

THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V.BHATT

PIL No.102 OF 2015,

WAMP No.2078 OF 2015 IN/AND WA(SR) No.146763 OF 2015

AND

WAMP No.2076 OF 2015 IN/AND WA(SR) No.146750 OF 2015

JUDGMENT: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

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The questions raised in these appeals and the PIL are common and hence by consent of learned counsel for the parties those were heard together and are being disposed of by this common judgment.

2. In the PIL and in the Writ Appeals, the respondents are common. Since the petitioner, in the PIL, was not a party to the writ petitions (W.P.No.10823 of 2015 & W.P.No.21273 of 2015), he has filed Miscellaneous Petitions seeking leave of this Court to file writ appeals against the common order dated 16.07.2015 passed therein.

3. The prayer in the PIL reads thus:-

“It is prayed that this Honourable court may be pleased to issue an appropriate writ more in the nature of writ of mandamus declaring the action of the government in reviving the LOI of the 3rd respondent for establishing a IMFI manufactory by extending the validity of LOI from time to time contrary to the rules 5 and 6 of A.P. distillery (Manufacture of IMFL other than beer and wine) rules 2006 8and consequently direct the respondents 1 and 2 not to grant extension of LOI any further nor grant licence to the 3rd respondent since the 3rd respondent has forfeited the LOI which was granted on 20-10-2008 and issue such other writ or order or direction as deemed fit and proper in the circumstances of the case.”

4 . The writ petitions were filed by the 3rd respondent- M/s.S.P.Y Agro Industries Limited (for short “SPY”). In the first writ petition (W.P.No.10823 of 2014) SPY sought writ of Mandamus declaring the proceedings dated 04-04-2014 issued by the 2nd respondent viz., The Commissioner of Prohibition and Excise (for short “the Commissioner”) and the Memo dated 04-04-2014, referred to in the proceedings, as illegal, arbitrary and one without jurisdiction and consequently sought directions to the respondents to grant a licence as provided for under Rule 6 of the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquor Other Than Beer And Wine) Rules, 2006 (for short “the Rules”) to SPY. In the 2nd writ petition (W.P.No.21273 of 2015) SPY sought writ of Mandamus declaring the proceedings dated 27-06-2015 issued by the Commissioner as illegal, arbitrary and contrary to the order passed in WPMP Nos.13586 and 13587 of 2014 in W.P.No.10823 of 2014 and consequently issue a direction to the respondents to grant licence by extending validity of the letter of intent (LOI), if necessary.

5. To deal with the questions raised including *locus* of the petitioner in filing the PIL, narration of facts in brief would be necessary. The 3rd respondent – SPY is a Company registered under the Companies Act, 1956. The 1st respondent is the State of Andhra Pradesh, which issued the notification dated 10-06-2008, inviting applications from intending persons for grant of LOI for establishment of a new Indian Made Foreign Liquor (IMFL) manufactory as contemplated by Rule 4 of the Rules. SPY made an application for establishment of IMFL Manufactory (molasses and grain based ENA) at Nandyal, Kurnool District. The 1st respondent (Principal Secretary) issued LOI dated 20.10.2008 in favour of SPY. It would be advantageous to reproduce the LOI to understand facts of the case better.

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FORM-DM (S)

[See Rule 5 (2) (C)]

LETTER OF INTENT

GOVERNMENT OF ANDHRA PRADESH

REVENUE (EXCISE.III) DEPARTMENT

Letter No.46865/Ex.III(1)/2008-1 Dated : 20-10-2008

From:

The Principal Secretary to Govt.

Revenue (Ex.III) Department,

A.P. Secretariat

Hyderabad.

To

The Chairman,

M/s.S.P.Y. Agro Industries Ltd.,

New Industrial Estate,

Sy.No.446 to 449, APIIC,

Udumulupur,

Nandyal,

Kurnool District.

Sir,

Sub:- Prohibition and Excise – Establishment of IMFL Manufactory-

Sanction accorded for establishment and working for

manufacture of Indian Made Foreign Liquors – Orders –

Issued.

Ref:- 1. G.O.Ms.No.90 Revenue (Ex.III) Dept. dated 27.01.2007

2. G.O.Ms.No.728 Revenue (Ex.III) Dept. dt.10.06.2008

3. G.O.Ms.No.1051, Revenue (Ex.III) Dept. dated 21.8.2008

4. M/s.S.P.Y. Agro Industries Ltd., Nandyal, Kurnool District,

Application dated 26.8.2008 and 05.09.2008.

5. From the Commissioner of Prohibition and Excise reference in
Cr.No.B3/1076/08/DDB/Ex. Dt.4.9.2008 and 6.9.2008.

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In response to the notification issued in the reference 2nd cited, M/s.S.P.Y. Agro Industries Ltd., Nandyal, Kurnool district have submitted an application in the reference

4th cited for sanction of the Government for establishment and working of a IMFL Manufactory as required under Rule 5 (2) (a) of the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquors other than Beer and Wine) Rules, 2006 for manufacture of Indian Made Foreign Liquors utilizing from both Molasses and grain based ENA. The applicant proposes to establish the unit in the State of Andhra Pradesh as detailed in the scheme at Nandyal of Kurnool district of Andhra Pradesh State.

