THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.973 of 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.8904 of 2010 dated 22.04.2016. W.P.No.8904 of 2010 was heard earlier by a Learned Single Judge who, by his order dated 22.10.2013, disposed of the said writ petition holding that the respondent-writ petitioner was entitled to refund of the whole amount of licence fee collected from him; however, since the Government was also not responsible for not opening the retail shop, the Government could not be burdened with interest; and, therefore, the respondent-writ petitioner was not entitled to claim interest on the amount paid by him. The license fee paid by the respondent-writ petitioner was ordered to be refunded.

Aggrieved thereby, the State Government filed W.A.No.130 of 2015 and, by its order dated 26.02.2015, a Division Bench of this Court set side the order passed in W.P.No.8904 of 2010 dated 22.10.2013 on the ground that the State of Telangana had not been arrayed as a respondent in the writ petition, and the writ petition filed against the Government of Andhra Pradesh was not maintainable. The order under appeal was set aside, and Writ Petition No.8904 of 2010 was restored to file for a fresh hearing. The Division Bench observed that the Writ Petition shall be heard afresh, provided the respondent-writ petitioner took suitable steps for correction of the cause title of the Writ Petition within a period of seven days from the date of receipt of a copy of the order failing which the Writ Petition itself would stand dismissed. The respondent-writ petitioner impleaded the State of Telangana as a respondent in the writ petition and, thereafter, W.P. No.8904 of 2010 came to be allowed, by the order now under appeal before us, in terms of the earlier order passed on 22.10.2013 in the same Writ Petition.

In the order under appeal, the Learned Single Judge observed that the order passed in W.P.No.8904 of 2010 on 22.10.2013 was a detailed order; the Division Bench had allowed W.A.No.130 of 2015 on the sole ground that the State of Telangana was not made a party, and the order was against the Government of Andhra Pradesh, which was not *sui juris*; thereafter, the respondent-writ petitioner had filed an amendment petition in W.P.M.P.No.11083 of 2015 to amend the cause title which was ordered; and, as W.A.No.130 of 2015 was allowed only on the technical plea of an order being passed against the Government of Andhra Pradesh, the matter need not be examined on merits; and the Writ Petition should be allowed in terms of the earlier order passed on 22.10.2013.

The respondent-writ petitioner was granted licence to run an A4 shop for the period 01.07.2005 to 30.06.2006. He could not carry on business in the said shop because of protests by residents in the locality who filed W.P.No.15371 of 2005 before this Court. A Division Bench of this Court passed an interim order on 19.07.2005, restraining the respondent-writ petitioner from running the shop. The respondent-writ petitioner, thereafter, filed a petition to vacate the interim order which came to be allowed on 20.09.2005 as there was no representation on behalf of the writ petitioners. Thereafter, on a petition being filed, the interim order passed in W.P.No.15371 of 2005 on 19.07.2005 was restored. This interim order continued to remain in force till W.P.No.15371 of 2005 was disposed of, as infructuous, by order dated 03.07.2006.

As noted hereinabove the relevant excise year, for which the respondent-writ petitioner was granted a licence, was from 01.07.2005 to 30.06.2006; and it is only after the end of the said Excise year that W.P.No.15371 of 2005 was disposed of as infructuous on 03.07.2006.

W.P.No.22330 of 2005 was filed by the respondent-writ petitioner seeking a direction to the officials concerned not to demand that the respondent-writ petitioner should pay licence fees for the period he did not carry on business. During the pendency of this Writ Petition, and after W.P.No.15371 of 2005 was disposed of as infructuous by order dated 03.07.2006, the respondent-writ petitioner amended the prayer in W.P. No.22330 of 2005 seeking a direction to the officials concerned to refund the entire licence fee, paid by them, for the Excise year 2005-06.

