
**Deshbhakta Ratnappa Kumbhar Panchganga Sahkari Sakhar Karkhana
Ltd. Vs Minister (State Excise)**

Writ Petition No. 594 of 2002

Court: Bombay High Court

Date of Decision: Oct. 17, 2003

Acts Referred:

Bombay Prohibition Act, 1949 " Section 138

Citation: (2004) 2 ALLMR 68 : (2004) 2 MhLj 744

Hon'ble Judges: S. Radhakrishnan, J

Bench: Single Bench

Advocate: V.B. Thadani, for the Appellant; P.H. Palekar, Assistant Government Pleader for Respondent No. 1 and Rajan Dharmadhikari, D.B. Sawant and Shailesh Dalvi, for the Respondent

Judgement

S. Radhakrishnan, J.

By this Petition, the petitioners M/s Deshbhakta Ratnappa Kumbhar Panchganga Sahakari Sakhar Karkhana Ltd.

are challenging the order passed by the respondent No. 1 the Hon"ble Minister for State Excise. Government of Maharashtra dated 3-10-2001.

2. The brief facts are that the petitioner Co-operative Society was granted CL-I Licence on 4-10-1973 for manufacture of country liquor under

Maharashtra Country Liquor Rules, 1973. It appears that the petitioner was carrying on the said business under the said licence till about 1982-

1983 and thereafter due to certain unavoidable circumstances, the said CL-I licence was not renewed. In view thereof, from 1-4-1983,

manufacture of country liquor was stopped by the petitioner. After a lapse of about almost fifteen years, the petitioner Society decided to appoint

some suitable person to conduct the said business of manufacture of country liquor.

3. It is the case of the petitioner that a Conducting Agreement was entered into between the petitioner Society and the respondent No. 2 on 3-4-

1998. But at that time, there were some misrepresentations as well as undue influence caused by respondent No. 2 and as such the said

Agreement was executed in a hurry without complying with the condition No. 13 of the aforesaid licence CL-I. The petitioner has also stated that

the said respondent No. 2 had not furnished the appropriate progress report with regard to the renewal of the said manufacture licence in spite of

repeated attempts.

4. Under these circumstances, the petitioner Society had called a meeting of the Managing Committee on 20-4-1999, i.e. almost after an year after

the said Conducting Agreement and had asked the second respondent to attend the said meeting, wherein the second respondent had failed to

attend. In the said meeting, the Managing Committee had decided to wait till 30-4-1999 and in the event, the second respondent fails to get the

licence renewed by then, the petitioners themselves would get the licence renewed. Ultimately, on 30-4-1999, when no steps were taken by the

respondent No. 2, the petitioner Society's Managing Committee at it's meeting resolved to cancel and/or revoke the power of attorney granted to

the respondent No. 2 and as such the aforesaid Conducting Agreement was terminated by the petitioner Society. Thereafter again by letter dated

18-10-1999, the second respondent was duly informed about the cancellation of the power of attorney as well as the termination of the said

Conducting Agreement. To the above termination, the second respondent responded by denying all the allegations of the petitioner and thereupon

threatened to take action against the petitioner Society.

5. After the aforesaid termination of the Conducting Agreement, as well as revocation of the power of attorney, the petitioner Society was

approached by M/s Ramraj blenders, who offered to do the needful and commence the business, and in view thereof on 29-1-2000, the

Managing Committee of the petitioner Society passed a resolution approving the petitioner-society to sign the Conducting Agreement with M/s

Ramraj Blenders, Kolhapur and appointed M/s Ramraj Blenders as their Agents as per the terms and conditions of the new agreement. The

petitioner Society had also informed the Excise Authority regarding the above resolution.

6. In pursuance of the above resolution, on 3-7-2000, an Agreement for conducting of the business was entered into between the petitioner and

M/s Ramraj Blenders. A month later, i.e. on 31-8-2000, the third respondent herein being the Commissioner of State Excise issued a show cause

notice to the petitioner alleging that the petitioner had committed breach of condition No. 13 of the CL-I licence and the third respondent had

threatened to take action u/s 54(1)(c) of the Bombay Prohibition Act, 1949 against the petitioner. To the above, the petitioner Society sent the

reply on 19-9-2000, denying any such breach of condition No. 13 and also offered to compound the same u/s 104 of the Bombay Prohibition

Act, 1949.