2. In the reference 5th cited, the Commissioner of Prohibition and Excise, Hyderabad has recommended the proposal.

3. The Government have examined the request of the applicant and the recommendations of the Commissioner. **The Government hereby accord sanction for the construction and working of a manufactory under Rule 5 (2) (c) of the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquors other than Beer and Wine) Rules, 2006** subject to the following conditions:-

- b. the quantity permitted for manufacture per annum shall be 2000 Lakh Proof Litres.
- c. This sanction is accorded without any commitment for allowing import of any machinery or supply of raw materials.
- d. **This Letter of Intent is valid for a period of three years in case of new manufactory from the date of issue subject to the condition that the holder shall obtain a licence from the Commissioner of Prohibition and Excise within six months duly fulfilling the formalities as required under the A.P. Distillery (Manufacture of Indian Made Foreign Liquors other than Beer and Wine) Rules, 2006.**
- e. **The holder of this Letter of Intent shall fulfill the formalities laid down in the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquors other than Beer and Wine) Rules, 2006 and the amendment orders issued in the reference 3rd cited, subsequently,**
- f. This Letter of Intent shall not, however, confer any right or privilege for the grant of licence and is liable to be cancelled or withdrawn at any time and in such an event, no compensation or damages whatever shall be payable.

Yours faithfully

For PRINCIPAL SECRETARY TO GOVERNMENT"

(emphasis supplied)

5.1 From perusal of the letter of intent dated 20.10.2008, it is clear that the Government had accorded sanction for construction and working of the manufactory under Rule 5(2) (c) of the Rules subject to the conditions mentioned therein. It was also made clear in the letter of intent that it was valid for a period of 3 years subject to condition that the SPY shall obtain a licence from the Commissioner of Prohibition and Excise within six months duly fulfilling the formalities as required under the Rules. The Rules mentioned in the letter of intent are “the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquor Other Than Beer And Wine) Rules, 2006”, duly amended vide G.O.Ms.No.90 dated 27.01.2007.

5.2 The Commissioner, thereafter, issued proceedings dated 25.10.2008 to SPY directing them to comply all formalities for issue of licence under Rule 6 of the Rules. SPY, accordingly, claim that they made an application for grant of licence under rule 6 of the Rules on 04-02-2009. They further claim that they paid and/or furnished bank guarantee towards the fees that they were required to pay under the Rules, in particular Rules 5 and 6 thereof. It is not in dispute that licence was not issued within the stipulated time and/or till expiry of the period of LOI. The LOI was issued on 20-10-2008 and it was valid for a period of three years as stated therein and as provided for in rule 5 of the Rules in force at the relevant time. The validity period of LOI expired on 19-10-2011. It has come on record that for the first time vide Memo dated 17-04-2013, issued by the 1st respondent, the validity of LOI was extended upto 19-04-2014. Then it was again extended by another Memo dated 11-05-2015 from 20-04-2015 to 19-07-2015 and lastly, it was extended by Memo dated 09.04.2015 from 20-04-2014 to 19-04-2015. These extensions were made to enable SPY to obtain licence, to complete civil works, and to install machinery in relaxation of Rule 5(2)(e) of the Rules.

5.3 After the first extension, vide Memo dated 17.04.2013, SPY made an application for grant of licence and along with the application submitted/furnished necessary certificates and amounts/fee to the

Commissioner on 05.10.2013. Though the application dated 04-02-2009 was made, as claimed by SPY, for grant of licence after issue of LOI, it is not clear as to why SPY made another application for grant of licence on 05.10.2013. According to SPY, since there was no action on the part of the officials of the respondent in considering their applications for grant of licence, on 14.03.2014 they filed a writ petition in this Court bearing W.P.No.7950 of 2014. The said writ petition was disposed of vide order dated 18.03.2014. While disposing of the writ petition it was observed that it is incumbent upon the Commissioner to take up the application that was submitted by SPY on 05.10.2013 and pass such orders as are deemed fit and proper by him upon being satisfied that the conditions stipulated under sub-rules (1) to (3) of Rule 6 of the Rules were being satisfied by SPY in all respects. It was further observed to complete this exercise within a period of 15 days from the date of receipt of the order.

5.4 In pursuance of the said order, it seems SPY made representation dated 27-03-2014 to consider their application for grant of licence and also produced a copy of the order dated 18-03-2014 passed by this Court in W.P.No.7950 of 2014. The Commissioner on 04-04-2014 passed an order directing SPY to pay a further 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 the amended Rule 5(2)(b)(i) and (ii) of the Rules on or before 09-04-2014 so as to take further action on the application dated 05-10-2013 for grant of licence in Form DM2 (MGO) within stipulated time. This order of the Commissioner was challenged by SPY in W.P.No.10823 of 2014. In this writ petition (W.P.No.10823 of 2014) WPMP Nos.13586 and 13587 of 2014 were filed by SPY, on which this Court directed the Commissioner to consider the application for grant of licence on furnishing undertaking vide order dated 09-04-2014. Accordingly, SPY furnished an undertaking on 11-04-2014. On 17-04-2014 the Commissioner passed an order rejecting petitioner's application on the ground that they did not pay the amount as demanded by letter dated 04-04-2014.

5.5 The order of Commissioner, dated 17-04-2014, was questioned by SPY in W.P.No.12732 of 2014. In this petition, in view of the statement made by the learned Advocate-General on 24-07-2014, learned Judge directed the Commissioner to pass a fresh order regarding issuance of licence strictly in terms of the directions issued in WPMP Nos.13586 and 13587 of 2014 in W.P.No.10823 of 2014 dated 09-04-2014 within one week therefrom. It appears, since the order was not passed within the stipulated time a Contempt Case was filed by SPY bearing C.C.No.151 of 2015. The learned Judge, dealing with the Contempt Case, vide order dated 10-04-2015, in the light of the submission made by the learned Advocate-General, observed that it is expected that a decision in granting extension of LOI would be processed and action taken immediately and in any case within a period of three (3) weeks, including the consequential orders to be passed by the Commissioner on the application for licence.

