

(2013) 10 AP CK 0043

Andhra Pradesh High Court

Case No: Writ Petition No. 25183 of 2004

E. Ramaraju

APPELLANT

Vs

The Government of Andhra
Pradesh and The
Superintendent, Prohibition and
Excise

RESPONDENT

Date of Decision: Oct. 1, 2013

Citation: (2014) 1 ALD 337

Hon'ble Judges: P. Naveen Rao, J

Bench: Single Bench

Advocate: Patti Srinivasulu, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Naveen Rao, J.

On 08.04.2002, notification was issued calling for applications for establishment of retail excise shop in Nandavaram Mandal. In the auction conducted on 12.05.2002, petitioner was selected as per the procedure envisaged for the establishment of excise shop. It is the obligation of the petitioner to select the suitable premises. The premises selected by the petitioner was not accepted by the Department and Department suggested the petitioner to select another premises. Initial proposal of the petitioner to locate the shop was opposed by another shop owner by filing W.P. No. 8473 of 2002. Alleging that petitioner was not granted licence even though licence fee was paid by him and premises is identified, petitioner instituted W.P. No. 10417 of 2002. This Court by order dated 13.06.2002, directed consideration of the claim of the petitioner for grant of licence subject to the petitioner fulfilling all the formalities within a period of one week without regard to the pendency of the Writ Petition No. 8743 of 2002, which writ petition was instituted challenging the allotment of retail shop to the petitioner. By order dated 26.06.2002, the petitioner

was directed to select another premises as Department has not accepted the premises chosen by him. Petitioner has identified another premises and satisfied with the location of the premises, licence was granted and the petitioner commenced his operations of sale of excise items w.e.f. 03.10.2002. Claiming remission of the licence fee paid by the petitioner on the ground that he was not allowed to undertake sale of liquor from 01.04.2002 to 02.10.2002 for no fault on him, petitioner submitted a representation. Matter was examined by the Government and Government passed orders in G.O.Rt. No. 367 dated 27.02.2004 rejecting the request of the petitioner for grant of remission of the licence fee paid by him. Aggrieved thereby this writ petition is instituted challenging the orders in G.O.Rt. No. 367, dated 27.02.2004 and seeking direction to give remission of licence fee for the period from 01.04.2002 to 02.10.2002.

2. The relief claimed by the petitioner is opposed by the respondents. Consequent to the short list of a person for grant of licence, for establishment of retail excise shop, it is mandatory for the person, who secured the lease, to identify the premises and if the department approves the location of the premises, then only the licence will be granted. The premises selected by the petitioner was found to be in barren land and was far away from the main village and there was no inhabitation. Furthermore, the premises selected by the petitioner is falling within radius of 1 KM. from Yemmiganur Municipality, where other persons were granted similar licences. Since petitioner did not select alternative premises, notice dated 16.06.2002 was issued requesting the petitioner to select alternative premises. He was also warned that if he does not select an alternative premises immediately, the amount already deposited by him would be forfeited to the Government.

3. Alleging that interim Order dated 13.06.2002 is not complied with, the petitioner filed Contempt Case No. 812 of 2002 and the same was closed by order dated 29.07.2002 and the main W.P. No. 10417 of 2002 was disposed of on the same day. This court observed that it is better if the 1st respondent gets necessary certificates from the Mandal Revenue Officer, Nandavaram, as well as the Engineers of R&B Department and consider the request of the petitioner to establish a liquor shop under I.L.24 licence in Mugathi village. Petitioner was directed to make a representation to the 1st respondent seeking licence to establish a retail liquor shop in Mugathi village and not in Survey No. 163-B (Paiki). It is further directed that as and when representation was made by the petitioner, the same shall be considered and disposed of within a period of two weeks thereafter by the 1st respondent.

4. Subsequent to the said directions, respondents obtained certificate from the Mandal Revenue Officer, Nandavaram and Engineers of R & B Department and as per the certificate issued, the premises initially identified is less than 1 KM from periphery of Yemmiganur Municipality. Petitioner submitted a representation on 12.09.2002 identifying five premises. After verification of the distance, licence was issued to the petitioner to establish a shop in D. No. 5/206 of Mugathi village on

03.10.2002. Accordingly, shop was established by the petitioner. It is, thus, contended by the respondents that due to the fault of the petitioner only, licence could not be granted.

