

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.5397 of 2010

Between:

M/s.Himagiri Restaurant & Bar

....Petitioner

and

The State of Andhra Pradesh,
Rep.by its Commissioner, Prohibition & Excise,
Andhra Pradesh, M.J.Road, Hyderabad,
And another.

....Respondents

JUDGMENT PRONOUNCED ON : 17.03.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.5397 of 2010

ORDER:

The petitioner is a holder of Form 2B licence and by virtue of the same, it was running M/s.Himagiri Restaurant & Bar at Rajahmundry from the excise year 2006-2007 onwards. It was renewed for the year 2008-2009. An application for renewal of licence for the excise year 2009-2010 was submitted in June, 2010, along with a challan for an amount of Rs.12,70,000/- towards the first installment of the licence fee and the bank guarantee for an equal amount towards the second installment. However, the licence was not renewed for the excise year 2009 – 2010 with effect from 01.07.2009 on the

ground that the consent letter of the premises owner was not enclosed along with the renewal application. The petitioner could not enclose the consent letter due to some disputes with the owner, which were ultimately settled in the last week of October, 2009. After settling the matter with the owner, the petitioner requested the second respondent to renew the licence for the remaining period of the excise year 2009 – 2010. Accordingly, the renewal of the licence was granted from the period 09.11.2009 to 30.06.2010 vide proceedings dated 09.11.2009. The second respondent in the proceedings for renewal stated that the licence fee for the period commencing from 09.11.2009 to 30.06.2010 was Rs.19,05,000/- and since the petitioner already paid an amount of Rs.12,70,000/- through challan dated 30.06.2009, it was asked to remit the amount of Rs.6,35,000/- towards the second installment fee. The said amount was paid on 24.12.2009. However, the petitioner was informed by the bank that the second respondent encashed an amount of Rs.6,35,000/- from the bank guarantee of Rs.12,70,000/- furnished by the petitioner on 30.06.2009, on the ground that the petitioner did not pay the second installment licence fee. Challenging the action of invocation of bank guarantee for an amount of Rs.6,35,000/-, the present Writ Petition is filed.

A counter affidavit was filed by the second respondent stating that the licence of the petitioner was renewed up to 2008 – 2009 and it expired on 30.06.2009. It was also admitted that the petitioner submitted a proposal for renewal of licence for the excise year 2009 – 2010 by paying an amount of Rs.12,70,000/- towards the first installment and furnishing a bank guarantee for an equal amount towards the second installment. The petitioner submitted a representation on 26.10.2009 enclosing a copy of the consent letter of the owner dated 23.10.2009. The proposal for renewal of licence was submitted to the Commissioner of Prohibition and Excise and he issued orders on 07.11.2009 for renewal of the licence of the petitioner. Accordingly, the licence was renewed by proceedings dated 09.11.2009. But, in the renewal proceedings, it was wrongly mentioned as Rs.19,05,000/- instead of Rs.25,40,000/- and immediately revised proceedings correcting the amount was issued. The petitioner was not granted a fresh licence for payment of proportionate licence fee i.e., 3/4th of licence fee as laid down in Rule 10(3)

(b) of the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, the Rules). But, the licence was issued for the specific excise year 2009 – 2010.

Now the point for consideration is that in view of the renewal of licence with effect from 09.11.2009, whether the petitioner has to pay full licence fee or only 3/4th of the licence fee as provided in the Rules.

This issue is no longer *res integra*, as this Court in identical circumstances, while considering the Rule in W.P.No.39048 of 2012, dated 03.03.2016, held that, in case of renewal of licence in between 1st October and 31st December, only 3/4th of the annual licence should be paid. While coming to the said conclusion, this Court also noticed a decision of another learned single Judge in **Sri Venkata Sai Restaurant and Bar, Vemagiri, East Godavari District v. Government of Andhra Pradesh**^[1].

In view of the above, this Writ Petition is allowed holding that the licence fee payable by the petitioner is in accordance with Rule 10(3)(b)(ii) of the Rules in view of the renewal of the licence after 1st October. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

17.03.2016

vs

^[1] 2007 (5) ALD 147