**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION NOs.8601 of 2011, 22567 of 2012, 5007 of 2013 and 11710 of 2013**

**Date : 29.12.2016**

**W.P.No.8601 of 2011**:

Between :

M/s Karol Distilleries & Breweries Pvt.Ltd.,
Rep.by its Managing Director, P.Ramchander Gupta,
S/o late P.A.Narayana, Aged about 67 years,
Occu: Business, Office at No.1 Unity Building,
Abids, Hyderabad.

....Petitioner

And

Government of Andhra Pradesh, rep.by its
Principal Secretary, Excise Department,
State Secretariat, Hyderabad and another.

.... Respondents

The Court made the following:

**HONOURABLE SRI JUSTICE P. NAVEEN RAO**

**WRIT PETITION NOs.8601 of 2011, 22567 of 2012, 5007 of 2013 and 11710 of 2013**

**COMMON ORDER:**

Petitioner in all four writ petitions is same company. Petitioner Company was involved in manufacturing of different types of Indian Made Foreign Liquor (IMFL), as a consequence to license granted in the year 1965. This license was cancelled in the year 1987. Its distillery was named as M/s. Karol Distilleries. As the subject matter of all writ petitions concern distillery of Petitioner Company, they are disposed of by this common order.

2. In a surprise check conducted in the premises of M/s. Trade Wines (F.L.15 and F.L.24 licenses) on 14.12.1985 and 15.12.1985, excise officials found non duty paid liquor. A case was registered in Crime No.10/85-86 for possession of non duty paid liquor against Sri Raj Kumar, Proprietor of M/s. Trade Wines and Sri L.Ramakrishna, GPA holder of M/s. Karol Distilleries. On the allegation that non duty paid liquor was sold by M/s. Karol Distilleries, Hyderabad, the D2 license of the unit was suspended vide Cr.No.37467/85/Ex/J5, dated 20.12.1985 under Section 31(1) (a) of A.P. Excise Act, 1968 (Act,1968).

3. Holding that M/s. Karol Distilleries, Hyderabad had indulged in illicit manufacture of liquor and clandestine trade of non duty paid liquor, violating condition no.8 read with condition no.3 thereof of the license and Rules 79, 81 to 85 of A.P. Distillery Rules, 1970 (Rules, 1970), the license in Form D2 was cancelled, in exercise of power under Section 31(1) (a) & (b) of Act, 1968 vide

Proceedings in Cr.No.37467/85/Ex/J5, dated 03.01.1987. This order has become final.

4. W.P.No.3302 of 2005 was filed praying to direct renewal of license of M/s. Karol Distilleries, Hyderabad. The Writ Petition was disposed of on 25.02.2005, directing the Commissioner to pass appropriate orders within six weeks. Vide Proceedings in Cr.No.B3/2625/2003/ DDB/Ex, dated 01.10.2005, the request was rejected. Sri Kailash Agarwal representing Petitioner Company filed WP No.4896 of 2006 challenging the said rejection. However, the said writ petition was withdrawn on 02.07.2008.

5. Sri P.Ramachandra Gupta, has submitted a representation to the Government on behalf of Petitioner Company requesting for renewal of D2 license of M/s. Karol Distilleries. The government vide its Memo No.49373/Ex.III.1/ 2009-5, dated 21.09.2010 has ordered to regularize the gap period from 1987-88 to 2010-11 (leaving a period from 03.1.1987 to 13.8.1987) on payment of Rs.6,05,14,740/- towards license fee and late fee and an additional amount of Rs.30,88,742/- towards arrears of establishment charges. It was ordered that unless the above dues are cleared by the Unit and the gap period is regularized, the unit cannot be treated as an existing unit and would not be eligible for renewal of license. Aggrieved by levy of license fee and penalties, the Petitioner Company filed WP No.8601 of 2011. Without prejudice to claim in the above WP the amount demanded was paid. On payment of amount determined by Government licence was renewed.

6. While so, responding to a report in a daily newspaper alleging that by granting license Government suffered huge loss,

the commissioner issued show cause notice bearing Cr.No.B2/ 805/2006/DDB/Ex, dated 23.07.2011, calling for explanation as to why license should not be cancelled. Petitioner Company filed detailed explanation on 01.08.2011. On the same day, Petitioner Company has also applied for shifting the distillery to Chityala in Nalgonda district. On 08.09.2011 another application was filed seeking permission to shift the distillery to West Godavari District. Petitioner Company has also submitted application on 24.09.2011 for renewal of license along with renewal license fee.

7. On 03.07.2012, the Commissioner passed orders canceling the Petitioner Company license. Pleading ignorance of cancellation of license, Petitioner Company filed WP No.22567 of 2012 praying to direct the Commissioner to grant renewal of license for the year 2011-12.

8. Challenging the order of cancellation of license, W.P.No.5007 of 2013 and W.P.No.11710 of 2013 are filed on behalf of the Petitioner Company by two different persons claiming to be competent to represent the company.

