

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 5340 OF 2013
WITH WP/5118/2013

PRAKASH MANNULAL JAISWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. R.R. Mantri
AGP for Respondents: Mrs. A.V. Gondhalekar.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 29th JUNE , 2016.

PER COURT:

1] Vide the present petition, directions are sought against the respondents to refund the licence fees for the year 2004-05 to 2010-2011, amounting to Rs. 8,22,700/-, so also, claims compensation.

2] Mr. Mantri, learned counsel for the petitioner submits that under a valid licence of CLIII, petitioner was running his business prior to the year 2000. The said licence was duly transferred to Bhavsingpura, Aurangabad. Upon the death of his father, the licence came to be renewed only after intervention of this Court in W.P. No. 2289 of 2001. Learned counsel submits that there were several unlawful attempts to stall the business of the petitioner. However, the petitioner had to approach this court and this court protected the petitioner. On or about 5.2.2005, some miscreants demolished the shop of the petitioner. The respondent authorities failed to perform their constitutional obligation to protect the property of the petitioner. Because of the demolition of the shop of the petitioner, the business of the petitioner was closed. In spite of that, the respondents were recovering the renewal fees. The licence fees is to be recovered for the services rendered. No such services were rendered. The shop of the petitioner was demolished. The petitioner was prevented from

running his shop. In such a case, the respondents do not have any right or authority to recover the licence fees. The petitioner is entitled for the refund of the same for the period 2004-2005 to 2010-2011. Learned counsel submits that the judgment of the Full Bench of this court in the case of ***"Jitendra Vs. State" reported in 2011(5) Mh.L.J. 412***, even if considered, would not affect the claim of the petitioner for refund, inasmuch as, if the licensee is prevented from running his business for the reason attributable to the Government, then, in that case, the petitioner would be entitled for the refund of licence fees. In the present case, because of the failure on the part of the authorities to perform their obligation, of protecting the property of the petitioner, the petitioner was prevented from running his business. As such, directions be issued to refund the said amount. The petitioner is also entitled for compensation for the wrongful acts of the respondent authority.

3] Mrs. Gondhalekar, learned AGP, submits that demolition of shop of the petitioner by miscreants can not be attributed to the Government. According to learned AGP, if the petitioner is not in a position to run the business for the reason not attributable to the Government, then, in such case the petitioner is not entitled for the refund of licence fees. In fact, it is a privilege fees. Learned AGP relies upon the judgment of the Full Bench in the matter of "Jitendra" (cited supra).

4] We have considered the submissions canvassed by the learned counsel for the respective parties.

5] Section 49 of the Bombay Prohibition Act gives exclusive right to the State Government of privilege in dealing with intoxicants. The factual matrix need not be dilated. As per the averments the shop of the petitioner was demolished by miscreants on 5.2.2005, because of which the petitioner was not in a position to run his business. The demolition of the shop by some miscreants is an act which cannot be directly attributed to the Government. If the contention of the petitioner is accepted, then it would

be stretching too far the aspect of reason attributable to the Government. The Full Bench of this Court in the matter of "Jitendra" (supra) has dealt with the issue and has observed in paragraph Nos. 5,7 and 10 as under :-

" 5. It is now well settled that no citizen has a fundamental right to trade or do business in intoxicants. The State under its regulatory powers has a right to prohibit every form of activity in relation to manufacture, storage, import, export, sale and possession of intoxicants. Neither can anyone claim against the State, the right to trade or do business in liquor nor can the State be compelled to part with its exclusive right or privilege. It is observed by the Hon'ble Supreme Court in case of Har Shankar & others etc. etc. Versus The Deputy Excise and Taxation Commissioner & others etc. (AIR 1975 SC 1121), that since the right in regard to the intoxicants belongs to the State, it is open to the State to part with its right for a consideration and the amount charged to the licensee is not a fee properly so called nor indeed a tax but, is in the nature of the price of a privilege, which the purchaser has to pay in any trading or business transaction. The view expressed by the Hon'ble Supreme Court in the case of Har Shankar & others etc. etc. Versus The Deputy Excise and Taxation Commissioner & others etc. (AIR 1975 SC 1121) is consistently followed by the Supreme Court in the decisions reported in AIR 1975 SC 2008 (Panna Lal & others etc., etc. Versus State of Rajasthan & others), 1994 Supp (1) SCC 8 (State of U.P. & others Versus Sheopat Rai & others), (2004) 11 SCC 26 (State of Punjab & another Versus Devans Modern Breweries Ltd. & another) and (2008) 10 SCC 607 (State of Madhya Pradesh & others Versus Lalit Jaggi).

