nsc.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5051 OF 2004

Pune District Cantonment Wine Merchants
Association, Registered under the Societies
Registration Act, 1860 and having its Office at
C/o.Suresh Darshanlal Agarwal, 63,
New Bazaar, Khadki, Pune – 411 003. ...Petitioner

v/s.

1) The Commissioner State Excise,
having his Office at 2nd Floor,
Old Custom House, Fort, Mumbai.

2) The State of Maharashtra
through the Hon'ble Minister (State Excise),
Home Department, Mantralaya,
Mumbai – 400 032. ...Respondents.

WITH
WRIT PETITION NO.3777 OF 2004

Ashok B. Teilani,
CL-III Licence No.117,
Deolali Camp, Nasik Road,
District – Nashik. ...Petitioner

v/s.

1) State of Maharashtra
through Principal Secretary Home,

(Transport) Department, Mantralaya,
Mumbai – 400 032.

2) Commissioner of State Excise,
Maharashtra State,
Old Custom House,
Mumbai - 400 0 23.

3) Collector of Nasik,
(State Excise Department)
Pune, District Nasik. ...Respondents.

Ms.Veena Thadhani, for the Petitioners.

Mr.V.S.Gokhale, AGP for the Respondents - State.

CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.

DATED : 5th AUGUST, 2015.

ORAL JUDGMENT (Per A.S.Oka, J.) :

1. The issue which arises for consideration in both the petitions is identical and therefore the petitions are being disposed of by a common Judgment.

2. Writ Petition No.5051 of 2004 is filed by the Pune District

Cantonment Wine Merchants Association. It is stated that this Association represents Wine Merchants carrying on business of sale of foreign liquor and country liquor in Cantonment area of Pune District. In this petition, we are concerned with licences granted under the provisions of the Bombay Foreign Liquor Rules, 1953 (for short 'the said Rules of 1953'). Rule 25 prescribes fees based on population of City or Town. On 30th December, 1996 the Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licences) Rules, 1996 (for short 'the said Rules of 1996') were brought into force. Rule 4 of the said Rules of 1996 deals with fee for grant, renewal or continuance of a licence. It provided that fee for grant, renewal or continuance of a licence for one year shall be as notified by the Commissioner at least sixty days in advance of the Financial Year. Rule 6 of the said Rules of 1996 specifically provides that the said Rules of 1996 shall supercede all the provisions relating to periodicity of licences and the amount of fees chargeable for grant, renewal or continuance thereof made in the relevant rules mentioned in sub-Rule (ii) of Rule 2 above, and the remaining provisions of these rules shall continue to be in force. Sub-Rule (ii) of Rule 2 incorporates even the said Rules of 1953. In exercise of powers under Rule 4 of the said Rules of 1996, the Commissioner of the State

Excise published a notification dated 30th January, 2004. The challenge in these two petitions under Article 226 of the Constitution of India is to the last part of the said notification which reads thus :-

> "Notwithstanding anything contained above, the rate of licence fees applicable to cantonment area shall be the same as applicable to the municipal/corporation area within whose boundaries such cantonment is located within or which are adjacent to the limits of such municipal/corporation".

3. It appears that a Revision Application was preferred by the one of Members of the Writ Petition in Writ Petition No.5051 of 2004 before the State Government which was dismissed by the Hon'ble Minster of State Excise Department. The challenge is to the aforesaid part of the notification dated 30th January, 2004 as well as to the order passed in Revision Application.

