IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15360 OF 2024

Suryakant Baburao Khaladkar ...Petitioner

Versus

1. The State of Maharashtra
2. The Commissioner of State Excise
3. The Collector of Pune
4. Shobha Balkrishna Wadkar (Since Deceased, through her legal heirs)

4(a) Manor Balkrishna Wadkar;

4(b) Ganesh Balkrishna Wadkar;

4(c) Ravindra Balkrishna Wadkar. ...Respondents

Ms. Sampada Khanolkar *a/w Mr. Vinayak Salokhe, Ms. Megha Jani, for the Petitioner.*

Mr. Yatin Shashikant Khochare*, "B" Panel Counsel, for Respondent Nos. 1 to 3 – State.*

Ms. Priya Vaidya Gondhalekar *a/w S. P. Telgote, for Respondent No. 4(a), (b) and (c).*

CORAM:	**SOMASEKHAR SUNDARESAN, J.**
RESERVED ON:	**APRIL 6, 2026**
PRONOUNCED ON:	**SEPTEMBER 10, 2026**

JUDGEMENT:

Context and Factual Background:

1. The challenge in this Writ Petition is to an order dated October 26, 2023, ***("Impugned Order")*** passed by the Minister-in-charge of State Excise, disposing of a Revision Application filed under the Maharashtra Prohibition Act, 1949 ***("Prohibition Act")***, whereby the order dated November 24, 2022 ***("Appellate Order"*** or ***"2022-Commissioner Order")***, passed by Respondent No.2, the Commissioner of State Excise, Maharashtra State, had been set aside.

2. By the Impugned Order, an order dated May 20, 2017 ***("Collector Order")***, passed by Respondent No.3, the Collector of Pune (State Excise Department), has been reinstated, whereby the licence to sell Foreign Liquor in Form FL-II ***("FL-II Licence")*** came to be transferred to Respondent No. 4, Shobha Balkrishna Wadkar ***("Shobha")***, and the Application by the Petitioner, Suryakant Baburao Khaladkar ***("Khaladkar")***, seeking allotment of the FL-II Licence, was rejected.

3. The factual matrix relevant to the adjudication of this Petition truly fits the oft-quoted and now trite expressions "peculiar" and "chequered history". The dispute has travelled through three rounds of litigation before this Court across nearly four decades, and the questions that now arise turn substantially on the effect of two unchallenged Judgements of this Court rendered in the earlier rounds.

1973 to 1985: the Licence, Partnership, and Recognition:

4. On October 2, 1973, an FL-II Licence bearing number 41, was issued to one Mr. Balkrishna Ramchandra Wadkar ***("Wadkar")***, a resident of Pune, having been sanctioned by the State on August 24, 1973.

5. On January 31, 1976, the Commissioner of Prohibition sent a communiqué to all Collectors in the State of Maharashtra directing that no new licences for the retail sale of country liquor or foreign liquor should be granted. Applications already received were to be processed in accordance with the Rules but were to be kept pending without being forwarded to the Commissioner at that stage. With immediate effect, no fresh Applications for the grant of such licences were to be accepted. Where sanction had already been accorded by the Government for the grant of any such licence, the licence was to be issued in accordance with the prescribed procedure.

6. Nearly six years after the grant of the licence, on July 12, 1979, Wadkar entered into a partnership ("***the Partnership***") with Khaladkar and his father, Baburao Ganpat Khaladkar ***("Baburao")***, both Pune residents. Wadkar's stake in the partnership was 10%, with Baburao and Khaladkar collectively being entitled to 90%. The Partnership took effect from August 19, 1979. It is evident that the State recognised the Partnership and noted the names of the partners on the licence pursuant to Rule 40 of the Bombay Foreign Liquor Rules, 1953 ("***Foreign Liquor Rules***").

7. The Partnership was duly registered. By a form dated July 12, 1979, the admission of the two incoming partners, namely the Khaladkars, was recorded with the Registrar of Firms, the firm carrying on business in the name of M/s. S. B. Wines. The certificate of registration for purposes of sales tax, and the registration under the Shops and Establishments Act, are likewise in the name of M/s. S. B. Wines. The record shows that Wadkar had executed an agreement with the Khaladkars as of the date of the Partnership Deed, to indicate that discharge of dues of Rs. 55,000 owed to various parties by him was undertaken by the Khaladkars. In return, Wadkar agreed to share the business with the Khaladars whereby Wadkar's stake in the partnership was

10%, with Baburao and Khaladkar collectively entitled to 90%, after which Wadkar would have no right, title or interest in the licence.

8. The licence itself bears out the recognition of the Partnership. The State not only recognised the two partners, Baburao and Khaladkar, but also affixed a photograph of Khaladkar on the FL-II Licence and endorsed the name of "M/s. S. B. Wines" on it, as reflected in the renewed licence dated March 31, 1981. It is also noteworthy that the premises at which the licence was operated shifted from Wadkar's premises to those of Khaladkar. A copy of the licence was issued for the period between April 1, 1991 and March 31, 1992 in lieu of the old licence, and was thereafter renewed from time to time, the record showing renewals running all the way to the year 2000. A fresh licence for the period ending March 31, 2000 was issued as a duplicate, the original having been said to be lost. Each licence so renewed clearly carried the names of all three partners.

9. On March 26, 1984 ("***1984 Circular***"), the State issued a Circular in connection with *country liquor licences*, recording that inter-se disputes between partners carried a likelihood of irregular service and inconvenience to customers, and making it clear that the renewing authority would be within its rights to refuse renewal until the partners settled their disputes, and that the licence could even be cancelled. Significantly, the Circular also recorded that there was absolutely no warrant in law for renewing licences in favour of one partner only on the ground that he is the original licencee, in the absence of any legal provision, condition in the licence, or formal Government orders or instructions to that effect. The parties in this matter have a difference of opinion on whether the 1984 Circular can be extended to apply to FL-II licences.

1985 to 1988: Wadkar’s Death and Competing Applications

10. On December 23, 1985, Wadkar died. On the very next day, December 24, 1985, Baburao and Khaladkar executed a new Partnership Deed, on the basis of which it was contended that the benefits of the licence would thereafter flow to these two parties as the surviving partners of the firm.

11. On January 7, 1986, Khaladkar filed an Application with the Collector seeking transfer of the FL-II Licence to his name. Shortly thereafter, on February 3, 1986, Shobha, the widow of Wadkar, filed an Application with the Collector seeking transfer of the FL-II Licence to her name and deletion of the names of Khaladkar and Baburao.

12. On April 13, 1987, the Additional Secretary, Home Department, State of Maharashtra wrote to the Commissioner observing that, at the time of inducting and removing partners from the partnership, the Collector had not sought the sanction of the State Government. That communication was an iteration of Government policy as it then stood — a policy which, as will be seen, has evolved over time, particularly bearing in mind the developments taking place in the field of liquor licences from the mid-1970s and through the 1980s.

13. On May 19, 1987, a Government Order issued by the Home Department informed all Collectors that, in relation to FL-II Licences, where the names of partners were being deleted, it had to be examined whether the name of the original licensee was being removed with the result that licences were being transferred without compliance with Rule 61-A of the Foreign Liquor Rules. It recorded that the induction of new partners into an FL-II Licence, or the removal of such partners who were not originally the licensees, was a power delegated to District Collectors under Rule 40-B, introduced into the Foreign

Liquor Rules in 1973, and that the District Collectors shall mandatorily stipulate a condition both in the Partnership Deed as well as the order approving the Partnership , that the newly inducted partners shall have no claim or right over the licence in the absence of the original licence holder, failing which the induction of partners should not be approved.

14. On September 25, 1987, the State accorded sanction for transfer of the licence from the name of Wadkar to Shobha, under the then applicable Rule 61-A of the Foreign Liquor Rules. On October 1, 1988, a personal hearing was granted to Khaladkars and Shobha, and on October 31, 1988, the Collector transferred the FL-II Licence to the name of Shobha in exercise of discretion under Condition No. 8 of the licence read with Rule 61-A. Khaladkars claimed to have executed a new Partnership Deed after the demise of Wadkar, which was rejected vide the Order dated October 31, 1988, for not having been recognised under Rule 40 of the Foreign Liquor Rules *(“**1988-Order**”)*.

WP-5375 and the 2002-Judgement

15. The 1988-Order in favour of Shobha was challenged in Writ Petition No. 5375 of 1988 *(“**WP-5375**”)* by Baburao and Khaladkar. It was disposed of by an order dated November 20, 2002 *(“**2002-Judgement**”)* passed by a Learned Single Bench of this Court (*Coram: S. A. Bobde, J.*, as he then was).

16. The 2002-Judgement specifically held that the 1988-Order deserved to be quashed and set aside, inasmuch as upon the death of Wadkar, the licence itself came to an end, concomitant with the Partnership . It was held that the reliance by the State on Rule 61-A of the Foreign Liquor Rules and on Condition No. 8 of the FL-II Licence was wrong and inappropriate, and that the only cause of action available was for each of Khaladkar and Shobha to

apply for a licence afresh under Rule 25 of the Foreign Liquor Rules. Such Applications were directed to be processed in accordance with the Government policy prevailing as of the dates of their original Applications, namely January 7, 1986 (Khaladkar) and February 3, 1986 (Shobha).

17. The 2002-Judgement clearly held that the Partnership had been recognised. It also found that the premises had shifted to Khaladkar's premises. It was also found that renewals of the licence had been in favour of the firm.

18. All the parties — Khaladkar, Shobha and the State — embraced the 2002-Judgement. No challenge was mounted by any party to the observations and findings contained therein, be it on facts or on law. Indeed, pursuant to the 2002-Judgement, each of Shobha and Khaladkar applied to the State for the grant of the licence. The 2002-Judgement having expressly ruled that the licence itself stood expired upon the demise of Wadkar and the dissolution of the firm, the acceptance of that position by all parties is noteworthy.

WP-71 and the 2016-Judgement:

19. Inexplicably, and in sharp contrast to the Writ issued by this Court while disposing of WP-5375, an Order dated March 15, 2003 was passed by the Collector transferring the FL-II Licence to Shobha in her capacity as a legal heir of Wadkar. This was challenged by Khaladkar in an Appeal before the Commissioner, who, by an Order dated April 3, 2003, upheld the Order of the Collector. A Revision application filed before the Minister of State Excise was dismissed by an Order dated August 9, 2004. In a nutshell, after the 2002-Judgement was delivered in November 2002, the entire course of proceedings granting the licence to Shobha, including the appeal and the revision, was

completed in the span of time between March 2003 and August 2004 – all in the teeth of the 2002-Judgement.