5.6 Thereafter, the Commissioner on 10.06.2015 passed an order rejecting the application of SPY for grant of licence. On 19-06-2015, once again the Advocate General stated that certain factual errors have crept in the order dated 10.06.2015 and sought leave of this Court to withdraw the order and issue a fresh order. Again on 27.06.2015 the Commissioner passed an order rejecting the application for grant of licence on the ground that SPY failed to fulfill the conditions stipulated under the proviso to sub-rule (3) of Rule 6 of the Rules, viz., non-submission of bank guarantee for the balance of LOI deposit/fee of Rs.51 Crores. The second writ petition (W.P.No.21273 of 2015) was filed by SPY challenging the order dated 27-06-2015. Thus, both the writ petitions bearing Nos.10823 of 2014 and 21273 of 2015 came to be disposed off by common order dated 16.07.2015.

6. The petitioner in PIL is a Member of Legislative Assembly belonging to YSR Congress Party. He claims that he knows the provisions of the A.P. Excise Act, 1968 (for short, 'the Act') and the Rules made thereunder. He states that the State Government gets a lot of revenue through IMFL Manufactories. He stated that the manner in which LOI, after it expired, was extended thrice, apart from it being illegal, is bound to cause huge financial loss to the State

exchequer. He further states that the Government in violation of the Rules, in particular Rules 5 & 6 of the Rules, granted extension of LOI, dated 20-10-2008, after more than two years of its expiry date. Though the Government extended the validity of LOI *de hors* the provisions of Rule 5 of the Rules, the Commissioner rightly directed SPY to pay LOI/License fee enhanced by the Government vide G.O.Ms.No.67, Revenue (Ex.III) Department, dated 25.01.2011, under the amended Rule 5 (2) (b) (i) (ii) of the Rules. That apart, he stated that the delay in obtaining license by SPY and the arbitrary extension of validity of LOI caused a huge loss to the State exchequer. He also stated that if SPY had completed all the stages within the time stipulated for commencement of production of IMFL, the State would have gained about Rs.50 crores per month by way of excise duty, apart from annual license fee. He has stated that the Government has acted contrary to the Rules and therefore the order, extending or reviving the LOI, is illegal and without jurisdiction. In this backdrop, he seeks direction to the respondents not to grant further extension of LOI.

7. SPY filed counter-affidavit dated 8.7.2015 through their Managing Director. Basically, SPY has denied all allegations made by the petitioner and raised serious objections about the maintainability of the PIL on the ground of petitioner's *locus*. It is stated that the PIL has been filed with a view to wreak private vengeance and due to political differences between them. In short, it is stated that the PIL at the instance of petitioner is politically motivated and it is not in public interest. He further stated that in any case the petitioner cannot question the action of the Government, extending validity of LOI, which is also the subject-matter in the writ petition. He has also justified the extension of LOI, and stated that the common order of the learned Single Judge in both the writ petitions (W.P.Nos.10823/2014 & 21273/2015) deserves no interference. He also opposed miscellaneous petitions filed in Writ Appeals seeking leave of this Court to file appeals against the order of the learned Single Judge, dated 24.7.2014, whereby the order of the Commissioner directing SPY to pay the difference of LOI/Licence fee, has been set aside.

7.1 Insofar as *locus* of the petitioner is concerned, the Managing Director of SPY in the counter has stated that the petitioner and the Chairman of SPY were the members of YSR Congress Party and because of differences between them, the Chairman changed the political party, and therefore, the petitioner has filed the present PIL with oblique motive and only with a view to wreak private/political vengeance.

8. In this backdrop, we have heard the learned counsel for the parties at considerable length and with their assistance gone through the relevant provisions of the Act and the Rules, so also other materials placed before us.

8.1 Mr. Vedula Venkata Ramana, learned Senior Counsel for the petitioner, at the outset, invited our attention to the relevant Rules and submitted that the Rules are mandatory in nature and they do not confer any power on the Government to extend validity of LOI, as has been done in the present case. On the basis of the material available on record, he submitted that, even assuming that the Government has power to extend the validity of LOI, such power cannot be exercised where the period of LOI has expired long before. In other words, he submitted that even if power to extend LOI is assumed, the Government had to extend the validity of LOI from 20.10.2011 i.e., immediately on expiry of the period of three years from the date of issue of LOI on 20.10.2008. He, in the alternative, submitted that the first extension of LOI granted by the Government vide Memo, dated 17.04.2013 cannot be treated as extension of validity of original LOI, dated 20.10.2008 and at the most it could be treated as issuance of fresh LOI, and therefore, the order of the Commissioner directing SPY to pay LOI/Licence fee, as enhanced by G.O.Ms.No.67, dated 25.01.2011, is valid and legal. He submitted that the petitioner does not have any personal vengeance or grievance against the Chairman of SPY and he has filed the instant PIL in the larger interest of the people and prevent SPY from enjoying the privilege of licence to manufacture without paying fee as applicable.

8.2 Insofar as the *locus* is concerned, he submitted that the petitioner is an

individual, having no interest directly or indirectly in the activities of SPY and he has every right to file PIL in the interest of people at large and to save huge loss that is likely to be caused to the Government exchequer by applying amended rules in levying fee for grant of licence.

8.3 On the other hand, Mr.C.V.Mohan Reddy, learned Senior Counsel submitted that the petitioner has filed the instant PIL and also petitions, seeking leave to file appeals, to settle personal score against the Chairman of SPY. He submitted that the PIL is politically motivated and it is filed only because the Chairman of SPY left YSR Congress Party and joined the Ruling party. On this count alone, he submitted that PIL as well as miscellaneous petitions and consequential appeals deserve to be dismissed. In support of this contention, he has placed reliance upon the judgment of the Supreme Court in ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra***⁽¹⁾.