7. Though the matter was pending before the Commissioner of State Excise with regard to the aforesaid show cause notice for cancellation of the

petitioner's licence, suddenly on 25-1-2001, the respondent No. 1 herein being the Hon"ble Minister for State Excise sent a notice to the

petitioner to appear before him regarding the appointment of the second respondent as a Conductor with regard to the above licence.

8. When the above notice was received from the respondent No. 1, the petitioner raised a preliminary objection on 8-2-2001, challenging the

jurisdiction of respondent No. 1 to call upon the petitioner to appear before him with regard to the appointment of the respondent No. 2 as a

Conductor, contending that the respondent No. 1 did not have the jurisdiction to decide any civil dispute. The respondent No. 1 thereafter by his

letter dated 22-2-2001 had passed an order holding that he had jurisdiction to appoint the respondent No. 2 as an Agent and also determine the

civil rights between the petitioner and the second respondent.

9. Subsequent thereto in the month of May, 2001 the aforesaid M/s Ramraj Blenders, Kolhapur withdrew their Conducting Agreement which they

signed with the petitioner.

10. The Hon"ble Minister for State Excise, the respondent No. 1 herein had heard the matter at length between the parties on 10-5-2001 and 28-

5-2001 wherein the petitioner had contended that the respondent No. 1 had no right to decide the civil disputes between the parties and also that

the respondent No. 1 had no jurisdiction to interfere in the above and the petitioner had also ultimately informed the respondent No. 1 that the

petitioner is not keen to appoint the respondent No. 2 as a Conductor with regard to the aforesaid country liquor business.

11. In spite of all the above objections, the respondent No. 1 by an order dated 3-10-2001, had permitted the petitioner Society shifting of the

CL-I licence of the petitioner Society to Kohakadi Tq. Parner, Dist.- Ahmednagar and appointed M/s KEM Liquor and Beverages Pvt. Ltd. the

respondent No. 2 herein as the petitioner's Conductor for running the aforesaid business under the said licence. Subsequent thereto, by another

letter dated 26-12-2001, the Commissioner of State Excise directed the petitioner to produce documents so that the second respondent could

carry on the said business of country liquor. It is the contention of the petitioner that the petitioner received the aforesaid impugned order dated 3-

10-2001 and the Commissioner's letter dated 26-12-2001 on 4-1-2002.

12. Mrs. Thadani, the learned counsel appearing for the petitioner strongly assailed the impugned order dated 3-10-2001 on the ground that the

respondent No. 1 did not have the power or authority in law at all to exercise his jurisdiction u/s 138 of the Bombay Prohibition Act, 1949 to pass

such an order. In the above matter, the learned counsel for the petitioner submitted that there was no order passed by any authority, which could

be revised or corrected by the respondent No. 1. In that behalf, it would be relevant to quote Section 138 of the Bombay Prohibition Act, 1949,

which reads as under :--

138. The State Government may call for and examine the record of any proceeding before any Prohibition Officer including that relating to the

grant or refusal of a licence, permit or authorization under this Act for the purpose of satisfying itself as to the correctness, legality or propriety of

any order passed in, and as to the regularity of, any such proceeding and may when calling for such record, direct that the order be not given effect

to pending the examination of the record. On examining the record, it may either annul, reverse, modify or confirm such order, or pass such other

order as it may deem fit.

13. Mrs. Thadani, the learned counsel appearing for the petitioner emphasised that from a bare reading of the above section, it is clear that the

State Government can call for and examine the record of any proceedings before any Prohibition Officer for the purpose of satisfying itself as to

the correctness, legality or propriety of any order passed in, pending such examination and on examining the record, the State Government can

annul, reverse, modify or confirm such order or pass such other order, as it may deem fit. Therefore, the contention of the learned counsel for the

petitioner is that the preliminary requirement for the State Government to exercise its jurisdiction of any revisional power u/s 138 of the Bombay

Prohibition Act, 1949 is only when there is an order passed by any Authority under the Act. And if there is no order at all passed by any authority

then the question of the State Government exercising such a revisional power in a pending matter, does not arise at all. Mrs. Thadani contended

that the entire section makes it abundantly clear that the State Government can call for any record pertaining to an order passed by any authority

and scrutinise the same and either annul, reverse, modify or confirm such order or even pass such other order as it may deem fit.

