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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7597 OF 2018

Shri Vikram Uddhav Chug .. Petitioner
Vs.
The State of Maharashtra & ors. .. Respondents

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Mr. D.B. Savant with Mr. V.R. Salokhe for the petitioner.
Mrs. Shruti D. Vyas, 'B' Panel Counsel for respondent Nos.1 to 4
– State.

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**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 10th SEPTEMBER , 2018

ORAL JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule made returnable forthwith by consent of the parties.

2. The petitioner by way of this petition filed under Article 226 of the Constitution of India challenges the Demand Notice dated 6th July, 2018 issued by respondent No.4 – The Superintendent of State Excise, Pune, District : Pune, calling upon the petitioner to pay a sum of Rs.28,00,000/- failing which

license of the petitioner is to stand suspended till payment. The Demand Notice is issued pursuant to the audit objection raised by the office of the Accountant General, Maharashtra State, Mumbai, stating therein that the amount has not been recovered towards transfer fee of the license from one site to another site.

3. The facts of the case in a nutshell are thus :-

The petitioner is holding a license in Form FL-II and CL/FL/TOD-III for sale of sealed bottles of IMFL and country liquor (CL) to the customers under the name and style as 'M/s. Shivam Wines'. The said license was granted by respondent No.3 – The Collector of Pune, State Excise Department, District – Pune, in accordance with the Bombay Foreign Liquor Rules, 1953. The petitioner was carrying business at Shop No.1, Harmes Heritage Shopping Complex, Shastri Nagar, Pune, District – Pune within the area of Pune Municipal Corporation. (hereinafter referred to as “the old premises” for short).

4. In respect of a Special Leave Petition pending before

the Apex Court considering the impact of the “drink and drive”, the Apex Court by judgment and order dated 15/12/2016 reported as **State of Tamil Nadu and Ors. V/s. K.Balu & Ors. [AIR 2017 SCC 262]**, directed the other States not to renew the liquor vending licenses beyond 31st March, 2017 which are situated at the distance of 500 mtrs. from National Highway and State Highway.

5. Pursuant to the directions of the Apex Court, the Government of Maharashtra issued a Circular dated 7th June, 2017 stating that if the premises affected by the order passed by the Hon'ble Supreme Court are required to be shifted, in that event no privilege fees should be charged.

6. The original shop of the petitioner ('old premises') was falling within the distance of 500 mtrs. from National / State Highway. The petitioner's license was thus not renewed beyond 31st March, 2017. The petitioner procured new premises at Shop No.G/2, Survey No.7, Hissa No.1 to 5, 'F' Residency

Scheme Tower, Tower No.3 in Wadgaon Sheri, Pune, District – Pune (hereinafter referred to as “new premises” for short). The new premises are also within limits of the Pune Municipal Corporation.

7. The Petitioner applied to respondent No.3 for shifting of the license from the old premises to the new premises. By an order dated 14th August, 2017, the respondent No.3 allowed the shifting of the license from the old premises to the new premises. In the said order it is specifically mentioned that since the premises are affected due to the order passed by the Hon'ble Supreme Court, the petitioner is not required to pay the privilege fees as contemplated under Rule 4(b) of the Bombay Prohibition (Privileges Fees) Rules, 1954 (hereinafter referred to as “the Rules 1954” for short). The order for shifting of the license was passed on 14th August, 2017. The petitioner, however, could not shift the license in view of an existing condition which the petitioner realised later that the shop owners shall not make use, consume or vend any alcoholic

drinks.

8. Thereupon by an application dated 18/8/2017, the petitioner requested the respondent No. 3 to cancel the said shifting order. Respondent No.3 by an order dated 18/8/2017 cancelled the shifting permission and directed the petitioner to procure new premises and apply accordingly.

9. At this juncture, it would be pertinent to mention that after the petitioner made an application for shifting of the license from old premises to new premises, the Apex Court by order dated 11th July, 2017 issued further directions that the prohibition mentioned in order dated 15/12/2016 shall not be applicable in cases where the licenses are situated within Municipal Corporation and Municipal Council areas. Pursuant to the directions of the Hon'ble Supreme Court, the Commissioner of State Excise by Circular dated 4th September, 2017 directed all Collectors / Superintendent of State Excise to renew the licenses which are situated in Municipal Corporation, Municipal

Council and Cantonment areas.