In her order, in W.P.No.22330 of 2005 dated 18.04.2009, the Learned Single Judge observed that the respondents were bound to refund proportionate licence fee for the period for which the respondent-writ petitioner did not carry on business, and a similar view was expressed in **Naga Chengal Reddy vs. Prohibition and Excise Superintendent, Cuddapah District**[1]. Having so observed, the Learned Single Judge disposed of the writ petition directing the respondents therein (appellants herein) to consider the respondent-writ petitioner's representation dated 17.07.2006, for refund of the licence fee paid for the Excise year 2005-06, in the light of the observations made in the order, and pass orders in accordance with law. Pursuant thereto, the appellants herein issued Memo dated

[1] 2003(2) ALD 509

10.02.2010 holding that the respondent-Writ Petitioner was not entitled for refund of the proportionate licence fee in the light of the judgment of a Full Bench of this Court in **SLV Wines vs. State of Andhra Pradesh**[2].

In the order under appeal, i.e W.P.No.8904 of 2010 dated 22.04.2016, the Learned Single Judge followed the earlier order passed in the very same Writ Petition on 22.10.2013 wherein it was held that the Full Bench judgment in **SLV Wines**[2] related to suspension of the licence of a retail liquor shop on certain allegations, which were later revoked; and on the respondent-writ petitioner seeking refund of the licence fee, for the period for which the licence was under suspension, the Full Bench had held that a licensee was not entitled for refund of the licence fee for the period during which the licence was under suspension. Unlike in **SLV Wines**[2], where the licence of an A4 shop dealer was suspended, in the present case the respondent-writ petitioner was disabled from operating his A4 shop on account of the interim order passed by this Court in W.P.No.15371 of 2005.

The maxim *actus curiae neminem gravabit,* i.e an act of the Court shall prejudice no man, would apply to the facts of the present case. W.P.No.15371 of 2005 was disposed of as infructuous by order dated 03.07.2006, without any adjudication on merits, and without examining whether the petitioners therein were justified in seeking closure of the respondent-writ petitioner's shop. As a result of the interim order passed therein, the respondent-writ petitioner was not permitted to carry on business for a substantial part of the license period. In the order passed on 22.10.2013, the Learned Single Judge had directed that the respondent-writ petitioner be granted remission

[2] 2009(5) ALD 170

and, consequently, for refund of the licence fee paid by him for the period during which the interim order in W.P.No.15371 of 2005 was in operation.

In more or less similar circumstances, the Supreme Court in **Chitra vs. State of Kerala**[3], following its earlier judgment in **R.Vijaykumar vs. Commissioner of Excise**[4], observed that a party is entitled to seek remission, in payment of the licence fee, if it is precluded from transacting business on the strength of that licence because of factors and reasons extraneous to it. In the present case, the respondent-writ petitioner was disabled from carrying on business for no fault of his, and only on account of the interim order passed in W.P.No.15371 of 2005. Further the Learned Single Judge, while disposing of W.P.No.22330 of 2005 by order dated 18.04.2009, had categorically held that the appellants were bound to refund the proportionate licence fee for the period for which the respondent-writ petitioner did not carry on business. The appellants herein were directed, by the said order dated 18.04.2009, to dispose of the respondent-writ petitioner's representation dated 17.07.2006 for refund of the licence fee in the light of the observations made in the said order. As the order in W.P. No.22330 of 2005 dated 18.04.2009 has attained finality, the appellants herein were obligated to refund the proportionate licence fee in terms of the said order also.

Viewed from any angle the order under appeal, directing the appellants herein to refund the proportionate licence fee to the respondent-writ petitioner, does not suffer from a patent illegality as to necessitate interference in an intra-Court appeal under Clause 15 of the Letters Patent. The interests of the appellants were adequately

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[3] 2015(1) Decisions Today (SC) 316
[4] 1993(4) SCALE 386

safeguarded, by the Learned Single Judge, by following the earlier order dated 22.10.2013 whereby the respondent-writ petitioner was specifically denied interest for the amount claimed towards refund. As the respondent-writ petitioner was disabled from carrying on business only because of the interim order passed by this Court, the Learned Single Judge, in our view, was justified in directing that he should be granted refund of the said amount.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

09th April, 2018
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