14. In this behalf, on the issue that the State Government did not have the authority at all to exercise its power u/s 138 of the Bombay Prohibition

Act, 1949, Mrs. Thadani, the learned counsel for the petitioner strongly relied on a Judgment of the Hon"ble Supreme Court in Chandrika Jha Vs.

State of Bihar and Others, , wherein the Hon"ble Supreme Court was dealing with a similar provision of revision under Bihar and Orissa Co-

operative Societies Act. In paragraphs 12 and 13 of the said Judgment, the Hon"ble Supreme Court has in very clear and unambiguous terms has

held that when no proceeding was pending before the lower authority and no order has been passed by the lower authority there was no question

for the State Government to exercise its revisional power. The said paragraphs 12 and 13 of the aforesaid Judgment read as under :--

12. The action of the then Chief Minister cannot also be supported by the terms of Section 65A of the Act which essentially confers revisional

power on the State Government. There was no proceeding pending before the Registrar in relation to any of the matters specified in Section 65A

of the Act nor had the Registrar passed any order in respect thereto. In the absence of any such proceeding or such order there was no occasion

for the State Government to invoke its powers u/s 65A of the Act. In our opinion, the State Government cannot for itself exercise the statutory

functions of the Registrar under the Act or the Rules.

13. Neither the Chief Minister nor the Minister for Co-operation or Industries had the power to arrogate to himself the statutory functions of the

Registrar under bye-law 29. The act of the then Chief Minister in extending the term of the Committee of Management from time to time was not

within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The Act was amended from time to

time was enacted for the purpose of making the cooperative societies broad-based and democratizing the institution rather than to allow them to be

monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measure contemplated by the Act.

15. Mrs. Thadani, the learned counsel for the petitioner also challenged the impugned order on the ground that the power to grant permission for

appointment of Conductor rests with the Commissioner of State Excise under the licence condition No. 13 and the said power is not with the State

Government and obviously the said power cannot be exercised by resorting to Section 138 of the Bombay Prohibition Act, 1949. In that behalf,

the learned counsel for the petitioner brought to my notice the said condition No. 13 which reads as under:--

Except with the written permission of the Commissioner, the licensee shall not sell, manufacture, transfer or sublet the right of manufacture

conferred upon him by this licence not shall he, in connection with the exercise of the said right enter into any agreement which is in the nature of a

sub-lease. If any question arises whether any agreement or arrangement is in the nature of sub-lease the decision of the Commissioner on such

question shall be final and binding on the licensee.

16. Mrs. Thadani, pointed out that from a bare reading of the above condition, it is clear that except with the written confirmation of the

Commissioner, the licensee shall not sell, manufacture, transfer or sublet the right of manufacture conferred upon him by this licence etc. Therefore,

the only authority if at all ought to grant such a license, is the Commissioner of State Excise and not the State Government, while exercising it's

revisional power. The learned counsel also contended that the aforesaid judgment of the Supreme Court in Chandrika Jha's case will also squarely

apply with regard to the above contention also.

17. Mrs. Thadani thirdly contended that the aforesaid impugned order is also totally without the authority of law, illegal and unsustainable, since the

respondent No. 1 the Hon'ble Minister while exercising the power u/s 138 of the Bombay Prohibition Act, has in fact exercised the power of a

Civil Court deciding the civil disputes between the parties and the learned counsel pointed out certain observations made by the Hon'ble Minister

in his order, which read as under:--

From all the above mentioned facts it is proved that the Agreement entered into by M/s Deshbhakta Ratnappa Kumbhar Panchganga Sahakari

Sakhar Karkhana Ltd., with M/s KEM Liquor and Beverages Pvt. Ltd. is in accordance with law and rules and accordingly M/s KEM Liquor and

Beverages Pvt. Ltd. has complied with all the prescribed conditions and refusing the necessary permission to them will not only be unfair but will

also be illegal.