10. In view of the clarification of the Hon'ble Supreme Court that the earlier order dated 15th December, 2016 shall not be applicable to the cases where the licenses are situated within Municipal Corporation and Municipal Council areas, the petitioner applied for renewal of the license at the old premises. The license was accordingly renewed by the respondent No.3 in respect of the old premises of the petitioner and since then petitioner is carrying on the business at the old premises.

11. By the impugned Demand Notice dated 6th July, 2018, the respondent No. 4 – The Superintendent of State Excise, Pune, District – Pune called upon the petitioner to pay a sum of Rs.28,00,000/- within seven days failing which the licenses of the petitioner shall stand suspended till the payment. The said Demand Notice was issued pursuant to the objection raised by the office of the Accountant General stating that the amount has not been recovered towards the transfer of

the license from one site to another side.

12. Learned Counsel for the petitioner impugning the Demand Notice submits that the respondent No.4 has no jurisdiction to raise the Demand Notice as the license was granted by the respondent No.3 - Collector of Pune being a licensing authority under Rule 25 of the Rules Bombay Foreign Liquor Rules, 1953. The impugned Demand Notice as raised by the respondent No.4, who is an officer appointed under Section 5 of the Bombay Prohibition Act is without jurisdiction and hence the Demand Notice is illegal. Learned Counsel further submitted that the respondent No.4 has no authority in law to issue the Demand Notice as there is no delegation of powers under Section 10 of the said Act and therefore the impugned Demand Notice is illegal.

13. Learned Counsel submits that Rule 4 of the Rules 1954 provides for fees for transfer of a license from one site to another. Relying upon Clause (d) of Rule 4 of the Rule 1954,

learned Counsel submits that no fee shall be charged for transfer of license from one place to another in the following circumstances :-

- (i) license whose premises are affected by the implementation of Development Scheme such as road widening and alike ; or
- (ii) license whose premises are closed down or required to be closed down as per the provision of the Bombay Prohibition (Closure of license on Resolution by Gram Sabha or Representation by Voters in the Ward of Municipal Council/ Corporation) Order, 2008 ; or
- (iii) license whose premises are closed down or required to be closed down as per order of any Court or Competent Authority.

14. In the submission of the learned Counsel, apart from the objections raised by him herein above, the impugned Demand Notice is also illegal on one more ground. He submits that the license was required to be shifted from old premises to new premises in view of the directions of the Apex Court dated 15/12/2016. In fact he was allowed to shift his license from old

premises to new premises for which no fees were charged. As the petitioner was not in position to shift for circumstances beyond his control, his application for cancelling the shifting was accepted. Pursuant to further clarification issued by the Hon'ble Supreme Court vide order dated 11th July, 2017, the petitioner's license in the old premises stands protected. Learned Counsel therefore submits that this cannot be a case of transfer of license from one site to another site so as to attract the privilege fees for transfer of the license.

15. Per contra, learned AGP invited our attention to the Demand Notice and the affidavit filed on behalf of the respondents. Learned AGP submits that once the license is allowed to be shifted to the new premises and endorsement on the license is taken, the petitioner cannot conduct his business in the old premises. He invited our attention to the letter dated 18/8/2017, whereby the petitioner informed the respondent No.4 that due to personal reasons he has not shifted his license to the new premises. Learned AGP submits that it is in these

circumstances the petitioner's request for cancellation of license was accepted and was further informed that he should find suitable place for shifting his licensed premises. According to learned AGP, if in these circumstances, once the respondents have granted the petitioner permission to shift without charging any fee and thereafter if the petitioner again applies for shifting his license back to the old premises or any other place then no fault can be found with the respondents if a Demand Notice is issued calling upon the petitioner to pay privilege fees for shifting of the license which is within the contemplation of Rule 4(b) of the Rules 1954. The second application has to be regarded as a new application for shifting from one site to another site attracting transfer fees.

