(1996) 10 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1869 of 1994

Ramesh Dhore and Others APPELLANT

Vs

The Commissioner of State Excise and Others RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Partnership Act, 1932 — Section 14

Citation : (1996) 98 BOMLR 837 : (1998) 2 MhLj 939

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The petitioner herein challenge the concurrent orders passed by the Collector, Chandrapur and the appellate order passed by the respondent No. 1 Commissioner of State Excise. By the instant orders firstly the Collector allowed the application filed by the respondent No. 3 and deleted the names of the present petitioners from the licence and ordered the renewal of the said licence in the name of the respondent No. 3 alone. This order was confirmed in an appeal necessitating the present petition.

2. Following facts will highlight the controversy:

Respondent No. 3 Chaitram Domaji Mashakhatri was granted licence under Form C.L. III for running a retail country liquor shop under the provisions of Maharashtra Country Liquor Rules 1973. He probably found himself unable to fulfil the conditions and, therefore, later on his licence came to be cancelled. This non grant of licence was informed to him by letter dated 28.3.1974. The respondent No. 3 did not do anything for a considerable time and thereafter moved the Hon''ble Chief Minister. However, that request too met with the same fate and was turned down by letter dated 12.8.1982. Again the respondent No. 3 moved a fresh request for revalidation of his earlier granted licence. This time, however, the respondent No. 3 succeeded and by an order dated 16.10.1984 he was informed that he was granted a licence. This letter is annexed to the petition as Annexure ''A'' and goes on to say that the request of the applicant dated 18.7.1984 has been forwarded to the Collector, Chandrapur by the State Government and the order is passed by the State Government in that behalf. He was directed to communicate to the office the date of commencement of the licence and was directed to acknowledge. There is then a condition mentioned which runs as under:

Condition: A proposal of inclusion of partner in the licence should be submitted later on.

It seems that on the basis of this the respondent No. 3 started operating the licence. It seems that after the respondent started working on this licence, he made an application to Collector for including the names of the two petitioners as the partners. This was on 29.6.1988. The Collector granted the permission to include the names of the two petitioners in the licence vide his order dated 23.5.1988 and informed the respondent No. 3 accordingly by his communication dated 29.6.1988. So far the matters were smooth. However, on 1.4.1993 the respondent No. 3 made an application for the renewal of licence in his own name. It seems that the renewal in his name alone was not granted. He dissolved the partnership by a notice dated 13.5.1993 and thereafter applied for deletion of the names of the petitioners from the licence and renewal of that licence in his name alone. The Collector seems to have noticed the petitioners for hearing them but inspite of the opportunities granted, the petitioners seem to have absented themselves from the hearing and thus ultimately the Collector went on to pass an order on 3.11.1993 allowing the application by respondent No.3 necessitating the petitioners to file an appeal before the Commissioner of State Excise which appeal has also been dismissed by the order dated 6.6.1994. These two orders are challenged herein.

3. Shri V.C. Daga, the learned Counsel appearing on behalf of the petitioners, submits that the Collector has erred in directing the removal of the petitioners'' names from the licence as he could not have done the same in law. According to him, the original grant of the licence was itself a conditional grant in the sense a clear-cut condition was put therein that the original grantee, i.e. the respondent No. 3 would file a proposal for partnership. He invites my attention firstly to an agreement between the petitioners and the respondent No. 3 which agreement is even prior to the said grant of licence dated 16.10.1984. The said agreement, according to the learned Counsel, is dated 3.4.1984 wherein it is agreed by the respondent No. 3 that the respondent No. 3 had authorised the petitioner No. 1 Ramesh s/o Shrikrishnarao Dhore to act on his behalf for the renewal of the old licence and/or for the new shop which was allotted by the Government according to its policy. He has also agreed that the said petitioner No. 1 was to try for the renewal of the said licence and he further agreed that after getting the renewal of the licence he would make the petitioner No. 1 a partner having equal share and for that purpose he had agreed also to execute the partnership in the above

