IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRITE PETITION NO. 12413 OF 2018

Dilip Maruti Pise ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

Mr.Vikram S. Undre for the Petitioner.
Ms.P.N.Diwan, AGP for Respondent Nos. 1 to 3.

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATE : 25TH JUNE, 2019

P.C.:

1. Heard the learned Advocates appearing for the parties for final disposal of the Petition. The Petitioner has challenged a communication dated 15th October, 2018 issued by Respondent No. 3 - Superintendent of State Excise, Satara directing the Petitioner to deposit a sum of Rs.7,35,000/- with the Respondents. Brief facts are as under :

2. The State Excise Department in the year 1980 had granted license to proprietary concern. Later on, it was endorsed in the name of partnership firm comprising of two partners namely Malan Pise and Meena Kadam for sale of liquor. This business was being run by the partnership firm comprising of the said two partners. Over a period of time, partners of partnership firm changed and at each successive change, the outgoing and incoming partners had applied to the Department

to incorporate the change in the license. These changes were made and incorporated in the license itself. Lastly, the license was in the name of three partners namely Malan Pise, Mukesh Udasi and Sanjay Chavan.

3. On 5th September, 2015, Malan Pise applied to Department and requested that the license be transferred from her name to her son. The Department under letter dated 30th October, 2015 asked the Petitioner to submit certain documents such as a bank guarantee and his photo ID. In this letter itself, the Department had referred to the request for deleting the name of Malan Pise and entering the name of the Petitioner - Dilip Pise. Eventually, the Department accepted the request for transfer of the name, which was incorporated in the license on 5th November, 2016. A sum of Rs.15,000/- was demanded and duly paid by the Petitioner for transfer of the name in the license.

4. On the ground that the Audit Department had raised objection to the short collection of the fee for transfer, the impugned communication came to be issued. Through such communication, it was conveyed to the Petitioner that the transfer fee of Rs.7,50,000/- was leviable. Instead the Petitioner had paid only sum of Rs.15,000/-. Remaining an amount of Rs.7,35,000/- may therefore be paid by the Petitioner. It is this communication, the Petitioner has challenged this communication.

5. The learned Advocate appearing for the Petitioner drew our attention to the Bombay Prohibition (Privileges Fees) Rules, 1954 ('**the Rules**' for short) and contended that the fee of Rs.15,000/- originally charged was in consonance with the

Rules. The demand for sum of Rs.7,35,000/- is wholly unjust.

6. On the other hand, the learned AGP opposed the Petition contending that the mother of the Petitioner had asked for transfer of the license from her name to that of the Petitioner. As per Rule 5 of the said Rules therefore this invited fee to be calculated at five times the annual license fee. This is how the Department had calculated the fee payable at Rs.7,50,000/-. She contended that the request of the Petitioner was not for transfer of the name of the erstwhile partner of the firm and therefore the Petitioner's reliance on Rule 6 is untenable.

7. Having heard the learned Advocates for the parties, we may recall that from the outset the license has been granted in favour of a proprietary concern which was later changed to the partnership, the partners of this firm having changed from time to time, all changes were incorporated in the license itself. Lastly, the license was shown in the name of three partners namely mother of the Petitioner and two others. The mother of the Petitioner desired to retire from the business due to old age she therefore applied to the Department and requested that the name of her son may be shown. It is true that in such Application the language used by her is not accurate. She has put her thumb impression. Clearly therefore she is an illiterate lady. We cannot pin her down to the literal words used in the Application. We must gather the true facts from the documents on record. She could not have requested for transfer of the license from her name to that of her son since she was not the sole proprietor in whose name the license was issued. The license was held by the partnership comprising of three

persons. Even the Department has not treated her Application for transfer of license from her name to that of her son. In the letter dated 30th October, 2015, the Department has referred to her request for change of the her name to that of her son. Even the change incorporated in the license only amounts to replacement of the Petitioner's mother by his name. In this background, we may look at the Rule position. Rule 5 of the said Rules pertains to fees for transfer of a license from one name to another. This Rule reads as under :

> *"5. Fees for transfer of a license from one name to another :- (a) the fee payable by any licensee for the privilege of having the transfer of his license, in Form 'CL-1', granted under the Maharashtra Country Liquor Rules, 1973, 'PLL' or 'I' granted under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, from one name to another shall be five times of the fees chargeable for grant or renewal or continuance of such license whichever is higher.*
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> *(b) the fee payable by any licensee for the privilege of having the transfer of his license in Form 'CL-III', granted under the Maharashtra Country Liquor Rules, 1973, "FL-II" or "FL-III", granted under the Bombay Foreign Liquor Rules, 1953 shall be as follows :-*

(i)	*In the areas of Municipal Corporation of Mumbai, New Mumbai, Thane, Bhiwandi, Mira-Bhayander, Virar-Vasai, Kalyan, Dombivali and Pune*	*Eight times of the fee chargeable for grant or renewal or continuance of such license, which is higher.*

(ii)	*In the area of other Municipal Corporations (excluding those mentioned in clause (i) above), and all Municipal Councils.*	*Five times of the fee chargeable for grant or renewal or continuance of such license, whichever is higher.*
(iii)	*In all other area (excluding those mentioned in clauses (i) and (ii).*	*Four times of fee chargeable for grant or renewal or continuance of such license, whichever is higher.*

(c) the fee payable by any licensee for the privilege of having the transfer of any licensee other than those mentioned in clauses (a) and (b) shall be same as the fee chargeable for the grant or renewal or continuance of the license, whichever is higher".

8. As per Clause (b) of Rule 5, the fees payable by the licensee for transfer would be as per the different grades provided depending on the Municipal Corporation or other areas, for which such license may have been granted. The learned AGP would rely on Sub Clause (ii) of Clause (b) of Rule 5 of the Rules contending that in the areas other than those specified in Sub Clause (i), the fees would be five times, that chargeable for grant or renewal or continuance of such license, whichever is higher. We are of the opinion the case of the Petitioner does not fall under Clause (b) since this is not a case of transfer of license. It is a case where an outgoing partner of the partnership firm in whose favour the license has been granted

made a request that her name may be replaced by her son's. This case would therefore fall under the proviso to Rule (6). Rule 6 pertains to fees for admission into or withdrawal from a business of partner or partners. Clauses (a) to (e) of Rule 6 prescribe different fees for the purpose of admission into or withdrawal from a business of partner or partners. The first proviso to Rule 6 provides that in case of admission of a partner or partners from family members (husband or wife or children) of the licensee, the fees chargeable shall be ten per cent of fee chargeable for grant or renewal or continuance of the license concerned, whichever is higher, on every occasion of admission of a partner or partners. Further proviso to Rule 6 may be seen for clarity. It provides that no fees shall be chargeable after death of licensee or partner in case of transfer of license in the name of the legal heir.

9. It can thus be seen that the case of the Petitioner falls in Rule 6 of the Rules and was covered by the first proviso since outgoing partner requested that her name be replaced by that of her son. The Department had therefore correctly in the beginning levied fees of Rs.15,000/- for said purpose. The contention of the Audit Department that the case would fall under Clause (b) of Rule 5 of the Rules, is not correct. Under the circumstances, the impugned communication dated 15th October, 2018 issued by Respondent No. 3 is set aside. Petition disposed off accordingly.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**