16. We have heard learned Counsel. Admittedly, the petitioner was having a liquor license in respect of the old premises. Pursuant to the order of the Hon'ble Supreme Court, an application was made by him for shifting of the license to new premises. Though respondents allowed the petitioner to

shift, the petitioner could not shift to the new premises due to personal reasons and therefore applied for cancellation of his application for shifting. The same was granted by the respondent No.3. The respondent No.3 further informed the petitioner to find suitable place for shifting of his license premises.

17. It can thus be seen that the petitioner on his own volition never intended to shift his license from one site to another site. It is on account of the directions of the Apex Court dated 15/12/2016 which held there could be no liquor shop within 500 mtrs. from the National / State Highway, that the petitioner had to make an application for shifting. Later on, the Hon'ble Supreme Court by the order dated 11th July, 2017 clarified that the prohibition mentioned in order dated 15/12/2016 shall not be applicable in cases where the licenses are situated within Municipal Corporation and Municipal Council areas. It can thus be seen that the prohibition contained in the order dated 15/12/2016 now does not apply to the

petitioner's old premises in view of the clarification of its earlier order by Hon'ble Supreme Court. In fact even the respondents have not charged any privilege fees for shifting of the license from old premises to new premises which shifting was necessitated and was the outcome of the directions of the Apex Court dated 15/12/2016.

18. The Apex Court having clarified its earlier order by a subsequent order dated 11th July, 2017 and as the petitioner wants to continue his license in respect of the old premises, the question of charging any fees for transfer of license from one site to another does not arise at all. In view of the clarificatory order of the Apex Court, there is no need for the petitioner to shift from old premises to new premises. The petitioner's license in the old premises stand protected and the petitioner is entitled to carry on business in the old premises. But for the directions of the Hon'ble Supreme Court on 15th December, 2016 the petitioner would not have applied for transfer of the license from old premises to new premises. The transfer of the license

was not on the petitioner's own volition but in compliance with the directions of the Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court having issued necessary clarifications vide order dated 11th July, 2017, as a result of which the shop of the petitioner is not affected, the petitioner cannot be penalized only because he had already applied for shifting from old premises to new premises. It is a matter of record that the petitioner did not shift to the new premises. As a matter of fact the application made by him for shifting to new premises which was earlier granted was also cancelled at his request and the respondents themselves had called upon the petitioner to find out suitable premises for shifting of his license.

19. We may make a profitable reference to the decision of the Apex Court in the case of **Raj Kumar Dey and others Vs. Tarapada Dey and others** reported in [(1987) 4 SCC 398] in this context. In para 6 it is held thus :-

“6. We have to bear in mind two maxims of equity which are well settled, namely, *actus curiae neminem gravabit* – An act of the Court shall prejudice no man. In *Broom's Legal*

Maxims, 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense ; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution.”

20. A useful reference can also be made to the decision in the case of Gursharan Singh and others Vs. New Delhi Municipal Committee and others reported in [(1996) 2 SCC 459] wherein the principle laid down in **Raj Kumar Dey's case** (*supra*) is followed.

21. In this view of the matter, the petitioner cannot be faulted for making an application for shifting his license from old premises to new premises. The respondent No.3 and 4 were justified in not charging fees for transfer the license from old premises to new premises in view of the Circular dated 7th June, 2017. Conscious that as a result of the shifting for which the applicants are not at fault and even as the applicants would have to face severe hardships and monetary loss, the State Government had taken a decision not to charge any fees for

transfer from the old premises to the new premises. Pursuant to the clarification issued by the Hon'ble Supreme Court, if the license of the petitioner as regards the old premises stand protected, the question of the respondents demanding transfer fee under Rule 4 (b) of the Rules 1954 does not arise. In the present fact situation the respondents are not at all justified in raising the demand for transfer fee on the pretext that Rule 4(b) of the Rules 1954 is attracted, as the petitioner cannot be said to have made any application for transfer from one site to another site since the petitioner wants to carry the business in the old premises itself. In our opinion, the impugned Demand Notice is completely arbitrary and irrational and therefore deserves to be quashed and set aside.

22. Rule is made absolute in terms of prayer Clause (a).

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)