20. This led to Khaladkar filing Writ Petition No. 71 of 2005 *(“**WP-71**”)*, which was allowed by another Learned Single Bench by Judgement dated November 21, 2016 *(“**2016-Judgement**”)*. It was held that the State had not complied with the explicit directions issued by the Writ Court in the 2002-Judgement. Although it had been clearly held that Rule 61-A of the Foreign Liquor Rules and Condition No. 8 of the FL-II Licence had no application to the facts of the case, the FL-II Licence having expired, the State had once again purported to exercise powers under those very provisions, clearly in excess of the declared jurisdiction.

21. The 2016-Judgement held that the Collector had not even bothered to read the 2002-Judgement and had mechanically dealt with the file, and that the Commissioner and the Minister too had mechanically upheld the Collector’s approach. Therefore, the 2016-Judgement aside all three orders and reiterated the directions contained in the 2002-Judgement, namely, to process the Applications of Shobha and Khaladkar under Rule 25 of the Foreign Liquor Rules and to decide them in accordance with law and the policy in existence on January 7, 1986 and February 3, 1986.

22. It was made clear that although liberty had been granted to Shobha and Khaladkar to file fresh Applications, such Applications were nothing but a continuation of the original Applications made by the respective parties in 1986. It was further directed that the Collector ought not to treat those Applications as Applications for transfer, either under Condition No. 8 or under Rule 61-A, and that they be considered in terms of Rule 25 of the

Foreign Liquor Rules and be disposed of in terms of the policy applicable in that regard.

23. The 2016-Judgement too remained unchallenged and was embraced by all parties including the State. Both Khaladkar and Shobha filed fresh Applications before the Collector thereafter.

<u>Collector Order, 2022-Commissioner Order and the Impugned Order:</u>

24. By an order dated May 20, 2017 ("***Collector Order***"), the Collector yet again confirmed the earlier transfer of the licence to Shobha. Writ Petition No. 9216 of 2017 was filed, but was allowed to be withdrawn with liberty to pursue the statutory Appeal and Revision. This time, Khaladkar's Appeal was allowed by the Commissioner by an order dated November 24, 2022 ("***2022-Commissioner Order***"), setting aside the Collector Order with a direction that both the Khaladkars and Shobha may claim their agreed shares in the licence, i.e. Khaladkar and Shobha would, in effect, have complementary rights in the ratio of 90:10 respectively.

25. That order was challenged by Shobha in Revision Proceedings before the Minister, who allowed the Revision and reinstated the Collector Order by way of the Impugned Order dated October 26, 2023. Hence this Petition.

<u>Current State of Individuals:</u>

26. Shobha, the widow of Wadkar too has passed away during the pendency of these proceedings. This case is peculiar in its multiple layers, not least on account of the sheer passage of time. Following Wadkar's death in 1985,

Baburao too passed away. Khaladkar is now aged about 91. All those now claiming interest and rights are Shobha's legal heirs, arrayed as Respondent Nos. 4(a) to 4(c). For convenience, references in this Judgement to "***Shobha***" shall be deemed to include, where the context so permits, references to those currently claiming interests through Shobha's entitlements.

Statutory and Licensing Framework

27. Since the entire controversy turns on the interplay between the recognition of partners on a licence, the transfer of a licence, and the grant of a fresh licence, it is convenient to set out the relevant provisions at the outset. Rule 40 of the Foreign Liquor Rules reads thus:

> *"40. No person shall be recognised as partner of the holder of a vendor's licence for the purposes of his licence, unless the partnership has been declared to the Collector before the licence is granted and the names of the partners have been entered jointly in the licence or if the partnership is entered into after the granting of the licence, unless the Collector agrees on application made to him, to alter the licence and to add the name or names of the partner or partners in the licence."*
>
> *[Emphasis Supplied]*

28. Therefore, indeed a partner of an original licensee can be recognised – the Collector has to agree with an application to alter the licence and add the name of the partners in the licence.

29. Rule 40(1A) of the Foreign Liquor Rules reads thus:

> *Except with the previous sanction of the Collector, no person recognised as partner under sub-rule (1) shall be allowed to withdraw from the partnership and to have his name as partner deleted from the licence."*

[Emphasis Supplied]

30. This provision mandates prior approval from the Collector for any person recognised as a partner to leave the partnership, and also for the name of any such partner to be deleted from the licence.

31. Rule 61-A of the Foreign Liquor Rules reads thus:

> *"**61-A. Transfer of licence from one name to another**. –*
>
> ***No licence granted under Rules 5, 25 or 45 shall be transferred by the Collector from one name to another** except with the **previous sanction of the State Government and on an application made in that behalf to the Collector**."*

[Emphasis Supplied]

32. Therefore, for a transfer of a licence, previous sanction of the Government is necessary although the application is to be made to the Collector.

33. Rule 25 of the Foreign Liquor Rules, which governs the grant of a vendor's licence, which the 2002-Judgement and the 2016-Judgement distinctly directed the State to adhere to, reads thus:

> *"25. **Grant of vendor's licence and payment of fees**. — (1) **On receipt of the application, the Collector shall verify the particulars given therein, and after making such other enquiries as he deems necessary and which are incidental to the grant of the licence and after satisfying himself that the premises proposed for location of the shop for selling foreign liquor are in conformity with the provision rules and the instructions issued by the State Government or the Commissioner of Prohibition and Excise from time to time shall forward the application to the State Government together with his remarks thereon.***

*(1A) On receipt of the application under sub-rule (1) of this rule, **<u>the State Government, may, subject to provision of this rule, make enquiries through the Committee, constituted under clause (ni) of section 139 of the Act</u>**. The State Government **<u>after considering the Committee's recommendation, may, if it is satisfied that there is no objection to grant the licence applied for, by order direct the Collector to grant the licence in Form F.L. II to the applicant on payment of a deposit of Rs. 10,000 and of a fee (inclusive of consideration) payable at the scale given below</u>** and shall forward a copy of such order to the Commissioner of Prohibition and Excise. Collector of the district in which the applicant desires to locate his licenced premises, **<u>shall then grant a licence in Form F.L. II, forward a duplicate of the licence to the State Government for its record and keep its third copy on his record</u>**.*

(1) Town with a population upto one lakh — Rs. 7,500

(2) City with population of one lakh above but below ten lakhs — Rs. 15,000

(3) City with a population of ten lakhs and above — Rs. 20,000

Explanation. — For the purpose of rules 24 and 25, "population" means the population as ascertained at the last preceding census of which the relevant figures either provisional or final have been published.

*(2) **<u>No licence under sub-rule (1) shall be granted in respect of any shop</u>**, —*

*(a) which, in the opinion of the Collector or the Officer authorised by him in this behalf in writing, **<u>is not adequate for storing</u>** the required stock and selling it; or*

*(b) which, if situated within the jurisdiction of any Municipal Corporation or 'A' Class or 'B' Class Municipal Council, **<u>is within a distance of fifty metres, and if situated elsewhere, one hundred metres, from any educational or religious institution</u>**; or*

*(c) which is situated within a distance of **<u>fifty metres from any bus stand, station or depot of the Maharashtra State Road Transport Corporation</u>**; or*

(d) which is not duly approved by the Collector or the Officer authorised by him in this behalf and is not, for reasons to be recorded in writing, certified by him to be otherwise suitable also for locating the shop before the grant of the licence:

Provided that nothing contained in this sub-rule shall apply in respect of an existing shop for which the licensee holds a valid licence in Form F.L. II immediately before the coming into force of the Bombay Foreign Liquor (Amendment) Rules, 1981.

Explanation. — For the purpose of this sub-rule, —

*(i) "**educational institution**" means any pre-primary, primary or secondary school, managed or recognised by any local authority or the State Government or the Central Government or any college affiliated to any University established by law, but does not include any private coaching institution;*

*(ii) "**religious institution**" means an institution for the promotion of any religion and includes a temple, math, mosque, church, synagogue, agiary or other place of public religious worship which is managed or owned by a public trust registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950) and such other religious institutions as the State Government may by order specify in this behalf;*

*(iii) the **distance** referred to in clause (b) or (c) shall be **measured from the mid-point of the entrance of the shop** along the nearest path by which a pedestrian ordinarily reaches, —*

*(a) the **mid-point of the nearest gate of the institution**, if there is a compound wall, and if there is no compound wall, the mid-point of the nearest entrance of the institution, or*

*(b) the **mid-point of the nearest gate of the bus stand, station or depot** of the Maharashtra State Road Transport Corporation, if there is a compound wall and if there is no compound wall, the nearest point of the boundary of such bus stand, station or depot.*

(3) Any shop in respect of which a licence in Form F.L. II has been granted shall not be deemed to be situated within the prohibited distance referred to in clause (b) or (c) of sub-rule (2) if at any time after such licence is granted, —

(a) any institution referred to in clause (b) of sub-rule (2) comes into existence within a distance of fifty metres or, as the case may be, one hundred metres from that shop, or

(b) if any bus stand, station or depot referred to in clause (c) of the said sub-rule (2) comes into existence within a distance of fifty metres from that shop."

[Emphasis Supplied]

34. It will be seen that this is simply a provision involving ascertainment of adequacy for storage with locational parameters such as distance from an educational institution, religious institution and public transport service clusters.

35. Turning to the conditions of the FL-II Licence itself, Condition No. 4 mirrors Rule 40 and reads thus:

*"4. **No person shall be recognised as partner of the licensee for the purposes of his licence, unless the partnership has been declared to the Collector** before the licence is granted and the names of the partners have been entered jointly in the licence, **or if the partnership is entered into after the granting of the licence, unless the Collector agrees on application made to** him **to alter the licence and to add the name or names of the partner or partners in the licence**.*

Provided that, no name or names of the partner or partners shall be entered in the licence by the Collector, without the previous sanction of the State Government."

[Emphasis Supplied]

36. Condition No. 8 of the FL-II Licence reads thus:

> *"8. __The licenselicensee, his heirs, legal representatives or assignees shall have no claim whatsoever to the continuance or renewal of this licence after the expiry of the period for which it is granted__. It shall be __entirely within the discretion of the Collector to permit or not the assignee of the licensee__ in case of sale or transfer of __the heir or legal representative of the licenselicensee, in case of death, to have the benefit of the licence for the unexpired portion of the term for which it is granted__"*
>
> *__[Emphasis Supplied]__*

37. Therefore, as a condition of the licence, there is no vested right of renewal and continuation after its expiry. The legal heirs too have no vested right except for the unexpired portion of the residual term of the licence.