terms. Shri Daga very heavily relies on this agreement and suggests that a de-facto partnership had already come into existence and, therefore, the licence which was granted on condition that the licensee would send a proposal for inclusion of a partner was only with the idea that the respondent No. 3 introduces the petitioner No. 1 as a partner later on and, therefore, in fact this was not a grant in favour of the respondent No. 3 alone but in respect of a proposed partnership firm. The learned Counsel, therefore, claims that this is not a case where the licence was granted in favour of the respondent No. 3 alone so that he would be able to add or delete the names of his partners as per the State policy. Shri Daga also submits that once these partners were introduced by the order of the Government, the Collector alone did not have the power to delete the names of these partners. Lastly, he submits that the licence has become a property of the partnership firm because there was already a partnership agreement dated 23.8.1984 along with the petitioner No. 1 who was figuring alone in the agreement dated 3.4.1984, and petitioner No. 2 who was added. According to Shri Daga, as per this partnership agreement, the licence itself becomes the property of the firm and specific rights of the other persons are crystalised in pursuance of that partnership as per the Indian Partnership Act and more particularly in view of Section 14 thereof. The learned Counsel, therefore, submits that once the licence itself becomes the property then the respondent No. 3 who was only a partner could not have applied for the renewal of this licence in his own name alone and for that matter the State Government Authorities like the Collector and the Commissioner could not have ordered the deletion of the names of those partners completely ignoring their rights as the partners as such.

4. Shri B.R. Gawai, the learned Counsel for the respondent No. 3, countered these arguments and pointed out that though a condition was put in the licence, there is nothing to suggest that the said condition was in respect of the present petitioners. He further pointed out that the licence undoubtedly was granted in the name of the respondent No. 3 alone and, therefore, it could not be denied that he was the original grantee. Shri Gawai submits that even if there was any partnership between the petitioners on one hand and the respondent No. 3 those rights could not affect the power of the State Government to issue orders regarding the continuance or renewal of the licence. According to him, the inter-se rights between the so called partnership were irrelevant in so far as the question as to whether the licence could be renewed in the name of the partnership or in the name of respondent No. 3 alone. According to the learned Counsel, in fact, the said agreements were all fake and bogus. He contends that probably taking the advantage of the simplicity of the respondent No. 3 his signature were obtained on the blank papers and that is now the petitioners have introduced themselves to the licence. According to the learned Counsel, therefore, the respondent No. 3 was fully justified in applying for the deletion of the names and the authorities were also fully justified in deleting the same.

5. Shri T.R. Kankale, the learned Assistant Government Pleader, pointed out that

it was a clear-cut policy of the State Government that the original licensee could introduce the partners and he could also delete such introduced partners. Shri Kankale pointed out that the State Government recognised the original grantee only. He brought to my notice that there was ample power in the Collector to delete the names of the newly introduced partners if the original grantee so wished and made an application in that behalf. Shri Kankale also relies on the Division Bench ruling of this Court in Letters Patent Appeal No. 1147/81 in Writ Petition No. 2916/91 the State of Maharashtra v. Manjitsingh Bachera and points out that the Division Bench had approved of these policies in the matter of prohibition. He points out from that judgment that in fact the newly introduced partners do not have any rights as against the State Government and even if such newly introduced partners may have any rights under the partnership, those rights are not at all binding on the State Government in the matter of either grant or renewal of such licences.

6. Considering the rival contentions, it will have to be first seen as to whether the authorities were right in ordering the deletion of the names of the present petitioners. It will be firstly seen that it is an admitted position that the original licence in the year 1973 was granted in the name of the respondent No. 3 alone. He was not able to fulfil some conditions and. therefore, the said licence was not granted. Ultimately probably because the policy of the State of Maharashtra changed, the respondent No. 3 started pursuing his demand and in these efforts he was probably helped by the present petitioners and more particularly the petitioner No. l. Even if we accept the so-called agreement dated 3.4.1984 as it is, it does not give any rights to the petitioner No. 1 of a partner because admittedly the partnership firm was not in existence then. It seems that the petitioner No. 1 was recognised as his agent by the respondent No. 3 probably because the petitioner No. 1 had promised to help out the respondent No. 3 in pursuing the matters relating to this licence. The partnership firm seems to have come into existence on 23.8.1984 where the following recitals would make it clear that there is a clear-cut admission on the part of petitioner Nos. 1 & 2 that the licence was in the name of the respondent No. 3 alone. The recital is like this:

...But in May, 1983 The Government of Maharashtra adopted a policy of reopening the closed shops, the Party No. 1 with the help of Party Nos. 2 and 3 made an application for renewal of his old closed shop. So, Government vide its letter No. CLR/3684/144/PRO/1, dated 1.8.1984 renewed the licence and informed the Collector, Chandrapur and Superintendent, Prohibition and Excise, Chandrapur and accordingly the partnership of Party No. 1 to 3 is sanctioned as follows....