8.3.1 He then submitted that the LOI was issued in 2008, and therefore, SPY is liable to pay LOI/License fee prevailing then and not the fee enhanced vide G.O.Ms.No.67, dated 25.01.2011. He submitted that the learned judge, while allowing the writ petitions, has rightly observed that “the amended Rule 5 (b) (i) (ii) came into force w.e.f. 25.01.2011 by virtue of the notification issued by the Government vide G.O.Ms.No.67 and since the LOI was issued in 2008 the question of asking the SPY to pay enhanced fee does not arise”. In short, he has submitted that the amended Rule, which was brought into force vide G.O.Ms.No.67, dated 25.01.2011, was not given retrospective effect and as a matter of fact, the language employed clearly shows that it applies prospectively.

8.3.2 Mr.C.V. Mohan Reddy, then, invited our attention to Section 68-B of the Act and submitted that the Government has power to extend the validity of LOI and in view thereof, orders of extension cannot be faulted. He submitted that the moment validity of LOI was extended it would relate back to the date on which it was issued and therefore rule dealing with rate of fee prevailing at that time would apply. Lastly, he submitted that in any case, in view of the

provisions of Section 68-B of the Act, the extension of LOI cannot be stated to be illegal.

8.4 The learned Advocate General for the State of Andhra Pradesh did not either support or oppose the common order passed by learned Single Judge in the aforementioned two writ petitions, nor did he oppose the prayer in the PIL. Though he submitted that the orders of the Commissioner impugned in the writ petitions were not consistent with the directions issued by this Court from time to time in W.P.Nos.7950, 10823 & 12732 of 2014, he placed the original file on record for our perusal. In response to our specific query, he fairly submitted that there was no application by the SPY seeking extension of LOI at any point of time and the extension was made in view of the orders passed by this Court in the aforementioned writ petitions and the order passed in Contempt Case No.151 of 2015. Though, initially, he submitted that extension was made in view of the orders passed by this Court, as aforementioned, it was done by State Government in exercise of the powers under Section 68-B of the Act.

9. We would now deal with the questions raised and advert to the submissions advanced by the learned counsel for the parties and also look into the relevant rules and the provisions contained in Section 68-B of the Act.

9.1 Section 68-B of the Act deals with the power of the State Government to notify exemptions or grant relaxations. The State Government, under this provision, can, by notification in the A.P. Gazette and subject to such restrictions and conditions as may be specified in such notification, make exemption or grant relaxation in respect of any of the provisions of the Act. This section was inserted by Act 35 of 2005 w.e.f.20.5.2005. From bare perusal of this provision, it is clear that the Government can issue a notification in the A.P. Gazette, making exemption or granting relaxation in respect of the provisions of the Act. In the present case, no such notification, published in the A.P. Gazette, was placed before the Court by the Advocate General. It was submitted on behalf of SPY by Mr.C.V.Mohan Reddy that issuance of notification is a ministerial act, and merely because notification was not issued,

it cannot be stated that the act of extension of LOI is illegal and it was not in exercise of the powers conferred under this provision. We would not like to enter into this controversy any further and we proceed to examine the questions on the assumption that the Government extended the validity of LOI in exercise of its powers under Section 68-B of the Act.

10. The Rules were framed vide G.O.Ms.No.90, Revenue (Ex.III) Dept., dated 27.1.2007, published in A.P. Gazette RS to Part-I (Ext) No.7, dated 29.1.2007 in exercise of powers conferred by Section 72 read with Sections 16, 17, 18, 21, 22, 23, 28 and 29 of the Act and in supersession of all the rules on the subject.

10.1 The Rules were amended from time to time. We are not concerned with the amendments prior to 27.01.2007 since the letter of intent, in the instant case, was issued on 20.10.2008. On 27.01.2007 the Rules were amended vide G.O.Ms.No.90 Revenue (Excise.III). Thereafter, the Rules were amended vide G.O.Ms.No.1051, dated 21.08.2008. Then, vide G.O.Ms.No.881, Revenue (Excise-III) Dept., dated 23.08.2010 and finally by G.O.Ms.No.67, Revenue (Excise-III) Department, dated 25.01.2011.

10.2 The relevant rules for our purpose are Rules 4, 5 and 6. Rule 4 reads thus:

4. (1) No letter of intent for establishment of any new manufactory or expansion of the production capacity of an existing manufactory shall be issued without previous notification issued by the Government expressing the intention to grant the same from time to time.

(2) A notification shall be issued by the Government separately from time to time for grant of Letter of Intent for establishment of a new manufactory or expansion of production capacity of an existing manufactory for different purposes mentioned in rule 3.

(3) Government may, by notification issued from time to time, withdraw their intention of granting Letter of Intent for establishment of new manufactory or expansion of the production capacity of the categories of existing manufactory for any of the purposes separately.

10.3 From perusal of Rule 4, it is clear that issuance of notification for grant of LOI is mandatory for establishment of a new manufactory or extension of production capacity of existing manufactory. In the present case, Government had issued notification dated 10.06.2008 inviting applications for establishment and working of IMFL manufactory. In response thereto, SPY made an application for issue of LOI. LOI was granted in favour of SPY on 20.10.2008, according

sanction for construction and working of manufactory under Rule 5 (2) (c) of the Rules subject to the conditions stipulated therein. We have already reproduced LOI dated 20.10.2008 while narrating the facts leading to these petitions. Condition (d) in the LOI clearly stipulates that LOI would be valid for a period of three years and the holder should obtain license from the Commissioner within six months duly fulfilling the formalities as required under the Rules.

10.4 We would like to reproduce Rule 5, indicating the amendments made from time to time. Rule 5 reads thus:

5. (1) No licence for manufactory shall be granted unless the same is notified and sanctioned under sub-rules (1) and (2) of rule 4 of these rules.

