**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
**AND**
**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

## WRIT APPEAL No.1137 OF 2016

**JUDGMENT:** (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard the learned Government Pleader for Prohibition & Excise (Telangana) and Sri B. Sai Ram Goud, learned counsel for the respondent - writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred by the Commissioner, Prohibition and Excise, State of Telangana and the Superintendent of Prohibition and Excise, Secunderabad, against the order passed by the learned Single Judge in W.P. No.39048 of 2012 dated 03.03.2016.

The respondent - writ-petitioner herein was granted Form-2B licence for running a Bar-cum-Restaurant in the name of M/s. Moon Rock Restaurant and Bar at Bapujinagar, Tadbund, Secunderabad. He was granted a 2B licence on 09.12.2011 for the excise year 01.07.2012 to 30.06.2013 on payment of the annual licence fee. The petitioner submitted an application on 28.06.2012, seeking renewal of the licence within time (before the end of the excise year on 30.06.2012). However, he failed to enclose a copy of the trade licence along with the application. He submitted a copy of the trade licence to the appellants herein on 09.10.2012 and, on the very same day, his licence was renewed for the excise year 2012-13.

As the appellants had called upon him to pay the entire annual licence fee, though renewal was granted only in the second quarter of the excise year on 09.10.2012, the petitioner invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, placing reliance on Rule 10(3)(b)(ii) of Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (hereinafter called, the 2005 Rules) to contend that he was liable to pay only 3/4th of the annual licence fee since the licence was renewed only during the second quarter - 1st October to 31st December.

In the order under appeal, the learned Single Judge held that Rule 10 deals with licence fee, mode of levy and method of payment; it does not make any distinction between a fresh and a renewed licence; in the instant case, the licence was renewed after compliance of the formalities contemplated under Rule 6 only on 09.10.2012 i.e., between the period 1st October and 31st December; the rule was very clear that only 3/4th of the annual licence fee was payable in such circumstances; and the contention that Rule 10(3)(b) of the 2005 Rules was applicable only for fresh licences, and not for renewal of licences, was not tenable. Expressing concurrence with the earlier judgment of this Court, in **Sri Venkata Sai Restaurant and Bar, Vemagiri, East Godavari District v. Government of Andhra Pradesh**[1], the learned Single Judge allowed the writ petition holding that the petitioner was liable only to pay 3/4th of the annual licence fee as per Rule 10(3)(b)(ii) of the 2005 Rules for renewal of his licence; and the excess amount paid by the petitioner, if any, should be adjusted from the further licence fee or shall be refunded to the petitioner. Aggrieved thereby, the present appeal.

---

[1]. 2007 (5) ALD 147

Learned Government Pleader for Prohibition and Excise would draw our attention to the averments in the counter affidavit, filed on behalf of the 2nd respondent, wherein it is stated that, except for submitting a renewal application enclosing a challan for Rs.10,000/-, the petitioner did not fulfil the required formalities for renewal of the Form 2-B licence; the petitioner submitted proof of payment of trade licence fee, for the current year 2012-13 only on 03.10.2012, along with a challan for Rs.15,50,000/- towards half the annual licence fee, and a challan for Rs.1,45,235/- towards late fee on the licence fee; he furnished a bank guarantee for Rs.15,50,000/-, and executed a counterpart agreement on the same day i.e., 03.10.2012; and, on fulfilling the required formalities, his licence was renewed vide proceedings dated 09.10.2012. The counter affidavit also refers to Rule 6(1)(v) which prohibits a licence in Form-2B being granted, unless the applicant produces a trade licence from the concerned local authority. Reference is also made therein to Rule 9-A, inserted by G.O.Ms.No.868 dated 21.06.2007, for renewal of a license instead of granting fresh licence every time; in order to claim renewal of the existing licence, it is incumbent on the applicant to satisfy all the conditions envisaged in Rule 6 for grant of licence; what is required for granting a fresh licence is equally required for grant of renewal; an applicant seeking renewal of the Form-2B licence has necessarily to comply with all the conditions envisaged in Rule 6; and, as such, production of proof of payment of the trade licence fee, for the current year, was the *sine qua non* for renewal of the Form 2B licence.

The 2005 Rules were made in the exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968, and are statutory in character. Rule 6 places certain restrictions on the grant of licence and, under Sub-Rule (1)(v) thereof, a licence in Form-2B shall not be granted unless the applicant produces a "Trade Licence" from the local authority concerned for grant of a Form 2B licence.

It is not in dispute that the respondent - writ petitioner had failed to enclose a copy of the trade licence along with the application for renewal submitted by him on 28.06.2012, and it is only on 09.10.2012 that he submitted the trade licence, and his licence, for the excise year 2012-13, was renewed on the very same day i.e 09.10.2012.

