
(1993) 02 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 352 of 1993

Smt. Pushpalata Admanthaya

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Bombay Prohibition (Privileges Fees) Rules, 1954 — Rule 5

Citation : (1993) 2 BomCR 639

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Lata Desai, for the Appellant; L.V. Kapse, for the Respondent

Judgement

D.R. Dhanuka, J.—This petition must be finally disposed of at the stage of admission. The learned Counsel on both sides are heard on this footing.

2. The basic facts and the basic issues concerning this writ petition are identical with the basic facts and issues in Writ Petition No. 391 of 1993. I have allowed the said petition. For the reasons briefly indicated hereinafter and briefly set out in my judgment and order dated 23rd February, 1993 in the above referred writ petition this petition is allowed. Having regard to the facts of this case, Court exercises its Constitutional jurisdiction and grants relief to all the victims of injustice placed in identical situation as the petitioner as indicated below.

3. The 2nd respondent granted a licence in favour of the petitioner's father to sell country liquor in Form CL-III under Rule 24 of the said 1973 Rules sometime in the year 1974. The petitioners father died on or about 18th December, 1980, leaving behind him the petitioner and her mother as her only heirs. The name of the petitioner and her late mother were included in the said licensee as heirs of the petitioner's deceased father as per the Government Order No. CLR/1181/4986/PRO-3 dated 1st April, 1981. On 28th August, 1991, the petitioner's mother died leaving behind her the petitioner as the only heir.

4. The petitioner applied to respondent No. 2 to delete the name of her mother

from the said licence in view of her death. Rule 5 of the relevant rules dealt with the subject matter of transfer of licence from one name to another and had no application in the situation of death of one of the joint licence-holders. The application made by the surviving joint licence-holders for deletion of name of the deceased could never be treated as an application for transfer of licence from one name to another. Rule 5 of the Bombay Prohibition (Privilege Fees) Rule, 1954 reads as under :

"5. The fee payable by any Licensee for the privilege of having transfer of his licence from one name to another shall be the same as the fee chargeable for the grant or renewal or continuance of the licence."

It is unfortunate that the respondents acted in the matter in a most perverse manner. The respondent No. 2 passed illegal orders dated 17th September, 1992 directing the petitioner to pay a sum of Rs. 20,000/- as transfer fee. The respondents threatened the petitioner with closure of business unless the petitioner paid a sum of Rs. 20,000/-. In view of the unlawful coercive action adopted by the respondents, the petitioner was forced to pay a sum of Rs. 20,000/- to the respondents on 21st October, 1992. The said amount was paid under protest. The respondent No. 3 passed his Appellate Order No. CLR/1992/5679/183/I dated 22nd December, 1992 confirming the order of the Collector. Both the impugned orders suffer from patent error of law apparent on face of the record and are patently unjust. Rule 5 of the said rules can never apply in a situation where the applicant merely seeks deletion of name of the deceased joint holder of the licence. This is not a case of transfer of licence from name of one person to another. The respondents seek to justify their orders on basis of Audit note and/or audit objection. The said Audit note/objection is equally perverse.

5. In the result, the petition is allowed in term of prayers (a) to (c). The respondents must carry out order and refund the amount of Rs. 20,000/- with interest as prayed for in prayer (b) of the petition within one month from today. The impugned circular dated 18th November, 1992 annexed to the affidavit in reply is also quashed. The respondents are directed to pay a sum of Rs. 300/- to the petitioner towards cost of this petition.

6. In the result, the impugned order dated 17th September, 1992 passed by the 2nd respondent and order dated 22nd December, 1992 passed by the 3rd respondent are quashed and set aside.

7. It appears that the respondents are collecting large amounts from the citizens of the State without authority of law. It is the mandate of the Constitution that the Constitutional Court must endeavour to do justice to all citizens even if no petition is filed by the victim of injustice who is in situation identical with that of the petitioner. The Welfare State is bound to observe the rule of law. I accordingly direct the respondents to refund the amounts collected from every single citizen by the respondents in identical situation during last three years

immediately preceding the date of this order within one month from today. The respondents shall refund such amounts within one month from today. The respondents shall submit their compliance report to this Court on or before 2nd April, 1993.

9.Certified copy to be issued expeditiously.