38. Finally, Condition No. 4A, inserted by an amendment to the Rules effected on December 2, 1989 — that is, well after the events with which this Petition is concerned — reads thus:

> *"4A. __Any person recognised as a partner by the licensee for the purpose of his licence,__ admitted under Rule 4 as such partner __shall cease to be a partner as soon as the licensee ceases to have any interest in the licence, for any purpose whatsoever__."*
>
> *__[Emphasis Supplied]__*

39. This condition essentially disabled the takeover of a licence by incoming partners if the original licensee ceases to have any interest in the licence. This is the first statutory instrument that provided for automatic wiping out of interest of a partner if the licensee ceased to have any interest in the licence. This condition was deleted on August 30, 1993[1]. The introduction of such a condition ten years after the Khaladkars were inducted could evidently not

[1] *Case Law cited and dealt with later in this judgement clearly record this position.*

apply to vested rights already created; the fact that the condition was even deleted in 1993 only fortifies Khaladkars' claim.

<u>Contentions of Parties:</u>

40. The question that arises is whether the stance adopted by the State, or the evolution of its policy, would lend itself to upholding the Impugned Order as a reasonable exercise of discretion, bearing in mind the writ jurisdiction of this Court and two iterations of writs issued by this Court, which have become final, binding and conclusive and accepted by all the three parties – Shobha, Khaladkar and the State.

41. It is in this context that Mr. Yatin Khochare, Learned Advocate for the State was called upon to have responsible officials of the State set out a detailed account of the evolution of the FL-II Licence policy from 1973 when the licence was granted, and how it has evolved till date. This is what led to the Affidavit in Reply dated March 26, 2026 ("***Reply***") being filed. An additional compilation of documents tendered on January 20, 2026, was also taken on record, and the parties were permitted to address the Court on its contents.

42. In substance, the contest before me is threefold. On behalf of Khaladkar, it is contended by Ms. Sampada Khanolkar, Learned Advocate, that the induction of the Khaladkars as partners was validly recognised under Rule 40 and that, on the findings in the 2002-Judgement and the 2016-Judgement, the licence could never have been transferred to Shobha. On the other hand, Ms. Khanolkar would submit that the 2022-Commissioner Order took a middle path and let the licence continue in the same ratio as existed

between Wadkar and the Khaladkars as on the date of Wadkar's passing away, and that the Impugned Order granting the licence to Shobha is untenable.

43. On behalf of the State, Mr. Khochare contends that a policy decision not to grant fresh licences, including under Rule 25, has been in force since 1976 and prevails even today. He concedes that the two writs issued by this Court cannot be ignored by the State, but he would point out that these writs too directed consideration of the two competing applications in accordance with the policy of the State, which stipulates that there can be no fresh issuance of a licence at all.

44. On behalf of Shobha, Ms. Priya Gondhalekar contends that what has taken place is not a "transfer" but a "re-grant" or "revalidation" in favour of legal heirs, permissible under a Circular dated July 6, 1989 ("***1989 Circular***"). Ms. Gondhalekar would rely on a line of authorities to contend that an incoming partner has no interest in a licence standing in the name of the original licensee.

Analysis and Findings:

45. A plain reading of Rule 40 of the Foreign Liquor Rules would indicate that the provision entails statutory recognition "*as partner of a holder*" of an FL-II Licence, and that too "*for the purposes of his licence*". Partnerships formed prior to the issuance of the licence are to be declared to the Collector before the licence is granted, and the names of the partners are to be entered jointly in the licence. However, where the partnership is entered into after the grant of a licence, such recognition shall not be accorded "*unless the Collector agrees, on an application made to him*", to "*alter the licence and to add the names of the partner or partners*" in the licence. In other words, the

jurisdiction under Rule 40 is essentially one of administering the terms on which a person would be recognised as a partner.

46. It is clear from the material on record that Wadkar entered into a Partnership with Khaladkar and his father Baburo, about six years after the grant of the licence, which indicates that the licence was not taken by Wadkar merely to flip it over to the Khaladkars. The Khaladkars' names were indeed added by the Collector to the face of the licence. The licence was renewed from time to time, which also means that the State had multiple occasions to examine the status of the licence holder and the Partnership into which the licence holder had entered. Wadkar had managed the business using the licence for a good six years and owing to financial difficulties, inducted the Khaladkars. Such induction was undertaken through the due process stipulated under Rule 40, and the sanction of the Collector was admittedly obtained. This is evident from the State's own position on the issue, as is discernible across the multiple rounds of litigation through which this matter has already travelled.

47. It is contended on behalf of Shobha that, at this distance in time, an actual order passed under Rule 40 has not been produced by Khaladkar. However, Khaladkar has produced the very copy of the licence on which the induction has been endorsed, on which the names of the Khaladkars have been added, and to which their photographs have also been attached. Such induction was never challenged by Wadkar during his lifetime. The Khaladkars were brought in as partners and thereafter conducted the operations. Wadkar's dilution of his own stake to 10% means that the ratio between the partners reflected a conscious movement away from the position of Wadkar alone being the licence holder, and it is writ large that the

transaction between Wadkar and the Khaladkars had the blessings of the State at all times while Wadkar and Baburao were alive.

48. The Reply filed on behalf of the State also brings on record the instructions given by the State in writing to the Government Pleader's Office in connection with WP-71. Those instructions reiterate that the induction of the Khaladkars as partners had been recognised, and that sanction had been accorded for the Partnership on August 19, 1979 in terms of Rule 40 of the Foreign Liquor Rules. I therefore have no hesitation in proceeding on the footing that the induction of the Khaladkars as partners of the licensee was clearly and evidently sanctioned and approved by the competent authority, namely the Collector, under Rule 40 of the Foreign Liquor Rules. Therefore, the Partnership Deed dated July 12, 1979 led to the Khaladkars being recognised as partners of Wadkar for purposes of the licence issued to Wadkar, with effect from August 19, 1979, with specific regard to Rule 40.

49. While the State insists that the name of the licensee was not changed to the firm's name, what is evident is that the interest of the partners was indeed recognised by the State in discharge of the statutory framework in this regard. Arguably, when recognition under Rule 40 is accorded and the names of the incoming partners are endorsed on the licence, the only logical import of Rule 40 is that the State recognises that the activity of retailing foreign liquor — the activity for which a licence is mandatory — is carried out in partnership. Such interest of the Partnership in the licenced activity, when taken note of by the State, contains an inherent element of recognition of the Partnership 's interest in the licence.

50. It is in this context that the 2002-Judgement must be read. The Learned Single Judge held that, with the death of the licensee, the Partnership Firm

came to an end. The finding is not that the Partnership never existed in the eyes of the law or that the State did not recognise it. The finding is that the licence came to an end with the dissolution of the Partnership firm upon the death of a partner. Such judicial holding is consonant with the following interpretation: the licenced activity of retailing being carried out by the Partnership , the licence granted for the benefit of the Partnership expired with the expiry of the Partnership .

51. It therefore follows that the actual change of name on the licence is only a ministerial act once recognition of the partnership has been recorded under Rule 40. The change of trade name in the present case was sought only after the death of Wadkar, but this too ought to be treated as a ministerial act, the recognition of the partnership being the effective change in the persons carrying on the activity of retailing foreign liquor. While it is contended that the licence had not been changed or transferred into the name of the Partnership Firm, what is clear is that in the books and records of the State, the partnership carrying on the activity of retailing foreign liquor was recognised to that extent.

52. It is another matter that, after the demise of Wadkar, an official of the State raised a grievance that the Collector had not taken the previous permission of the State before according sanction under Rule 40. It must be mentioned that the policy of the State in relation to the holding, operation and participation in FL-II Licences — and indeed in country liquor licences — has evolved from time to time as a response to the social reality witnessed on the basis of developments relating to various licences. It is seen that the mid-1980s saw a significant tightening of the approach to licences and partnerships, with particular regard being had to owners of licences introducing partners, thereby necessitating a policy rethink. The

communication from the Home Department stating that the Collector had not obtained the previous sanction of the State is dated as late as April 13, 1987. It essentially stated that in the event of the disability or death of the licensee, the partners would not be entitled to the licence.

53. To my mind, that understanding of the approval given by the Collector cannot be applied to the grant of recognition accorded to the partnership way back in 1979, since Rule 40 conferred discretion upon the Collector to decide on recognition of partners without caveat to the level of shareholding of the incoming partners. No conditions were imposed about the effect of demise of the original licensee. The contention that the transaction was a transfer under Rule 61-A of the Foreign Liquor Rules, necessitating approval of the State is a stance taken in 1987, just short of a decade after sanction was validly granted by the State to the induction of the Khaladkars as partners. By that time, the State had taken a further evolved view — with particular regard to country liquor — that an inducted partner could not get a share higher than a majority, and that upon the demise of the original licensee the inducted partner would have no entitlement to being a licence holder.

54. That such tightening was a later development is borne out by the record. It was only on July 6, 1989 that the State took the position that the earlier Circular dated February 22, 1989, which had prescribed the procedure for the grant of new FL-II Licences, was being shelved due to mounting opposition from various quarters of society. By the 1989 Circular, the State announced that no new licences would be granted, that incoming partners would need to have a minority stake, and that licences would not be transferred into the names of incoming partners, as that would amount to the grant of a new licence.

55. Mr. Kochare contends that the policy adopted in the 1989 Circular was merely a reiteration of a "long-standing policy". However, the State is unable to identify any date on which the policy of not granting a majority stake to incoming partners was actually adopted. It was only by the 1989 Circular that the two conditions said to have been applicable "even prior to 1989" — namely, that Partnership Deeds must explicitly state that the original licensee would hold a majority share, and that in the event of the death of the original licensee the incoming partner would have no right to the licence — were incorporated. There is simply nothing brought on record to indicate that a policy carrying the explicit requirement of ensuring a majority stake for the existing licensee was purportedly brought into force. Indeed, even in 1987, when the observation about the induction of partners with a majority stake was highlighted by the Home Department, there is no reference to any purported long-standing policy requiring the Partnership Deed to provide for those conditions.

56. The 1984 Circular referred to earlier, throws some light in this regard. That Circular expressly recognises that there was no warrant in law for renewing a licence in favour of one partner only on the ground that he is the original licensee. This indicates that it could have never been an inexorable position of the State, as is now claimed, that only the original grantee would be entitled to the licence, and that his legal heirs would thereby be entitled to claim under him, and the partners, despite having been recognised, would lose all interest in the licence.

