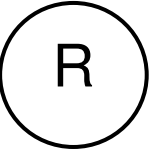




NC: 2024:KHC-D:10728-DB
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C/W WA No.100095 of 2022
WA No.100321 of 2023
AND 3 OTHERS



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 30TH DAY OF JULY, 2024

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

WRIT APPEAL NO.100328 OF 2023 (EXCISE)
C/W. WRIT APPEAL NO.100095 OF 2022 (GM-RES)
WRIT APPEAL NO.100321 OF 2023 (GM-EXCISE)
WRIT APPEAL NO.100324 OF 2023 (EXCISE)
WRIT APPEAL NO.100336 OF 2023 (GM-EXCISE)
WRIT APPEAL NO.100351 OF 2023 (GM-EXCISE)

IN WA NO.100328/2023:
BETWEEN:

1. THE STATE OF KARNATAKA
R/BY. ITS SECRETARY,
TO EXCISE DEPARTMENT,
BENGALURU-560001.
 2. THE DEPUTY COMMISSIONER,
OF EXCISE, DHARWAD, DIST. DHARWAD-580001.
... APPELLANTS
- (BY SRI. G.K. HIREGOUDAR, AGA)

AND:

M/S. PALLAVI BAR AND RESTAURANTS,
CTS NO.126, GOULI GALLI, HUBBALLI,
R/BY. ITS PARTNER,



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SHRI MANJUNATH S/O. PARASHURAM PAWAR,
AGE. 33 YEARS, OCC. BUSINESS,
R/O. NO.191, ARAVIND NAGAR, HUBBLI,
TQ. HUBBALLI, DIST DHARWAD-580001.

... RESPONDENT

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE
WRIT APPEAL AND QUASH THE ORDER DATED 25TH MARCH 2021
IN W.P.NO.101180/2021, PASSED BY THE LEARNED SINGLE
JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO.100095/2022:
BETWEEN:

1. THE COMMISSIONER OF EXCISE,
2ND FLOOR, BMTC SATELLITE BUILDING,
SHANTI NAGAR, BANGALORE-560027.
2. THE DEPUTY COMMISSIONER,
HAVERI, TQ & DIST. HAVERI-581110.
3. THE DEPUTY COMMISSIONER OF EXCISE,
HAVERI, TQ & DIST. HAVERI-581110.

... APPELLANTS

(BY SRI. G.K. HIREGOUDAR, AGA)

AND:

SHRI. MANJUNATH BAR AND RESTAURANTS,
PARTNERSHIP FIRM,
R/BY. ITS MANAGING PARTNER,
SHRI R. NAGARAJ,
AGE. 48 YEARS, OCC. BUSINESS,
NP NO.1967, GUTTAL TOWN,
TQ & DIST. HAVERI-581110.

... RESPONDENT

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)



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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 2ND MARCH 2021 IN WP.NO.100054/2021 PASSED BY THE LEARNED SINGLE JUDGE, IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO.100321/2023:
BETWEEN:

1. THE STATE OF KARNATAKA,
R/BY. ITS SECRETARY,
TO EXCISE DEPARTMENT,
BENGALURU-560001.
2. THE DEPUTY COMMISSIONER,
OF EXCISE, DHARWAD,
DIST. DHARWAD-580001.

... APPELLANTS

(BY SRI. G.K. HIREGOUDAR, AGA)

AND:

M/S. KAVERI PEG BAR,
TRADE AS MINERVA BAR AND RESTAURANT,
CTS. NO.4803/B, OPP. NEW BUS STAND,
GOKUL ROAD, HUBBALLI,
R/BY. ITS PARTNER, SHRI. SHRIKANT KATWE,
S/O SHANKARSA KATWE,
AGE. 51 YEARS, OCC. BUSINESS,
R/O. HUBBALLI, TQ. HUBBALLI,
DIST. DHARWAD-580001.

... RESPONDENT

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND QUASH THE ORDER DATED 31ST MARCH 2021 IN W.P.NO.148012/2020, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.



