HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT APPEAL No.211 of 2016

Date: 16.3.2016

Between:
B.Sujanakar Reddy S/o Ranga Reddy
R/o Raghunathapally, Waranga district

…..Appellant/
Petitioner

And

State of Telangana
Revenue (Ex.II) Department, Secretariat,
Hyderabad
Rep by its Principal Secretary and others

…..Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

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PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Petitioner was granted license for sale of Indian made foreign liquor

(IMFL) for shop No. 84 of Cherial village, Ward No. 14, Warangal district for a total consideration of Rs. 1,20,00,999/-. The period of license was valid from 01.07.2010 to 30.06.2012. While so, vide proceedings dated 03.01.2011 third respondent suspended the license of the petitioner. After due enquiry, by order dated 25.1.2011, the license was cancelled. The appeal filed against the cancellation was rejected by the Appellate Authority by proceedings dated 16.3.2011. In the instant writ petition, petitioner challenged invoking of the bank guarantee furnished by him at the time of obtaining of the license. Petitioner contended that there is no provision in the A.P. Excise Act, 1968 (for short the Act, 1968) and the Rules made thereunder vesting power to invoke bank guarantee on suspension/cancellation of the license granted to the petitioner. Thus, invoking of the bank guarantee Nos. 59 /2010 and 60/2010 was illegal and petitioner is entitled to refund of the amounts forming part of these two bank guarantees.

2. On consideration of the provision contained in Section 31 (3) of the Act, 1968 and judgment of the Full Bench of this Court in S.L.V. WINES, the writ petition was dismissed.

3. Learned counsel for appellant contends that since there is no provision in the Act, 1968 and Rules made thereunder, invoking of the bank guarantee is ex-facie illegal and learned single Judge has erred in not appreciating this contention. The learned single Judge failed to appreciate that Full Bench judgment has no application, since in the instant case, the contention of the petitioner is on competence to invoke bank guarantee, which was not the issue before the Full Bench.

4. Learned Government Pleader for Excise (TS) opposed the claim of petitioner by relying upon provision contained in Section 31 (3) of the Act, 1968 and decision of the Full Bench of this Court in S.L.V. WINES, CUDDAPAH DIST Vs STATE OF A.P. AND OTHERS[1].

5. Sections 2 (12) and 31 (3) of the Act, 1968 read as under:

> "2 (12) –'Excise Revenue' means revenue derived or derivable from any duty, fee, tax, rent, fine, penalty or confiscation levied, imposed or ordered under the provisions of the Act or other

law for the time being in force relating to intoxicating liquors or intoxicating drugs".

"31 (3)—The holder of a 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."

6. In S.L.V. WINES, licence of the petitioner was suspended and the shop was sealed with effect from 21.11.1993 but licence was restored on 07.01.1994. Petitioner claimed for remission of licence fee for the period for which the licence was suspended alleging that for no fault of him, he was not allowed to carry on business during the said period even though he has paid full amount of licence fee.

7. The Full Bench of this Court, having regard to the above provisions of the Act and the Rules, considered the issue whether petitioner was entitled to remission for the period during which the shop was closed and licence was suspended. Following the earlier Full Bench judgment in SRI NARASIMHA WINES AND ORS Vs PROHIBITION AND EXCISE SUPERINTENDENT, MEDAK DISTRICT AT SANGAREDDY AND OTHERS[2], held as under:

"From the scheme of the Act and the procedure envisaged under various Rules framed under the Act, it becomes clear that the licensee is not entitled to any remission of the licence fee paid by him for the period during which his licence stands cancelled or suspended. Remission on the other hand is envisaged only in cases where the licence is withdrawn or the shop is ordered to be closed by a competent authority under the provisions of the Act, otherwise than by cancellation or suspension of licence."

8. Once license is granted, licensee is entitled to pay the license fee for the entire period for which license is granted. Further Rule 18 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules 2005, notified vide G O 998 Revenue (Ex.II) dated 24.5.2005,
(for short the Rules) facilitates payment of the license fee in six equal instalments. Rule 19 mandates furnishing of two fixed deposit receipts or bank guarantees in Form A-5, each of which is equivalent to 1/6th of the lease amount valid upto 5 and 9 months respectively.

9. Thus, once license is granted to licensee, he is required to pay the entire licence amount for the period of licence as already determined. Rules

18 and 19 only facilitate differential payment of the licence fee and/or furnishing of bank guarantee. The payment of licence fee is for the full period of licence and licensee has to pay full licence fee irrespective of the cancellation /suspension of the licence fee. If licensee opted to pay licence fee in instalments or furnished bank guarantee and licence fee is due, it is open to the respondent State to recoup the license fee with whatever instruments available with the authority concerned. In the instant case, petitioner chose to furnish two bank guarantees. At this stage, it is also appropriate to note provisions in Sections 65 and 66 of the Act, 1968. Section 65 vests power in the State to recover the 'Excise Revenue' due to the State. Licence fee is 'Excise Revenue'. Section 66 of the Act 1968 vests lien on the property of the defaulter, as noticed by the Full Bench of this Court in S.L.V. WINES. Thus, there is no illegality in adjusting the bank guarantees furnished by the petitioner as a consequence to the decision taken to cancel the licence of the petitioner.

10. We see no error in the decision arrived at by the learned single Judge. Writ Appeal is accordingly dismissed. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:16.3.2016
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HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

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[1] 2009 (5) ALD 170 (DB)

[2] 2001(6)ALT 240