57. There is one other contentious facet of the matter which would need adjudication and which cannot be adjudicated by a Writ Court. This relates to the Deed of Retirement purported to have been executed by Wadkar on March 18, 1981. The State has no record of such a Deed being presented to it. A plain

reading of Rule 40(1A) indicates that, without the previous sanction of the Collector, no person recognised as a partner under Rule 40 may withdraw from the Partnership and have his name deleted from the licence. Therefore, even assuming that Wadkar had signed the Deed of Retirement dated March 18, 1981, in the absence of approval under Rule 40(1A), such Deed would be of no legal effect. In the absence of any such approval, or even an application seeking such approval, there is no question of Wadkar being treated as having retired from the Partnership firm, leading to Khaladkars alone becoming 100% owners of the Partnership firm in which Wadkar, had a licence.

58. Therefore, it stands to reason that it is only such withdrawal that could have resulted in an effective transfer of the licence — by transferring the interest in the Partnership Firm that conducted the licenced activity, without transferring the licence itself. A harmonious construction of Rule 40(1A) with Rule 61-A would point to the need for the previous sanction of the State Government, as applicable to the transfer of a licence. What cannot be done directly cannot be permitted to be done indirectly. If the transfer of a licence from one party to another necessitated the previous sanction of the State Government, it cannot follow that by changing the constitution of the Partnership Firm conducting the retail sale of foreign liquor, an indirect transfer could be effected without such previous sanction. Therefore, for all intent and purposes, the purported Deed of Retirement of Wadkar, said to have been executed four years before his demise, cannot be recognised as valid in law. If Khaladkar had been content to proceed without securing the sanction required for such retirement and without obtaining the necessary endorsement under Rule 40(1A), that was a risk he voluntarily assumed, since the provisions of law were quite clear that the withdrawal of any partner required previous sanction of the Collector.

59. Put differently, even if Khaladkar were to withdraw from the Partnership , that too would have needed the previous sanction of the Collector. Therefore, what we have on hand is a situation where the Partnership , having been recognised, necessitates approval of the exit of either Wadkar or Khaladkar under the Foreign Liquor Rules. When sanction under Rule 40 is accorded for the induction of a partner, such sanction is a comprehensive sanction permitting the partners to carry out the licenced activity of retailing foreign liquor. Therefore, one would have to disregard the contention that Khaladkars had no stake whatsoever and also the contention that Wadkar had no stake whatsoever.

60. It is against the aforesaid backdrop that the 2002-Judgement has to be seen. The Learned Single Judge of this Court squarely noticed that the State had recognised Khaladkar as a partner of the holder of the licence and that his name had been added as a partner of the licence holder. The 2002-Judgement held that there was no dispute that the licence was issued in the name of Wadkar and that Khaladkar's name had been "merely added" as a partner under Rule 40. The 2002-Judgement held that upon the demise of Wadkar, the licence itself came to an end. Taking note of Rule 61-A and Condition No. 8, the 2002-Judgement squarely held that the Collector had no discretion to transfer the licence to the name of Shobha and could, at best, have permitted the benefit of the licence to continue for the unexpired portion of the term for which it was granted.

61. It is also noteworthy that for a transfer of the licence under Rule 61-A, the previous sanction of the State Government would be necessary. It was judicially held that with the demise of Wadkar the Firm stood dissolved by virtue of Section 42 of the Partnership Act, 1932 ("***Partnership Act***"). Therefore, it was ruled, the licence itself would expire. In the absence of any

term in the Partnership Deed to the contrary, upon the death of a partner, the Partnership being one at will, the firm, and with it the recognised licence being run in Partnership , would itself come to an end. It was therefore directed that both the applications, that of Shobha as well as of Khaladkar, were to be processed as applications for a new licence under Rule 25 of the Foreign Liquor Rules.

62. Since the 2002-Judgement squarely ruled that the licence stood expired with the expiry of the Partnership firm, the necessary corollary of that judicial finding is that the benefit of the FL-II Licence allotted to Wadkar had enured to the benefit of the Partnership since 1979. It is upon the demise of a partner, who happened to be the original licensee, resulting in the consequential expiry of the Partnership Firm, that it was held that there was no licence left to transfer. Neither Wadkar nor Khaladkar challenged the 2002-Judgement. They evidently embraced the position that the licence had expired and that the only avenue available to them thereafter was to apply for a new licence, in accordance with the State policy.

63. The renewed licences on record, each carrying the names of all three partners, have to be accounted for. The Learned Single Judge, in the 2002-Judgement, declared that with the expiry of the Partnership upon the demise of Wadkar, the licence itself lapsed. Had it been the judicial view, on the very facts of this case, that the licence would survive the Partnership Firm, there would have been no cause for the 2002-Judgement to declare that the transfer of the licence to Shobha as a legal heir of Wadkar deserved to be quashed and set aside. Therefore, to my mind, inherent in such finding in the 2002-Judgement, which is also reiterated in the 2016-Judgement, is that the premise that the Partnership which was carrying on the licenced activity having come to an end, the licence itself came to an end.

64. The State contends that its policy did not permit the issuance of any new licence. This was not the policy position disclosed by the State to the Learned Single Judge in 2002. This was not even the policy position disclosed by the State to the Learned Single Bench in 2016, when the findings in the 2002-Judgement were reiterated and fresh directions were issued to the State to consider the applications afresh, bearing in mind the policy position obtaining at the time of their respective applications after Wadkar's demise.

65. It is inexplicable that despite such an emphatic finding in the unchallenged 2002-Judgement and its reiteration in the 2016-Judgement, the State is persuaded to repeatedly reiterate the same position – of transferring, or to borrow from Ms. Gondhalekar's suggestion of "reissuing" the licence to Shobha. For reasons best known to the State, the same action is being taken repeatedly, granting Shobha a licence which had already been twice declared as being untenable. The writs issued to the State necessitate consideration of applications for a licence. If it is the State's policy view that no fresh licence can at all be issued, and the two writs do direct the State to adhere to its policy, the only outcome could be that the State rejects the applications of both Wadkar and Khaladkar on the same and even footing – that its policy is that no licence can at all be issued.

66. The evidentiary material on record – the proof of filing of the Partnership Deed with the Registrar of Firms, the sales tax registration, the registration under the Shops and Establishments Act in the name of M/s. S. B. Wines would ultimately not be of relevance, particularly since there is a final judicial declaration that the licence has expired and does not deserve to be renewed with the expiry of the partnership contract. That position was declared in the 2002-Judgement and accepted by all parties, with none mounting a challenge; judicial discipline requires that it must be honoured

and enforced by all arms of the State, instead of repeatedly reiterating the very same transfer that has been quashed twice over by the Writ Court.

67. Evidently, the State was represented when the 2002-Judgement was rendered. It was nobody's case before the Learned Single Judge that the State had taken a policy decision not to issue fresh licences. The State did not challenge the 2002-Judgement, nor did either Shobha or Khaladkar. Consequently, it stood concluded that the Applications dated January 7, 1986 and February 3, 1986 would be dealt with in accordance with law and applicable policy. The 2002-Judgement clearly resulted in a judicial declaration of the position that the licence had expired. A writ was issued directing a view needed to be taken on the issuance of a licence under Rule 25 of the Foreign Liquor Rules, and that too "*in accordance with the policy in existence on the dates of the applications*", in accordance with law. The 2016-Judgement is a reiteration, this time by another Learned Single Bench that a view needs to be taken under Rule 25 of the Foreign Liquor Rules. Fresh applications were permitted but were meant to be processed in terms of the law and policy applicable in 1986 when the original respective applications by Shobha and Khaladkar had been filed. These being reiterative writs that have attained finality, it is simply not permissible for the State or even for this Bench to revisit the issue.

68. Today, the State takes the position that its policy had always been not to issue licences under Rule 25 of the Foreign Liquor Rules. According to the State, and as set out in the Reply, the policy decision not to grant any fresh licences, including under Rule 25, came about with the communiqué of the Commissioner of Prohibition dated January 31, 1976 referred to earlier in this Judgement. The State could take a view that is consistent with this stance, that there is a policy in place that necessitates no licence at all being granted,

particularly since both the writs indicated that the law and policy as applicable at the relevant time i.e. as of January 7, 1986 and February 3, 1986, should be applied. However, it is simply not open to the State to act as if the two writs did not exist and simply reiterate the very same stance of having the licence transferred to Shobha.

69. Mr. Kochare submits that the policy position not to issue any new licences has remained unchanged and that such a position continues even today. If that were so, the only course available to the State would have been to cite the very 2002-Judgement, demonstrate the policy that is claimed to have existed on January 7, 1986 and on February 3, 1986, and hold that the licence simply could not be issued to either party, in disposal of the applications. The State did not do so. Instead, it went on to repeat for the third time, the same order that had been set aside, with no regard whatsoever to the declaration of the law in the 2002-Judgement and the 2016-Judgement.

70. Mr. Kochare candidly states that neither did any one point this out to either Bench nor did anyone indicate after the writs were issued that as per the policy, it is not possible to issue a new licence to either party. It is inexplicable that this purported policy position was not brought to the attention of not one but two Benches, in WP-5375 and in WP-71. Had it been brought to the attention of the Court at that stage, the Learned Judge may have taken a view on whether to exercise the extraordinary writ jurisdiction, in the facts and circumstances of the case, to grant the licence to either or to both of the competing claimants, or whether to issue any writ at all. The State could even have sought a review of the 2002-Judgement or the 2016-Judgement, or both, highlighting that the judgements were untenable in view of the claimed policy position. On neither occasion was that done.

71. Instead, the State accepted applications from each of the contesting parties pursuant to the 2016-Judgement and the State purported to process them, only to follow the same approach of transferring the licence to Shobha and rejecting the contentions of Khaladkar. Mechanically, the licence kept getting transferred to Shobha in the teeth of the directions issued by the Writ Court, which is not just inexplicable but entirely without basis. This is the most dissatisfactory outcome in these proceedings, ignoring the direction that the licence had expired and could never be transferred, re-granted or re-issued because what was to be done was to consider only Rule 25 of the Foreign Liquor Rules to see if the licence could be issued to either party at all.

72. Rule 25 is extracted above – the ingredients of what was to be considered is set out in it. The capacity to store, the distance from education institutions, religious institutions and bus transport hubs of the nature stipulated in it, was to be considered. There is nothing of this nature that has been shown. Indeed, the Collector Order rules on who can inherit the licence, directing that Shobha is entitled to it and the Minister has accepted that declaration in revision in the Impugned Order.