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C/W WA No.100095 of 2022
WA No.100321 of 2023
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IN WA NO.100324/2023:
BETWEEN:

1. THE STATE OF KARNATAKA,
R/BY. ITS SECRETARY,
TO EXCISE DEPARTMENT, BENGALURU-560001.
2. THE COMMISSIONER OF EXCISE,
BENGALURU DISTRICT, BENGALURU-560001.
3. THE DEPUTY COMMISSIONER OF EXCISE,
DHARWAD DISTRICT, DHARWAD-580001.

... APPELLANTS

(BY SRI. G.K. HIREGOUDAR, AGA)

AND:

M/S. PRABATH BAR,
CTS. NO.4890+4891/B,
GOKUL ROAD, HUBBALLI-580030.
A PARTNERSHIP FIRM,
R/BY. ITS PARTNERS.

1. SRI. DEEPAK S/O PANDURANGSA MAGAJIKONDI
AGE. 56 YEARS, OCC. BUSINESS,
R/O SARASWATIPURAM, KESHAVAPUR,
HUBBALLI, TQ. HUBBALLI, DIST. DHARWAD-580030.
2. SRI. JAGADISH S/O PANDURANGSA MAGAJIKONDI
AGE. 46 YEARS, OCC. BUSINESS,
R/O SAI GARDEN, BHAVANI NAGAR, HUBBALLI,
TQ. HUBBALLI-580020, DIST. DHARWAD.
3. SRI VISHAL S/O DEEPAK MAGAJIKONDI
AGE. 27 YEARS, OCC. BUSINESS,
SARASWATIPURAM KESHAVAPUR, HUBBALLI,
TQ. HUBBALLI-580020, DIST. DHARWAD.

... RESPONDENTS

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)



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WA No.100321 of 2023
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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND QUASH THE ORDER DATED 23.07.2021 IN W.P.NO.102413/2021, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.

IN WA NO.100336/2023:
BETWEEN:

1. THE STATE OF KARNATAKA
R/BY. ITS SECRETARY
TO EXCISE DEPARTMENT,
BENGALURU-560001.
2. THE DEPUTY COMMISSIONER,
OF EXCISE, DHARWAD,
DIST. DHARWAD-580001.

... APPELLANTS

(BY SRI. G.K. HIREGOUDAR, AGA)

AND:

M/S. VINAYAK HOTELS,
CTS NO.4880/11, AIR PORT ROAD,
NEAR HOSUR BRIDGE, HUBBALLI,
R/BY. ITS PARTNER,
SRI. ASHOK S/O GIRIMALLAPPA KOTI,
AGE. 64 YEARS, OCC. BUSINESS,
R/O. LINGARAJ NAGAR (SOUTH),
29TH CROSS, VIDYA NAGAR, HUBBALLI,
TQ. HUBBALLI, DIST. DHARWAD-580001.

... RESPONDENT

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND QUASH THE ORDER DATED 25TH MARCH 2021 IN W.P.NO.101168/2021, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.



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WA No.100328 of 2023
C/W WA No.100095 of 2022
WA No.100321 of 2023
AND 3 OTHERS

IN WA NO.100351/2023:
BETWEEN:

1. THE STATE OF KARNATAKA,
R/BY. ITS SECRETARY,
TO EXCISE DEPARTMENT,
BENGALURU-560001.
2. THE DEPUTY COMMISSIONER,
OF EXCISE, DHARWAD,
DIST. DHARWAD-580001.

... APPELLANTS

(BY SRI. G.K. HIREGOUDAR, AGA)

AND:

M/S. KISHORE MEHERWADE AND CO.
MADHUBAN BAR AND RESTAURANT,
CTS NO.1928/1, PLOT NO.2, WARD NO.3,
OPP. APMC YARD, AMARAGOL, HUBBALLI,
R/BY. ITS PARTNER SRI. TULAJARAM,
S/O. MAHADUSA MEHERWADE,
AGE. 75 YEARS, OCC. BUSINESS,
R/O. VISHWESHWARNAGAR, HUBBALLI,
HUBBALLI, DIST. DHARWAD-580001.