18. The learned counsel for the petitioner therefore, contended that the Hon"ble Minister has virtually granted a specific performance of the

Agreement dated 3-4-1998 by issuing the following directions :--

Permission is hereby granted to M/s Deshbhakta Ratnappa Kumbhar Panchganga Sahakari Sakhar Karkhana Ltd., for shifting their CL-I licence

to Kohakadi, Taluka-Parner, District-Ahmednagar and for appointing M/s KEM Liquor and Beverages Pvt. Ltd. as their Conductor for running

and conducting the licence.

19. In this context, Mrs. Thadani also contended that at the hearing of the above matter, the Hon"ble Minister was satisfied that the Conducting

Agreement as well as the Power of Attorney have been duly terminated and that the petitioners were not desirous of appointing the respondent

No. 2 as their Conductor.

20. The learned counsel for the petitioner contended that as the Conducting Agreement entered into between the petitioner and the respondent

No. 2, specially condition No. 13 of the licence clearly provided as Except with the written permission of the Commissioner, the licensee shall not

sell, manufacture, transfer or sublet the right of manufacture conferred upon him by this licence nor shall he, in connection with the exercise of the

said right enter into any agreement which is in the nature of a sub-lease. If any question arises whether any agreement or arrangement is in the

nature of sub-lease the decision of the Commissioner on such question shall be final and binding on the licensee, and if that be so, the Conducting

Agreement between petitioner and respondent No. 2 was not approved by the Commissioner, hence could not be enforced.

21. The learned counsel for the petitioner pointed out with regard to the earlier Conducting Agreement that even Rule 11 and Rule 12 of the

Maharashtra Country Liquor Rules, 1973 were not complied with. Mrs. Thadani also pointed that the Hon"ble Minister had failed to appreciate

the fact that though the respondent was fully aware of the termination of the Conduct Agreement, as well as the revocation of power of attorney as

early as in October, 1999, the respondent No. 2 on their own had expended money to construct a building and paying the licence fee etc.

Therefore, the contention is that this has been done by the respondent No. 2 at their own risk and the petitioner cannot be blamed since, the

petitioner had made it clear that the termination of the said Conducting Agreement also revoked the aforesaid power of attorney. Therefore, the

contention of the learned counsel for the petitioner is that whatever amount has been spent by the respondent No. 2, was entirely at their own risk

and peril and now the respondent No. 2 cannot derive any benefit or equity for the same.

22. It is also the contention of the learned counsel for the petitioner that in the above matter, the Petition was admitted on 4-4-2002 and this Court

had granted interim relief in terms of prayer Clause (c), whereby the respondent, their Agents or servants were restrained by this Court from

preventing the petitioner from carrying on the said liquor business. The learned counsel for the petitioner pointed out that though the petitioner had

complied with all the requisitions, the respondent No. 1 had not allowed the petitioner to carry on the business.

23. Under the aforesaid facts and circumstances, the learned counsel for the petitioner pointed out that the impugned order ought to be set aside

and the State Government ought to be directed to renew the licence of the petitioner and allow them to commence business in their factory

premises.

24. Shri D. B. Dharmadhikari, the learned counsel for the respondent No. 2 contended that the order passed by the Hon"ble Minister of State

Excise was a well reasoned and proper one and this Court ought not interfere with the said order passed in revision.

25. Shri Dharmadhikari referred to clause Nos. 6, 8, 9, 11 to 15 and 18 to 20 of the said conducting agreement and stated that the petitioner could

not have unilaterally terminated the said Conducting Agreement without the permission of the respondent No. 2. Shri Dharmadhikari also

emphasised that in pursuance of the aforesaid Conducting Agreement, the respondent No. 2 had invested huge amounts of money for purchase of

land as well as for constructing the said factory building to conduct the liquor business. The learned counsel also contended that the Hon"ble

Minister was right in allowing the respondent No. 2 to conduct the said country liquor business.

26. Shri Dharmadhikari sought to contend that the Hon"ble Minister has not resolved any civil dispute between the parties and while exercising his

revisional power u/s 138 of the Bombay Prohibition Act. Shri Dharmadhikari also contended that the Hon"ble Minister had taken into account all

the facts and circumstances, especially the fact that respondent No. 2 had spent a large amount of money in purchasing of the plot of land and

constructing factory premises for production of country liquor business. He also emphasised that the respondent No. 2 is paying of the requisite

licence fee from time to time.