73. It is the Commissioner Order that picks up how the Collector Order is violative of the 2002-Judgement and the 2016-Judgement. The following extracts are noteworthy (*Paragraph breaks are incorporated since their absence in the original order makes reading it inconvenient*):

> *This is a very curious case wherein the matter has been lingering since 1986. The husband of the Respondent i,e. late Shri. Balkrishna Wadkar expired in 1986. There were 3 partners in the licence one late Shri. Balkrishna Wadkar himself, second the Appellant i.e. Shri. Suryakant Khaladkar and third Appellant's father i.e. late Shri. Baburao Khaladkar.* ***This is a fact which can be ascertained from the Excise record****.*

<u>After Shri. Wadkar expired the dispute between the legal heirs of late Shri. Wadkar and Shri. Khaladkar started which culminated in the High Court order 2002</u>. This order explicitly mentions that both the parties i.e. <u>Wadkar and Khaladkar can approach for a new licence under Rule 25 of Bombay Foreign Liquor Rules, 1953 and the Collector may decide the applications as per the 1986 policy</u>.

The then Collector dismissed the Appellant's claim on the licence on the ground that as per the 1986 policy no incoming partner had any right on the licence on demise of the rightful licensee. Subsequent order in appeal and revision have maintained the same field that since the Khaladkar were incoming partners only the legal heirs of late Shri. Balkrishna Wadkar could have claim on the licence. <u>Record submitted by Khaladkar shows that late Shri. Balkrishna Wadkar had almost given up his share of the licence by first entering into agreement to pay off the debt on the licence, secondly, by claiming 90% partnership in the licence</u> and lastly by an application late Shri.Balkrishna Wadkar requesting the Collector to delete his name from the licence.

<u>The licence was also shifted to the premises which was owned by the Khaladkars</u>. This <u>shows that late Shri. Wadkar had given up the entire claim on the licence but this could not reach any conclusion due to the prevailing Government policy</u>. Due to his unfortunate demise the claim of the legal heirs of the Wadkar become strong as per the prevailing policy. <u>It is necessary to understand that the prevailing policy was in the field due to the fact that the Government took conscious decision not to grant any new licences in form FL-II after 1980</u>, i.e. why new partners were admitted freely and licences were transferred freely till 1980.

<u>After that the Government took a decision that admission of partners and transfer of licences amounted to grant of new licence and hence the powers of approval of admission of partners was taken up by Government itself and policy of not letting the licence being transferred in the name of incoming partners on demise of the original licensee was declared in 1984</u>.

The 2002 High Court order clearly mentions that the said licence has expired on demise of Shri.Balkrishna Wadkar and both the parties involved in the licence can apply for a new licence. ***Obviously as per prevailing policy no new licence can be granted, hence the Collector decided to transfer the licence to the name of legal heirs of Shri.Balkrishna Wadkar as per the prevailing policy. The licence has been transferred in the name of Smt.Shobha Wadkar in 2003 and 2017****. The 1988 transfer has been done on the basis of licence Condition no.8 which allows the Collector the discretion to transfer the licence in name of legal heirs of the deceased licenselicensee.* ***The Rule 61-A of the Bombay Foreign Liquor Rules, 1953 permits the Collector to transfer the licence from one name to another. The then prevalent policy dictated that the incoming partner has no right on the licence, which is stated above, the Government did not wish to grant new licences to new persons****. But that did not mean that whatever share that the Khaladkars had in the licence could be waived off.* ***The order of 2003 & 2017 have simply followed what the decision was taken in 1988. These have been set aside by the Hon'ble High Court. In view of the observations stated above, since the partnership deed of Khaladkar and Wadkar is of 1979 and the orders of the Hon'ble High Court in 2002 of allowing both the parties to apply for the licence newly, it is pertinent that the rightful share of the Appellant Shri.Khaladkar can not be set aside.*** *I therefore set aside the impugned order dated 20.05.2017 with directions that* ***the Appellant and the Respondent both can claim the licence jointly, as per their share as had already been agreed.***

[Emphasis Supplied]

74. It is clear that when the Khaladkars were recognised as partners in respect of the licence i.e. in 1979, there was no bar on induction of partners. That the Khaladkars' names were entered as partners is also borne out from the record. That the premises for which the licence was issued was also changed to the premises of Khaladkar is writ large. Therefore, it is not possible to wish away the induction of the Khaladkars and their stake and

interest in the business carried on under the licence. It is also apparent that the dilution of 90% in favour of Khaladkar meant that Wadkar had agreed to the dilution when there was no prohibition in the law.

75. The Impugned Order passed in the revisional jurisdiction by the Minister simply reinstates the Collector Order and overturns the Commissioner Order. The Impugned Order holds that when Wadkar died on December 23, 1985, the share and interest of Khaladkars automatically came to an end. The Impugned Order holds that the original licensee has special rights and the partner does not. The Impugned Order is almost as if the two decisions in WP-5375 and WP-71 were simply otiose and did not exist.

76. One has to distinguish between the policy not to issue fresh licences that came about in 1976 from the policy to disincentivise induction of partners with licensees, by making the rights of incoming partners evaporate upon the death of the partner who was the original grantee of a liquor licence. Evidently, the induction of partners was not connected with the barrier on issuance of new licences in the 1970s. There were no conditions or strings attached to the induction of new partners in 1979 when the Khaladkars were brought in by Wadkar.

77. Even the 1984 Circular indicates the ambivalent policy of the State – keep renewing the liquor licence to earn revenue and not renew it only in favour of one partner or the other, and await the outcome of the dispute resolution to earn revenues while the disputes get resolved. This policy kept evolving and mutated into a clear restriction in the form of Condition 4A only in 1989, until then there appears to be no codified imposition of such conditions – which indicates that the induction of Khaladkars in 1979 cannot

be faulted and the benefits granted to them when there was no such condition cannot be wiped out with retrospective effect.

78. The prohibition on induction of partners who had a majority stake in the partnership and the prohibition on any succession rights in the hands of the partners appears to be a disincentive to creating a partnership. It is not for this Court to comment on the wisdom or the reasonableness of these measures since that is not in issue here. The issue is when the various restrictions came about and how they apply to the facts of the case, and whether they can take away vested and well-recognised rights that had already been created in past partnerships. The conditions imposed in 1989 could evidently apply only to partnerships created after these restrictions were imposed.

79. When there is a recognition of an inducted partner, there is no grant of a fresh licence – it is only in recognition of inducted interest in a licence already issued, which is what transpired in 1979. At that stage, there does not appear to have been any discrepancy with the scale of partnership interest in the hands of the incoming partners. When the State found that this could lead to a loophole of individuals getting a licence only to flip it over to third parties whose credentials were not checked prior to issuance, the State introduced newer conditions and restrictions in the 1980s.

80. Whether the changes introduced in the 1980s could retrospectively take away vested rights is the question to ask. The Commissioner Order vaguely identifies 1984 as the change of policy in approach to treatment of inducted partners on the demise of the original grantee of the licence. Wadkar died in December 1985. However, it appears that the first clear iteration of a prohibition on succession by inducted partners was articulated in 1987, as set out in the section on factual background set out at the threshold.

81. Whether any policy introduced in 1984 or introduced in 1987 would apply prospectively or whether it could take away the interests already created with the acknowledgement by the State in 1979 is the point to be considered. Therefore, when Wadkar died in 1985 (the Commissioner Order wrongly refers to 1986 as the year of demise) and the parties applied in 1986, and the interpretation of the then prevalent policy had to be applied, one would still need to see which portion of the policy prevailing in 1986 was retrospective and which portion was prospective. To my mind, by necessary implication, this analysis has been done in the 2002-Judgement and reiterated in the 2016-Judgement.

82. Be that as it may, the letter dated April 13, 1987, from the Additional Secretary, Home Department, State of Maharashtra to the Commissioner observing that, at the time of inducting and removing partners from the partnership, the Collector had not sought the sanction of the State Government, is based on the policy that was not in place in 1979. It was evidently informed by the stance of the State that was evolving in the 1980s. That the Government Order dated May 19, 1987 came later informing all Collectors that, in relation to FL-II Licences, where the names of partners were being deleted, it had to be examined whether the name of the original licensee was being removed, with the result that licences were being transferred without compliance with Rule 61-A of the Foreign Liquor Rules, is a policy position that was iterated in 1987. The requirement to iterate, that the newly inducted partners would have no right to the licence unless the Partnership Deed contained a clause that induction and removal of inducted partners would also need approval of the Collector, too does not mean that any induction needed State approval. It was still the domain of the Collector and

his permission was mandated to approve change in composition of the partnership.

83. Now, this evolving position has to also be reconciled with the clear unequivocal judicial declaration in the 2002-Judgement that the licence expired with the expiry of the firm, on the basis of Section 42 of the Partnership Act. The very fact that it was judicially found that the licence expired with the expiry of the firm means that the judicial determination is that the licence and the firm were mutually inter-dependent facts. This would only mean that the licence has been judicially held not to be the sole property of Wadkar. If one of the Khaladkars had died, then too by application of the rationale adopted in the 2002-Judgement, the licence would have come to an end. It so happened that Wadkar was the one who had expired, but the rationale in the 2002-Judgement is crystal clear.

84. The direction to the State was clear – apply Rule 25 of the Foreign Liquor Rules and consider the applications of the respective parties. Indeed, such a direction was in the context of and in lieu of the expired licence on which the business of the partnership firm was being conducted. The State simply had two choices: to accept or reject either application on the touchstone of Rule 25 of the Foreign Liquor Rules; or to reject both applications citing its purported policy position of it being impossible to issue any licence whatsoever. The State has taken neither of these decisions, and has simply kept transferring the licence, and this time for the third time, as if the judicial directions simply did not exist.

85. Shobha too has passed away and Khaladkar is in his 90s. Therefore, we now have a situation where Wadkar and his heir Shobha have both passed away and it is the heirs of Shobha who seek to benefit from the licence

originally issued to Wadkar, when the Khaladkars had bailed out Wadkar in 1979; had been given a 90% share in the Partnership ; were recognised as partners by the Collector; and even the premises for which the licence was issued had been shifted to their premises; but have had to keep approaching the Court, with the State repeatedly and mechanically taking the same steps over and over again, as if there has been no judicial order.

86. Indeed, the State had taken a policy position that where there were disputes, it would keep renewing the licence bearing in mind the revenue interests of the State and that is what has happened in this case too. The disputes reached Court and the judgement is that the licence itself had expired.

87. In the earlier journey through the Collector to the Commissioner and the Minister, the order dated April 3, 2003 passed by the Commissioner squarely notices that the licence had expired and that there was no question of a transfer being possible in view of the 2002-Judgement. The authorities went on to uphold the transfer of the licence to Shobha, the very action that the 2002-Judgement had quashed and set aside. What becomes clear from that Order, despite its incoherence, is that the State Authorities were fully conscious that there was no basis for them to enable the transfer of an expired licence, and yet they went on to do exactly that, which is what led to the 2016-Judgement.

