IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND FIFTEEN

HONOURABLE SRI JUSTICE A.V. SESHASAI

WRIT PETITION NO. 10823 OF 2014
AND
WRIT PETITION NO. 21273 OF 2015

Between: WRIT PETITION NO. 10823 OF 2014

M/s. SPY Agro Industries Ltd.,
]New Industrial Estate,
Sy.No.446 to 449, APIIC Udumulpur
Nandyal, Kurnool district
Rep.by its Managing Director,
S.Sreedhar Reddy … Petitioner

V/s.

Government of Andhra Pradesh
Revenue [Excise-III]Department
Secretariat, Hyderabad
Rep.by its Prl.Secretary to Govt.
& Anr. … Respondents

Counsel for the Petitioner : Sri O.Manohar Reddy

Counsel for the Respondents : GP for Prohibition & Excise [AP]

The court made the following : [order follows]

HONOURABLE SRI JUSTICE A.V. SESHASAI

WRIT PETITION NO. 10823 OF 2014
AND
WRIT PETITION NO. 21273 OF 2015

COMMON ORDER :

WP.No. 10823 of 2014 assails the Proceedings Cr.No.B3/1076/2008/CDB/Ex. Dated 04/04/2014 of the second respondent – Commissioner of Prohibition and Excise, and the Memo No. 22380/Ex.III.I/2013-10 Revenue [Ex.III] Department dated 04/04/2014 issued by the first respondent State Government.

2. WP.No. 21273 of 2014 challenges the order passed by the Commissioner of Prohibition and Excise – second respondent in Cr.No.B3/1076/2008/CDB/Ex. Dated 27/06/2015 as illegal, arbitrary and contrary to the orders passed in WPMP.No. 13586 and 13587 of 2014 in WP.No. 10823 of 2014 dated 09/04/2014.

3. In response to the notification issued by the first respondent – State Government, inviting applications for establishment of IMFL factory, petitioner made an application for the same at Nandyal, Kurnool district. Basing on the recommendations of the second respondent-Commissioner, the first respondent – State Government

issued Proceedings Lr.No. 46865/Ex.III(1)/2008-1, dated 20/10/2008, according sanction for manufactory under Rule 5 (2) [c] of the A.P. Distillery [Manufacture of Indian Made Foreign Liquors other than Beer and Wine] Rules, 2006 {hereinafter called 'the Rules'} subject to the conditions stipulated therein.

4. As per Rule 5 [2] [e] of the said Rules, holder of the letter of intent has to obtain licence in the prescribed form within six months from the date of issue of letter of intent and as there was delay in completion of project, the validity of letter of intent was extended upto 19/04/2014 to obtain licence to complete civil works and to instal machinery in relaxation of Rule 5 [2] [e] of the A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006. The petitioner made an application for grant of licence to commence the production and complaining delay in processing the said application on the part of the respondents the petitioner herein filed WP.No. 7950 of 2014 before this court and this court by way of an order dated 18/3/2014 disposed of the said writ petition, directing the second respondent-Commissioner to dispose of the application for grant of licence within 15 days. The petitioner made a representation dated 27/3/2014 for consideration of its application for grant of licence in form DM2MGO. Thereafter the State Government issued Memo

No.22380/Ex.III.I/201310 Revenue [Ex.III] Department dated 04/04/2014, asking the Commissioner to take action for grant of licence under amended Rule 5 [2] [b] [i] [ii] issued vide GO.Ms.No. 67 Revenue [Ex.III] Department dated 25/1/2011. Pursuant to the memo of the State Government, the second respondent Commissioner of Prohibition and Excise by way of Proceedings in Cr.No. B3/1076/2008/CDB/Ex. Dated 14/4/2014 requested the petitioner to pay a sum of Rs.34 crores towards non-refundable and non-adjustable fee and Rs.17 crores towards special fee for the production capacity of 1000 LPLs as per amended Rule 5 (2) (b) (i) and (ii) of A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006 on or before 09/4/2014 for taking further action. Questioning the said orders of respondents 1 and 2, petitioner herein filed WP.No. 10823 of 2014 and this court on 09/2/2014 passed an order in WPMP.Nos. 13586 and 13587 of 2014, directing the Commissioner to consider the petitioner's application for grant of licence, in accordance with law, within one week from the date on which the petitioner submits an undertaking.

