

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5118 OF 2013

Chimanlal Bhagatlal Notani

...PETITIONER

versus

The State of Maharashtra and others

...RESPONDENTS

.....

Mr. A.D. Kasliwal, Advocate holding for

Mr. A.H. Kasliwal, Advocate for petitioner

Mrs.A.V. Gondhalekar, AGP for respondents No. 1 to 3

.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 13th JULY, 2016.

Order :-

1. Mr. Kasliwal, learned counsel for petitioner submits that petitioner is CL-III Licence holder. Learned counsel submits that original licence was granted for village Kamthala, Taluka Kinwat, District Nanded. For the period since 1986 till 1998 business of the petitioner was closed. Father of petitioner along with original licensee carried out the business, subsequently at village Kamthala till the year 2002. In the year 2002 an application was moved for shifting said licence from Kamthala to Degloor Naka, Nanded - Hyderabad road. Though said licence was permitted to be shifted, the business could not be commenced because of the interpretation of orders passed by the authorities. Ultimately, by virtue of orders dated 24-06-2011 passed by the Honourable Minister, licence was permitted to be shifted from Village Kamthala to Degloor Naka. When petitioner got knowledge that

licence is shifted, she applied to transfer said licence in her name being legal heir of deceased father. The petitioner got knowledge that renewal of licence fees is charged for the period for which the licence was not in operation. So also, the interest is charged upon the same. The petitioner under representation dated 04-03-2013 keeping her right reserved for challenging the original amount of renewal licence fees had requested the authorities to withdraw the claim of the interest. Learned counsel further submits that the authorities did not accede to the request of the petitioner. To avoid further complication the petitioner has deposited the amount of interest also. Learned counsel submits that none of the provision under the Maharashtra Prohibition Act entitles the authorities to claim licence fees for the period, the business was not in operation. So also, the respondents are not entitled to claim any interest. The licence was not in operation by virtue of orders of the respondents- authorities. Learned counsel relies on the judgment dated 7th January, 2011 of learned Single Judge of this Court in writ petition No. 199 of 2006 (*Smt. Ketu Ardeshir Kapadia Vs. State of Maharashtra and others*) to contend that respondents - authorities do not have right to charge any interest.

2. Mrs. Gondhalekar, learned Assistant Government Pleader submits that it is not because of the orders of respondents, petitioner was not in a position to run the business. Reasons for not running business cannot be attributed to the Government, in such a case, the petitioner is not entitled for refund of the licence fees. To support her submission, learned Assistant Government Pleader relies upon the decision of full

bench of this court in the case of *Jitendra S/o Manindranath Bose Vs. State of Maharashtra and another* reported in 2011(5) MH.L.J. 412.

3. Learned Assistant Government Pleader further submits that during the period 2006-2007 and 2011-2013 respondent- department at no material point of time ever issued any order to the licensee to stop the business pursuant to said licence. Learned Assistant Government Pleader submits that respondent No. 2 has approved the premises of Degloor Naka on 01-04-2002 and permitted father of the petitioner to run business, however, father of petitioner did not start business on the approved premises. There was no order directing the petitioner or her father to close down the shop. Learned Assistant Government Pleader submits that licence fees was not paid in time, respondents - authorities are entitled to charge interest @ 2% per annum under section 114 of the Maharashtra Prohibition Act.

4. We have considered the submissions canvassed by learned counsel for respective parties. The issue with regard to refund of licence fees is no longer *res-integra* in view of decision of Full Bench of this Court in *Jitendra Bose* referred to supra. The full Bench of this court has observed that State Government is not bound to refund privilege fees charged from a licensee where such licensee is prevented from running his business on account of an order of the Court or similar reason not attributable to the Government. The petitioner could not point out any order of the Government wherein the petitioner or her father were prevented from carrying on the business for the disputed period. Moreover, affidavit is filed on behalf of respondent - State

thereby clarifying that father of the petitioner had already applied for renewal of licence for the year 2002-2003 to 2005-2006 as per stay order in writ petition 7539 of 2004 and got renewed the licence till 31-03-2006. It is further stated in affidavit that the petitioner had not submitted the required document before the Enquiry Officer as per request during the period 2006-2013 and due to said reason CL-III licence are not transferred in time. No fault can be attributed to the Government. Demand notice dated 11-03-2013 for recovering the licence fees for the period 01-04-2006 to 21-03-2012 is properly issued.

5. So far as claim of interest is concerned, same appears to be in consonance with Section 114 of the Maharashtra Prohibition Act, which reads as under:

“114. (1) All duties, taxes, fines(except fines imposed by a Court) and fees leviable under any of the provisions of this Act or in respect of any licence, permit pass or authorisation granted under it and the cost of the supervising staff appointed under section 58A [if not paid within the due date or the prescribed period, shall be recovered from any person liable to pay the same or from his surety, if any, with simple interest at the rate of 2 per cent per month, from the date it has become due, as if they were arrears of land revenue].

(2) When any person, in compliance with any rule, regulation or order made under this Act, gives a bond (other than a bond under section 91 or 93) for the performance of an act, or for his abstention, from any act, such performance or abstention shall be deemed to be a public duty within the meaning of section 74 of the

Indian Contract Act, 1872; and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue]”

6. Perusal of said provision, it is manifest that if fees leviable in respect of license is not paid within due date or prescribed period the same is recoverable with simple interest @ 2 percent per month from the date it has become due as they were arrears of land revenue. While delivering the judgment in writ petition No. 199 of 2006, it was not brought to the notice of learned Single Judge the provisions of Section 114 of the Maharashtra Prohibition Act. The said provision is not referred to in the said judgment. Said judgment as such would be *per in curium*.

7. Considering the aforesaid conspectus of the matter, the petitioner is not entitled to the relief sought. As such, writ petition stands dismissed. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

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