9. At the outset it is appropriate to note following aspect concerning this litigation. All the four writ petitions are filed by same company. However, affidavits filed in support of W.P.Nos.8601 of 2011 and 11710 of 2013 were deposed by Sri P.Ramachander Gupta and affidavit filed in support of W.P.No.22567 of 2012 was deposed by Sri Vinod Kumar Singh and affidavit filed in support W.P. No.5007 of 2013 was deposed by Sri M.V.Subba Rao. In W.P.No.8601 of 2011 Mr. P.Ramachander Gupta deposed as the Managing Director and as authorized

signatory in W.P.No. 11710 of 2013 of the Petitioner Company. In W.P.No.22567 of 2012, Sri Vinod Kumar Singh deposed as authorized signatory of Petitioner Company. In W.P.No.5007 of 2013, Mr M V Subba Rao deposed as authorized signatory of Petitioner Company. It is also relevant to note that W.P.Nos.5007 of 2013 and WP No.11710 of 2013 are filed challenging the same order of the Commissioner. Further same company is 3rd respondent in both writ petitions represented by different persons.

10. Heard Sri O.Manohar Reddy, learned counsel for Petitioner Company in W.P.No.8601 of 2011 and W.P.No.11710 of 2013, Sri Ch.Pushyam Kiran, learned counsel for Petitioner Company in W.P.No.5007 of 20133 and W.P.No.22567 of 2012, learned Government Pleader for Excise, State of Telengana.

11. There are two facets to the litigation in these four cases. The first one is on substantive grievance of Petitioner Company against canceling the license, demanding arrears of license fee with fine and non-renewal of license for the year 2011-12; and secondly, maintainability of two writ petitions by same company on same cause of action and who can institute writ petitions on behalf of Petitioner Company.

12. Learned Government Pleader raised preliminary objection on maintainability of two writ petitions against cancellation of license. He has also raised objection on maintainability of W.P.No.5007 of 2013 and W.P.No.22567 of 2012 on the ground that Sri M.V.Subba Rao and Sri Vinod Kumar Singh are not recognized by the excise department as the Directors of the company and therefore, they cannot represent the company.

13. According to learned Government Pleader, on same cause of action same person cannot institute two writ petitions. By relying on Rule 13(2) of A.P. Distillery (Manufacture of Indian Made Foreign Liquor Other than Beer and Wine) Rules, 2006 (for short, 'Rules 2006'), he would submit that whenever there is a change in composition of ownership of licensee, it is mandatory to obtain prior permission of the Commissioner and no such prior permission was obtained to include Sri. M.V.Subba Rao and or Sri.Vinod Kumar Singh as Directors of the Petitioner Company and therefore they cannot represent the Petitioner Company and on that ground the Writ Petitions 22567 of 2012 and 5007 of 2013 are not maintainable. The submissions of learned counsel representing respective parties are noted along with other contentions.

14.1. Sri O.Manohar Reddy contended that on due consideration of the matter, Government passed orders to regularize the gap period for renewal of licence on payment of huge amount towards licence fee and late fee and arrears of establishment charges and directed the Commissioner to renew the licence. The amount as determined was paid and accordingly, the Commissioner renewed the licence, regularizing the gap period. Thus, it is no more permissible for the Commissioner to cancel the licence already renewed.

14.2. He would submit that once renewal is granted, Commissioner would become *functus officio* and it is no more competent for him to pass order of cancellation. He would further submit that once Government passed order granting renewal of licence, the Commissioner of Excise being subordinate cannot cancel the licence.

14.3. The order impugned is liable to be set aside also on the ground that it does not contain reasons in support of the decision. Detailed explanation filed by the Petitioner Company was not taken into consideration and mechanically rejected the explanation and illegally cancelled the renewal granted for the year 2010-11. He would further submit that order of cancellation goes beyond the contents of the show cause notice and no such new material or material which was not disclosed cannot be taken into consideration while passing final orders without affording due opportunity.

14.4. He would further submit that there was no suppression of facts as alleged. Auction of machinery of distillery was conducted by the Department and the proceeds were credited to the Government. Before conducting auction, machinery was shifted to the Department godown. He would, therefore, submit that Department was aware that the machinery was not available in the premises, where distillery operations were earlier carried. Therefore, it cannot be said that the Petitioner Company suppressed the factum of non-existence of machinery. It is not permissible for the Department to refer to this issue as Government was aware of these issues when the Government passed orders.

14.5. He would further submit that the Commissioner has no jurisdiction to cancel the licence, unless conditions mentioned in

Section 31 of the Act are attracted. In the instant case, none of those conditions are attracted.