4. Learned Counsel appearing for the petitioners invited our attention to Rule 25 of the said Rules of 1953. She submitted that sub-Rule 1 of Rule 25 provides for fixing the rates of fees based on the population of the City or Town. She invited our attention to Explanation to Rule 25 which specifically defines 'population' which means the population of a

town or a city, as the case may be, as ascertained from the latest Census Report either provisional or final. Her contention is that in accordance with the said Rules of 1953, the test for determination of quantum of fees is the population based on the latest Census Report. Inviting our attention to Rule 6 of the said Rules of 1996, she urged that the Explanation to Rule 25 of the said Rules of 1953 and the tests laid down by Rule 25 of the said Rules of 1953 have not been superceded. Her submission is that power of the Commissioner under Rule 4 of the said Rules of 1996 will have to be exercised on the basis of the latest Census figures and the quantum of fees to be notified has to be based on the latest census figures. Inviting our attention to the impugned notification dated 30th April 2004, she urged that infact the Commissioner has followed the test of population in respect of all 7 areas except the Cantonment areas. Her submission is that the Cantonment areas which are not a part of Municipal areas cannot be treated on par with the adjoining Municipal areas for the purposes of determining the rates. Inviting our attention to paragraph 3 onwards of this petition, her submission is that the licence holders may not get the same business in cantonment areas as compared to the business available to the adjacent municipal/corporation areas. She pointed out that the villages adjacent to the limits of the Municipal/Corporation have been treated differently and the rates which are applicable to the adjacent corporation or municipal areas are not the same. Her submission is that position of the cantonment areas adjacent to the Municipal limits is no different from the position of the villages adjacent to the Municipal limits. She invited our attention to various documents from Exhibit – A to D1 which show that consistently the test of population has been applied for the determination of quantum of fees. She would therefore urge that the impugned notification is contrary to the test laid down by Rule 25 of the said Rules of 1953, as Rule 25 and in particular the test of population laid down therein has not been superseded by Rule 6 of the said Rules of 1996. She, therefore, submitted that the part of the impugned notification which deals with the cantonment area deserves to be struck down with a direction to charge the fees on the basis of census figures of the population in the areas falling within the limits of Cantonment in Pune District.

5. Writ Petition No.3777 of 2004 has been filed by a new licence holder where challenge is to the same part of the notification dated 30th January, 2004.

6. We have given our careful consideration to the submissions. We

have perused the said Rules of 1953. The said Rules provide for Grant of Foreign Liquor Trade and Import Licence. Part 2 of the said Rules deals with Vendor's Licence for the sale of Foreign Liquor with which we are concerned in these two petitions. Under Rule 24A, applications for Vendor's Licence are required to be considered by the Committee headed by the District Collector. What is material for consideration in Rule 25 is the sub-Rule (1) thereof which reads thus :-

> "25. **<u>Grant of vendor's licence and payment of fees. -</u>**
>
> [(1) The Collector shall in conformity with the Committee's recommendation, and after satisfying himself that the premises proposed for location of the shop for selling foreign liquor are in conformity with the provisions of the rules and instructions issued by the State Government or the Commissioner in this behalf from time to time, and that there is no objections to grant the licence applied for, may inform the applicant of the decision and grant the licence in Form FL-II on payment of deposit of Rs.10,000/- and of a fee(inclusive of consideration) payable as per the scale given below :-

[1.	Town with population upto 1 Lakh	Rs.25,000
2.	City with population of 1 Lakh and above but below Ten Lakhs ..	Rs.65,000
3.	City with population of 10 Lakhs and above ..	Rs.1,00,000]

> Provided that, if the selected applicant fails to completer necessary formalities for obtaining the Licence within three months of receipt of intimation, it shall automatically be treated as cancelled and the Collector shall

proceed to allot the licence to other suitable applicant.

Explanation - For the purposes of rule 24 and 25, “population” means the population of a town or a city, as the case may be, as ascertained from the latest Census Report, either provisional or final.]

7. A perusal of sub-Rule (1) of Rule 25 shows that fixed fees are payable on Vendor’s Licence granted in Form FL-II. It is true that the fixed fees are payable in accordance with the population of the town or the city. The population as defined in Explanation means the population of a town or a city, as the case may be, as ascertained from the latest Census Report. Thus, sub-Rule 1 of Rule 25 gives no discretion to the Collector and fixed fees provided therein are payable on the licences depending upon the population of the area.

