

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13545 OF 2017

- 1) Maheshprasad Dwarkadas Jaiswal,
Age Major, Occupation Business,
CL-III licensee,
At. Shahabazar, Aurangabad.
- 2) Rajeshwar Dwarkadas Jaiswal,
Age Major, Occupation Business,
At Shahabazar, Aurangabad. .. Petitioners

VS.

- 1) The State of Maharashtra,
Through Excise Department,
Mantralaya, Mumbai.
- 2) The Collector, Aurangabad.
- 3) The Superintendent of
State Excise, Aurangabad. .. Respondents

Mr. A. H. Kasliwal, Advocate for the petitioners.
Mr. A. R. Kale, Assistant Government Pleader, for
respondents No.1 to 3/ State.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.
DATE : 21-11-2017**

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith and heard learned

advocates for the parties appearing finally, by consent.

2. The present petitioners have invoked the writ jurisdiction of this Court under Article 226 of Constitution of India in order to challenge the communication dated 4th March, 2017 to the extent of calling upon them to deposit amount of interest issued by the 3rd respondent and for issuing directions to the respondents No.3 and 4 to refund the amount of interest that has been deposited by the petitioners under protest.

3. The brief facts of the case are that, the father of the petitioners viz. Dwarkaprasad Hiralal Jaiswal was the license holder of "CL-III" category in respect of shop at Shahabazar, Aurangabad. Dwarkaprasad Jaiswal expired on 3rd June, 1992. After his death, the license was temporarily transferred in the name of his widow Smt. Ramdulari Jaiswal. However, said Ramdulari also expired on 18th June, 1994. They both had left four sons and three daughters as their heirs. There was a dispute between the legal representatives, and therefore, the matter was taken before the Civil Court in Aurangabad. The said petition came to be decided on 5th August, 1994 and it was decided that the present petitioners would run the liquor shop in

question. Petitioner No.1 submitted an application on 22nd February, 2010 with the department in respect of dispute between the brothers i.e. both the petitioners in respect of partnership. It was communicated to the petitioners that, unless the dispute is settled, the license will not be renewed. Therefore, the writ petition was filed before this Court bearing Writ Petition No.2441 of 2010. It was disposed of giving direction to respondent No.2 to decide the representation within eight weeks. In view of the facts referred, the second respondent by its order dated 17th June, 2010 suspended the license until the dispute is resolved. The said dispute got resolved but till then i.e. between 2011-2012 the license remained suspended. After the dispute was resolved, the petitioners decided to run the shop jointly. Therefore, they moved an application for renewal of license with effect from 2011-2012 till 2016-2017. By letter dated 4th March, 2017 the 3rd respondent called upon the petitioner to pay / deposit the license fee for the period 2011-2012 till 2016-2017 to the tune of Rs.16,15,852/- along with interest of Rs.11,68,375/-. The said amount came to be deposited by the petitioners under protest. After the said amount was deposited, the license was renewed and an endorsement is put on the same.

4. The license fee for the current year is also paid by the petitioners. Thereafter, they had made an application/ representation to the 3rd respondent stating that, the direction regarding payment of interest on the license fee was illegal and against the principle laid down in Writ Petition No.199 of 2006 decided by this Court. No action has been taken by the respondents, and therefore this petition has been filed.

5. The petition has been objected by the learned Additional Government Pleader stating that, the amount has been paid by the petitioner, and therefore, there is no question of refund. The learned counsel appearing for the petitioner has relied on the decision in Writ Petition No.199 of 2006 passed by the Single Judge on 7th January, 2011.

6. The facts are not in dispute and it is also evident from the documents those have been produced on record that, a license came to be issued in the name of Dwarkaprasad Hiralal Jaiswal in respect of liquor shop to be run at Shahabazar, Aurangabad. After his death, the license was transferred in the name of his widow Smt. Ramdulari Jaiswal. After death of Ramdulari dispute arose between the legal heirs as to who would conduct the shop.

7. It appears that, the interse dispute between the heirs has been ultimately resolved and the petitioners decided to run the shop. Accordingly, they applied for the renewal of license whose period in the meantime had lapsed. While considering the application, the respondent No.3 had called upon the petitioners to pay in all amount of Rs.27,84,224/-. This claim was inclusive of interest on the license fee. The period of license for which renewal was prayed and granted was 2011 to 2017. It has been held in Writ Petition No.1186 of 2004 by this Court that, the licensee is required to pay the license fees for the period of having the license including the period for which the business was not being operated. That means, the petitioners were liable to pay the license fee for that period also when they were not conducting the business. The petitioners have paid the said amount.

8. The petitioners have challenged the right of the respondent to claim interest on the licensee fee. It has been held in Writ Petition No.199 of 2006 that, there is no legal provision to recover interest over the license fees. The following observations have been made on the basis of the legal position ;

“6. Perusal of section 49 of the Bombay Prohibition Act would make it amply clear that the Government is entitled to

recover the license fee including rent for the grant of privileges or right to any person in order to issue the license fro dealing in the liquor business. Section 49 reads as follows :-

“Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using any intoxicant, hemp or toddy, and whatever under this Act or any license, permit, pass, thereunder any fees are levied and collected for any license, permit, pass, authorization or other permission given to any person for any such purpose, shall be deemed to include the rent or consideration for the grant of such right ore privilege to that person by or on behalf of the State Government”.

On careful consideration of section 49 of the Bombay Prohibition Act, 1949 and the relevant circulars, particularly, the circular dated 21-04-1983 issued vide B.P.A./1083/9/PRO/2, it is quite clear that there is no legal provision to recover interest over the license fees. It is well known concept that interest can be recovered only on the amount which is lent and the amount which is found due or recoverable as a debt. License fees which was not paid for the period during which the business was not being operated by the petitioner could not have been treated as a legally recoverable debt from the petitioner. The recovery of the

interest is not permissible under any contract, usage or other legal provision.”

9. The learned Additional Government Pleader could not point out any such provision before this Bench also. Under such circumstance, the claim of the respondent was illegal. Though the petitioner has paid/ deposited the said amount, it is required to be refunded.

10. In the result, the petition is allowed. The impugned communication dated 4th March, 2017 by respondent No.3 to the extent of calling upon the petitioners to deposit the amount of interest to the tune of Rs.11,68,375/- is hereby quashed and set aside. The 2nd and 3rd respondents are directed to refund amount of interest i.e. Rs.11,68,375/- deposited by the petitioners under protest, through Challan No.91 dated 31-03-2017 be refunded to the petitioners within a period of three (03) weeks from today.

11. Rule is made absolute in above terms. No order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.