14.6. He would further submit that there was a similar grievance to M/s. International Wines, Visakhapatnam, whose licence was also cancelled. The said person filed W.P.No.16066 of 2003. This Court by order dated 27.03.2004 quashed the order of cancellation and issued directions to renew the licence. Based on the said directions, the licence was renewed in its favour. The claim of Petitioner Company is similar to that of M/s. International Wines, Visakhapatnam and there can not be a different treatment. He contends that while granting orders in favour of the company vide Memo No.49373/Ex.III.1/2009-5, dated 21.09.2010, Government referred to the case of M/s. International Wines and held that the claim of the Petitioner Company is on similar lines.

14.7. With reference to the institution of W.P.No.5007 of 2013, he contended that the deponent representing the company while filing W.P.No.11710 of 2013 was not aware of the earlier writ petition. Therefore, there was no occasion for the deponent to know about the pending writ petition. He would further submit that the deponent to the affidavit filed in support of W.P.No.5007 of 2013 and W.P.No.22567 of 2012 are not authorized by the company and they are not competent to represent on behalf of the company.

15.1. For the reasons recorded hereunder, the submissions of Mr. Pushyam Kiran appearing for petitioners in W.P.Nos.22567 of 2012 and 5007 of 2013 are noted only on the maintainability of the two writ petitions he is representing.

15.2. He submitted that in the peculiar facts of these cases two writ petitions are maintainable on the same cause of action. He would submit that this is a case where the principle of lifting of corporate wheel should be applied. There is an interse dispute between two groups of promoters and litigation on ownership issue is pending and therefore it cannot be said which group can claim to represent the Petitioner Company and therefore it is permissible for the contesting partners to independently prosecute grievance by filing two separate writ petitions though on the same cause of action. In support of his contention, he placed reliance on the decision of the Supreme Court in the case of **New Horizons Limited and another v. Union of India (UOI) and others**[1].

15.3. By relying on the provision in Section 10 of Code of Civil Procedure, he would submit that subsequent writ petition is not maintainable. W.P.No.5007 of 2013 represented by him is filed earlier point of time and the said writ petition was pending by the time WP No.11710 of 2013 is instituted and, therefore, the said writ petition is liable to be dismissed.

15.4. Rule 13 (2) of the Rules are not attracted to a company. He would submit that as per the resolution passed by the Directors of the company, the deponents to both the writ petitions are authorized to depose on behalf of the company. He would further submit that the Board was reconstituted and as a consequence to reconstitution of the Board, the deponents to the affidavits filed in support of these writ petitions are competent to represent the company and to depose on behalf of the company.

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[1] (1995) 1 SCC 478

16.1. Learned Government Pleader would submit that the factum of cancellation of licence on 03.01.1987 was not reflected in the correspondence. Petitioners while submitting representation to the Government have not referred to the earlier orders. He would further submit that acquittal in criminal proceedings does not automatically result in grant of renewal and merely because the Directors of Petitioner Company were acquitted in criminal proceedings is no ground to ask for automatic renewal of licence. The provisions of A.P. Excise Act are clear and principles of law laid down by this Court in the case of **Toddy Co-operative Society, Toddy Group of Khammam District, Khammam v. State of Andhra Pradesh and others**[2], would clearly point out that it is not permissible to ask for renewal only on the ground of acquittal in criminal proceedings.

16.2. According to Section 31 of the Act, breach of one of the licence conditions is sufficient to take departmental action. The impugned order was passed in valid exercise of power. The representations submitted to the Government would clearly disclose that the previous history was not brought to the notice of the Government while making claim for renewal and it was projected as if the unit was closed for some reason and, therefore, it can be reopened after penalizing for the previous years of non-operation and Government, in *bona fide* belief of the claim, directed grant of renewal, subject to payment of the amounts specified therein.

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[2] 2010 (5) ALD 99 (DB)

17. The following issues fall for consideration in these writ petitions:

1. Whether two writ petitions against same order by which license was cancelled are maintainable? ;

2. Whether Mr. M.V.Subba Rao and Mr. Vinod Kumar Singh are competent to represent Petitioner Company? ;

3. Whether the decision of the Commissioner of Excise to cancel the licence is valid and legal? ; and

4. Whether Petitioner Company is entitled for refund of Rs.6,05,14,470/- levied towards renewal fee ?.

**ISSUE NOs.1 & 2:**

18. A person aggrieved by a decision of an authority representing the State can invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Writ remedy is an extra-ordinary remedy and an equitable remedy. It is for the writ court to entertain a writ petition and grant appropriate relief. Writ Court can refuse to entertain a writ petition if the petitioner lacks *bona fides* in prosecuting the litigation or has not disclosed true and correct facts. The Court expects the petitioner to be fair and honest in stating true and correct facts before praying to grant a relief. In both the writ petitions filed against same order, there is no whisper of filing of other writ petition. Even after pointing out that two writ petitions on same cause of action are not maintainable and even though sufficient time was granted, parties were not willing to come to an understanding and to prosecute grievance in one writ petition. Even though both groups have knowledge of filing of other writ petition on the same cause of action, no additional pleadings are raised brining on record the facts relevant for prosecuting litigation independently, even assuming that is permissible. There is no consensus on who

should represent the company. Rival groups are fighting and each of the groups claim as authentic representatives of the company.

