

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3374 OF 2021**

M/s. National Restaurant Association	]	
of India	]	Petitioner
Vs.		
The Commissioner State Excise and others	]	Respondents

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Mr. Vishal Thadhani i/b Mrs. Veena Thadhani, for Petitioner.

Mr. V. S. Gokhale, 'B' Panel, AGP, for Respondent-State.

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**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 3rd September, 2021

P.C.

1. The petitioner an Association representing members of Hotel and Restaurant Industry has filed instant petition challenging the Notification dated 28th January, 2021 issued by respective respondents demanding payment of licence fees for renewal of FL-III licences despite there being complete lock down and suspension of licenced activities on account of Covid-19 pandemic, *inter alia*, seeking quashing and setting aside the said Notification.

2. Briefly stated facts are as follows;

3. The petitioners are the members of an association holding hotel licence in the form of FL-III for the purpose of serving liquor in their premises under the provisions of Maharashtra Foreign Liquor Rules, 1953.

4. FL-III licences are renewed annually from 1st April of each year till 31st March of the following year after annual renewal fees are paid by the licence holders. It is contended that the licence holders have a *bona fide* and legitimate expectation that they will be allowed to carry on their business for entire 12 months licence period every day between 11.30 a.m and 1.30 a.m.

5. Due to the situation of Covid-19 pandemic, Government of India as well as State Government imposed a complete lock down across the country mid March, 2020; pursuant to which, the restaurants and bars were closed. Subsequently, they were allowed to operate only at 50% of their actual capacity. Timings and hours of operation of restaurants and bars were also curtailed. In the financial year 2020-2021, restaurants and bars operated only for a period of five months, that too, with severe restrictions. It is further contended that respondent No.1 permitted payment of licence fees on installment basis i.e 25% by 30th June, 2020, 25% by 30th September, 2020 and balance 50% by 31st December, 2020. A circular came to be issued by respondent No.1 on 13th April, 2020 that the licence fees have been reduced to the rates applicable to the financial year 2019-2020.

6. From 1st April, 2021 FL-III licencees have not been permitted to freely carry on their business for which licence fee is demanded and the restrictive measures continued to be imposed by the State of Maharashtra by it's Notification dated 4th April, 2021 which came to be extended from time to time.

7. The petitioner members' business has been completely shut down with effect from 22nd March, 2020 and there is no clarity as to when imposed restrictions will actually come to an end.

8. Learned Counsel for the petitioner has drawn our attention to the ad-interim relief granted by this Court in Writ Petition [L] No.11021 of 2021 on 13th May, 2021 which reads thus;

“ Heard.

2. By this Interim Application, Applicants original petitioners are seeking permission to comply the order dated 06.05.2021 passed by this court in Writ Petition (L) No.11021 of 2021 by depositing the amount online with Respondent Excise Department.

3. The learned counsel for the Applicants submits that this court by order dated 06.05.2021 directed Petitioners to deposit 50% amount due and payable by the Applicants to the Respondents by 13.05.2021 with the Prothonotary and Senior Master. He relies on paragraph 3 and 4 of the said order which reads thus:

“3. In the circumstances, by way of ad-interim relief we only direct that in the event the members of Petitioner Association deposit 50% of the license fees in this court within one week from today, the representations of the Petitioner Association at Exhibits - N and O (page Nos. 146 and 147 of the Writ Petition) be decided on or before 31st May, 2021.

4. We record the statement of learned Senior Counsel for the Petitioners that the list of members of the Petitioner's Association shall be filed on 10.05.2021 and a copy thereof shall be forwarded to the office of the Govt. Pleader on 10.05.2021 itself. The list of members who have deposited 50% of the license fees in this court shall be communicated by the Advocate of the Petitioners to the office of the Govt. Pleader by 17th May, 2020 with proof of payment.”

4. The learned counsel for the Applicants submits that Petitioners members are from different parts of State of Maharashtra. Therefore, it is very difficult for them to collect Demand Draft from each and every member. He submits that hence, the Applicants decided to deposit entire amount online as provided by the

Respondents in their Circular dated 23.02.2021. He further submits that Applicants undertakes to provide list of members on whose behalf they are depositing the said amount with details i.e. License No., name of the license holder, their address and how much amount they are depositing on behalf of each member to the office of the Government Pleader immediately. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Application. He submits that if Application is not allowed, irreparable loss and injury will be caused to the Applicant.

5. On the other hand, the learned A.G.P for the Respondents vehemently opposed the present Application. He submits that as per the order dated 06.05.2021 the last date to deposit 50% amount was today i.e. 13.05.2021. He further submits that Applicant has not provided the detailed list of their members showing their particulars till today. Therefore, it is very difficult for them to ascertain which member is going to pay how much in respect of which license. Therefore, there is no question of entertaining the present Application.

6. The learned G.P for the Respondent submits that if this court comes to the conclusion that, Applicants have made out a case for extension of time, in that case, time to decide the Applicant's representation should be extended from 31.05.2021 to 07.06.2021.

7. We have heard both the sides.

8. It is to be noted that in the present Application Applicant members are scattered all over Maharashtra and to collect Demand Draft from each and every person during this COVID-19 and lock down period is very difficult. Therefore, we are of the opinion that Application is required to be allowed. Hence, the following order is passed:

a. Applicants are permitted to deposit the amount as per earlier order dated 06.05.2021 in Writ Petition (L) No.11021 of 2021 with Respondent Excise Department online as provided in Circular dated 23.02.2021 on or before 21.05.2021, failing which present Application shall stand dismissed without referring back to the court.

b. Applicants are also directed to provide list of their members along with license number, their address and how much amount they are depositing to the office of the Government Pleader immediately on or before 21.05.2021.

c. Time to decide the Applicant's representation as per paragraph 3 of the impugned order is extended till 07.06.2021.

d. With these directions, Application stands disposed of.

3. No order as to costs.

9. Learned A.G.P in his reply on affidavit states that this Court by an order dated 23rd June, 2021 directed the petitioner to deposit 50% of the licence fee for the year 2021-2022 as per Notification dated 28th January, 2021 and to submit the list of members of the petitioner to the respondents. He further submits that about 90% FL-III licensees in the State of Maharashtra have paid entire licence fees for the year 2021-2022 for renewal of their FL-III licence. Thus, concession given by this Court to the petitioner members' for depositing 50% of licensee has caused loss to the Government revenue.

10. It is stated that the licensees who have paid 100% of the licence fee for the year 2021-2022 for renewal of the licence are also facing the same financial crisis and difficulties as the petitioner members in this Covid-19 situation. It is stated that liquor being a non essential commodity, this Court ought not to have granted any relief to the petitioner.

11. Having considered the respective submissions at bar and in view of the view taken by this Court in Writ Petition [L] No.11021 of 2021, following order is expedient.

: ORDER :

(a) The petitioners to deposit 50% licence fee in the name of respective respondents' Treasury within two weeks and inform the respondents along with the documents;

(b) Once the amount is deposited, the petitioners to file representation with respective respondents for the same cause of action as in the present Writ Petition within two weeks from today;

(c) If the amount is deposited in time and applications are made within two weeks from today, respective respondents to decide the same on merits, if necessary, after hearing both the sides and shall pass reasoned orders and communicate the same to the petitioners in writing;

(d) It is made clear that the amount deposited by the petitioners shall be subject to the outcome of the above representations;

(e) All contentions of the parties are kept open;

(f) Till decision of the representations that would be filed by the petitioners and for two weeks from the date of the orders, if are against the petitioners, no steps shall be taken for cancellation of the licences issued to the petitioners;

(g) Writ Petition stands disposed of accordingly.

(h) No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]