HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.8904 of 2010
AND
W.P.M.P.No.11083 of 2015

ORDER:

1. This Writ Petition was filed challenging the action of the 1st respondent in issuing the impugned Memo No.54595/Ex.II(2)/2009 dated 10.02.2010 rejecting the claim of the petitioner for refund of the license fee.

2. This is a strange case where this Court is called upon to decide the issue on third occasion. In order to understand the facts of the case which were already culled out in W.P.No.22330 of 2005, it is clear that the petitioner was a successful bidder in the auction conducted for establishment of a shop for sale of liquor in Ward No.8 of L.B. Nagar Municipality for the excise year 2005-2006. The location of the shop was approved by the competent authority and accordingly a license was issued to the petitioner for the period from 01.07.2005 to 30.06.2006. The residents of the locality filed W.P.No.15371 of 2005 in the name of Sharada Nagar Residents Welfare Association seeking a direction to shift the retail shop of the petitioner to a different place and a Division Bench of this Court by an interim order dated 19.07.2005 restrained the petitioner from running the shop. The said interim order was vacated on 20.09.2005. The petitioner filed W.P.No.22330 of 2005 seeking a direction not to collect the licence fee for the period during which he was prevented from running the shop. In the meanwhile, the petitioner in W.P.No.15371 of 2005 sought restoration of the earlier interim order dated 19.07.2005 and the

same was restored, as a result of which, the petitioner's shop was closed. Ultimately, the main Writ Petition was disposed of on 03.07.2006 as infructuous since the licence period came to an end on 30.06.2006. Since the petitioner was not allowed to run the shop, he submitted an application dated 17.07.2006 requesting the respondents to refund the entire licence fee for the excise year 2005-2006.

3. A counter-affidavit was filed on behalf of the respondents in the writ petition and after considering the rival contentions, Section 31 of the A.P. Excise Act, 1968 and the decision of this Court in ***Naga Chengal Reddy Vs. Prohibition and Excise Superintendent, Cuddapah District and others***[1], the writ petition was disposed of with a direction to the respondents to consider the representation of the petitioner dated 17.07.2006 for refund of the licence fee paid for the excise year 2005-2006 in the light of the observations made in the order and pass appropriate orders. This Court made the observations in the said order stating that the failure of the petitioner to carry on the business was not on any one of the circumstances mentioned in Section 31 of the A.P. Excise Act, 1968, but the entire amount of licence fee of Rs.17,14,599/- was recovered from him.

4. Thereafter, an order was passed on 10.02.2010 rejecting the claim of the petitioner for refund of the licence fee. Challenging the said order, the present Writ Petition No.8904 of 2010 was filed.

5. This writ petition was again considered by a learned single Judge of this Court and after considering the binding

decisions, allowed the writ petition holding that the petitioner was entitled to refund of the whole amount of licence fee collected from him. However, it was held that since the Government was not responsible for not opening the retail shop, it cannot be burdened with interest and accordingly, the claim for interest was rejected. The order passed by the learned single Judge of this Court in the present writ petition on 22.10.2013 was a detailed order. When an appeal was preferred by the State Government against the said order in Writ Appeal No.130 of 2015, a Division Bench of this Court allowed the said appeal on the sole ground that the State of Andhra Pradesh was not made as a party and the order was passed against the Government of Andhra Pradesh, which is not *sui juris.* It was directed that fresh hearing shall be taken provided the writ petitioner takes suitable steps for correction of the cause title of the writ petition within a period of seven days from the date of receipt of a copy of that order. Accordingly, the petitioner filed an amendment petition in W.P.M.P.No.11083 of 2015 and the said application is ordered.

6. Though the Division Bench of this Court held that fresh hearing shall be taken after correction of the cause title, this Court feels that no such hearing is required in view of consideration of the case by the two learned single Judges of this Court in W.P.No.22330 of 2005 dated 18.04.2009 and in the present writ petition on 22.10.2013. The Writ Appeal No.130 of 2015 was allowed only on the technical plea of passing an order against the non-existent party, the Government of Andhra Pradesh. The appeal was not decided on merits. In fact, the learned single judge of this Court in

W.P.No.22330 of 2005 categorically held that the petitioner is entitled for the refund of the licence fee as his failure to carry on the business was not on any one of the circumstances mentioned in Section 31 of the A.P. Excise Act, 1968. Again by subsequent order dated 22.10.2013 another learned single Judge of this Court held that the petitioner is entitled for refund of the whole amount of licence fee collected from him.

7. In view of the opinion expressed by the two learned single Judges of this Court and after considering the merits of the case on the basis of the material available on record, it is not open or proper for this Court to hear the matter afresh on the same material as there are no points framed by the Division Bench of this Court for reconsideration except on the ground of amendment of the cause title, which is done now.

8. In the circumstances, the Writ Petition is allowed in terms of the order of this Court dated 22.10.2013 in the present writ petition. No order as to costs.

9. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

22-04-2016
Gsn

[1] 2003 (2) ALD 509