19. In **K.D.Sharma v. SAIL[3],** Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "***hide and seek***" or to "***pick and choose"*** the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts" (paragraph 38).

20. It is appropriate to reproduce paragraphs 34 to 39 of **K.D.Sharma** (supra), which read thus:

> **"**34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.
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> 35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R.* v. *Kensington Income Tax Commrs. (1917) 1 KB 486* in the following words: (KB p. 514)
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> > "… it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and **the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement**." (emphasis supplied)
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> 36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter**

[3] (2008) 12 SCC 481

**into the merits of the case by stating, "*We will not listen to your application because of what you have done*."** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* Viscount Reading, C.J. observed: (KB pp. 495-96)

> "… Where an ex parte application has been made to this Court for a rule nisi or other process, **if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits**. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. ***But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit*.**" (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, **the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible.** The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* is kept in mind, **an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.** If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.
(*emphasis supplied*)

21. In **Prestige Lights Limited v. SBI**[4] the Supreme Court observed that "*in exercising power under Article 226 of the Constitution of India the High Court is not just a 'Court of Appeal', but it is also a 'Court of Equity' and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is suppression of material facts or if the facts are twisted.*"

22. The decision of Supreme Court in **New Horizons Limited** does not come to the rescue of Sri Pushyam Kiran. It was a case concerning claim of a company that it answers the eligibility criteria to undertake the job of printing telephone directory as its shareholders have vast experience. Supreme Court held that while assessing the eligibility of participant company in tenders, the experience of constituents cannot be ignored. It is not a case where two writ petitions are filed for same cause of action.

23. It is beyond pale of doubt that there is dispute among the promoters of the Petitioner Company and litigation is pending on inter se dispute. Not surprisingly both learned counsel appearing for respective parties argued that the writ petition filed by rival group is not maintainable. Internal disputes took ugly turn and extended even to prosecuting independent litigation on behalf the company on same cause of action.

24. Rival claims to ownership among the promoters cannot be a ground to institute two writ petitions on the same cause of action.

[4] (2007) 8 SCC 449

Petitioner Company is a legal entity and can sue or be sued. If it has a grievance against any decision of executive, it can prosecute litigation. Who can represent such personality is a different issue, but in the guise of internal disputes among different promoters, more than one writ petition cannot be filed on the same cause of action by same legal entity.

25. In the instant writ petitions, having regard to peculiar facts of these cases, the principles evolved in **K.D.Sharma** can be relaxed and both writ petitions on same cause of action need not be dismissed on that ground, but suffice to note that rival groups could not have instituted two writ petitions, being fully aware that such kind of litigation is not legal and ought to have taken steps to withdraw one of the writ petitions against same cause of action. Thus, one of the writ petitions has to be dismissed as only one writ petition can be entertained and considered on the issue of validity of the order of the Commissioner.

26. Next question is who can represent the Petitioner Company. To determine this aspect, guidance can be taken from Rule 13 of the Rules, 2006. To the extent relevant to this case, it reads as under:

> **"Rule 13. change or alteration of license:-**
>
> **(1) xxxx**
>
> **(2) Inclusion or exclusion of partners :-** No licensee shall except with prior permission of the commissioner get any person included as a partner to his business or get an existing partner excluded. “”

27. Rule 13 of the Rules, 2006 deals with change or alternation of license. A plain reading of this provision makes it clear that no change in the management or ownership can be brought out without prior approval of the Commissioner. As subject matter of

writ petition concern the claim for license to undertake manufacturing of IMFL, levying of penalty and determination of arrears which decisions are all made in exercise of powers vested by the A.P.Excise Act and Rules, 2006, Petitioner Company is bound by the provisions of the Act and the Rules and more particularly Rule 13.

28. The contention of the learned Government Pleader that no application was filed before the Commissioner to effect changes in the composition of the company is not disputed. Admittedly, no changes in ownership and management is effected in accordance with Rule 13 of the Rules, 2006, and Sri M.V. Subba Rao and Sri Vinod Kumar Singh were not on the board of Directors when license was granted, nor do they have authorization to represent the Petitioner from the management recognized by the Excise authorities. Thus, they cannot represent the Petitioner on any issue arising under the A.P. Excise Act, and the Rules, 2006. Mr Pushyam Kiran sought to contend that Petitioner Company is registered under the Companies Act and is therefore governed by the provisions of that Act and thus, Rule 13 has no application. It is made clear that Rule 13 is pressed into service only for the limited purpose of considering the competence to represent the Petitioner vis-à-vis institution of two writ petitions on the same cause of action and to reject one writ petition.

29.1. In view of provision in Rule 13 of the Rules, 2006, W.P.Nos.22567 of 2012 and 5007 of 2013 are not maintainable.

29.2. Even otherwise, as two writ petitions on same cause of action by same person cannot be instituted, W.P.No.5007 of 2013 is not maintainable.