7. Section 49 of the Act, which falls under Chapter IV dealing with control, regulation and exemption, begins with a Non-Obstante Clause and stipulates that the State shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicants, hemp or toddy and whenever any fees are levied or collected for any license, permit, pass or authorization given to any person for any such purpose, such fees shall be deemed to include the rent or consideration for the grant of such right or privilege to that person by or on behalf of the State Government.

Section 52 of the Act authorizes the authorized officers to grant licences, permits and passes and Section 53 stipulates that the license should be granted only if the licensee undertakes to abide by all the conditions of the license and the provisions of the Act and only if the authorized officer forms an opinion to that effect. Section 54 speaks of the power of the authorized officer to cancel or suspend the license on the conditions mentioned therein. Section 55 provides that the holder of

the license would not be entitled to either compensation or refund of license fees in case of cancellation or suspension of license under Section 54. If the authority granting the license considers that it should be cancelled for any cause other than the causes specified in Section 54, it can do so under Sub-Section (1) of Section 56 and in case of cancellation of license under Section 56(1), the part of the license fee for the unexpired term of license is liable to be refunded to the license holders. The other provisions of the Act exhaustively deal with the offences and the penalties, powers and duties of the officers, appeals and revisions and the general powers of the State Government including the power to make Rules.

10. On a perusal of the provisions of the Act and the Rules, we find that the legislature in its wisdom has provided for the refund of proportionate license fees only under the provisions of Section 56(2) and none other. It is only in the case of cancellation of the license under Section 56(1) that the part of the fees for the unexpired term of the license is liable to be refunded to the licensee. Hence, considering the scheme of the Act, the details of arrangements envisaged therein and the nature of the privilege fees, we are of the view that the State is liable to refund the license fees only under Section 56(2) of the Act and in no other circumstances. In such circumstances, we find that the reliance placed on behalf of the licensee on the provisions of Section 56 and 65 of the Contract Act is not well founded. The Act and the Rules do not permit any recourse to these provisions. Since privilege fees are charged by the Government for parting with the exclusive privilege of trading in liquor, which vests with the Government, and since the fees are not charged for any service rendered by the Government, the fees are liable to be paid till the privilege is withdrawn by the Government.

The submission made on behalf of the licensee, that the Government would have also been prevented from doing the business due to the prohibitory order of the Court and, hence, it should refund the fees for the period during which the license was inoperative, is misplaced and is liable to be rejected. In the case of *State of Haryana & others Versus Jage Ram & others* reported in AIR 1980 SC 2018, the Hon'ble Supreme Court had turned down the prayer of the licensees for refund of the proportionate bid amount on the ground that there was severe drought in the District of Rohtak and in the Summer months, the consumption of liquor was less than in Winter and, therefore, there was less business resulting in losses. The Hon'ble Supreme Court held that the refund was not permissible as what the Government was trying to recover from the licensees is in essence the price of the privilege which was parted in their favour and not the Excise Duty on the undrawn liquor."

6] Considering the aforesaid aspects of the matter, the relief claimed in the petition for refund of licence fees cannot be considered. As far as the claim for compensation is concerned, there are no details about the alleged loss and the same cannot be considered in the present petition.

7] In the light of the above, writ petition is dismissed. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-