IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5045 OF 2019

Kantrao s/o Lalsingh Chavan Petitioner

Versus

The Commissioner for Prohibition and Excise, Maharashtra State, Mumbai & another Respondents

Mr.Satish S. Manale, advocate for the petitioner.
Mrs.G.L.Deshpande, AGP for Respondents.

CORAM : PRASANNA B. VARALE AND NITIN W. SAMBRE, JJ.
DATE : 26th April, 2019.

P.C. :

1 The petitioner is holding CL-III license issued under the provisions of Maharashtra Country Liquor Rules, 1973. Under the conditions of said license, petitioner is under an obligation to sell the country liquor product at prescribed MRP rate.

2 As the petitioner was found to be charging Rs.2/- over and above the MRP rate, petitioner's license came to be suspended for three months by the Prohibition Officer i.e. District Collector.

3 The petitioner claims that he has, therefore, preferred an appeal under Section 137 of the Maharashtra Prohibition Act, 1949. However, as the Presiding Officer is not available presently, the appeal is not yet registered. As such, the petitioner is constrained to approach this Court.

4 According to the learned Counsel for the petitioners breach of the license condition i.e. petitioner found to have charged Rs.2/- over and above the MRP rate, is compoundable under the provisions of Section 104 of the Maharashtra Prohibition Act. According to him, if the appellate authority i.e. Commissioner, State Excise is not convinced on merits of the appeal, he can certainly permit compounding of the matter. According to him, with a view to show *bona fides*, petitioner is ready to deposit an amount of Rs.50,000/- (Rs.Fifty thousand) with the Commissioner, State Excise, Mumbai, during the pendency of appeal and till appeal is decided, he may be permitted to operate the license.

5 Learned AGP opposed the submissions on the ground that the Prohibition Officer has passed an order after appreciating the provisions of law in the backdrop of conduct of the petitioners. According to her, petition is liable to be dismissed.

6 Upon considering the rival contentions, what is noticed from the record is, the Commissioner, State Excise, Mumbai, who is vested with appellate powers under Section 137 of the Act, is not available, being on election duty.

7 In the aforesaid background, considering the scheme of Section 104 of the Act, this Court accepts the undertaking given by the petitioner that he shall deposit Rs.50,000/- (Rs.Fifty thousand) with the Superintendent, State Excise, Parbhani, within a period of three weeks from today. The moment petitioner deposits the said amount, the Superintendent, State Excise,

Parbhani, shall permit the petitioner to operate the license. Present arrangement is made subject to the final outcome of the appeal, which is pending registration before the Commissioner, State Excise, Mumbai. We expect the Commissioner, State Excise, Mumbai, to decide the appeal preferred by petitioner expeditiously. The amount of Rs.50,000/-, (Rs.Fifty thousand), if deposited by the petitioner, be adjusted in case the Commissioner, State Excise, comes to the conclusion that the petitioner is entitled for compounding of the matter. In case petitioner suffers an adverse order, the amount of Rs.50,000/- (Rs.Fifty thousand) be refunded to the petitioner within a period of six weeks from the date of demand made by the petitioner.

8 With above directions, petition stands disposed of.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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