29.3. Cause in W.P.No.22567 of 2012 does not survive in view of the order of the Commissioner canceling the licence which is assailed in W.P.No.11710 of 2013 and is liable to be dismissed on that ground alone.

**ISSUE No.3:**

30. The facts which are not in dispute are as under. The licence granted to the petitioner was cancelled by the Commissioner on 03.01.1987, on the allegation that the Petitioner Company indulged in illicit manufacture of liquor and clandestine trade of non duty paid liquor violating the condition No.8 of the licence and Rules 79, 81 to 85 of A.P. Distillery Rules, 1970. This order of the Commissioner has become final; that the machinery of the distillery was disposed of long ago; that the premises, where the distillery was earlier located was subsequently converted into residential property; that by the time representation was submitted to the Government to grant renewal, this premises and the machinery were not available; the representations are bereft of the relevant and crucial facts and do not disclose the contents of earlier letters referred to and there is no mention about the cancellation of licence by the Commissioner on 03.01.1987, conversion of premises into real estate property and disposal of machinery. The Government was not informed of these facts and reasons for such cancellation. On the contrary, simple request for renewal of licence was made. The government was also not

appraised that earlier the Company request for renewal was rejected by the Commissioner. Though a challenge was made to said order of the Commissioner in WP No.4896 of 2006, but the same was withdrawn and the decision of the Commissioner has become final.

31. In the report of the Commissioner vide Cr.No.B2/805/2006/DDB/Ex, dated 22.03.2010, Commissioner brings to the notice of the Government about the cancellation of licence on 03.01.1987. The report also refers to the WP No.3302 of 2005 and WP No.4896 of 2006 instituted by Kailash Agarwal on behalf of the Petitioner Company praying to grant renewal of licence. The report highlights the stand taken in the counter affidavit filed by the Commissioner in WP No.4896 of 2006 that renewal cannot be granted 19 years after the licence was cancelled. The Commissioner also explains that this case cannot be equated to the cases where renewal was granted by regularizing the break period after levying the late fee. Commissioner pointed out that there was 19 years of gap and that in the mean time new set of Rules called 'A.P. Distillery (Manufacture of IMLF other than Beer & Wine) Rules, 2006', came into force w.e.f. 27.01.2007 and as per provision contained in Rule 9 (7) of these Rules, the right of a licensee to get his licence renewed stands forfeited if the licence is not renewed continuously for a period of three years. The Commissioner, therefore, suggested that the company may be advised to apply for manufactory licence afresh.

32. For unexplained reasons, thereafter, there is a drift in the stand of the Commissioner. He became silent on his earlier

objections. In his letter vide Cr.No.B3/805/2006/DDB/Ex., dated 29.05.2010, he has only placed on record the renewal granted to M/s. International Wines, Rayalaseema Enterprises, and M/s. Prag Distillery Private Limited. He has not suggested any course of action to the Government. In the further report vide Cr.No.B2/ 805/2006/DDB/Ex, dated 23.06.2010, the Commissioner has only highlighted what would be the licence fee payable if licence is renewed by enclosing the worksheet showing the amount that should be collected from the Petitioner Company towards licence fee, penalty/late fee.

33. While issuing orders in Memo No.49373/Ex.III.I/2009-5, dated 21.09.2010, Government though refers to the report of the Commissioner dated 22.03.2010, there is no discussion on the objections of the Commissioner. However, the Memo went on to discuss the orders granted in favour of other distilleries and passes orders to grant renewal of licence by directing the petitioner to pay arrears of licence fee from 14.08.1987 till 2000-11.

34. The order of the Government dated 21.09.2010 is challenged in WP No.8601 of 2011 to the extent of directing the petitioner to pay huge amount as licence fee and fine. This Court, by way of interim directions, directed the petitioner to pay the amount quantified while holding that payment of any such amount would be subject to the final adjudication. Accordingly, petitioner paid the amount. On receipt of the amount levied, licence was renewed for the year 2010-11.

35. At this stage, responding to a news item published in a daily newspaper, show cause notice was issued on 23.7.2011 calling

upon the Petitioner Company to explain why the orders granting renewal should not be cancelled.

36. The show cause notice alleges that licensee failed to adhere to the condition No. 6(b) of the licence and failed to keep the plant and machinery as well as building in good condition. The show cause notice refers to reports submitted by the Assistant Commissioner of Distilleries, wherein it is reported that on the premises, where the distillery was operating earlier, Karolbagh Welfare Association and MCH Park have come up surrounded by multistoried building complex. The show cause notice therefore alleges that by misrepresenting the facts and suppressing the relevant information renewal of licence was obtained and the gap period got regularized. It was alleged that the Petitioner Company altered the building and plant without approval of the licencing authority and thus, violated the conditions of licence and, such conduct warrants action under Section 31 of the Act.