2. Procedure for obtaining sanction of the Government:
- a. on the notification issued by the Government under rule 4 (1) and (2), any person intending to construct and work such a manufactory or expand the production capacity of the existing manufactory, may apply in Form- DM (1) along with his scheme to the Government through the Commissioner.
- (b)(i) **No application mentioned in Clause (a) above shall be entertained unless a non-refundable and non-adjustable fee as specified below is paid into Government treasury** and the challan in original in support of payment is produced along with the application.

TABLE

Annual Production capacity of the proposed manufactory	Non-refundable and non-adjustable Fee(in respect of new manufactory)	Non-refundable and non-adjustable Fee(in respect ofexpansion of anexisting manufactory)
Up to 10 Lakh Proof Litres	Rs.7 Crores	Rs.1.4 Crores

Above 10 Lakh proof Litres upto 50 Lakh proof Litres	Rs.7 Crores	Rs.1.4 Crores plus 1.4 crore for every additional slab of 10 lakh proof litres or part thereof
Above 50 Lakh Proof Litres and upto 100 Lakh Proof Litres	Rs.10 Crores	Rs.10 Crores
Above 100 Lakh Proof Litres	Rs.10 Crores plus Rs.2 crore for every additional slab of 50 lakh proof litres or part thereof	Rs.10 Crores plus Rs.2 Crore for every additional slab of 50 lakh proof litres or part thereof

[Table substituted by G.O.Ms.No.67, Revenue (Ex.III) Dept. dated 25.01.2011]

- ii.
- A special fee as specified below shall also be paid into Government treasury and the challan in original in support of payment is produced along with the application.

TABLE

Annual Production capacity of the proposed manufactory	Special Fee(in respect of new manufactory)	Special Fee(in respect ofexpansion of anexisting manufactory)
Up to 10 Lakh Proof Litres	Rs.3 Crores	Rs.0.6 Crores
Above 10 Lakh proof Litres upto 50 Lakh proof Litres	Rs.3 Crores	Rs.0.6 Crores plus 0.6 crore for every additional slab of 10 lakh proof litres or part thereof
Above 50 Lakh Proof Litres and upto 100 Lakh Proof Litres	Rs.5 Crores	Rs.5 Crores
Above 100 Lakh Proof Litres	Rs.5 Crores plus Rs.1 crore for every additional slab of 50 lakh proof litres or part thereof	Rs.5 Crores plus Rs.1 Crore for every additional slab of 50 lakh proof litres or part thereof

[Table substituted by G.O.Ms.No.67, Revenue (Ex.III) Dept. dated 25.01.2011]

Provided that **the non-refundable and non-adjustable fee as well as the special fee may be paid in twelve equal four-monthly installments in case of new manufactories** and in case of expansion of the production capacities of existing manufactories within the validity period of Letter of Intent.

[Proviso inserted by G.O.Ms.No.1051, Revenue (Ex.III) Dept. dt.21.8.2008 and substituted by G.O.Ms.No.881 Rev (Ex.III) Dept. dt.23.8.2010)]

(iii) The special fee remitted under clause (ii) above shall be adjusted towards future licence fee or Excise Duty or both on commencement of production.

(c) When the Government is satisfied of the proposed scheme, it may accord the sanction and communicate it in the form of Letter of Intent in Form-DM (S). **This Letter of**

Intent shall be valid for a period of four years from the date of issue.

[Clause (c) substituted by G.O.Ms.No.1051, Revenue (Ex.III) Dept. dated 21.8.2008 and further substituted by G.O.Ms.No.881 Revenue (Ex.III) Dept. dt.23.8.2010]

- d. It shall be lawful for the Government to accept or reject without assigning any reason any application made for grant of Letter of Intent in pursuance of the notification under Rule 4(1) and (2) of these rules.
- e. **The holder of the Letter of Intent shall obtain a licence in Form DM-2 (M) or DM-2(G) or DM-2 (MGO) as the case may be within six months from the date of issue of Letter of Intent.**
- f. **If the holder of the Letter of Intent and Licence fails to obtain a licence within a period of six months from the date of issue of Letter of Intent, he ceases to have any right on the Letter of Intent.**
- g. **If the holder of the Letter of Intent and Licence fails to commence production within four years from the date of issue of Letter of Intent, he forfeits his right over Letter of Intent and on the licence.**

[Clause (g) was substituted by G.O.Ms.No.1051, Revenue (Ex.III) Dept. dated 21.8.2008 and further substituted by G.O.Ms.No.881 Revenue (Ex.III) Dept. dated 23.8.2010]

- h. The Letter of Intent communicated under clause (c) shall not confer any right or privilege for grant of a licence and is liable to be revoked or withdrawn by the Government at any time without giving any notice to the holder if the Government so desires.
- i. No compensation for damage or loss shall be payable when a Letter of Intent is rejected under clause (d) or revoked or withdrawn under Clause (h).

(emphasis supplied)

Clause (b) (i) of sub-rule (2) of Rule 5 provides that no application mentioned in clause (a) shall be entertained unless non-refundable or non-adjustable fee as specified below is paid into Government treasury and the challan in original in support of payment is produced along with application. SPY claims that as provided for in the proviso to sub-clause (ii) of clause (b) of sub-rule (2) of Rule 5 they deposited non-refundable and non-adjustable fee as well as special fee in installments and also furnished Bank guarantee of the total amount as per

the tables appended to Rule 5.

10.5 The proviso was inserted by G.O.Ms.No.1051, Revenue (Ex.III) Department, dated 21.8.2008 and substituted by G.O.Ms.No.881, Revenue (Ex.III) Department, dated 23.08.2010. Reliance placed on the proviso which was inserted w.e.f. 21.8.2008 would clearly show that SPY is relying upon the amended provision which was not available in the Rules on the date on which LOI was issued. The date of LOI is 20.08.2008 i.e., just a day before the amendment by G.O.Ms.No.1051, dated 21.08.2008, was made. By the very same amendment, validity period of LOI was extended from three years to four years. SPY have also relied upon this amendment to contend that the validity period of LOI was for four years and not three.