8. Now we turn to the said Rules of 1996. Clause – (ii) of Rule 2 of said Rules of 1996 defines ‘Licence’ means any type of licence granted under any of the Rules specified in clauses (a) to (f). Clause – (e) incorporates the said Rules of 1953. Thus, the said Rules of 1996 deal with even Vendor’s Licence granted under the said Rules of 1953. From the title of the said Rules of 1996, it is itself clear that the Rules deal with fees for grant, renewal or continuance of licences. Now we turn to the Rule

regarding Repeal, which is Rule 6 which reads thus :-

> "6. REPEAL – These rules shall supercede all the provisions relating to periodicity of licences and the amount of fees chargeable for grant, renewal or continuance thereof made in the relevant rules mentioned in sub rule (ii) of Rule 2 above, and the remaining provisions of these rules shall continue to be in force."
>
> (Underline added)

9. What is superceded by the said Rules of 1996 are the Rules listed in sub-Rule (ii) of Rule 2. All the provisions of Rules listed in sub-Rule (ii) of Rule 2 are not superceded, only the provisions relating to periodicity of licenses and the amount of fees chargeable for grant, renewal or continuance thereof made in the said Rules specified in sub-Rule (ii) of rule 2 stand superceded. As the said Rules of 1953 form a part of sub-Rule (ii) of Rule 2 of the said Rules of 1996, it follows that all the provisions in the said Rules of 1953 dealing with periodicity of licences and the amount of fees chargeable for grant, renewal or continuance thereof stand superceded. It will be necessary to make a reference to Rule 4 of the said Rules of 1996 which reads thus:-

> "4. Fee for grant, renewal or continuance :-
>
> (a) Fee for grant, renewal or continuance of a licence for one

year shall be as notified by the Commissioner at least sixty days in advance of the Financial Year; &

(b) Fee for grant or renewal of a licence for five years shall be equal to four and a half times the fees chargeable for the grant or renewal or continuous, as the case may be, of that licence, for one year.

10. Rule 4 confers a power on the Commissioner to notify the fee for grant, renewal or continuance of a licence for one year. As stated earlier, Rule 25 of said Rules of 1953 deals with amount of fees chargeable for grant, renewal or continuance of Vendor's licence. As stated earlier, the fees prescribed by sub-Rule (1) of the Rule 25 of the said Rules of 1953 are fixed fees based on population of a town or city. However, the provisions regarding the amount of fees for licence under sub-Rule (1) of Rule 25 of the said Rules of 1953 specifically stand superceded by the said Rules of 1996 by virtue of Rule 6 thereof and that is how the power is conferred on the Commissioner of the State Excise to fix the rates of fees for grant, renewal or continuance of licenses.

11. The argument of the learned counsel appearing for the petitioners is that the Explanation to sub-Rule (1) of Rule 25 of the said Rules of 1953 which defines population for the purposes of Rule 25 has

not been superceded. The said argument cannot be accepted. The occasion for providing an explanation arises as under sub-Rule (1) of Rule 25 fees are made payable based on the population of City or Town. The explanation was incorporated for the purposes of computing the population for the purposes of payment of fees as provided in sub-Rule (1) of Rule 25 of the said Rules of 1953. The Rule 6 of the said Rules of 1996 specifically provides that the said Rules of 1996 specifically supercede all provisions relating to the amount of fees chargeable for grant, renewal or continuance of a licence under the Rules of 1953. On conjoint reading of Rule 6 and Rule 4 of the said Rules of 1996, the Commissioner was not under an obligation to follow the test of population for determining the rates at which the fees are payable. However, the determination of fees on the basis of population of the place can be certainly a rational criteria which seems to have been adopted by the Commissioner while issuing the impugned Notification dated 30th January, 2004. What is objected to is the last part which applies the same rates of licence fees to a cantonment area which are applicable to the municipal/corporation area within whose boundaries such cantonment is located. If a cantonment area is adjacent to the limits of such municipal/corporation, the rates of municipal/corporation areas are made applicable.