5. Heard learned counsel for the petitioner and learned Assistant Government Pleader for respondent No. 3.

6. The learned counsel for the petitioner submits that for no fault of the petitioner, even after payment of requisite licence fee, licence was not granted and he was not permitted to run a retail shop for a long period of approximately six months i.e., half of the licence period. Thus, petitioner is entitled to refund of proportionate licence fee paid by him for the period, for which he was not allowed to run the retail shop.

7. The learned Assistant Government Pleader submits that the lease period, which means 12 months, beginning from 01.04.2002 and ending with 31.03.2003. Therefore, the licence fee paid was for the entire licence period and it is not related to the date on which the retail shop is established. On the issue of remission, the learned Government Pleader submits that provision in Rule 25 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules 1970 is clear and categorically envisages refund of licence fee only when two contingencies are fulfilled,, i.e., 1) where licence granted is withdrawn; or 2) the shop is ordered to be closed by the competent authority under the provisions of the Act. Only in those two contingencies remission would arise and in no other case, remission is permissible. In support of the contention that the petitioner is not entitled to seek remission, the learned Assistant Government Pleader relied on Full Bench judgments of this court in the cases of [Sri Narasimha Wines and Others Vs. The Proh and Excise Superintendent and Others](#), [S.L.V. Wines Vs. State of A.P. and Others](#), and decision of single judge of this Court in W.P. Nos. 2919, 3501 and 3503 of 2010 (Jakkam Komaranjan Rao and others Vs. Government of Andhra Pradesh rep. by its Principal Secretary, Excise Department and others).

8. Andhra Pradesh Indian Liquor and Foreign Liquor Rules 1970 (for short "Rules") were framed in exercise of powers conferred by Section 72 read with Sections 9, 11, 12, 13, 14, 15 and 28 of the Andhra Pradesh Excise Act, 1968.

9. Rule 3(ee) of the Rules, defines "Lease Year", which means twelve months beginning from the first day of April of the year and ending with the 31st March of the following year.

10. Rule 3(eee) of the Rules defines "Lease period" means the actual lease period in a lease year or part thereof.

11. Rule 3(ff) of the Rules defines "License Fee", which means annual license fee as shown in the schedule appended to these Rules and includes proportionate license fee.

12. Rule 25 of the Rules prescribes Licence Fees: It reads as under:

(1) The annual licence fee for each of the licences except (IL. 17, IL.24, IL-24-B- and IL-24G) referred to Rule 23, shall be as amended, from time to time, at the rates as shown in the schedule appended to these rules. The annual licence fee for a lease year shall be paid before the commencement of the lease year to which it relates in one lump sum.

13. It is also useful to extract Rule 29 of the Rules, which reads as under:

20. Restrictions on the grant of licenses:

(1) IL-24 (Retail License):-

The applicant, subject to the approval of the licensing authority i.e., Prohibition & Excise Superintendent, shall select suitable premises for the location of shop within the Municipal Corporation, Municipality, village/town/city or area as the case may be as notified in the district Gazettee. It shall be at least 100 meters away from the places of Public worship, Educational Institutions, Hospitals and 50 meters away from Highways except in Municipal Corporations and 5 kms belt area of the periphery of Municipal Corporations.

14. A combined reading of the above Rules would show that the licence is granted to a person for a period of twelve months, unless specifically stipulated in the licence and licence fee payable is for one year. But once a person is selected to establish a retail shop, it is his obligation to identify suitable premises for the location of the shop and on selection of the said premises, after inspection of the premises, if the competent authority is satisfied, the licence will be granted. Once licence fee is paid, it shall be for the entire period of licence irrespective of the period, for which the petitioner operates shop.

15. In all the above three judgments cited by the learned Assistant Government Pleader, for remission of the licence fee, this Court rejected the claim of refund of licence fee.

16. In Sri Narsimha Wines and others case, the contention of the petitioner was that the licence was granted for less than 12 months and, therefore, the entire licence fee cannot be collected, which is actually determined for a period of 12 months. It is thus contended that the difference of fee for the period for which the actual licensee has operated alone shall be collected. The Full Bench of this Court, held as under:

The petitioners are applicants for grant of new licences and they entered into a contract. They form a separate class. The dealing in Indian made foreign liquor is not a fundamental right. It is merely a privilege. Rule 25(9) of the Rules inserted by reason of amendment is done so that revenue may not suffer any loss. The provisions of the Act and the Rules made there under are complete Code in themselves. The petitioners herein were aware of the conditions imposed as regards payment of annual licence fee as amended by the said G.O.Ms. No. 190, dated 24.3.1998. Clause 8 of the Schedule to the Rules is attracted in the case of the

petitioners. Having regard to the fact that it merely directs payment of the entire licence fee if the licence is issued before 31st May of that year cannot be said to be wholly unreasonable so as to attract the wrath of Article 14 of the Constitution.