5. The petitioner had given a letter of undertaking and subsequently the Commissioner vide Proceedings Cr.No.B3/1076/2008/CDB/Ex. Dated 17/4/14 rejected the request of the petitioner for grant of licence. Assailing the said order, the petitioner herein filed WP.No.12732 of 2014 and this court by way of

an order dated 24/7/2014 allowed the said writ petition and set aside the order and liberty was granted to the petitioner to make a representation to the Government of Andhra Pradesh, seeking extension of letter of intent granted on 17/4/2013 for a further period and further direction was issued to the Commissioner to pass orders regarding issuance of certificate of licence strictly in terms of orders in WPMP.No. 13586 and 13587 of 2014 in WP.No. 10823 of 2014.

6. Thereafter, the petitioner herein filed CC.No. 151 of 2015. The Commissioner of Prohibition and Excise - second respondent herein by virtue of proceedings in Cr.No.B3/1076/2008/CDB/Ex. Dated 27/6/2015 passed an order rejecting the application of the petitioner for grant of licence. Assailing the said order, WP.No. 21273 of 2015 has been filed. Counter affidavit deposed by Joint Commissioner of Prohibition and Excise [Distilleries] is filed.

7. Heard Sri C.V. Mohan Reddy, learned Senior Counsel representing Sri O.Manohar Reddy, learned counsel for petitioner on record and learned Advocate General for the respondents. Perused the material placed before the court.

8. Submissions/contentions of the learned counsel for the petitioner:

1) The impugned order passed by the first respondent is highly

illegal, arbitrary and violative of Article 14 and 19 (1) (g) of the Constitution of India.

2) The impugned order is opposed to the provisions of A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules. 2006.

3) Since the letter of intent was issued on 20/10/2008 the amended Rule 5 [2] [b] [i] and [ii] which came to being on 25/1/2011 by virtue of GO.Ms.No.67, dated 25/1/2011 cannot be made applicable.

4) The amended Rule has no retrospective operation and the rule cannot be given retrospective operation unless it is specifically provided for.

5) By the time amended Rule came into force, the petitioner herein already paid half of the amount and on the delayed payment of instalments the second respondent collected interest also as such the impugned action cannot be sustained.

6) The reasoning assigned by the State Government vide Memo dated 04/4/2014 that as on the date of extension of validity of letter of intent i.e., 17/4/2013 the amended Rule 5 [2] [b] [i] [ii] was in force is unsustainable.

7) Letter of intent was issued prior and extension of letter of intent cannot be equated to the grant of letter of intent afresh.

8) Rule 5 (2) (b) (i) (ii) and 5 (ii) (e) operate in different fields independently.

9) The amended Rule can be made applicable only in respect of applications received after insertion of the amended rule and not in respect of the application already processed and letter of intent already granted.

10) Impugned orders are contrary to the orders dated 18/3/2014 passed in WP.No. 7950 of 2014.

11) The conduct of the second respondent herein is highly contemptuous and tantamount to disobedience of the orders of this court.

9. Submissions/contentions of the learned Advocate General.

The impugned orders are in conformity with the A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006 and there is no illegality nor any infirmity in the impugned order, as such the writ petitions are not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

2) Since the extension of validity of letter of intent took place after the advent of the amended Rule the petitioner needs to pay fee as per the amended provisions as such the questioned orders warrant no interference of this court under Article 226 of the Constitution of India.