... RESPONDENT

(BY SRI. G.I. GACHCHINAMATH, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 25.03.2021 IN W.P.NO.101184/2021, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT)

1. All these Intra Court Appeals involving substantially similar facts and legal matrix are presented by the State & its officials to call in question a set of six judgments rendered by two learned Single Judges of this Court whereby W.P. Nos. 101180/2021, 100054/2021, 148012/2020, 102413/2021, 101168/2021 & 101184/2021 filed by the respondents Wine Shop Licensees having been favoured, the impugned punitive action taken against them has been invalidated.

2. Learned AGA appearing for the appellant-State vehemently argues that the reconstitution of licensee partnership firms by induction of others results into the original entities losing their identity and therefore there is transfer of the licenses in violation of Rule 17-B of the Karnataka Excise (General Condition of License) Rules, 1967 especially when such reconstitution was not notified to the authorities. He further submits that the learned Single Judges have selectively applied



the decision of another learned Single Judge in **M/s. Shankar Wines Vs. The Commissioner of Excise.**¹ He draws attention of the Court about the requirement of licencees taking prior permission of the Commissioner for such reconstitution and informing him the factum of reconstitution of the firm. All these aspects, according to the AGA, having been lost sight of, the impugned judgments suffer from the vice of infirmities and therefore are liable to be voided. Learned advocates appearing for the private respondents who happened to be the writ petitioners resist the appeals by making submission in justification of the reasoning on which the impugned judgments are constructed.

3. Having heard the learned counsel for the parties and having perused the appeal papers we decline indulgence in the matters for the following reasons with some observations as under:

(i) Ordinarily liquor is *res extra commerciam* since trade in it is inherently harmful to the Society. No person can claim the right to trade in liquor as a matter of right, let alone a fundamental right vide **M/s. Khoday Distilleries Ltd. Vs.**

¹ (2017) 6 KLJ 507



State of Karnataka². However, when the statute regulates business in the liquors, the authorities have to act in accordance with the provisions of such a statute; otherwise the actions are liable to be faltered, hardly needs to be stated. Rules 17-A of the 1967 Rules has the following text:

“17-A. Transfer in the event of death.- In the event of death of the licensee or the lessee, the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the licence or the lease as the case may be, in their favour.”

This Rule apparently provides for induction of legal heirs of the deceased person to whom the licence / lease was granted under the extant Rules. However, where the partnership comprises of members of a Joint Hindu Family and if one or two of them would pass away, the estate of the deceased would ordinarily pass on to his L.Rs. such a partnership would not come to an end by way of dissolution or otherwise, unlike other partnership firms.

(ii) The above view gains support from Mulla's Hindu Law³ which reads as under:

“232. Ancestral business and its incidents.-

(1) In Hindu Law, a business is a distinct heritable asset. Where a Hindu dies leaving a business, it descends like other heritable property to his heirs. If he dies leaving a male issue, it descends to him. In the hands of the male issue, it becomes joint family business, and the firm which consists of the male becomes a joint family firm. The joint ownership so created between the male issue is not an ordinary partnership arising out of a contract but a

² (1995) 1 SCC 574

³ 22nd Edition, page 353



family firm created by the operation of law. Therefore, the rights and liabilities of the coparceners constituting the family firm are not to be determined by exclusive reference to the provisions of the Indian Partnership Act, 1932, but must be considered also with regard to the general rules of Hindu Law which regulate the transactions of joint families.”

In cases of partnership business in liquor run by the members of a Joint Hindu Family, if some of them die or retire from the firm, the business would be run as usual by others. In such a case, the provisions of Rule 17-A *stricto sensu* are not applicable. However, the requirement of informing death/retirement and of induction of L.Rs. of the deceased to the firm in the stead of deceased has to be conveyed to the authorities concerned, within a reasonable time, so that records are updated. In such cases, the requirement of sanction from the Excise Commissioner shall be only facilitative of the same. An argument to the contrary would offend the long standing customary rules of Hindu Law. We hasten to add that all this is applicable only to the partnership firms that specifically mentions about the business of Joint Hindu Family, and not to others. This does not immune the licensee from making the payment of the fees/charges if any, prescribed for the same.