<u>Contention of “re-grant” and “revalidation”:</u>

88. The contention advanced on behalf of Shobha’s legal heirs is that the transfer of the licence to Shobha is effectively a re-grant of the licence. Towards this end, Ms. Gondhalekar seeks to differentiate between “transfer”,

"re-grant" and "revalidation", and contends that the 2002-Judgement pertained to a transfer but does not prohibit a re-grant. She contends that the FL-II Licence has effectively been re-granted to the legal heirs, and relies upon the 1989 Circular to contend that such a re-grant can be effected in favour of legal heirs.

89. This contention does not lend itself to acceptance. Not only is the State's own position that no fresh grant is possible, but there is also the conclusive finding in the 2002-Judgement that, with the demise of Wadkar, the Partnership Firm stood dissolved and, with it, the licence too expired, thereby prohibiting any re-grant of the licence. Reliance upon the 1989 Circular is of no avail, inasmuch as the 2002-Judgement squarely declared not only that the licence could never be the subject matter of a transfer, but also that the law and policy to be applied would be those prevailing in January and February 1986, when each of the parties made an Application to the State staking a claim to the licence. Obviously, the 1989 Circular can have no relevance to applying the position obtaining in 1979 or in 1986.

90. Ms. Gondhalekar also relies on the State's position that in cases involving disputes between partners holding FL-II Licences, the existing licences should be renewed and re-granted where the application for renewal, after due compliance with the requirements, is made on behalf of the Partnership by any one of the partners, subject to contrary orders issued by the competent Civil Court. That Circular was issued to safeguard Government revenue. It is contended that the renewal of the FL-II Licence was therefore a case of a re-grant to Shobha, in which no fault could be found. I am afraid this contention does not lend itself to acceptance either. The licence could have been kept renewed to keep earning State revenue, but once the 2002-

Judgement was passed, any renewal to just one of the partners is clearly an order contrary to the arrangement contemplated by that Circular.

91. That apart, the State's own circulars point to its desire to safeguard the continued earning of Government revenue leaving disputes between partners open for adjudication. In the facts of this case, there were no disputes between the partners during Wadkar's lifetime. It is after his death that disputes arose, which led to the 2002-Judgement squarely quashing and setting aside transfer of the licence to Shobha on the ground that the Partnership had ceased to exist and consequently, the licence had expired. Since the Partnership Firm is judicially found to have stood dissolved upon Wadkar's death, leading to expiry of the very licence it is not even open to this Court to reopen a closed issue that has been reiterated by two Learned Single Benches of this Court.

92. For the same reason, the contention that the 90:10 Partnership is not in consonance with State policy is irrelevant at this stage, simply because there is already a judicial declaration that the licence itself came to an end.

93. Clearly, the decision not to issue fresh licences admittedly came about in 1976. The Commissioner Order ambiguously places the policy decision not to grant new FL-II licences to "after 1980" and indicates that the policy against an effective transfer of interest in a licence to an incoming partner upon the demise of a licensee, came about in 1984. Wadkar died in 1985 but the Partnership was created in 1979 and the State took note of the Partnership while the Courts accorded full recognition to the interests of Khaladkars to the extent of holding that demise of the Partnership led to demise of the licence. It is not open to this Court much less the State to reopen this closed issue.

94. In a nutshell, the licence having come to an end, there is no question of a re-grant, a transfer or a revalidation of an expired licence. Two explicit

reiterative directions issued by the Writ Court consistently stated that a fresh issue under Rule 25 alone may be considered. It is nobody's case that a fresh issuance under Rule 25 is being effected. Therefore, the Impugned Order is not sustainable.

Case Law Cited for Shobha:

95. Ms. Gondhalekar would place significant reliance on a Judgement of a Learned Single Judge of this Court in ***Wabale***.[2]. In that case, the Petitioner, Prabhakar Wabale, was the person to whom a foreign liquor licence had been issued in 1973. He entered into a partnership in 1984, which the Collector did not accept. A fresh Partnership Deed was therefore executed on May 28, 1992, and that partnership was dissolved by notice dated December 23, 1993. The Collector suspended the licence and an Appeal was rejected, but the Revision was allowed, permitting the inducted partner to continue the business until the inter-se disputes were resolved. This led to multiple rounds of litigation, and a Division Bench held, in Review, that it was the original licensee who had to apply for renewal of the licence afresh, while the partner who had been permitted to continue and operate the liquor business until the partnership dispute was resolved, could not apply afresh.[3] A special leave petition was also not entertained. Thereafter, an Arbitral Tribunal too ruled in favour of the original licensee and the objections to the award were turned down by the Principal District Judge insofar as the declaration of dissolution of the partnership was concerned, although the Judgement records that appeals arising from the arbitration remained pending.[4]

[2] *Prabhakar Mohiniraj Wabale v. State of Maharashtra* – ***2025 SCC OnLine Bom 2421***
[3] *See Paragraphs 6 to 12 of* ***Wabale***
[4] *See Paragraphs 9, 16 and 19 of* ***Wabale***

96. The Collector again suspended the licence; an Appeal was preferred before the Commissioner, who granted no stay; the Minister, in Revision, stayed the suspension and allowed the business to continue pending the Appeal being heard before the Commissioner. This led to the original licensee filing a Writ Petition, which was disposed of by directing the Collector to decide the issue and pass orders within four weeks.[5] That was challenged before a Division Bench, and the inducted partner was allowed to continue the business until March 31, 2013. The Collector, meanwhile, held that the name of such partner should be dropped and the licence retained only in the name of the original licensee. That order was carried higher. On a fresh decision directed by the Supreme Court, the Collector again held, on December 31, 2016, that the inducted partner could not have the licence in his name; the Commissioner dismissed his Appeal on February 17, 2018; and the Minister, by the order impugned in that Petition dated July 30, 2019, directed that the name of the original licensee's legal representative be deleted and that the licence be continued in the name of the inducted partner.[6] On those facts, the Learned Single Judge squarely held that the original licensee had been held to be a licensee in due process of law and that the reversal by the Minister was erroneous. The Learned Single Judge framed the issue as to whether the other partner had any right in the licence merely because he happened to be a partner for some time; considered Rule 40(1), and found that the licence never stood in the name of the firm and always stood in the name of the Petitioner. It was held that the Minister had failed to examine the earlier position already declared in the litigation.

[5] *See Paragraphs 10 to 12 of **Wabale***
[6] *See Paragraphs 11 and 12 of **Wabale***

97. In reliance upon ***Wabale***, it is contended on behalf of Shobha that the law declared is that the original licensee would always be the only one interested in the licence and that incoming partners would have no say. I am afraid this line of reasoning does not appeal to me; quite apart from the ratio being inapplicable to the facts of this case. In ***Wabale***, the original licensee inducted a partner, but the partnership was never entered on the licence, which at all times stood in his sole name, and the partnership later came to be dissolved.[7] No recognition having been granted to the partnership under Rule 40, and the partnership having been dissolved, the licensee would clearly continue to have his interest in the licence. In sharp contrast, in the instant case, the names of the Khaladkars have been endorsed on the licence. The premises of Khaladkars were used for the business. This is the recognition under Rule 40 of the Foreign Liquor Rules; this took place in 1979. The policy decision not to issue new licences and to impose conditions on majority interests being introduced to new partners are features that came much later. That apart, there is already a judicial declaration in the facts of the instant case in the 2002-Judgement, repeated in the 2016-Judgement. For operation of Section 42 of the Partnership Act to result in the licence being said to have expired, the necessary precondition is that the licence was property of the partnership. That being judicially determined 24 years ago, without being challenged, and reiterated a decade ago, again without being challenged, there has to be a quietus now. Reliance on ***Wabale*** would be of no avail for a matter that had already been judicially determined.

98. The precedent in ***Wabale*** is therefore wholly irrelevant to the instant case. There is, in the instant case, an explicit judicial finding that only a new issuance of a licence under Rule 25 would be possible and that there survives

[7] ***Wabale****, paragraphs 25, 28 and 30.*

no licence for the application of Rule 61-A or Condition No. 8. It is only if one were to repeatedly parrot and apply Rule 61-A and Condition No. 8, both of which have been emphatically held to be inapplicable not once but twice, that one could sustain the transfer of the licence to Shobha, which deserves to be quashed and set aside.

99. The next judgement relied upon is that of ***Dhore***[8]. In that case, the licence was not in the name of the firm but in the name of the original licensee, and the deed provided for partnership in running the shop and not in the licence; the licence had not been acknowledged and identified as property of the firm. Relying upon the Judgement of the Division Bench in ***Majeetsingh Bachher***,[9] the Learned Single Judge held that the inter se rights of the partners could create no embargo on the power of the State to renew the licence in the name of the original grantee in accordance with its policy, and that no rights had been found in favour of the partners introduced later; the licence not having been cancelled, the original grantee continued to enjoy it, and the position was no different where the original grantee himself dissolved the firm.[10] Unlike in ***Wabale***, however, the names of the partners in ***Dhore*** had in fact been entered on the licence by the Collector's order dated May 23, 1988,[11] so that the absence of recognition, which distinguishes ***Wabale***, does not distinguish ***Dhore***. However, in ***Dhore***, the licence was never treated as property of the firm, the Partnership Deed itself recording that the licence stood in the name of the original grantee. That apart, the partnership itself was entered into after the 1984 Circular; and the dissolution was by the

[8] *Ramesh Shrikrishna Dhore v. Commissioner of State Excise, Bombay and others –* ***1996 SCC OnLine Bom 507***

[9] *The State of Maharashtra and Ors. v. Shri Majeetsingh Bachher –* ***Appeal No. 1147 of 1991 in Writ Petition No. 2916 of 1991***

[10] *See paragraphs 9, 12 and 13 of* ***Dhore****.*

[11] *See Paragraph 4 of* ***Dhore***

original grantee, who survived. In the instant case, the licence has been judicially held to be property of the partnership, the induction of the Khaladkars in 1979 pre-dates the 1984 Circular, and it is Wadkar, the original licensee, and not the inducted partners, who died. In my opinion, ***Dhore*** too is of no assistance for purposes of the matter in hand.