10.6 Clause (e) of sub-rule (2) of Rule 5 provides that holder of LOI has to obtain a license within "six months" from the date of its issue. Clause (f) provides that if the holder of LOI fails to obtain license within a period of six months, he ceases to have any right on LOI. Clause (g) provides that if the holder of LOI fails to commence production within "four years", for our purpose three years, from the date of issue of LOI he forfeits his right over LOI and on the license. In the present case, though SPY claim that they had made an application for issue of license within the time stipulated by clause (e) of sub-rule (2) of Rule 5 of the Rules, the other formalities such as construction of manufactory were not complied and as a result thereof issue of license remained pending till SPY approached this Court by way of writ petitions. In view thereof and having regard to the language employed in clause (f) and (g) of sub-rule (2) of Rule 5, it was contended that the SPY ceased to have any right on the LOI and they forfeited their right over LOI and Licence. Admittedly, licence was not issued within a period of six months nor could SPY commence production within three years or four years for that matter i.e. within the period of the validity of LOI. Admittedly, the production has not commenced till today.

11. Mr. C.V. Mohan Reddy, the learned Senior Counsel, on instructions from his client who was present in the Court, fairly stated that construction of

manufactory did not commence till 2013. He submitted that construction was commenced only after the first extension of LOI.

12. Next, we would like to consider the provisions contained in Rule 6, which deal with grant of licence. Rule 6 reads thus:

6. Grant of Licence:- (1) The holder of letter of intent shall obtain licence from the Commissioner within six months from the date of sanction of the Government in the form of Letter of Intent referred to in rule 5 (c).

(2) The holder of letter of intent shall apply in Form-DM (1) (A) and the application shall be accompanied by:

(a) Copy of the sanction (Letter of Intent) accorded by the Government.

(b) Description and plans for the construction of the proposed manufactory.

(c) Statement of plant and machinery proposed to be erected.

(d) 'No Objection Certificate' from the local body competent to issue.

(e) 'No Objection Certificate' from the competent authority under Factories Act, 1948

(f) Clearance Certificate from the A.P. Pollution Control Board.

(g) An undertaking in the prescribed form on a non-judicial stamp paper of the requisite value as per the Indian Stamp Act binding himself that he shall erect the plant and machinery as per the standards, as may be prescribed by the Commissioner from time to time for maintaining the specifications and quality of products.

(h) Counterpart Agreement in Form-DM (1) (C).

(3) No licence shall be granted unless the applicant deposits Rs.10 Lakhs in the shape of a cash deposit or fixed deposit receipt or Bank guarantee from any scheduled bank situated in Andhra Pradesh as a security for fulfillment of all the conditions of licence and enter into a counterpart agreement in Form-DM(1) (C).

Provided that in the case of licence for new manufactory, the licensee shall furnish a bank guarantee valid for four (4) years from the date of grant of Letter of Intent from any Scheduled Bank situated in Andhra Pradesh as a security for a sum equal to the remaining 11 four-monthly installments of non-refundable and non-adjustable fee as well as special fee.

[Two provisos inserted by G.O.Ms.No.1051, Rev. (Ex.III) Dept. dated 21.8.2008 and further substituted by G.O.Ms.No.881 Revenue (Ex.III) Dept. dated 23.8.2010 into a single proviso]

4 (a) Where the Commissioner is satisfied that the applicant for a new manufactory has fulfilled the conditions specified in sub-rules (1) to (3) above, he may grant a licence to the applicant in Form DM-2(M)/DM-2(G)/DM-2(MGO) as the case may be.

(b) The license fee for a new manufactory shall be Rs.20,000/- (Rupees twenty thousand only) per annum till the commencement of production of expiry of two years period from the issue of letter of intent which ever is earlier.

(c) Where the Commissioner is satisfied that the applicant for expansion of production capacity of an existing manufactory has fulfilled the conditions specified in sub-rules (1) to (3) above, he may endorse the sanction of expansion on the existing licence by permitting the licensee to go for the expansion in a phased manner as required by the licensee within a period of validity of Letter of Intent.

[Clause (c) substituted by G.O.Ms.No.1051, Rev. (Ex.III) Dept. dated 21.8.2008]

(5) The licensee shall, before expiry of two years from the date of grant of letter of intent, report to the Commissioner, the date of which the construction or expansion of manufactory is completed and the date from which it's working is commenced.

(6) In case the licensee fails to construct or expand and work the manufactory before expiry of two years from the date of grant of letter of intent, the new licence or the expansion sanctioned for cancellation without compensation for any damage or loss.

(emphasis supplied)

12.1 Sub-rule (1) of Rule 6 provides that holder of LOI shall obtain license from the Commissioner within six months from the date of sanction of the Government in the form of LOI referred to in rule 5 (c). Sub-rule (2) provides for certain compliances. Sub-rule (3) states that no license shall be granted unless

applicant deposits Rs.10 lakhs in the shape of cash deposit or fixed deposit receipt or Bank guarantee from any Scheduled Bank situated in A.P. as a security for fulfillment of all the conditions of license and enter into counterpart agreement in Form- DM (1) (C). It may be true that SPY deposited the licence fee, as claimed by them, then prevailing, though we did not find on record the date of payment of fee.

