IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.22103 of 2014

BETWEEN

Mr. Niranjanlal Agarwal.

... PETITIONER

AND

The State of Andhra Pradesh, Rep. by its Principal Secretary, Prohibition & Excise Department, Secretariat, Hyderabad and others.

...RESPONDENTS

Counsel for the Petitioner: MR. B. CHANDRASEN REDDY

Counsel for the Respondents: GP FOR PROH. & EXCISE
MR. R. RAGHUNANDAN
For MR. B.MAYUR REDDY

The Court made the following:

ORDER:

Petitioner questions the order of Commissioner of Prohibition and Excise dated 11.09.2013 whereby the Commissioner accepted the request for transfer of license held by the third respondent in favour of the fourth respondent.

2. The challenge to the aforesaid proceedings of the Commissioner, in this writ petition, is based upon several other preceding facts and proceedings including the Memorandum of Compromise recorded between the petitioner and his group and the present management of the third respondent company, in CP.No.84 of 2012. The said memorandum of compromise is undisputedly executed by all the parties before the Company Law Board (for short 'CLB') and became part of the order of the CLB dated 13.07.2013. Petitioner submits that the said memorandum of compromise was implemented by both parties and the petitioner and his group received full consideration and transferred the shares of their group to the present management of third respondent. Petitioner also stated that in all other aspects the memorandum of compromise is implemented. However, according to the petitioner, there are certain liabilities, which have now surfaced and without taking into consideration those liabilities, the third respondent sought transfer of the license to the fourth respondent and in the absence of the income tax clearance, the Commissioner could not have passed the impugned order dated 11.09.2013 approving the said transfer.

3. Petitioner has filed various documents along with the writ affidavit in support of the writ petition and reply affidavit and similarly, respondents 3 and 4 have also filed counter affidavits with documents and the Commissioner has also filed a counter affidavit.

4. I have heard the learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise and learned counsel for respondents 3 and 4.

5. Counter affidavit of Commissioner of Prohibition and Excise states that the third respondent is the holder of various licenses since 1997. It is further

stated that the third respondent had made an application dated 13.07.2013 requesting the Commissioner for transfer of license in favour of the fourth respondent. It is also specifically stated that the petitioner made various complaints dated 13.07.2013, 20.07.2013, 27.09.2013 and 01.10.2013 against the said transfer of license from the third respondent to the fourth respondent. Based on that, a show cause notice was issued by the Commissioner to the transferor and the transferee and thereafter, appropriate enquiry was held and after examining the matter in detail, further action was dropped and the order keeping the transfer in abeyance was lifted by proceedings dated 09.10.2014. To the extent of liabilities under the sales tax, which is now replaced by VAT, is concerned, the VAT returns for the year 2012-2013 and up to June 2013 were submitted by the third respondent along with an affidavit undertaking to pay statutory liabilities. The third respondent also submitted income tax returns for the year 2012-2013 and brought to the notice of the Commissioner that Sections 230 and 230A of the Income Tax Act, have since been deleted by amendment with effect from 01.06.2003, hence, clearance under the Income Tax Act does not arise. After considering all this and in view of the agreement between the transferor and the transferee, the license was permitted to be transferred from the third respondent to the fourth respondent.

6. Evidently, therefore, while passing the impugned order the Commissioner has duly taken into consdieration Rule 13(1)(i) of the Andhra Pradesh Distillery (Manufacture of Indian Made Foreign Liquor other than Beer and Wine) Rules, 2006. The facts of the case, further, show that undisputedly there was a memorandum of compromise entered into by and between the petitioner's group and the group representing the present management of the third respondent.

The various terms and conditions of the said memorandum of compromise also became part of the orders of the CLB dated 13.03.2013, 22.03.2013 and 31.05.2013, which not only took note of the memorandum of compromise but also recorded the compliance of the terms and conditions thereof by the respective parties. It is the last of the said orders, which disposed of CP.No.84 of 2012 in terms of the memorandum of compromise dated 22.03.2013 directing that the said memorandum of compromise will form part and parcel of the order of the CLB. Subsequent thereto, however, the petitioner and his groups had approached the CLB again by filing CA.No.5 of 2013 seeking directions against the respondents therein (present management of the third respondent) to comply with the order of the CLB dated 31.05.2013 by returning the collaterals given by the petitioner to other bankers and settle all the statutory liabilities and third party dues. The said application was again considered by the CLB and was disposed of on 08.11.2013 holding, *inter alia*, that the petitioners have not *locus standi* as they are strangers to the company petition. Questioning the said order, petitioners have filed an appeal, being CA.No.21 of 2013, before this Court and the same was disposed of by this Court by order dated 26.06.2014 specifically holding as under:

> "Therefore, the Company Law Board ought to have merely rejected the application filed by the appellants on the ground of its non-maintainability, instead of rendering findings on the merits of the case. If the parties encounter any difficulties in working out the Memorandum of Understanding (MOU), they are entitled to avail appropriate remedies available to them in law.
>
> Hence, this Court is of the opinion that the observations made and findings rendered in the order under appeal shall not bind either party. The appellants are left free to avail the remedies available to them in law for redressing their grievance arising out of the alleged violation of the MOU by the respondents.
>
> Subject to the liberty given to the appellants as above, the company appeal is disposed of."

Thereafter, the petitioner filed the present writ petition questioning the transfer of license approved by the Commissioner, referred to above.

7. After hearing the learned counsel at length and after seeking the

records, in my view, the fact remains that the memorandum of compromise and its implementation is not disputed by the petitioner. Petitioner and his group have, admittedly, resigned from the management of the third respondent and have also transferred all their share holdings in favour of the group of the present management of the third respondent. Admittedly, the petitioner and his group have also received full consdieration with regard to their share holding, in other words, the petitioner and his group have become strangers to the third respondent company, as rightly held by the CLB and as confirmed by this Court in the orders, referred to above. I, therefore, do not see any *locus* for the petitioner so as to question the order of transfer of license, passed by the Commissioner, from the third respondent to the fourth respondent. The petitioner, being neither a share holder nor is any way concerned with the third respondent company in any capacity, therefore, cannot be permitted to question the decision of the Commissioner.

8. Learned counsel for the petitioner vehemently contended that there are other liabilities for which the petitioner is likely to once again suffer prejudice after the transfer of license and to that extent,

the memorandum of compromise has not been fully implemented.

In reply thereto, learned counsel for respondents 3 and 4 point out specific averments in the counter affidavit under para 10 where the list of all the liabilities with remarks is shown in tabular form and it is contended that in view of the above, there is hardly any liability,

which remained uncleared or due. Even otherwise, the learned counsel states that the term of the compromise fully takes care of all contingencies among the parties and the petitioner cannot once again reopen the said compromise between the parties so as to make any claim against respondents 3 and 4.

9. On the facts and circumstances of the case, it is very clear that the petitioner ceased to have any *locus*, as already found and even assuming that any part of the memorandum of compromise is yet to be implemented,

appropriate proceedings are required to be taken before appropriate forum. The said issue, therefore, cannot be gone into in the present writ petition. According to respondents 3 and 4 all the liabilities are already satisfied and as such, the questions relating to them would clearly be disputed questions of fact, which cannot be adjudicated in this writ petition. The scope of this writ petition, being limited to the extent of legality or otherwise of the order of the Commissioner, I do not see any illegality or infirmity in the order of the Commissioner.

The writ petition is accordingly dismissed. As a sequel,
the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 26, 2015
DSK