10. In the light of the pleadings, submissions and contentions available before this court, now the issue that emerges for

consideration of this court are :-

i) whether the respondents are justified in demanding the petitioner to pay licence fee as per amended Rule 5 (2) (b) (i) & (ii) of the A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006.

ii) Whether the petitioner is entitled for licence subject to payment of licence fee as per un-amended Rule 5 of the Rules?

11. The State Government framed A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006 in exercise of the powers conferred under section 72 read with sections 16, 17, 18, 21, 22, 23, 28 and 29 of A.P. Excise Act, 1968 and the State Government notified the said Rules vide G.O.Ms.No.90 Revenue [Ex.III] Department, dated 27/1/2007. The entire controversy in these cases revolves round Rule 5 of the Rules. The petitioner herein after obtaining letter of intent from the State Government under Rule 5 [2] [c] of the Rules, applied to the Commissioner of Prohibition and Excise, second respondent for grant of licence under Rule 6 of the Rules and the Commissioner by way of the impugned proceedings rejected to grant the same. As evident from the impugned proceedings the only reason for such refusal is amendment brought in to Rule 5 of the A.P. Distillery [Manufacture of IMFL other than beer and wine] Rules, 2006 by the State Government by virtue of GO.Ms.No. 67 Revenue Ex-III

Department dated 25/1/2011. The sum and substance of the case of the petitioner is that it need not pay licence fee as per amended Rule. On the other hand, it is the case of the respondent that it is obligatory on the part of the petitioner to pay fee as per the amended Rule. In order to arrive at just conclusion with regard to the same, this court deems it appropriate to refer to un-amended as well as amended Rule 5 of the Rules.

The amounts payable as per the table given under un-amended Rule 5 (i) (ii) reads as under.

In Rule 5 (2) (b) (i),

Annual production capacity of the proposed manufactory (1)	Non-refundable and non-adjustable fee (in respect of new manufactory) (2)	Non-refundable and non-adjustable fee (in respect of expansion of an existing manufactory) (3)
Upto 10 Lakh Proof Litres	Not applicable	Rs.1.4 Crores
Every additional slab of 10 lakh proof litres upto 40 lakh proof litres	Not applicable	Rs.1.4 Crores
50 Lakh Proof Litres	Rs. 7 Crores	Rs. 7 Crores
Above 50 Lakh Proof Litres and upto 100 lakh proof litres	Rs. 10 Crores	Rs. 10 Crores
Above 100 Lakh Proof Litres	Rs.12 Crores	Rs. 12 Crores

In Rule 5 (2) (b) (ii)

Annual Production capacity of the proposed manufactory (1)	Special fee (in respect of new manufactory) (2)	Special fee (in respect of expansion of an existing manufactory) (3)
Upto 10 Lakh Proof Litres	Not applicable	Rs.0.6 Crores
Every additional slab of 10 Lakh Proof Litres upto 40 Lakh Proof Litres	Not applicable	Rs.0.6 Crores
50 Lakh Proof Litres	Rs. 3 Crores	Rs. 3 Crores
Above 50 Lakh Proof Litres and upto 100 Lakh Proof Litres	Rs. 5 Crores	Rs. 5 Crores
Above 100 Lakh Proof Litres	Rs. 6 Crores	Rs. 6 Crores

The following are the tables given under Rules 5 (2) (b) (i) and (ii) after the amendment brought in by virtue of G.O.Ms.No. 67 dated 25/1/2011.