12.2 Be that as it may, fact remains that the license was not issued within the stipulated time (six months), construction was not completed before expiry of two years from the date of grant of LOI and production did not commence within three years from the date of issue of letter of intent. Sub-rule (5) of Rule 6 provides that the licensee shall, before expiry of two years, from the date of grant of LOI, report to the Commissioner, the date on which the construction or expansion of manufactory is completed and the date from which its working was commenced. There is nothing on record to show compliance of this condition by SPY. Sub-rule (6) of Rule 6 provides that in case the licensee fails to construct or expand and work the manufactory before expiry of two years from the date of grant of LOI, the new licence or the expansion sanctioned under sub-rule 4 (a) or

4 (c) as the case may be shall be liable for cancellation without compensation for any damage or loss. It is not clear whether Government passed any order or communicated cancellation of LOI as contemplated by sub-rule (6) of Rule 6, till expiry of the period of three years or for that matter four years or until the first extension was granted vide Memo dated 17.04.2013. There is absolutely nothing on record to show that the LOI issued on 20.10.2008 was either extended or revived till the first extension was granted. In other words, between 20.10.2011, the date on which the stipulated three years period got over, or 19.10.2012 when the period of four years got over, and the first extension granted on 17.04.2013, LOI was not subsisting. The Government, while extending the validity of LOI, dated 20.10.2008, simply extended it upto 19.04.2014, without specifying the date of commencement of extension as we find in the 2nd and 3rd letter of extensions. The first letter of extension is dated 17.4.2013. The relevant portion of the first letter of extension reads thus:

“In the circumstances reported by the Commissioner of Prohibition & Excise, A.P.,

Hyderabad in his letters 2nd, 4th, 6th, 8th, 10th, 12th & 14th cited and in continuation of orders issued in the reference 1st cited, **Government, after careful consideration of the matter, hereby extend the validity of Letter of Intent upto 19.04.2014 in respect of M/s. SPY Agro Industries Ltd.**, Nandyal, Kurnool District to obtain licence to complete civil works and to install machinery in relaxation of Rule 5 (2) (e) of A.P. Distillery (Manufacture of IMFL other than Beer and Wine) Rules, 2006.”

(emphasis supplied)

12.3 The second letter of extension is dated 11.5.2015. Relevant portion of the second extension reads thus:

“In the circumstances reported by the Commissioner of Prohibition and Excise, A.P., Hyderabad in his letter 10th cited and in continuation of orders issued in the reference 8th cited, Government, after careful consideration of the matter, **hereby extend the time limit for the validity of Letter of Intent for a period of (3) months from 20.04.2015 to 19.07.2015 in respect of M/s. SPY Agro Industries**, Nandyal, Kurnool District in relaxation of Rule 5 (2) (e) of A.P. Distillery (Manufacture of IMFL other than Beer and Wine) Rules, 2006.”

(emphasis supplied)

12.4 Relevant portion of third extension dated 9.4.2015 reads thus:

“In the circumstances reported by the Commissioner of Prohibition and Excise, A.P., Hyderabad in his letters 6th & 7th cited and in continuation of the orders issued in the references 2nd & 3rd cited, Government, after careful consideration of the matter, **hereby extend the validity of Letter of Intent of M/s. SPY Agro Industries, Nandyal, Kurnool District for a further period of one year from 20.04.2014 to 19.04.2015** in relaxation of Rule 5 (2) (e) of A.P. Distillery (Manufacture of IMFL other than Beer and Wine) Rules, 2006.”

(emphasis supplied)

12.5 From bare perusal of the second and third letters of extension, it is clear that extension was granted when the LOI was subsisting or it was valid and legally subsisting, while the first extension does not make it clear the date of commencement of extension period. In other words, LOI was not extended for the period between 20.10.2011 on which date the three years period had

expired, and 19.4.2014. It appears that the validity of LOI was extended for one year. This extension, according to learned Advocate General, was granted in view of the orders passed by this Court in the writ petitions and also in the contempt case. The validity of a document, such as LOI, can be extended when it is subsisting in the eye of law and not long after its expiry unless the order of extension makes it clear that the extension would operate with effect from the date on which it had expired.

12.6 After issue of LOI on 20.10.2008, SPY had applied for licence on 4.2.2009. As observed earlier, despite issue of LOI and application for grant of license was made, no further progress, except exchange of correspondence, happened till the first extension was granted vide Memo dated 17.4.2013. According to SPY, they had applied for licence on 4.2.2009 and had also paid the requisite fee. No satisfactory explanation was offered or has come on record as to why they applied for licence once again on 5.10.2013. Even the Government could not explain as to why SPY was required to file fresh application for grant of license on 5.10.2013. However, the fact remains that application was made on 5.10.2013 for grant of license. It is well settled that the date of consideration of the application is relevant and not the date of application (see *State of Kerala v. Kandath Distilleries (2013) 6 SCC 573*). If same analogy is applied, the date of LOI loses its significance and what assume importance are the dates of the application for licence and its consideration. In the present case, both the dates are in 2013. The application for licence is dated 05.10.2013 and consideration was also in 2013.

12.7 In this backdrop and having considered the fact that from 20.10.2011 till the first extension of LOI (dated 17.4.2013) was granted, it is clear that the LOI, issued on 20.10.2008, was not subsisting, and that a fresh application for licence was made on 05.10.2013, SPY is obliged to pay the revived rates of licence fee. In any case, it is clear that on 17.04.2013 LOI was not in existence. That seems to be the reason why SPY was required to make fresh application for grant of licence on 5.10.2013, perhaps treating extension of LOI as issuance of new LOI. It is relevant to reproduce the application for grant of license for manufactory dated 5.10.2013 which reads thus:

“To,

The Commissioner of Prohibition & Excise,

Govt. of Andhra Pradesh,

Nampally, Hyderabad.

Dear Sir,

Sub: Excise – Establishment of a Distillery for manufacture of

Indian Made Foreign Liquors – Scheme approved by the

Government – Certain request for grant of license – Reg.

Ref: (1) Lr. No.46865/Ex.III(1)/2008-1, Dated: 20.10.2008 of

Government of Andhra Pradesh.

(2) Government Memo No.20132/Ex.III(1)/2011-7 and,

20132/ Ex.III(1)/ 2011-8 dt.17.04.2013.

