the same would not arise and there would be no question of the country liquor business continuing during the suspension of the CL-III license.

18. Perusal of the circular dated 20/08/1996, shows that it pertains to a situation where a dispute arises as regards a liquor license including CL-III license. Much emphasis is placed on clause 10 of the said circular on behalf of respondent Nos.3 and 4. The said clause stipulates that when a license holder dies and a question arises about incorporating names of his heirs in the said license, who are more than one, the name of any one heir can be incorporated if the other heirs give no objection. It is then directed that if the names of more than one legal heir are to be incorporated, then it would be appropriate that a proper partnership deed is executed. Thereafter, it is directed that if there is a dispute amongst the legal heirs, till the dispute is resolved, the names of none of the heirs should be incorporated and the license should be suspended. A proper reading of the aforesaid circular would show that clause 10 thereof pertains to a situation where an individual license holder expires. It does not pertain to a situation

where the license is in the name of a partnership firm and one of the partners dies. Merely because there is a direction that if names of more than one legal heir of an individual license holder are to be incorporated upon his death, it would be appropriate that a partnership is executed between them, it would not mean that clause 10 pertains to a situation where the license is in the name of the partnership firm and one of the partners expires. The reliance placed on the said circular on the part of the Collector and the respondent Nos.3 and 4 is therefore, misplaced.

19. As opposed to this, the circular dated 19/03/1985, specifically directs that in cases where disputes between partners arise in the context of a CL-III license and an application for renewal with due compliance is made, on behalf of the partnership by one of the partners, such renewal should be granted subject to any contrary orders issued by the competent Civil Court. This course was considered necessary to safeguard government revenue. The recent circular dated 09/02/2022, is also issued in the same spirit, which contemplates a situation of disputes pertaining to such liquor licenses. Paragraph 14 of the said circular dated 09/02/2022, specifically provides that if the original license holder or shareholder in such license dies and the process of incorporation of names of the legal heirs are

pending before the concerned authorities, till final decision in the matter is reached, for the year 2022-23 *ad hoc* or temporary renewal of the liquor license should be undertaken. Thus, the thrust of the State Policy appears to be safeguarding government revenue and permitting business to run, even during pendency of such dispute pertaining to liquor licenses. The impugned order passed by the Collector appears to be contrary to the aforesaid policy of the State manifested in the said circulars.

20. As regards reliance placed by the rival parties on judgments of this Court, it is found that the judgment of the Division Bench of this Court in the case of **Shamlal Jaglal Jaiswal v State of Maharashtra** (supra) is in the facts of the said case, which pertained to an FL-II license, in respect of which the Bombay Foreign Liquor Rules, 1953, were found to be applicable. Reference was made to specific rule requiring previous sanction of the Collector to be recognized as a partner and for withdrawing from the partnership, as also to have the name of the partner deleted from the license. There appears to be force in the contention raised on behalf of the petitioner that the aforesaid Rules pertaining to country liquor do not have any such stipulation. Perusal of the judgment of the learned Single Judge of this Court in the case of **Ms. Pamela P. Braganza v Mr. Finlay Braganza**

(supra) would show that the same also pertained to an FL-II license, but it was closer on facts to the present case because there were only two partners, one of whom died and it was held that the Collector was not justified in suspending the license because one of the legal heirs of deceased partner had raised a dispute against the surviving partner of the firm. Yet, this Court refrains from giving any final opinion on the said issue, as the revision proceeding initiated by the petitioner no.1 is pending before the State.

21. The judgment of this Court in the case of **Vidarbha Bottlers Private Limited v. Hon'ble Minister of State, State Excise, State of Maharashtra** (supra) is also relevant because, it is held therein that a license under the provisions of the said Act can be suspended only in specific contingencies as contemplated under section 54 of the said Act. Admittedly, none of the said contingencies exists in the present case. The only reason why the Collector has suspended the CL-III license is the existence of dispute between the petitioner no.1 and respondent Nos.3 and 4.

22. This Court is of the opinion that suspension of the CL-III license in the present case is not justified and that in any case it does not enure to the

benefit of any party, including the State, which is likely to suffer loss of revenue during the suspension of the license and consequent closing down of the country liquor business.

23. The respondent Nos.3 and 4 may well be justified in having a serious apprehension about being left high and dry and losing out on share in the profit of the business, even when the Collector and the Commissioner concurrently have held in their favour on the question of incorporating their names in the CL-III license, although the matter is still pending in revision before the State. But, the dispute is yet to attain finality and even the civil suit instituted by respondent No.3 in the year 2015 is pending, wherein by a specific order of the Civil Court, during the pendency of the suit, the respondent No.3 has been restrained from interfering with the country liquor business and the shop in which the said business is being run.

24. In such a situation, appropriate directions can be given for taking care of the apprehension of the respondent Nos.3 and 4. But, suspending the CL-III license and bringing the business of country liquor, being run for number of years, to a halt cannot be the solution. Therefore, it is found that

the present writ petition deserves to be allowed and appropriate directions need to be issued to take care of the apprehensions of respondent Nos.3 and 4.

25. In view of the above, the writ petition is allowed in the following terms:

- (a) The impugned order dated 06/05/2022, passed by the respondent No.1-Collector is quashed and set aside.
- (b) As a consequence, suspension of the CL-III license stands revoked.
- (c) The application for annual renewal submitted by the petitioner No.1 shall be processed by respondent Nos.1 and 2 at the earliest and upon accepting the required charges, if not already deposited by petitioner No.1, the license shall stand renewed for the year 2022-23.
- (d) The petitioner No.1 shall strictly comply with Rule 33 of the said Rules pertaining to maintaining daily accounts and registers of the quantity of country liquor sold and she shall also maintain registers and submit returns as per Rule 42 of the said Rules. Copies of such accounts and returns shall be placed regularly before the competent Civil Court in the pending Special Civil Suit No.1 of 2015.

- (e) Such renewal of the CL-III license, subject to the petitioner No.1 complying with the aforesaid directions, shall continue till the dispute between the parties is resolved.
26. Rule is made absolute in the above terms. No order as to costs.

JUDGE