THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.39048 of 2012

ORDER:

Heard the learned counsel for petitioner and the learned Government Pleader for Prohibition & Excise for respondents.

2. The petitioner is a licensee of 2B bar and restaurant in the name and style of M/s.Moon Rock Restaurant and Bar that is being run in premises bearing Sy.No.115, KJR Complex, Bapujinagar, Tadbund, Secunderabad. The licence expired on 30.06.2012. He applied for renewal of licence under form 9-A in accordance with the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, the Rules) along with a challan dated 28.06.2012. At that time, the policy of the Government was to grant renewal of the licence automatically. Since the petitioner was not having trade licence, his licence was not renewed. However, the licence was renewed only on 09.10.2012 for the period commencing from 09.10.2012 to 30.06.2013 on payment of licence fee of Rs.15,50,000/- and also on payment of Rs.1,45,235/- towards penal interest on licence fee. The licensee was informed that he shall comply with Rule 10(3)(a) of the Rules. Challenging the insistence of payment of full licence fee, though the licence was granted only on 09.10.2012, the present writ petition was filed.

3. A counter-affidavit was filed by the second respondent stating that the petitioner submitted the application for renewal of licence with a challan in original for Rs.10,000/- towards renewal fee, but he did not comply with requisite formalities for renewal of 2B licence. In order to claim renewal of the existing licence, it is incumbent on the applicant to satisfy all the existing conditions which are envisaged in Rule 6 of the Rules for grant of licence. Since the petitioner submitted proof of payment of trade licence fee for the current year on 03.10.2012 along with challan for Rs.15,50,000/- towards half of the annual licence fee and

a challan for Rs.1,45,235/- towards late fee on licence fee and also furnished a bank guarantee for Rs.15,50,000/-, the licence of the petitioner was renewed on 09.10.2012. It is stated that Rule 10 (3) (b) of the Rules has no application insofar as renewal of 2B licence is concerned and it applies only to licences granted afresh. The petitioner was liable to pay the annual licence fee of Rs.31,00,000/- for the licence year 2012-2013.

4. Thus, the facts in the instance case are not in dispute. The only dispute is with regard to application of Rule 10 (3) (b) of the Rules to the facts of the present case. It is the stand of the Department that Rule 10 (3) (b) applies only to the licences granted afresh, whereas the learned counsel for the petitioner submits that it applies not only to the licenses granted afresh but also for renewal of licences. Rule 10 (3) (a) and (b) of the Rules read as follows:

> "**10. License Fee, Mode of levying and method of payment:**
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> (1)…
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> (2)…
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> (3) (a) The annual licence fee shall be paid before commencement of the licence period in one lump sum or in two equal instalments or in a manner as notified from time to time. When the licence is issued before 1st July, the 1st instalment, i.e. half of the annual licence fee shall be paid into the Government Treasury through a challan before the issue of licence along with a Bank Guarantee from a Scheduled Bank situated in Andhra Pradesh in Form-3B or fixed Deposit receipt for an amount equal to half of the annual licence fee. The Bank Guarantee shall be valid for a period of seven months. The 2nd instalment of the annual licence fee i.e. half of the annual licence fee shall be remitted into the Government Treasury on or before 20th December of the same year, failing which the licence shall stand cancelled automatically on the expiry of such date and subject to the conditions prescribed in Form-2B.
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> Provided that the licensees in Form-2B shall be permitted to pay 1/3rd of the annual licence fee, together with a Bank Guarantee issued by a Scheduled Bank situated in Andhra Pradesh in Form-3B1 or fixed deposit receipt for an amount equal to 2/3rd of the annual licence fee. The 2nd and 3rd instalments of the annual licence fee of 1/3rd each shall be remitted on or before 20th September and 20th December

respectively, subject to payment of interest @ 18% per annum on 1/6th of the annual licence fee from 1st July to 20th September of the licence period.

(b) The annual licence fee in respect of licenses granted during the currency of the licence period, shall be on the following scales:-

(i) …
(ii) Licence granted between 1st October and 31st December: 3/4th of annual Licence fee."

5. Rule 10 deals with license fee, mode of levying and month of payment. It does not make any distinction between fresh and renewed licences. In the instant case, the licence was renewed after compliance of formalities contemplated under Rule 6 only on 09.10.2012, that is, between the period 1st October and 31st December. The Rule is very clear that only 3/4th of the annual licence fee is payable in such circumstances. Hence, I am not in agreement with the stand taken by the Department that Rule 10 (3) (b) is applicable only for fresh licences, but not for renewal of licences.

6. The learned counsel for the petitioner relied on a decision of this Court in **Sri Venkata Sai Restaurant and Bar, Vemagiri, East Godavari District v. Government of A.P.**[1] and the said decision is also in tune with the opinion of mine.

7. In view of the same, the writ petition is allowed holding that the petitioner is liable to pay only 3/4th of the annual licence fee as per Rule 10 (3) (b) (ii) of the Rules for renewal of his licence. Any excess amount paid by the petitioner, if any, shall be adjusted from the future licence fee or shall be refunded to the petitioner. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 03.03.2016

TJMR

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[1] 2007 (5) ALD 147