

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7176 OF 2014

Jasbirsingh Manjitsingh Bilkhu
Partner M/s. Lucky Wines

.. Petitioner

vs.

State of Maharashtra & ors.

.. Respondents

Mr. D.B. Sawant for the Petitioner.

Ms P. S. Cardozo, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

DATE : 2 MARCH, 2015

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] By order dated 18 June 2012, the Collector, Pune transferred the licence in favour of the petitioner, subject to the petitioner paying fees corresponding to four times the renewal fees. The same were assessed at Rs.5,32,000/- per annum, thereby making out a total of Rs.21,28,000/-.

3] The petitioner, instituted a revision petition before the State Government urging that the shop premises in question were at Dehu Road, Cantonment area and the population thereof was less than one lac. Accordingly, it was urged that the renewal fees would be Rs.1,10,000/- per annum and not Rs.5,32,000/- per annum.

4] The State Government by order dated 11 September 2014, after accepting the petitioner's contentions, has allowed the revision petition and directed that the fees should be on the basis that the petitioner's shop premises was located at Dehu Road, Cantonment Area. However, the State Government instead of directing refund of the excess amount, has held that the excess amount should be adjusted towards the renewal fees for the future.

5] Aggrieved by the aforesaid portion of the impugned order, which directs adjustment instead of refund, learned counsel for the petitioner made the following submissions:

(a) That there is no provision under the Bombay Prohibition Act, 1949 which permits any such adjustment as aforesaid;

(b) That the excess amount in the present case, is in the range of Rs.18 Lacs or thereabouts and the adjustment if permitted, would continue for a period of almost 18 years. In the meanwhile, the petitioner, for no reason would be deprived to use of his own money.

6] Ms Cardozo, learned AGP appearing for Respondent Nos.1 to 3, submitted that there is no bar to adjustment order which has been made and due credit will be given to the petitioner, in matters of future renewals.

7] Having heard learned counsel for the parties and perused the record, in my judgment, the State Government could not have

unilaterally made the order for adjustment of amounts, particularly since such adjustment is to spread over a long span of almost 17 to 18 years. The issue before the State Government was basically with regard to the rate of assessment. Once the State Government came to the conclusion that the assessment should have been on the basis that the shop was located in an area having population of less than one lac, then the assessment rate had to be determined accordingly. Insofar as the balance amount, which had been paid by the petitioner, without prejudice and under protest, the same had to be refunded to the petitioner.

8] It is not necessary for this Court to go into the calculation as to what is the precise amount which has been paid in excess. However, suffice to direct that the excess amount be refunded to the petitioner within a period of three months from today. In case, the amount is not refunded within a period of three months from today, then the same shall bear interest at the rate of 6% per annum. This shall be without prejudice to the rights of the petitioner to institute any other appropriate proceedings alleging disobedience.

9] Accordingly, the present petition is disposed of by way of modifying the impugned order dated 11 September 2014. The portion of the impugned order, which directs adjustment of the excess amount towards renewal fees for the subsequent years, is set aside. Instead, it is directed that the excess amount be refunded to the petitioner within a period of three months, as aforesaid.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

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