(iii) Learned AGA appearing for the appellants vehemently invoked the provisions of Rule 17-B of the 1967 Rules to contend that whenever there is a reconstitution of the partnership firm, there is a case of transfer of licence and therefore the prescriptions of the said provisions have to be complied with. For



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ease of reference relevant part of the said Rule is produced herewith:

The Deputy Commissioner may on an application by the licensee and [subject to payment of transfer fee equivalent to twice the annual licence fee] specified in Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 or Rule 5 of the Karnataka Excise (Lease of Right of Retain Vend of Beer, Rules, 1976, as the case may be and with the prior approval of the Excise Commissioner, transfer such licence in favour any person named by such licence, if such person is eligible for grant of licence under the Karnataka Excise Act, 1965 or the rules made thereunder.

Under the extant Rules licence or lease can be granted to any person natural or juristic or to other entities such as partnership firms, is not in dispute. Where the firm comprises of non members of the joint family, and some of them die or quit and in their stead others are inducted, indisputably it is a case of transfer within the meaning of Rule 17-B is also not disputed. In five of the six appeals, the licences have been granted to the firms that have the family members as partners, and on the death of some of them their heirs have been inducted, may be in varying shares; we are told at the Bar that there is none other than the family members. Such cases as already observed above, do not attract the provisions of Rule 17-B *stricto sensu*. What is required in such reconstitution is that the information about the reconstitution has to be conveyed for the purpose of updation of the records and for the payment of fees prescribed for such a special case of "transfer" and nothing beyond. Even the previous approval of the Commissioner is also for that purpose only. There is abundant evidentiary material to vouch



the contention that in the renewal application, a copy of the reconstitution deed has been submitted as requirement of the protocol. Therefore, the case of the respondents that Rule 17-B has breached cannot be sustained. This aspect although has not been satisfactorily dealt with by the learned Single Judge, the impugned judgment having brought about the correct result, qua these five cases, our interference is not called for.

(iv) The above being said the case in W.A. No.100095/2022 stands on a different footing. Admittedly, the licensee is a partnership firm and the partners are not the members of Joint Hindu Family, but the strangers in that sense. That being the position, the presumption that every Hindu Family is a Joint Hindu Family does not apply as rightly contended by the learned AGA. To that extent this case is miles away from the set of other five appeals and therefore what is applicable to that set is not applicable to this singular case. We agree with the submission of the learned AGA that when a firm is reconstituted with 50% or more of the new partners, the original entity to which the licence is granted would lose its identity and therefore, the reconstitution in such circumstance amounts to "transfer" as contemplated under Rule 17-B. Learned AGA is justified in placing reliance on **Shankar Wines** *supra* wherein a learned Single Judge has rightly observed at para 20 as under:

"In case, the partnership firm who holds the licence does not inform the fact of change in the constitution of partnership firm within a reasonable period, say within a period of one month from the change in constitution of partnership firm, the concerned Excise Authorities may even proceed to initiate action against the Licensee of the



partnership firm to impose suitable penalty and even take action for cancellation of the License itself."

(v) In **Shankar Wines** *supra*, the learned Single Judge has rightly observed at para 13 to 16 as under:

"13. The said rule of 50% or more of change in composition would operate in the following in the manner:-

Suppose, the Excise Licencee is in the partnership firm ie., M/s. ABCD, Bangalore with four partners namely A, B, C, D each having 25% of shares in the partnership firm and the Excise Licence is held during the current year July 2017 to June 2018. On 31.12.2017, partner with 25% share retires and a new partner 'X' is introduced in the partnership firm giving 'X' 25% of share. In the said illustrative case, the partnership firm of M/s.ABCD does not lose 50% or more of its effective control and 'X' is introduced in the firm with only 25% of share, this will not attract the transfer fee and the new partnership firm M/s.ABCX can be given the same Licence upon a transfer being recorded under Rule 17-B of Rules, 1967, without payment of transfer fees.