This clearly brings out a situation that the petitioners accepted that the licence was in the name of respondent No. 3 alone. In the further conditions also what is stated is that the respondent No. 3 would have 35% while the other parties would have 34% & 31% share in the shop (not in the licence). If we see the said partnership-deed, it is clear that even in this partnership-deed, the licence of the respondent No. 3 has not been acknowledged as the property of the partnership firm. The whole partnership-deed is absolutely silent in respect of the said licence and in fact there is an admission that the licence stood in the name of the respondent No. 3 Shri Gawai, the learned Counsel for the respondent No. 3, took an exception to this document. According to him, this document is bogus. Beyond the words of the respondent No. 3, however, there is nothing on the record to support his contentions. However, it will not be for this Court to go into the genuiness or otherwise of this document particularly because even if it is accepted to be true it is not in any manner of any help to the petitioners.

7. If, therefore, the respondent No. 3 is the original grantee, then there is nothing wrong if the Collector as per the policy of the State Government has allowed the deletion of the, names of the partners who were introduced later on. It has already been held that the so-called language in the order dated 16.10.84 does not create any rights in the petitioners nor could it be said on the basis of that condition that the licence was granted in the name or in favour of the partnership firm. The contention of the learned Counsel for the petitioner that this was a conditional grant and, therefore, it created the rights in the partners of a firm has, therefore, to be rejected.

8. The learned Counsel thereafter contended that if the partners were introduced by the orders of the Government then the Collector alone could not have ordered the deletion. In support of his contention, the learned Counsel relied upon a circular dated 25.2.1994 regarding the policy. The new policy suggests that if the original licence is in the name of a partnership firm and if the names of the partners are requested to be deleted, the names could be so deleted but it would be only with the prior permission of the State Government. In the first place, this circular would not be of any help to Shri Daga for the simple reason that in this case the licence was not in the name of a partnership firm. Secondly, this circular has come only in February, 1994 and obviously It would not be applicable to the present case the dispute of which has started only in the year 1993. Even if the circular is accepted on merits and is held to be applicable to the present case, even then it is of no use to the petitioners.

9. The learned Counsel then contended that the licence itself had become the property of the partnership firm and some rights were crystallised in favour of the petitioners because of their status as a partner and, therefore, even if the said partnership firm is dissolved, the said licence could not be allowed to revert back only in favour of the respondent No. 3 who was one of the partners. It has already been shown by reference to the partnership-deed that the licence was never treated to be a property of the partnership firm. Secondly, even if it had been so included the inter-se rights between the partners would not be in a position to create any embargo on the State''s power regarding the renewal of the licence. The State was never a party and merely because the State permitted the names of the partners to be brought in it would still always be open for the State to follow its own policy regardless of the inter-se rights between the

partners. The argument based on Section 14 of the Indian Partnership Act has to be rejected for this reason alone. Considering the orders of the Collector and the appellate order of the Commissioner, it will have to be said that both the orders are in keeping with the policy of the State Government which was more or less approved by the Division Bench of this Court in the earlier referred case of Manjitsingh Bachhera.

10. In that case, a person was granted licence and thereafter admitted two other partners. After the death of the original grantee, the said two partners kept on working the licence on the basis of the earlier partnership-deed. When the State Government sought to cancel that licence, a writ petition was filed challenging the action of the State Government. The Hon''ble Single Judge of this Court admitted that petition and had granted the interim relief whereby the said partners who were introduced later on were allowed to work the licence and run the shop. The State Government filed a Letters Patent Appeal against that order wherein the Court clearly found that such newly introduced partners would have no rights in the absence of the original grantee. Shri Daga tries to explain this case by contending that in that case the original grantee had expired and, therefore, there was no question of the partners retaining any rights. In the present case the original grantee has not expired. The situation is no different if the original grantee ends the partnership firm itself by dissolution and the partnership firm. Fact remains it is an admitted position that he has ended and dissolved that no rights have been found in favour of the newly added partners.

11. For all the above reasons, the orders passed by the Authorities below appear to be correct and the same are confirmed. The petition has no merits and is dismissed with costs.