THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.5680 of 2018

O R D E R:

Heard counsel for the petitioner and the Government Pleader for Excise appearing for respondents.

2. Petitioner has assailed, in this Writ Petition, the proceedings dt.14.12.2017 of the 1st respondent in Memo No.31024/57/2017.EXc.II-Rev in rejecting petitioner's claim for refund of application fee of Rs.1.5 Crores paid for grant of Letter Of Intent(LOI) for establishing a manufactory for manufacture of Indian Made Foreign Liquor (IMFL).

3. Petitioner is engaged in the business of IMFL having a LOI issued by the 1st respondent on 15.12.2009. It commenced operations at Gandepalli Village, Krishna District, Andhra Pradesh with effect from 17.11.2010 after getting necessary license from the 2nd respondent on 09.06.2010 within six months of the LOI as stipulated in condition 3(d) of the LOI after duly fulfilling the formalities as required under the A.P. Distillery (Manufacture of Indian Made Foreign Liquor other than Beer & Wine) Rules, 2006 (for short 'the Rules')

4. Later petitioner had applied for another LOI for establishment of a new manufactory for manufacture of IMFL at Pulla Village, Bhimadole Mandal, West Godavari District

through application dt.06.01.2011 by duly remitting the non-adjustable and non-refundable fee of Rs.1 Crore as well as Special fee of Rs.50 lakhs as first installment under G.O.Ms.No.728 Rule (Excise III) dt.10.06.2008 and as specified in Rule 5(2)(b) as amended by G.O.Ms.No.881 Revenue (Ex.III) Department dt.23.08.2010.

5. The said application was submitted to 2nd respondent for scrutiny and onward transmission to the 1st respondent.

6. When the said application of the petitioner was not considered, petitioner filed W.P.No.25461 of 2012 before this Court.

7. This Court disposed of the said representation on 17.08.2012 with a direction to respondents therein to take a decision on the application.

8. Government, however, issued a Memo No.428/Ex.III.1)/2012 dt.17.12.2012 stating that it had decided not to sanction any further IMFL distillery capacity addition at present; that it is withdrawing all notifications issued by it inviting applications for grant of LOI for establishment of new manufactory; and consequently rejecting all applications including that of the petitioner.

9. Petitioner contends that when the 1st respondent had taken a policy decision not to sanction any further LOIs for

establishment of new manufactory, it was incumbent on the part of the 1st respondent to refund the sum of Rs.1.5 Crores paid by the petitioner to it along with its application dt.06.01.2011, and that the 1st respondent cannot retain the same, since it would amount to unjust enrichment.

10. Taking this stand, petitioner gave an application on 25.03.2017 to the 1st respondent seeking refund of the sum of Rs.1.5 crores paid by it.

11. By the impugned order dt.14.12.2017, the 1st respondent rejected it quoting Rules 5(2)(d), 5(2)(i) and 5(2)(b)(iii) of the above Rules.

12. Challenging the said order, this Writ Petition is filed.

13. Counsel for the petitioner contends that once the G.O.Ms.No.728 dt.10.06.2008 issued by the State Government stood withdrawn as per the Memo dt.17.12.2012 issued by the 1st respondent, in view of the policy decision taken by the Government not to permit any new IMFL manufactories, the sum of Rs.1.5 Crores paid by the petitioner ought to have been refunded. He contended that any forfeiture of the amount would arise only if there is some short coming or deficiency in its part in complying with the terms of LOI which had been granted; but when the Government on its own wanted to withdraw their Government Order calling for applications for new manufactories, it

cannot be allowed to retain the amounts paid by the petitioner along with its application.

14. Counter affidavit is filed by the respondents reiterating the stand taken in the impugned order dt.14.12.2017. It is contended that the amount of Rs.1 Crore paid by the petitioner was nonrefundable & nonadjustable and the special fee of Rs.50 lakhs paid by it has to be adjusted towards future license fee or excise duty or both on commencement of production and since no permission for production was granted, there is no question of refund of the amount.

15. I have noted the contentions of both sides.

16. Rules 5(2)(d), 5(2)(i) and 5(2)(b)(iii) of the A.P. Distillery (Manufacture of Indian Made Foreign Liquor other than Beer & Wine) Rules, 2006 are as under:

"Rule 5(2)(d) –	It shall be lawful for the Government to accept or reject without assigning any reason any application made for grant of Letter of Intent in pursuance of the Notification under Rules 4(1) and 4(2) of these rules.
Rule 5(2)(i) –	No compensation for damage or loss shall be payable when a LOI is rejected under Clause (d) or revoked or withdrawn under Clause(h).
Rule5(2)(b)(iii) –	the Special Fee remitted under Clause(ii) above shall be adjusted towards future licence fee or Excise

> Duty or both on commencement of production."

17. After considering these Rules, I am of the view that where a Letter of Intent(LOI), which had been issued, is revoked or withdrawn only, rule 5(2)(i) would apply and compensation for damage or loss is not payable by respondents.

18. The same can be invoked, no doubt, even when an LOI is also rejected and then also no compensation for damage or loss can be claimed.

19. Here the petitioner is not claiming any compensation for damage or loss caused to it on account of withdrawal of the Government notification for issuance of LOI for new IMFL manufactory. It is seeking refund of the amount collected by the 1st respondent as a condition for considering its application for LOI. Once the very GO issued by the Government for receiving application for grant of LOI for establishment of new IMFL manufactories has itself been withdrawn, there is a total failure of the consideration.

20. Therefore, in my considered opinion, the petitioner is entitled to the refund of the amount of Rs.1.5 Crores, since it is not on account of any fault of the petitioner that the Government orders issued had been withdrawn, but because of a policy decision taken by the 1st respondent itself.

21. Also, under Section 70 of the Indian Contract Act, 1872, since the amount had been given to the 1st respondent by the petitioner not intending to do so gratuitously, the 1st respondent is bound to refund the said amount. The principle of unjust enrichment is clearly attracted and the State cannot be allowed to retain a sum of Rs.1.5 Crores in these circumstances.

22. Accordingly, this Writ Petition is allowed; the impugned proceedings dt.14.12.2017 of the 1st respondent is set aside; the sum of Rs.1.5 Crores, which had been paid by the petitioner for obtaining LOI for establishment of new IMFL manufactory along with its application dt.06.01.2011, retained by the 1st respondent, is directed to be refunded to the petitioner with interest @ 9% per annum from the said date till the date of repayment. The 1st respondent is also directed to pay costs of Rs.10,000/- to the petitioner.

23. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

04th April, 2018.
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