... The matter relating to remission thus having been provided for by the State in exercise of its rule making power itself, which, in our opinion, can neither be said to be unjust or arbitrary, we are of the opinion, that no writ of or in the nature of mandamus can be issued directing the respondents to grant remission for the period during which no business was carried on. In *Govt. of A.P. v. A. Sudhakar* (supra) the period during which the licence was granted was from 18.4.1997 to 17.6.1997 for which period remission of proportionate licence fee was claimed. The said decision to which one of us (S.B. Sinha, CJ) was a party, was rendered not only without noticing the impugned rule but related to a period which was prior to coming into force of the said rules as by reason of the aforementioned amended provision the State has empowered itself to collect the annual licence fee. Even in a situation where licence had been granted after coming into effect of the excise year, the said decision cannot be said to have any application whatsoever. Further, in a matter of this nature, the Court will not enforce a contract.

....Writ of mandamus cannot be issued directing the statutory authorities to act contrary to law. A matter governed by contract qua contract would not attract the writ jurisdiction of this Court as in such a matter public law element is not involved. The State by reason of any statutory rule or otherwise can reserve unto itself the right to revise the licence fee and/or the matters ancillary or incidental thereto. Only because some hardship is caused, the same by itself may not be a ground for declaring the same ultra vires. In *Santosh Kumar Roy v. State of West BENGAL*, a Division Bench of the Calcutta High Court has held that restructuring of rents for bad maintenance of flats may cause hardship to tenants and the rent when made double on ad hoc basis is not violative of the principles of natural justice. This aspect of the matter has also been considered in *AIMS India (P) Ltd. v. Indian Bank & Ors.*

17. In *S.L.V. Wines* case, licence of the petitioner was suspended and sealed the shop with effect from 21.11.1993 and it was restored on 07.01.1994. Petitioner claimed for remission of licence fee for the period for which the licence was suspended alleging that for no fault of him, he was not allowed to carry on business during the said period even though he has paid full amount of licence fee.

18. The Full Bench of this Court considered as to whether petitioner is entitled any remission for the period during which the shop was closed and licence was suspended. Interpreting the relevant positions and following the earlier Full Bench judgment, it is held as under:

From the scheme of the Act and the procedure envisaged under various Rules framed under the Act, it becomes clear that the licensee is not entitled to any remission of the licence fee paid by him for the period during which his licence

stands cancelled or suspended. Remission on the other hand is envisaged only in cases where the licence is withdrawn or the shop is ordered to be closed by a competent authority under the provisions of the Act, otherwise than by cancellation or suspension of licence.

19. In Jakkam Komaranjan Rao and others, similar prayer for refund of licence fee for a particular period on the ground that petitioner was not permitted to operate the licence during the said period, following the Full Bench judgment of this court in Sri Narsimha Wines case, the learned single judge of this court rejected the contention and dismissed the writ petition.

20. In view of the principle laid down by this court in the judgments referred to above, the claim of the petitioner herein for refund of the licence fee on the ground that the petitioner was not permitted to operate the licence for long period of six months, cannot be countenanced. As seen from the record, the place, which the petitioner initially identified, was nearer to Yemmiganur Municipality and as per the Rules and procedures governing grant of licence, no retail shop can be established out side the Municipal limits within one KM radius of the municipality, since separate licences were granted within the municipality. The parameters for location of shops within the municipality and out side the municipality are different. Therefore, when the competent authority found that the location identified by the petitioner was within 1 KM radius of Yemmiganur Municipality and that is far away from the habitation of the village, his request was not acceded to. Only when suitable premises was identified by the petitioner licence was granted. Thus, in the facts of this case it cannot be said that the denial of the licence in the first instance was arbitrary and discriminatory on the part of the competent authority. The parameters laid down in Rule 25 of the Rules for remission of the licence fee are not attracted to the case of the petitioner. Petitioner is not entitled to remission of licence fee on the ground that for long period he was not allowed to run the retail shop. Thus, there is no merit in the claim made by the petitioner. Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions pending, if any, in this petition shall stand dismissed.