IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

948 WRIT PETITION NO.6436 OF 2021

RAVI ASHOK SABLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

AND

WRIT PETITION NO. 6437 OF 2021

ASHOK VITTHALRAO SABLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. J.N. Singh, Advocate for the petitioners.
Mr. K.B.Jadhavar, A.G.P. for respondents.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 05.08.2021.

ORDER :

1. Heard Mr.Singh, learned Counsel for the petitioners and learned A.G.P. for respondents No.1 to 4.

2. The petitions challenge the orders dated 19.05.2021 and 18.05.2021, whereby the licences issued in favour of the petitioners, under the provisions of Maharashtra Prohibition Act and Rules made thereunder, have been cancelled, on the ground, that there were arrears of sales tax dues payable by the petitioners. The impugned orders direct the petitioners to first clear off the arrears of sales tax dues and produce the No Objection Certificate from the Sales Tax Department, only whereupon the request for renewal of the licences would be considered.

3. Mr. Singh, learned Counsel for the petitioners submits, that this was never the condition of the licence granted in favour of the petitioners, nor could it be so in law. He further submits, that the grounds on which the licence can be refused to be renewed, as emanating from the provisions of Section 14 (5) of the Maharashtra Country Liquor Rules 1973 and under Rule 45 (3) of the Bombay Foreign Liquor Rules 1953, do not provide for such an exigency, as is spelt out from the impugned orders. He further places reliance upon Sections 52 and 53 of the Maharashtra Prohibition Act to contend, that the provision of the statute also does spell out any such condition while granting a licence, nor does it empower the authorities to impose such a condition, in light of which the impugned orders cannot be sustained.

4. Learned A.G.P., justifies the impugned orders by relying upon the resolution dated 3rd September 2005, issued by the Government of Maharashtra in it's Department of Finance, to contend, that on account of any sales tax dues, the authorities under the Maharashtra Prohibition Act shall be entitled to refuse renewal on account of non payment of sales tax.

5. It is axiomatic to state, that the grant of a licence or it's renewal, under the Maharashtra Prohibition Act and the Bombay Foreign Liquor Rules 1953 and the Maharashtra Country Liquor Rules, are governed by statutory provisions and the Rules made thereunder, and therefore, any renewal, of any licence granted under the above Rules has to be within the four-corners of the requirement

as prescribed under the aforesaid statute and the relevant rules. Rule 45 of the Bombay Foreign Liquor Rules 1953 provides for grant of FL-III licence and sub-rule (3) of Rule 45 provides for it's renewal. The only requirement which is prescribed is that, any person desiring to renew a licence shall, 30 days before the expiry of such liecne apply for the renewal thereof with the application fee of Rs. 25/- evidenced by a challan in that regard. Sub-rule (4) of Rule 45, provides that any licence granted under sub-rule (1) may be renewed by the Collector for a period not exceeding one year at a time on payment of the fee as prescribed under sub-rule (1). The proviso to sub-rule (4) provides the schedule of fees, to be charged on account of renewal. There is no other condition prescribed, for renewal of the licence.

6. Rule 14 (5) of the Maharashtra Country Liquor Rules, 1973, provides for the renewal of a licence, which for the sake of ready reference, is reproduced as under :-

> *"14 (5) Any licence granted under sub-rule (2) shall be renewed by the Director for a period not exceeding one year at a time on payment of renewal application fee of Rs. 25 and licence fee as prescribed in sub-rule (2) of rule 14, unless the Director has reason to believe that there has been a breach of any of the terms and conditions of the licence, or that the licensee has not been working it properly"*

A perusal of sub-rule (5) of Rule 14 of the Maharashtra Country Liquor Rules 1973 also provides for renewal of a licence for a period not exceeding one year at a time on payment of the renewal application fee of Rs. 25/- and licence fee as prescribed, unless the Commissioner has reason to believe that there has been a breach of any of the terms and conditions of the licence or that the licencee has not been working it properly.

7. In the instant matter, the terms and conditions of the licence, admittedly, do not provide for clearance of the dues under the Sales Tax Act, as the pre-condition for renewal of the licence. The provisions of Section 53 of the Maharashtra Prohibition Act, prescribes the general conditions regarding licences, which are to be the conditions as contained in the Rules framed in this regard and the terms and conditions as contained in the licence. Section 53, also does not provide for any such condition, as is being sought to be imposed by the impugned orders. That being the case, the insistence of the respondents, to obtain a prior clearance, of the sales tax dues, before considering the application for renewal of the licence, is clearly not warranted in law.

8. The submission of the learned A.G.P., based upon the Resolution dated 3rd September 2005, is clearly without any merits, for the reason, that such a Resolution, by no stretch of imagination, can be construed, to add to or supplement the terms and conditions of the licence granted to the petitioners. It is the settled position of law, that resolutions passed by the Government in any of its departments cannot have the effect of adding to or supplementing the provisions of the statute or the rules framed thereunder. The contention therefore, is rejected as being without merit.

9. In the result, the petitions succeed. The impugned orders dated 19.05.2021 and 18.05.2021 are hereby quashed and set aside. In the circumstances, there shall be no order as to costs. Unless there is any other prohibition or violation or impediment, in the matter of renewal of the licences of the petitioners, the respondents, may consider taking appropriate action in law in that regard.

10. It is needless to mention that the Sales Tax Department shall be free to initiate appropriate proceedings / take appropriate action as permissible and available in law, in case the petitioners are in arrears of sales tax dues, to recover the same.

(AVINASH G. GHAROTE, J.)

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