S.No.	Annual production capacity of the proposed manufactory	Non-refundable and Non-adjustable fee (in respect of new manufactory	Non-refundable and Non-adjustable fee (i n respect of explansion of an existing manufactory)
(1)	(2)	(3)	(4)
(1)	Upto 10 lakh Proof Litres	Rs. 7 Crore	Rs. 1.4 Crore
(2)	Above 10 lakh proof litres and upto 50 Lakh proof litres	Rs. 7 Crore	Rs.1.4 Crore plus Rs. 1.4 Crore for every additional slab of 10 lakh proof litres or part thereof
(3)	ABOVE 50 LAKH P R O O F LITRES AND UPTO 100 LAKH PROOF LITRES	Rs. 10 Crore	Rs. 10 crore

(4)	Above 100 Lakh Proof Litres	Rs. 10 crore plus Rs.2 crore for every additional slab of 50 lakh proof litres or part thereof	Rs. 10 crore plus Rs. 2 crore for every additional slab of 50 lakh proof litres or part thereof.

S.No.	Annual production capacity of the proposed manufactory	Special fee (in respect of new manufactory)	Special fee (in respect of explansion of an existing manufactory)
(1)	(2)	(3)	(4)
(1)	Upto 10 lakh proof litres	Rs. 3 crore	Rs. 0.6 crore
(2)	Above 10 lakh proof litres and upto 50 lakh proof litres	Rs. 3 crore	Rs. 0.6 crore plus Rs.0.6 crore for every additional slab of 10 lakh proof litres or part thereof
(3)	Above 50 Lakh proof litres and upto 100 lakh proof litres	Rs. 5 crore	Rs. 5 crore
(4)	Above 100 lakh proof litres	Rs.5 crore plus Rs.1 crore for every additional slab of 50 lakh proof litres or part thereof	Rs.5 crore plus Rs.1 crore for every additional slab of 50 lakh proof litres or part thereof

12. In the instant case, the petitioner herein made its application and basing on the recommendation of the second respondent Commissioner, the State Government by virtue of the proceedings dated 20/10/2008 granted letter of intent in favour of the petitioner under Rule 5 (2) (c) of the Rules. There is also no dispute with regard to the fact that as per the above referred un-amended Rule in vogue as on the date of letter of intent, the

petitioner herein paid the fee also. The amended Rule 5 (2) (b) (i) (ii) came into force from 25/1/2011 by virtue of notification issued by the State Government vide GO.Ms.No.67 Revenue [Ex.III] Department dated 25/1/2011. By way of the said amendment, State Government modified the quantum of fee payable.

13. A reading of the said amended provisions shows that the said amendment has been brought in prospectively and not retrospectively. A plain reading of the said amended provisions shows that the same is applicable to the fresh applications and not to the cases where letters of intent were already issued prior to the advent of the amended Rules. In the name of extension of validity period of letter of intent, in the considered view of this court, the respondents cannot demand the petitioner to pay the amount as per the amended provisions and the same cannot be sustained. No provision of law is brought to the notice of this court by the respondents, which enables them to collect fee as per amended provisions in the cases where letters of intent were already granted. In the facts and circumstances of the case, this court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned orders cannot be sustained in the

eye of law.

15. For the aforesaid reasons, the writ petitions are allowed setting aside the Proceedings Cr.No.B3/1076/2008/CDB/Ex. Dated 27/6/2015 of the second respondent – Commissioner of Prohibition and Excise and proceedings of the second respondent vide Cr.No. B3/1076/2008/CDB/Ex. Dated 4/4/2014 and the Memo No. 22380/Ex.III.I/2013-10 Revenue [Ex.III] Department dated 04/04/2014 issued by the first respondent State Government and consequently the respondents are directed to grant licence in favour of the petitioner under the A.P. Distillery [Manufacture of Indian made Foreign Liquors other than beer and wine] Rules, 2006 within 15 days from the date of receipt of this order if necessary by extending the validity of letter of intent also. No costs.

16. As a sequel, Miscellaneous Petitions if any, pending in these writ petitions shall stand closed.

JUSTICE A.V.SESHASAI

16/07/2015
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HONOURABLE SRI JUSTICE A.V. SESHASAI

WRIT PETITION NO. 10823 OF 2014
AND
WRIT PETITION NO. 21273 OF 2015

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Date: 16/07/2015
Circulation No.
Court Master: I s L