27. Under the aforesaid facts and circumstances, Shri Dharmadhikari, the learned counsel for the respondent No. 2 stated that the order of the

Hon"ble Minister ought not to be interfered with and this Court ought not to sit in appeal over the same while exercising Writ jurisdiction and also

contended that the said order to be fair and equitable.

28. The learned Assistant Government Pleader Shri Palekar appearing on behalf of the respondent No. 1 and 3 sought to contend that the order

passed by the respondent No. 1 was within his jurisdiction u/s 138 of the Bombay Prohibition Act. Shri Palekar contended that as there was a

show cause notice issued by the respondent No. 3 to the petitioner for cancellation of the licence for non-compliance of condition No. 13 of the

Maharashtra Country Liquor Rules, 1973, as described hereinabove, and the said proceeding was pending. Therefore, the contention of the

learned Assistant Government Pleader is that, as the show cause notice was issued to the petitioner for cancellation of licence, the Hon"ble

Minister exercising the revisional jurisdiction could interfere and exercise the power u/s 138 of the Bombay Prohibition Act. Shri Palekar also

contended that as the respondent No. 2 had spent huge amount of money in purchasing the plot of land as well as constructing the factory thereon,

and based upon the same, the order passed by the Hon"ble Minister cannot be faulted with as the same was fair and equitable.

29. After having considered the arguments of the petitioner and the respondents, the basic issue involved in this Petition is whether at all the

respondent No. 1 being the Hon"ble Minister for State Excise could have exercised the revisional power u/s 138 of the Bombay Prohibition Act,

1941? In that behalf as pointed out hereinabove, Section 138 is explicitly clear, which contemplates that the State Government can call for and

examine any record and proceedings pending before any Authority under the Act for the purpose of satisfying itself to the Correctness, legality,

propriety of any order passed in and after such examination, annul, reverse, modify or confirm such order or pass such other order as it may deem

fit.

30. In the instant case, admittedly, no order has been passed by any authority of the Bombay Prohibition Act and the only proceedings if at all,

which was pending was a show cause notice issued by the Commissioner for State Excise to the petitioner, calling upon the petitioner to show

cause why the licence issued ought not to be cancelled. There was no order passed by any authority under the Act with regard to which the State

Government could have exercised its revisional power to examine the record and then annul, reverse, modify or confirm or pass such other order

as it may deem fit.

31. Specially in the light of the Judgment cited by the learned counsel for the petitioner in Chandrika Jha Vs. State of Bihar and Others, , it is very

clear in the instant case that the respondent No. 1 could not at all have exercised such a power of revision, when there was no order passed in the

above matter, which could be scrutinized and examined by the State Government, exercising its revisional power u/s 138 of the Bombay

Prohibition Act, 1949.

32. The second objection raised by the learned counsel for the petitioner is that by the aforesaid order the Hon"ble Minister has in fact sought to

decide a civil dispute and has virtually granted a declaratory relief by way of specific performance.

33. Obviously in the instant case, there were disputes between the petitioner and the respondent No. 2 and the respondent No. 1, while exercising

the power of revision u/s 138 of the Bombay Prohibition Act, 1949 could not resolve civil disputes between two private parties and the

respondent No. 1 was basically concerned with compliance of provisions of the Bombay Prohibition Act, 1949 and the provisions under

Maharashtra Country Liquor Rules, 1973 while exercising the power of revision under the said section. Therefore, it is evident from the above that

the respondent No. 1 did not have any authority in law in granting such a declaratory relief by way of specific performance.

34. As far as the third aspect of the matter that the respondent No. 2 had already spent a large amounts of money in purchasing the land as well as

construction of the distillery, could not have been taken into account by the Hon"ble Minister while exercising the power of the revision. Even

though the respondent No. 2 had spent a large amount of money in purchasing plot of land and constructing distillery, the same was done at their

own risk and the petitioner cannot be faulted since the petitioner had already terminated the Conducting Agreement as far back as in October,

1999 and subsequent thereto if the respondent No. 2 had spent large amounts of money, the petitioner cannot be faulted for the same.

35. Under the aforesaid facts and circumstances Rule is made absolute in terms of prayer Clause (a) and (b) with costs.

36. Parties to act on an ordinary copy of this order, duly authenticated by the Shirestedar/Court Stenographer.