14. In the next change in the constitution of partnership firm, if partner "C" also retires with 25% share and a new partner say 'Y' is introduced and he is also given 25% share in place of "C", the new firm M/s.ABXY will be a new firm, where the original partnership firm M/s.ABCD loses 50% of its stake in the new partnership firm M/s.ABXY. At this stage, a new firm M/s.ABXY can get Licence transferred in their name only upon paying the transfer fee in terms of Rules 17-B of Rules, 1967.

15. Taking another example, if two partners at the same time like A and B retire out of the firm M/s.ABCD



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and 50% is given to the new partners entering at the same time DATE OF JUDGMENT :22/08/2017 in W.P. No.30590/2014 AND CONNECTED MATTER M/S.SHANKAR WINES vs. THE COMMISSIONER OF EXCISE AND ANR. namely, X and Y with 25% share to each, even then upon such change of licence from M/s.ABCD to M/s.CDXY, it will attract the transfer fee under Rule 17-B. In terms of the aforesaid thumb rule of 50% or more of the effective control of existing Licencee partnership firm is divested and given to the newly entering partners.

16. If it is a case of more than 50% of share (effective control) is divested by the existing Licencee firm and such share of 50% or more of the profits of the partnership firm of the existing partners is given to the newly entering partners, there is no question of any confusion and such a change in the partnership firm will definitely attract the transfer fee under the Rule 17-B of Rules, 1967."

(vi) There is one finer aspect to the matter of reconstitution of the firm successively that may in the first instance not lose identity but may lose it subsequently. For example let us take a firm comprising of five partners namely A, B, C, D & E, each having 20% share. When A & B quit the firm and in their place F & G are introduced, there is no loss of identity since more than 50% of existing partners remain as they were and therefore there is no case of "transfer" attracting the provisions of Rule 17-B. Now let us assume that the original partners D & E quit and in their stead new persons H & I gain entry; in such an eventuality one cannot say that more than 50% of the existing partners still remain the same. Therefore, while adjudging as to whether reconstitution has resulted into loss of identity of the entity namely the firm, what the authorities have to bear in mind is the original partners and their share holding, and not



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just the partners and their shares in the immediately preceding reconstitution of the firm. What we have said is only by way of illustration and that given the ingenuity of human mind, it is not exhaustive. In adjudging the loss of identity, one cannot keep the common sense in cold storage. Now a day's running a business be it of liquor or liquid, is not a child's play. It involves huge investment of capital, labour & exertion; any business in general and liquor business in particular run the difficulty posed by a host of factors including competition and regulation. Even this aspect cannot be lost sight of by the authorities.

(vii) Applying the aforesaid parameters, we do not find any transfer in the case of licensee involved in Writ Appeal No.100095/2022 inasmuch as despite reconstitution of the firm there is no loss of identity, as rightly submitted learned Advocate Sri. Nandish Patil appearing for the appellant. CL-9 license was granted to the firm on 30.06.2002; renewal of license was periodically granted under Rule 5A of the Rules, is not in dispute. The latest reconstitution of this firm was effected on 05.03.2020. Excise year normatively starts from 1st of July and thus the time for applying renewal was just a few weeks away. The licensee firm informed the Commissioner, about its reconstitution, vide letter dated 14.07.2020, a copy whereof avails at Annexure-B. There were totally five partners, each having 20%; after reconstitution, there remained only 4 of them, one namely Shankar Basavaraj Mekanur having quit. However, share holding was not in equal proportion inasmuch as one of the partners had 40% and remaining three had only 20% each.



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Thus, it cannot be a case of loss of identity, though there was reconstitution, eventually one partner quitting and his share being taken over by one of the remaining. Therefore, there is absolutely, no case for invoking the 2nd part of Rule 17-B or the ratio in **Shankar Wines** *supra*.

With the above observations, these appeals are disposed off, costs having been made easy.

We appreciate the learned AGA Mr. G.K. Hiregoudar appearing for the State and learned Advocates Mr. G.I. Gachchinamath & Mr. Nandish Patil, appearing for the private respondents for their meticulous presentation of the case with appropriate rulings & law books.

Sd/-
(KRISHNA S.DIXIT)
JUDGE

Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE

VNP & JTR / CT:VP
LIST NO.: 1 SL NO.: 23