100. Reliance was also placed on ***Yashwant Patel***,[12] in which one Narayan Naik, who had been granted a licence for running a country liquor shop in Nagpur, sought transfer of the licence to the name of a Private Limited Company in which three signatories were identified as Directors. By an order dated February 23, 1989, the State Government permitted the transfer, but subject to conditions: that the original grantee of the licence should get the majority share of profit; that if the relationship with the original grantee was severed, the remaining Directors would have no right over the licence; and that upon the demise of Naik, it would be the legal heirs of Naik who would get the benefit of the licence. Within four days, on February 27, 1989, that order was superseded and such conditions were removed. The name of Naik, who was purported to have resigned from the company, was deleted and an application to do so was allowed. Naik challenged the deletion in a Writ Petition, which he was permitted to withdraw with liberty to file a suit. The Commissioner then directed the Collector not to renew the licence in the name of the company and to hold an enquiry, and the Collector informed the transferees that the licence would not be renewed without Naik's consent. That decision was challenged by the transferees in a Writ Petition, which was allowed with a direction for a fresh inquiry. On remand, Naik's objections were rejected, and an Appeal was preferred, during the pendency of which Naik died. The Commissioner allowed the Appeal by order dated November 8,

[12] *Yashwant Motiram Patel v. State of Maharashtra* – ***2009 (6) AIR Bom R 668***

1995 and directed removal of the names of the transferees from the licence; it was that order which was challenged before the Learned Single Judge.[13] The Learned Single Judge held that there was nothing to show why the conditions imposed by the Order dated February 23, 1989 had been inexplicably and suddenly deleted just four days later. It was in that context that the objections of the other directors inducted by Naik, were rejected and the Writ Petition was dismissed.

101. The conditions imposed by the first letter dated February 23, 1989 were held to have been validly imposed on the basis of the policy then governing licensees, and it was found that there was no reason for the issuance of the letter dated February 27, 1989, which simply superseded the earlier letter without reasons. The reasons for such supersession remaining an enigma, no case was made out to permit the Directors other than Naik to have any stake in the country liquor licence. A Learned Division Bench, before which an intervener claiming to be Naik's adopted son also appeared, and on behalf of the respondent claiming to be Naik's daughter it was alleged that the transferees, who were merely employees of the shop, had taken advantage of Naik and created a fictitious Partnership Deed with the partnership being converted into a Private Limited Company, refused to interfere with the decision of the Learned Single Judge, holding that the conditions imposed earlier were consistent with prevailing policy.

102. In my opinion, ***Yashwant Patel*** too has no relevance to the facts of the present case, inasmuch as the conditions that had been imposed and were taken up for challenge were conditions imposed in 1989, by which time the

[13] *See Paragraphs 1 to 6 and 12 of **Yashwant Patel**. The petition was decided on the presumption that Naik had signed the documents leading to the transfer, the allegation that he was tricked into doing so being a disputed question of fact.*

stated policy was to require the larger share of profit for the original grantee and to stipulate that the incoming partner would have no interest in the licence. No such condition had been imposed in 1979, when the induction of partners was recognised by endorsement of the induction of Khaladkars on the licence, by the Collector.

103. The Judgement in ***Majeetsingh Bachher*** too calls for comment. There, a Learned Division Bench of this Court dealt with an FL-II Licence granted on February 3, 1986, with a partnership being entered into within a week, on February 10, 1986. It is noteworthy that this judgement clearly records issuance of a licence in 1986, when it is the stance of the State that no new licences could have ever been issued since 1970s. Leaving that aside, the Collector accepted and endorsed the partnership on the licence with the condition that in the event of the death of the original grantee, the incoming partner would have no rights.

104. The original grantee died in 1989; this was not informed to the State and the operation of the licence continued for a prolonged period. When an application for renewal eventually came up, it was found that the condition imposed by the Collector had not been adhered to. Renewal of the licence was refused by the Collector in reliance upon that condition, an Appeal was preferred against the refusal, and even during the pendency of the Appeal a Writ Petition was filed. A Single Bench allowed the continuation of the business pending appeal, and the challenge went to the Division Bench, which noticed that Condition No. 4A had been inserted by an amendment to the Rules effected on December 2, 1989.

105. While that Judgement contains an inherent factual conflict – noticing that the Government had stopped issuing fresh licences from 1973 even while

noting that the licence in question had first been issued on February 3, 1986 – the real dispute in that case was about the implications of the induction of partners within a week of that issuance in 1986. If no licences were being issued after 1973, it begs the question how the licence in question came to be issued in 1986 in the first place. Be that as it may, the observation about licences not having been issued since 1973 is not part of the ratio of that Judgement and is merely an observation.

106. What is abundantly clear is that the facts of that case turned on the application of the policy applicable in 1986 and 1989, the amendment of 1989 having inserted Condition No. 4A, to the effect that any person recognised as a partner and admitted as such would cease to be a partner as soon as the licensee ceased to have any interest in the licence. ***Majeetsingh Bachher*** deals with the law prevailing in 1986 and thereafter, and therefore is of no relevance to the facts of this case where the induction of a partner with no strings attached took place in 1979. The reasonableness of the condition imposed was found to be unworthy of interference.

107. Finally, the Judgement in ***Jaiswal***[14] needs to be considered. That was a case where a licence was issued in 1973 and a partner was inducted in 1979. An application made in 1982 to enter the name of the inducted partner in the licence was refused by the Collector, and an appeal against that refusal was allowed on March 12, 1985, permitting the name to be introduced in the licence, but subject to enumerated conditions: that the original licensee was to remain the major beneficiary; that the incoming partner would have no claim to the licence in the event of the death or retirement of the original licensee;

[14] *Shamlal Jaglal Jaiswal v. The State of Maharashtra & others – **1997 SCC OnLine Bom 178***

and that the incoming partner held no other scheduled excise licence.[15] Disputes arose thereafter, and Jaiswal dissolved the partnership in 1988, it being a partnership at will. The High Court directed provisional renewal of the licence, and both parties filed respective Writ Petitions, one for deletion and the other for renewal in the joint names. Pursuant to a direction of this Court, the Collector deleted the name of the inducted partner from the licence with effect from April 1, 1992, and his Appeal was dismissed by the Commissioner on May 14, 1992. The inducted partner died on August 5, 1992, during the pendency of his Revision, and the Revisional Authority, by order dated September 29, 1992, directed that the names of his legal representatives be restored in the licence, the grievance of the original licensee being that they had been substituted without notice to him.[16]

108. Meanwhile, the 1989 Circular was issued permitting the Collector to delete the names of partners who had been added, in the case of retirement or death of the original licensee. It was a challenge to that Circular which was repelled. In those circumstances, the order of the Revisional Authority was quashed and set aside, and the order of the Excise Authorities directing that the names of the legal heirs be deleted from the licence was confirmed. In my opinion, ***Jaiswal*** is the mirror image of the present case rather than an authority for Shobha. The recognition of the inducted partner was expressly conditional upon the incoming partner having no claim to the licence in the event of the death or retirement of the original licensee. The partnership was dissolved by the original licensee, who survived; and it was the name of the incoming partner, and thereafter of his legal representatives, that came to be deleted. In the instant case, the names of the incoming partners were

[15] *See Paragraphs 2 and 3 of* ***Jaiswal***
[16] *See Paragraphs 5 to 7 and 10 of* ***Jaiswal***

endorsed on the licence in 1979 without any such condition, the premises of the business that used the licence too being shifted to the premises of Khaladkar, and it is the original licensee who died. If anything, the Judgement notices that the Rules themselves permit a licence to be issued in the name of joint licensees or of a partnership firm, if made in accordance with law.[17]

109. Quite apart from all the distinguishment of the case law above, at the risk of repetition, in the instant case, there has been a judicial finding that strongly affirms the validity of the partnership to such an extent that the death of a partner leading to the death of the partnership has been judicially equated with the death of the licence. This position binds all parties and it is now not open to rely on case law as if this issue is being adjudicated for the first time now.

Case Law Cited for Khaladkar:

110. On the other hand, on behalf of Khaladkar, Ms. Khanolkar has sought to rely on the judgement of a Learned Division Bench of this Court in ***Karunakar Mudann Shetty***,[18] where a licence in Form FL-II was granted on April 5, 1973 to one Madansingh Manvansingh, who traded as M/s. Ambar Wine Mart at Ambarnath. Madansingh died on November 23, 1974 and the licence was transferred on February 25, 1975 to his widow, Tarabai, as the sole legal representative. Even prior to that transfer, on January 15, 1975, Tarabai had entered into a partnership with the petitioner therein for running the business of sale of liquor at the shop, and on July 17, 1975, she applied for the inclusion of his name as a partner in the licence. The Collector considered that

[17]

[18] *Karunakar Mudann Shetty v. State of Maharashtra – **1991 (52) ELT 371 : 1990 SCC OnLine Bom 649** (Writ Petition No. 2863 of 1982, **decided on October 8, 1990**)*

request and admitted the petitioner as a partner in the licence. Tarabai died on July 28, 1979. The petitioner intimated her death on July 30, 1979 and asked that her name be deleted and that he be permitted to avail of the privileges under the licence. The Collector of Thane turned down that request, forfeited the licence to Government and held, by order dated February 4, 1982, that the petitioner was not a member of the family of the deceased licensee but had been admitted as a partner only, and could therefore not claim the continuance of the licenced privileges.

111. The Learned Division Bench, upon a plain reading of Rule 40(1) of the Foreign Liquor Rules, held that the Collector had been given the power to accept the agreement of partnership entered into by the original licensee and to enter the name of the partner in the licence, and that it was difficult to appreciate how the continuance of the privileges under the licence could be denied to such a partner upon the death of the licensee. This Judgement is of direct significance to one facet of the matter in hand: the Impugned Order proceeds on the premise that the rights of the heirs of the original grantee stand on a higher footing than the rights of a partner recognised on the licence, and that upon the demise of the original grantee, the interest of the recognised partner simply evaporates. That premise is precisely what the Learned Division Bench declined to accept in ***Karunakar Mudann Shetty***.

112. A partner recognised under Rule 40 does not claim as heir, legal representative or assignee, and Condition No. 8, which deals with the claims of heirs, legal representatives and assignees, is not the provision through which his interest is to be assessed. To that extent, the Judgement fortifies the conclusion already recorded above, namely, that the recognition accorded to the Khaladkars in 1979 was a recognition of a real and subsisting interest in the licenced activity, which could not have been wished away by the State in

1988, in 2003 or in 2017. It is because the 2002-Judgement has, in reliance on Section 42 of the Partnership Act, held that the licence expired with the expiry of the firm, that this judgement would not benefit Khaladkars beyond negating the very foundation of Shobha's case as endorsed by the State. The unchallenged judicial declaration in the 2002-Judgement, reiterated in the 2016-Judgement, that with the dissolution of the Partnership Firm upon Wadkar's death, is that the licence itself expired, and that the only avenue open to either claimant was a fresh issuance under Rule 25 of the Foreign Liquor Rules.

113. Therefore, while ***Karunakar Mudann Shetty*** completely answers the reasoning on which the Impugned Order rests, it cannot be the foundation for a direction to issue the FL-II Licence to Khaladkar.