37. A close reading of the contents of the representation submitted on behalf of the Petitioner Company to Government for renewal of licence would disclose that there was only a vague reference to earlier cancellation, rely upon the renewal granted to some other distilleries and seek renewal. The representations proceed as if the distillery exists, but is not in operation, since licence was not renewed and if renewal was granted, distillery can continue to operate. The penal action taken against the petitioner was not reflected in the subsequent correspondence between the Government and the Commissioner. Though in the earlier correspondence, the Commissioner refers to the cancellation of

licence, does not specify in what context the cancellation was made.

38. Admittedly, after the order of cancellation of licence, no licence was subsisting in favour of the Petitioner Company. It is not a case of licence being in dormant for non renewal or not seeking renewal in time so that application for renewal can be subsequently considered after penalizing for not seeking such renewal in time. Question of renewal would arise, even assuming that petitioner is entitled, only if unit is in existence physically with all parameters required for continuation of manufactory. There was no existing manufactory.

39. Further significant aspect to be noted is between the date of cancellation of licence and the representation to the government to grant renewal there was change in the legal regime and new set of Rules came into force w.e.f. 27.1.2007. After 27.1.2007, there is no provision for renewal, if it was not granted for three years. New Rules do not enable a person to directly apply for establishment of distillery on its own, but can respond only if a notification is issued calling for interest in establishing the Distillery Units.

40. In the above factual backdrop, it is necessary to analysis the issue vis-à-vis the provisions of the Act and the Rules that are in operation from 27.01.2007.

41. To appreciate the contentions on this issue, it is necessary to consider the relevant provisions of the Act and Rules.

**Section 31 of the Act, 1968 reads as under:**

> "**S.31**. **Power to cancel or suspend licence etc. :-**(1) Subject to such restrictions as may be prescribed, the authority granting any

licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates.

(a) Xxxx, or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) xxxx , or

(d) xxxx. or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will :

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

41.1. **Rules 2 (c), (l), (m), (n), 4, 5(1), 6(1), 7 and 9 of the Rules, 2006 read as under:**

"**Rule.2.** In these rules the context otherwise requires:-

**(c)** "**Distillery**" means a manufactory where spirits are compounded, blended, processed, fortified and or diluted to produce Indian Made Foreign Liquor other than Beer and Wine and includes an operation for bottling of such liquor.

**(l) "Indian Made Foreign Liquor**" means liquor produced, manufactured or compounded in India after the manner of Gin, brandy, whisky or Rum imported from foreign countries and includes Milk punch and other liquors consisting of or containing any such spirits, but does not include beer, wine and Foreign liquor.

**(m)** "**Licence**" means a licence granted by the Commissioner under these rules in –

(i) FORM-DM-2(M) to construct and work a manufactory by utilizing molasses based Extra Neutral Alcohol.

(ii) FORM DM-2(G) to construct and work a manufactory by utilizing grain based Extra Neutral Alcohol.

(iii) FORM DM-2(MGO) to construct and work a manufactory by utilizing both molasses and grain based Extra Neutral Alcohol or Extra Neutral Alcohol obtained from any other fermentative base as notified by the Government from time to time.

**(n) "Manufactory"** means a unit where spirits are compounded, blended, processed, fortified and or diluted to produce Indian Made Foreign Liquor other than Beer and wine and includes an operation for bottling of such liquor.

**Rule 4**. (1) No letter of intent for establishment of any new manufactory or expansion of the production capacity of an existing manufactory shall be issued without previous notification issued by the Government expressing the intention to grant the same from time to time.

(2) A notification shall be issued by the Government separately from time to time for grant of Letter of Intent for establishment of a new manufactory or expansion of production capacity of an existing manufactory for different purposes mentioned in rule 3.

(3) Government may, by notification issued from time to time, withdraw their intention of granting Letter of Intent for establishment of new manufactory or expansion of the production capacity of the categories of existing manufactory for any of the purposes separately.

**Rule 5 (1).** No licence for manufactory shall be granted unless the same is notified and sanctioned under sub-rules (1) and (2) of rule 4 of these rules.

**Rule 6. Grant of Licence :-**

(1) The holder of letter of intent shall obtain licence from the Commissioner within six months from the date of sanction of the Government in the form of Letter of Intent referred to in rule 5(c).

**Rule 7. Existing Licenses under A.P. Distillery Rules, 1970:-**

The Andhra Pradesh Distillery Rules, 1972 shall cease to operate on the commencement of these rules and all relevant licenses granted under Andhra Pradesh Distillery Rules, 1970 for such purposes as categorized in rule 3 of these rules shall be deemed to have been granted under these rules:

Provided that the licence fee in respect of the existing distilleries shall be paid by the licensees proportionately from the date of commencement of these rules.

**Rule 9. Renewal of Licence:-**

(1) xxxx

(2) Licence shall ordinarily be for a period of one year.

(3) The licensee shall get his licence renewed before the commencement of the Licence year, by paying the licence fee as prescribed in Rule 8, other wise he is neither eligible to go into production nor permitted to transact any business.