Rule 9-A relates to renewal of 2B licence, and requires a licensee to apply for renewal of 2B licence before 15 days of the expiry of the licence. The application, submitted by the petitioner for renewal of licence, is within the time stipulated in Rule 9-A (1) of the 2005 Rules. Rule 9-A (3) stipulates that, in case the application for renewal of licence is made as prescribed in Sub-Rule (2) and the licence is not duly renewed and returned before the licence expires, the licensee shall have the right to carry on business till the renewal is refused, and the fact intimated. It is not in dispute that the appellants herein did not prohibit the respondent - writ petitioner from carrying on business nor was he directed to refrain from doing so during the pendency of his application for renewal. The delay in renewal of his licence till 09.10.2012 is only because the petitioner failed to comply with the statutory conditions prescribed in Rule 6(1)(v) whereby he was required to submit a trade licence. Having failed to submit a trade licence and, as he himself was the cause for the delay in renewal of the licence, the respondent - writ petitioner cannot now be heard to contend that, since the licence was renewed only in the second quarter i.e., on 09.10.2012, Rule 10 (3) (b) (ii) would require him to pay only $3/4^{th}$ of the annual licence fee. The requirement of payment of only $3/4^{th}$ of the annual licence fee would arise if the appellants were at fault in not renewing the licence within time, despite the respondent - writ petitioner having complied with all the conditions stipulated in the 2005 Rules. A person, who is himself responsible for the delay in the grant of renewal, cannot take advantage of his own wrong and contend that, notwithstanding his failure to submit a trade licence within time and his licence being renewed on the very date he submitted the trade licence, he is entitled to pay only $3/4^{th}$ of the annual licence fee.

The scope of Rule 6 (1) (v) and Rule 9-A (3) of the 2005 Rules were not examined in the order under appeal. In **M. Harikiran v. the Commissioner for Prohibition and Excise**[2], the dispute related to the grant of a Form 2B licence for the excise year 01.07.2005 to 30.06.2006, and did not relate to renewal of the license. As the licence was granted on 21.10.2005, the learned Single Judge, placing reliance on Rule 10 of the 2005 Rules, held that the respondents were not justified in insisting on payment of licence fee for a period of 12 months, with effect from 01.07.2005, notwithstanding that permission for establishment of the Bar was

[2] (judgment in W.P. No.23415 of 2005 dated 25.04.2006)

accorded only on 21.10.2005. This judgment of the learned Single Judge was confirmed in appeal by a Division Bench [ judgment in W.A. No.686 of 2006, dated 19-06-2006], and the appeal preferred thereagainst [in Civil Appeal No.5148 of 2007 and S.L.P. (C) No.17261 of 2007 dated 29.10.2014] was dismissed by the Supreme Court.

Likewise, in **Sri Venkata Sai Restaurant and Bar**[1], there was a delay in issuing the licence, under Rule 11 in Form 2B, for the excise year 2006-07; and it was only on 05.10.2006, that a licence was granted for the excise year 01.07.2006 to 30.06.2007. It is in such circumstances that the learned Single Judge, relying on Rule 10(3)(b) of the 2005 Rules, held that the licensee was liable to pay only 3/4th of the annual licence fee; and he was not liable to pay the licence fee for the first quarter.

It is necessary to note that both these judgments, in **Sri Venkata Sai Restaurant and Bar**[1] and **M.Harikiran**[2], were rendered prior to the amendment of the 2005 Rules, and insertion of Rule 9-A therein vide G.O. Ms. No.868 dated 21.06.2007. A specific Rule has been inserted w.e.f. 21.06.2007 for grant of renewal of the Form 2B licence and, under Sub-Rule (3) thereof, the licensee is conferred a right to carry on business till the application for renewal is refused, and the factum of refusal is intimated to him. In the present case, admittedly, there was no refusal to grant renewal nor was any such intimation given to the petitioner any time prior to 09.10.2012. The respondent-writ petitioner was not disabled from carrying on business in terms of the earlier Form 2B licence granted to him. While Sri B. Sai Ram Goud, learned counsel for the respondent-writ petitioner, would contend that the petitioner did not carry on business from 01.07.2012 to 08.10.2012, it is not even the case of the petitioner that his failure, to carry on business during the said period, was on account of any order being passed by the appellants directing him to refrain from carrying on business.

Even otherwise the aforesaid judgments, relied upon by Sri B. Sairam Goud, Learned Counsel for the petitioner, have no application to the facts of the present case as the delay in the grant of licence therein was solely attributable to the authorities concerned. Unlike the aforesaid cases, in the present case, the delay in granting renewal was only because the respondent-writ petitioner had failed to submit his trade licence along with his application seeking renewal; and his licence was renewed, the moment the trade licence was submitted by him. The action of the appellants, in insisting that the entire annual licence fee be paid by the petitioner, cannot therefore be faulted.

The order under appeal is set aside and the Writ Appeal is allowed. However, in the circumstances, without costs. As a sequel thereto, Miscellaneous Applications, if any, pending in the writ appeal stand closed.

**RAMESH RANGANATHAN, ACJ**

**A. SHANKAR NARAYANA, J**

**November 7, 2016.**

**PV/Mgr**