114. As regards ***Rajendrakumar***[19], a judgement by a Learned Single Judge of this Court, an FL-II licence issued in 1973 to one Purushottam Gawande was, upon a partnership entered into in 1976, transferred into the name of the partnership firm. On the death of the petitioner's father in 1987, a fresh partnership was executed between Gawande and the petitioner. Gawande died on February 12, 2000, but the business continued to be carried on in the name of the firm, and the death was disclosed to the licensing authority only much later. The Collector suspended the licence under Section 54 of the Prohibition Act; the Commissioner set that order aside; and the Minister, in revision, allowed the claim of Gawande's legal heirs and directed that their names be recorded on the licence. The Learned Single Judge held that upon the death of one of two partners the partnership firm stands dissolved

[19] *Rajendrakumar v. Hon'ble Minister, Maharashtra State Excise Department – **2024 NCBHC-NAG 9482** (Writ Petition No. 5636 of 2023 with Writ Petition No. 5637 of 2023, **decided on August 26, 2024**)*

automatically by operation of Section 42 of the Partnership Act; that the surviving partner is obliged to disclose the death to the licensing authority and to seek transfer of the licence in his own name as sole proprietor; and that the continuance of the business in the name of a dissolved firm without such disclosure amounts to misrepresentation warranting action under Section 54.

115. Two propositions from ***Rajendrakumar*** have a bearing on the matter in hand: *first*, the automatic dissolution of the firm under Section 42 of the Partnership Act upon the death of a partner in similar circumstances is exactly the reasoning adopted in the 2002-Judgement; *second*, the legal representatives of a deceased partner acquire no right to be foisted upon the surviving partner, or upon the business of the dissolved firm. That proposition sits ill with the course the State has taken, of treating the heirs of Wadkar as the natural and exclusive successors to a licence under which the Khaladkars were recognised partners with a 90% interest. At the same time, ***Rajendrakumar*** affirms that the surviving partner's remedy lies in an application to the licensing authority, to be decided in accordance with law and the applicable policy. That is precisely the course that the 2002-Judgement and the 2016-Judgement have directed in this case, and precisely the course that the State has thrice declined to take.

<u>Judgements Cited for the State:</u>

116. As regards judgements cited by Mr. Khochare, they fall into two groups – *first*, the State's privilege to issue liquor licences and the narrow compass of judicial review of liquor policy; and *second*, the ability to correct orders said to have been passed under a mistake. ***Balsara***[20] is cited for the proposition that

[20] *State of Bombay & Anr. v. F. N. Balsara – <u>1951 SCC 860</u>*

delegation of the character involved in Sections 52, 53 and 139(c) of the Prohibition Act cannot be held to be invalid, a legislature being unable to foresee and provide for every future contingency. There is no quarrel with that proposition and none has been raised, but then again, the vires of any provision of the law is not under challenge in this Petition.

117. While the vires of the State's policy is not under challenge, its blatant refusal to apply that policy and abide by the law declared by the Writ Court is remarkable. A policy that no new licence may be granted can only produce one inexorable outcome, namely, the rejection of both applications, on the same and even footing. It cannot conceivably produce the transfer of the licence to one of the two claimants, and that too three times over. The authorities cited to demonstrate the width of the State's policymaking power therefore cannot be of any use to defend the indefensible Impugned Order. If anything, they underscore that the Impugned Order is not an application of any policy at all, but a repetition of an order that has been quashed twice by this Court.

118. Mr. Kochare cites ***Nagaraj***[21] and ***Madhusudhan Reddy***[22] for the proposition that where a Court finds that an order was passed under a mistake, and that it would not have exercised jurisdiction but for an erroneous assumption which in fact did not exist, it cannot be precluded from rectifying the error, mistake being accepted as a valid reason to recall an order. The latter is cited for the proposition that an error apparent on the face of the record signifies an error evident *per se* from the record, not requiring detailed examination, scrutiny and elucidation, and that a Court exercising the power of review cannot sit in appeal over its own judgement. I am afraid this is of no assistance to the State. The power to recall or to review is the power of a Court

[21] *S. Nagaraj v. State of Karnataka –* ***1993 Supp (4) SCC 595***

[22] *S. Madhusudhan Reddy v. V. Narayana Reddy & Anr. –* ***(2022) 17 SCC 255***

of Record. It confers no power on Collector, the Commissioner or the Minister to disregard the declaration of the law effected by two different benches of the Writ Court spread across one and half decades, only to simply reiterate the same position all over again.

119. As already stated, if the State was of the view that the 2002-Judgement and the 2016-Judgement proceeded upon an assumption falsified by a policy which had never been placed before either Bench, its remedy was to apply to this Court for a review or a recall of those Judgements. That course was open to it in 2002, and was open to it again in 2016; on neither occasion was it taken. What the State did instead was to pass the very same order over again, and then a third time. ***Nagaraj*** itself sounds a caution that the inequitable consequences that had surfaced in that case having been traced to the failure of the State to bring the correct facts on record. On the very test laid down in ***Madhusudhan Reddy***, the question as to whether a policy said to be in place since 1976 existed, and whether and how it governed applications made in January 1986 and February 1986, is not a question capable of resolution without detailed examination and a long process of reasoning. This is not a case of a review of an error apparent on the face of the record. In any event, no application for review has been made at any time by any party, and any such application would now be hopelessly belated.

Conclusions and Directions:

120. In the result, my conclusions, based on the analysis set out above are summarised below:

A] The induction of Khaladkars as partners to run the business for which the licence was issued to Wadkar was evidently recognised by the State. Evidently, the Khaladkars' names were endorsed upon the licence and even the place of business, the location of which is a fundamental feature of assessment when a licence is issued under Rule 25 of the Foreign Liquor Rules, evidences a clear recognition and approval of such induction of partners under Rule 40 of the Foreign Liquor Rules.

B] There had been no dispute during the lifetime of Wadkar, the original licensee. Disputes arose only after his demise in 1985 about who is the legitimate inheritor of the licence. Fundamental facets of the dispute were judicially given a *quietus* with the 2002-Judgement declaring that the death of a partner in a partnership at will, led to death of the partnership, which in turn led to the death of the licence on which the business of the partnership was being run. On this basis, the first round of transfer of the licence to Shobha was quashed and set aside. The inexorable rationale of such ruling is that the partnership and its recognition was found to be valid – so emphatically, that the existential basis of the licence and existential basis of the partnership were identified as being so intertwined that expiry of one led to expiry of the other;

C] The State was simply required to apply Rule 25 of the Foreign Liquor Rules to issue a fresh licence and nothing else. The State did not indicate to the Court either in 2002 or in 2016 that it has a policy of not issuing any new licences and that the judicial finding that the licence has expired meant that no new issuance could at all be done;

D] There have been two iterations by different Learned Single Benches that were Writ Courts. The State is not above the Writ Court. It was simply not open to the State to adjudicate afresh precisely what was already given *quietus* by the Writ Court twice over. Yet for reasons best known to the State, the licence has been repeatedly transferred to Shobha. On this ground alone, the Impugned Order deserves to be quashed and set aside;

E] The State has been unable to find any basis to confer the benefits of the expired licence on Shobha other than finding that the interests of the original grantee stand way above the interests of the inducted partner. Now, this is precisely what it had done in the first instance, which led to the challenge being allowed by way of the 2002-Judgement. The permissible mandate from the Writ Court was clear – examine a fresh application from each of Shobha and Khaladkar, applying Rule 25 of the Foreign Liquor Rules. That mandate is all the State was permitted to apply. The State could have rejected both applications if it was of the firm view that no new licence can at all be issued. If the State was of the view that its policy position warranted making an exception for Shobha in view of her being the heir of Wadkar, that view is in violation of the 2002-Judgement and the 2016-Judgement. The mere labelling of the same action as a "re-grant" or "re-issue" of licence to one party over another, without regard to Rule 25 and in fact with regard to the policy on rights of heirs as against rights of partners, is nothing but old wine in new bottle and is completely untenable;

F] The requirements that an incoming partner must hold only a minority stake, and that the Partnership Deed must record that the incoming partner would have no right to the licence upon the death of the original licensee, were first articulated in the communique of 1987 and were incorporated in terms only by the 1989 Circular. Condition No. 4A was inserted only by Notification dated December 2, 1989, and was itself deleted by Notification dated August 30, 1993. None of these could govern an induction of partners recognised by the Collector in 1979, when no such condition was attached. These instruments of the 1980s could never operate to divest, with retrospective effect, an interest that the State itself had recognised and endorsed upon the face of the licence;

G] As a result, the Impugned Order deserves to be ***quashed*** and ***set aside***. Given the extraordinary nature of this case, and the emphatic recognition of the Khaladkars as partners in 1979, it may be tempting to use the extraordinary writ jurisdiction of this Court to direct that the ultimate effect of the Commissioner Order be adopted with a direction that the licence be jointly issued to Shobha's legal heirs as well as to Khaladkar in the ratio of 10:90. However, that would lead to this Court too committing the same untenable mistake that the State has committed, namely to revisit judicial findings rendered twice;

H] In the result, ensuring that judicial discipline is maintained by not revisiting the 2002-Judgement as endorsed and reiterated by the 2016-Judgement, and accepting that the State would need to issue a fresh FL-II licence, which is against the long-standing policy (since 1976), it is appropriate in the extraordinary facts of this case and the sheer number of violative iterations made by the State, that no FL-II licence be issued at all. The State can still redeem itself, having acted in violation of two iterations of writs issued by this Court, and considering that it would always be open to a policymaker to mould its policy in the peculiar situation that it finds itself in, it is for the State to consider moulding the policy restrictions by issuing a licence to both in the 10:90 ratio.

Costs to Khaladkar:

121. In the peculiar facts of the case, I am satisfied that Khaladkar deserves to be granted costs for having to knock the doors of this Court thrice and each time after going through three rounds before the Collector, the Commissioner and the Minister, resulting in the past quarter century of his life being mired in litigation, with the State having not even presented to two Writ Courts that it had no intention of issuing a fresh licence. It would be reasonable to award costs payable by the State in the sum of Rs. 2,50,000 to Khaladkar, within four weeks from today. This is not compensation but an acknowledgement that despite the 2002-Judgement being explicit in its terms, the State put him through multiple rounds to assert his acknowledged rights, only to be ambushed by the policy not to ever have meant to grant him a licence.

122. At the time of pronouncement, a request for stay is made on behalf of Shobha's legal heirs. In view of emphatic nature of findings, no stay is granted. The State shall take appropriate steps in accordance with this Judgement and implement the same.

123. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]