(4) If the licensee fails to apply for renewal by paying the specified fee before the commencement of the licence year, he shall pay the licence fee along with fee specified below for renewal of his licence.

| **Period** | **Late fee** |
|---|---|
| (1) Within six months from the date of commencement of licence year | 5% of the Annual Licencee Fee |
| (2) After six months from the date of commencement of licence year | 10% of the Annual Licencee fee |

> Provided, if the licensee does not apply for renewal of licence within the licence year, he shall pay the annual licence fee for the entire period for which he does not have his licence renewed along with the late fee as specified above, subject to the condition laid down in sub-rule (7) of this Rule.
>
> (5) Where the Commissioner is satisfied that the licensee has fulfilled the conditions specified for renewal and that the manufacturing facilities on ground are not modified in any manner in deviation of the provisions of previous licence, he may renew the licence.
>
> (6) The right of the licensee to get his licence renewed stands forfeited if the licence is not renewed continuously for a period of 3 years. "

42. The Petitioner Company was granted distillery licence under the A.P. Distillery rules, 1970. These rules are superseded by Rules, 2006. However, 2006 Rules treat the licence granted under the old Rules as deemed to have been granted under the Rules, 2006. Even assuming that the Petitioner Company continues to be treated as a valid licence holder, in terms of Rule 9(7) right to seek renewal is forfeited, if licence was not renewed continuously for a period of three years. Admittedly licence of petitioner was not renewed for several years. Thus, even if it is assumed that petitioner had a valid licence, but not renewed, right to seek renewal is forfeited and, therefore, question of renewal of licence would not arise. There is no provision made in Act, 1968 and the Rules, 2006, vesting power in government to grant relaxation of any or all of the provisions to individual licensee. Government has not considered the scope of Rules, 2006 though it was specifically pointed out by the Commissioner.

43. Section 31 of the Act vests power in the Commissioner to suspend and /or cancel the license granted. In exercise of this power, licence was cancelled by order dated 03.01.1987. Cancellation of licence was permanent and not for a specified

period. Claim for renewal of licence is applicable only when licence is not cancelled. Thus, by the time representation was made to Government for renewal of licence such request was not valid,

(a) as it was not made to prescribed authority by following due procedure; and

(b) there was no subsisting claim to grant renewal of licence:

(i) as licence was cancelled on 3.1.1987, and

(ii) as per Rule 9(7) of 2006 Rules, right to renewal is forfeited as licence was not renewed for more than three years.

44. Exoneration in Criminal case is no ground to contend that order canceling the licence is deemed to have been nullified. In fact, result of criminal proceedings has no bearing on decisions taken under the Act, 1968. In **Toddy Co-operative Society,** this court held that mere acquittal in criminal case has no relevance to action initiated under the Excise Act. This Court held,

> "24. A close scrutiny of the law laid down by the Supreme Court as well as this Court would clearly indicate that the scope of departmental and criminal proceedings is different and distinct from each other. Mere acquittal will not entail the departmental proceedings as illegal. If the departmental proceedings are already culminated into imposition of punishment, subsequent acquittal in the criminal case will not entail the delinquent to review the earlier order passed imposing punishment/cancellation of licence for violating the conditions of thelicence, if any.
>
> 25. It is fairly well settled that the finding of the criminal Court is not binding in civil proceedings/departmental enquiry, whereas the findings recorded in the civil proceedings will have a pervasive value in the criminal proceedings."

45. The claim of petitioner for renewal can be considered as a valid claim at least if the place where distillery unit was established remained idle and not diverted for some other purpose permanently, in this case construction of residential apartments, and machinery is retained.

46. There is nothing on record to show that Petitioner Company informed the Government and Commissioner that the place and machinery where manufactory was working is no more available and land use is changed and machinery was disposed. Applications for shifting of manufactory were made later. Clause 6(b) relied on by the Commissioner in his notice and order mandates the licensee not to alter/modify/make additions to the building. This clause read with definition of 'manufactory' provided in Rule 2(n), the form appended to the Rules and a cumulative reading of various other provisions of Rules, 2006 make it clear that unit has to be established and operated at a place specified in the licence and cannot be shifted/relocated without prior approval of the competent authority. Seeking renewal, presupposes existence of 'manufactory' at the place where original licence was granted. As petitioner was asking for renewal, he cannot be permitted to contend that clause 6(b) is not attracted.

47. On compliance of conditions imposed by the Government licence was renewed by the Commissioner. Thus, that issue ended there. The later action of the Commissioner is independent. It was on consideration of violation of terms of licence and taking action there on and is independent of renewal granted though flowing there from. The Commissioner is competent to take penal action against erring licence holder. Thus the Commissioner is competent to make the impugned order. In the facts of this case, it cannot be said that there was no application of mind and the order of Commissioner is bereft of reasons. What is required in law by a quasi-judicial authority is, his decision must be supported by reasons and there must be application of mind to the issue. It is

not necessary that such order must be lengthy order. In the instant case, after the renewal was granted, enquiries made by him in response to an adverse news item revealed that distillery does not exist at the place where distillery licence was originally granted and his further enquiry revealed that petitioner licence was cancelled long ago. On an analysis of the facts in issue and statutory frame work, it cannot be said that the Commissioner erred in arriving at the conclusion that Petitioner Company earned disqualification in terms of paragraph 6(b) of licence and was not qualified to seek renewal and in canceling the renewal granted.