Kindly peruse the reference cited wherein the Government of Andhra Pradesh accorded sanction for establishment for a manufactory for manufacture of Indian Foreign Liquors utilizing Extra Neutral Alcohol derived from Molasses and Grains/both/any other fermentative base in a phased manner at S.P.Y. AGRO INDUSTRIES LIMITED, NEW INDUSTRIAL ESTATE, SY.NO.514, 518, 576 & 470 Part APIIC, UDUMULAPURAM, NANDYAL, KURNOOL DISTRICT, ANDHRA PRADESH.

As per the orders of the Government as contemplated in the Letter of Intent, we are approaching your goodself with the following necessary documents with a request to grant a new licence in a phased manner at S.P.Y. AGRO INDUSTRIES LIMITED, NEW INDUSTRIAL ESTATE, SY.NO.514, 518, 576 & 470 Part APIIC, UDUMULAPURAM, NANDYAL, KURNOOL DISTRICT, ANDHRA PRADESH under A.P. Distillery (Manufacture of Indian Made Foreign Liquors other than Beer and Wine) Rules, 2006.

We are enclosing the following documents:

1. Copy of the Letter of Intent.
2. Particulars of land with relevant documents.
3. Blue Print of the proposed manufactory.
4. Remittance particulars of initial licence fee under rule 6 (4) (b) (Original Challan enclosed)
5. Remittance particulars security deposit under rule 6 (3).
6. No objection certificate obtained from the competent local authority.
7. No objection certificate obtained from the A.P. Pollution Control Board.
8. Undertaking as required under rule 6 (2) (g).

9. Counterpart agreement as required under rule 6 (3).

I/we undertake:

1. to furnish any further plans, estimates or information as required.
2. that in the event of a Licence being granted, we commence/working of the distillery within the period limit prescribed and inform the date by which the plant commences commercial production.
3. to comply in all respects with the provisions of the A.P. Distillery (Manufacture of Indian Made Foreign Liquor other than Beer and Wine) Rules, 2006 and the conditions of the License.
4. to pay the licence fee at the rates specified in rule 8 (a) from the date of commencement of commercial production.

This application is within the specified time limit prescribed in the Letter of intent.”

(emphasis supplied)

12.8 From bare perusal of application, it is clear that it was absolutely fresh application having no connection with the earlier application dated 4.2.2009, claimed to have been made by SPY. In the above application, SPY has also undertaken to comply in all respects, the provisions of the Rules and the conditions of license and to pay the licence fee at the rates specified in Rule 8 (a) from the date of commencement of commercial production. It also states that it is made within the stipulated time from the date of LOI. The application dated 05.10.2013 was made within six months from the date of first extension (i.e. 17.04.2013). This further supports the contention that the first extension of LOI is in the nature of fresh LOI. In this backdrop, we are of the considered view that the procedure followed by the Government in extending the validity of LOI, which had already expired long before, was not proper. We are informed that, after the first extension of LOI, SPY invested huge amounts for construction of manufactory which, admittedly, is ready for commencement of production.

13. Issue of LOI as contemplated by Rule 5 and licence as contemplated by Rule 6 of the Rules are two independent permissions. LOI is only a permission

to establish a new manufactory while licence is for manufacturing IMFL. In the present case, when LOI was issued on 20.10.2008 the Rules, as were amended vide G.O.Ms.No.90, Revenue (Excise-III), dated 27-01-2007, were in force. Those Rules were then amended, as observed earlier, from time to time. When the fresh application for licence was made in 2013 the amended Rules were in force by which licence fee was revived. In view thereof, we perused the Rules as were prevailing on the date of issue of LOI and on the date of application, in particular Rules 5 and 6 thereof. LOI and licence, in our opinion, being two independent permissions granted/issued by the authority, the law prevailing as on the date of Application for licence and its consideration is relevant and the Rule prevailing as on that date would apply. In any case, the date of LOI insofar as licence fee is concerned assumes no importance.

14. It is not in dispute that application for licence, from which these proceedings arise, was made in 2013 i.e. after amended Rules were brought into force vide G.O.Ms.No.67. SPY admittedly did not comply the formalities those were required to be complied within the time stipulated under the provisions then prevailing and were introduced vide G.O.Ms.Nos.90 or 1051 dated 27.01.2007 or 21.08.2008. They neither obtained licence within the stipulated time nor did they commence construction of factory and started production within 3 years from the date of grant of LOI. In this backdrop and having considered that the provisions were amended and licence fee and other fee were enhanced, SPY must pay the enhanced licence fee and not the fee as was prevailing when the LOI was issued.

15. In this backdrop, we are of the view that SPY is liable to pay the difference of the licence fees as provided for under the Rules prevailing on the date of fresh application i.e.05.10.2013. In other words, SPY is liable to pay the fees as enhanced vide G.O.Ms.No.67, dated 25.01.2011. The SPY cannot be allowed to take advantage of its own wrong, namely, the delay in completing the procedure including commencement of the construction of manufactory and production within the time stipulated under the Rules and cause huge loss to the public exchequer.

16. In the result, we allow Miscellaneous Petitions bearing W.A.M.P.No.2078 of 2015 in W.A.(SR) No.146763 of 2015 and W.A.M.P.No.2076 of 2015 in W.A.(SR) No.146750 of 2015 and set aside the judgment of the learned single Judge dated 16.07.2015 disposing of W.P.No.10823 of 2015 and W.P.No.21273 of 2015. The PIL as well as the appeals are, accordingly, disposed of in terms of this judgment. No order as to costs.

17. Miscellaneous petitions pending in these cases, if any, also stand disposed of.

Dilip B.Bhosale, ACJ

S.V.Bhatt, J

27th November, 2015.

TSNR