12. The question is whether the said provision stands to the test of reasonableness under Article 14 of the Constitution of India. No reasons are required to be recorded for coming to a conclusion that by no stretch of imagination, a revenue village adjacent to a Municipal area can be compared with the cantonment area adjacent to a Municipal area, which is always a developed area. It is necessary to make a reference to the affidavit-in-reply of Shri Surchand Ramchandra Kudale, Deputy Commissioner of State Excise. In paragraph 5 the impugned part of the notification is justified on following grounds a) The cantonment area which is adjacent to the Municipal/Corporation limits is a contiguous area and people are moving from cantonment area to Municipal/Corporation area and vice versa on a large scale ; (b) Therefore the consumption of liquor in cantonment area in such cases will not be only by the people residing in the cantonment area but also by the people visiting this area from the adjacent area of the Municipal/Corporation. What is sought to be suggested is that due to the contiguous location of the cantonment areas which are adjacent to the Municipal Corporation area, all these areas are virtually integrated with Municipal area and that is why the rates of fees

payable in the cantonment area are equivalent to the rates of fees payable in the adjacent Municipal/Corporation areas.

13. Against the impugned notification, a Revision Application was preferred by one of the licence holders to the State. While dismissing the Revision Application, the Hon’ble Minister has dealt with the cantonment area adjacent to the Pune Municipal Limits. While specifically dealing with the Cantonment area adjacent to the Pune Municipal Corporation limits, the Hon’ble Minister observed that the said areas are not only contiguous but for carrying out Business or Commerce, the citizens in cantonment areas very often travel to the Municipal areas and vice versa. Considering the peculiar location the cantonment areas in the Pune District, the Hon’ble Minister was of the view that the shops keepers holding vendor’s licence in the cantonment areas cannot be treated differently from the vendors in the adjacent Municipal Corporation areas. According to us, the test adopted is very relevant and cannot be said to be arbitrary. The classification made of the cantonment areas in Pune District which are adjacent to the Municipal/Corporation areas of Pune made by treating the same on par with the Municipal/Corporation areas is on consideration of all the relevant factors and the facts which are peculiar to

the Cantonment areas in Pune District. Therefore, the impugned part of the notification issued by the Commissioner cannot be faulted with.

14. As far as Writ Petition No.3777 of 2004 is concerned, the petitioner is holding a Vendor’s licence in Deolali Cantonment Area which is contiguous to Nashik Municipal Corporation area. We find no irrationality or arbitrariness in the action of the State Government applying the rates of fees which are applicable to the Municipal Corporation area of Nashik to Deolali Cantonment area which is adjacent to the Nashik Municipal Corporation Area. Under the circumstances, we find no error or no illegality associated with the impugned notification.

15. We must clarify here that in this petition we have dealt with the cantonment areas adjacent to Municipal Corporation Areas of Pune and Nashik. We must clarify that we have not examined the challenge as regards the other cantonment areas which are not the subject matter of these two petitions.

16. We accordingly reject the petitions. Rule is discharged with no order as to costs.

17. Learned Counsel appearing for the petitioners seeks continuation of interim relief in Writ Petition No.3777 of 2004. The record shows that this Court has rejected the prayer for interim relief and hence there is no question of continuation of interim relief.

18. As far as Writ Petition No.5051 of 2004 is concerned, interim relief was granted on 7th April, 2005 subject to filing an undertaking. The learned counsel appearing for the petitioners states that undertakings have already been filed. Therefore, we direct that the interim relief granted on 7th April, 2005 shall continue to operate for a period of twelve weeks from today, subject to the condition that undertakings will also continue to be valid for a period of 12 weeks from today.

(REVATI MOHITE DERE,J.) **(A.S. OKA,J.)**