48. Even assuming that there is merit in the contention of Petitioner Company that cancellation of licence was not validly made, setting aside the order impugned would result in restoring another illegal order. In exercise of equity jurisdiction, writ court can decline to grant relief to petitioner even if petitioner makes out a case against order impugned, if grant of such relief would result in restoring another illegal order. Renewal of licence was a void exercise. At this state, it is appropriate to note two decisions of Supreme Court in **S.L.Kapoor v. Jagmohan**[5] and **M.C.Mehta v. Union of India**[6].

49. In **S.L.Kapoor,** principal contention was that the order of supersession of New Delhi Municipal Corporation of Delhi made by Lt. Governor was in complete violation of principle of natural justice and total disregard of fair play. No notice to show cause was issued and no opportunity was afforded on the allegations made for such supersession. Supersession resulted in premature

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[5] (1980) 4 SCC 379
[6] (1999) 6 SCC 237

termination of tenure of members of the Committee. Supreme Court held opportunity need to be given before superseding Committee and that the Municipal Corporation was not put on notice before exercising power to supersede the committee and held such action as illegal. Having come to such conclusion, Supreme Court held,

> "24. …….. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

50. In **M.C.Mehta** on review of precedent decisions including the decision in **S.L.Kapoor,** Supreme Court held,

> "17. ….. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. ***The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.***
>
> 21. It is, therefore, clear that if on the *admitted* or *indisputable* factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.
>
> 22. ….. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived."

51. As noticed in earlier paragraphs, the order of Government to renew licence for the year 2010-11 was contrary to Rules, 2006 and made in ignorance of the fact that licence was cancelled on the allegation of illegalities committed and licence was not dormant to condone the gap period and to grant renewal and such request was rejected by the Commissioner, which decision has become final.

Setting aside the decision of Commissioner impugned in the writ petition would result in restoration of a void order. Thus, this Court is not inclined to grant prayer in the writ petition on this ground also.

**ISSUE No.4:**

52. Licence of the Petitioner Company was cancelled by the order of the Commissioner dated 03.01.1987. For more than 23 years, Petitioner Company was not in operation. In the year 2010, Petitioner Company applied for renewal of licence. Rule 9 of Rules, 2006 deals with procedure for renewal of licence. Ordinarily, licence is renewable for a period of one year and licensee should apply for renewal of licence before commencement of licence year by paying the licence fee as prescribed in Rule 8. If the licensee fails to apply for renewal within the specified time, he can apply for renewal, but he is required to pay licence fee along with the late fee. Proviso appended to sub-rule (4) of Rule 9, mandates that person applying for renewal of licence should pay annual licence fee for the entire period for which he did not have licence renewed, along with the late fee. It is thus clear that for applying renewal of licence after lapse of period prescribed in Sub-rule (2) of Rule 9, the licensee has to pay licence fee for the entire period before applying for renewal. Unless break period is regularized, licence cannot be renewed. Petitioner sought for renewal of licence and not for grant of fresh licence.

53. The application submitted by the petitioner was positively considered by the Government and orders were issued for renewal of his licence. The condition imposed by the Government in the

order, directing the Commissioner to renew licence is in accordance with the provisions contained in Rule 9. If the petitioner does not pay the licence fee payable for the previous years, he is not entitled to seek renewal of licence. Thus, his application for renewal presupposes obligation to pay the arrears of licence fee for the entire period. Both are intertwined and laced together. The amount determined by the Government is in tune with the statutory mandate. As a consequence to the orders of the government and on payment of the amount quantified, the Commissioner granted renewal as sought for by Petitioner Company. On renewing the licence one phase of the issue was completed. Subsequent cancellation has no bearing on the issue of renewal. Thus, I do not see any error in the order of the Government, in so far as fixing fee payable by Petitioner Company to grant renewal, though such decision is vitiated on other parameters noticed above. There is no merit in the contentions urged in W.P.No.8601 of 2011 and writ petition is liable to be dismissed.

54. For all the aforesaid reasons, all the writ petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in these writ petitions shall stand closed.

**JUSTICE P.NAVEEN RAO**

Date: 29.12.2016
*Kkm/tvk*

**HONOURABLE SRI JUSTICE P. NAVEEN RAO**

**<u>WRIT PETITION NOs.8601 of 2011, 22567 of 2012, 5007 of 2013 and 11710 of 2013</u>**

**<u>Date: 29.12.2016</u>**

*Kkm/tvk*