Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 42 OF 2022

Prestige Alcobev Pvt Ltd …Petitioner
Versus
State of Maharashtra through the Principal Secretary & Ors …Respondents

Mr Subhash Jha*, with Siddharth Jha & Dwivendra Dubey, i/b Law Global, for the Petitioner.*
Ms SS Bhende, AGP*, for the Respondents-State.*

CORAM **G.S. Patel & Sharmila U. Deshmukh, JJ.**
DATED: **21st November 2022**

PC:-

1. Leave to amend to correct the typographical error in the prayers. Reverification is dispensed with. The Respondents waives service. Rule. By consent, Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. There is a detailed Affidavit in Reply and an Affidavit in Rejoinder.

3. Prior to 25th June 2013, one Sunny Gold Wineries Pvt Ltd ("**Sunny Gold Wineries**") used to manufacture what is called Indian Made Foreign Liquor or IMFL under various licensees from the State Government Excise Department (Respondents Nos. 1 to 3). The details of these licenses are not immediately relevant because it is undisputed that Sunny Gold Wineries did in fact hold such licenses. On 25th June 2013, Sunny Gold Wineries and the Petitioner entered into a Deed of Transfer and Assignment in respect of these four licenses. A transfer of the licenses would enable the Petitioner to manufacture the IMFL. There does not seem to have been a proposal by the Petitioner to acquire the assets and properties of Sunny Gold Wineries or to take it over as a going concern. Sunny Gold Wineries also executed an indemnity in favour of the Petitioner. An application came to be made to the State Excise Department to transfer these licenses from Sunny Gold Wineries to the name of the Petitioner. The indemnity extended to the Excise Department as well. On the same day, Sunny Gold Wineries executed an Affidavit saying that it had discontinued its IMFL manufacturing business and that its manufacturing unit was closed. Importantly for our purposes, and for the reasons that will shortly become apparent, Sunny Gold Wineries agreed and undertook that it would be solely responsible for any tax arrears or dues should there be a demand raised by the government authorities, and this included any demand towards any form of indirect taxes such as Sales Tax, VAT etc.

4. That application for transfer remained pending. Time went by. Roughly a year later, on 15th May 2014 the Commissioner of Excise issued a show cause notice to Sunny Gold Wineries asking for an explanation why, since Sunny Gold Wineries had stopped manufacture of IMFL, the licenses in question ought not to be surrendered to the government. Sunny Gold Wineries replied on 20th November 2014 explaining that an application for transfer was pending since 2013 but without result. In parallel, the Petitioner clarified that it could immediately commence manufacture of IMFL but could not do so on account of the transfer application yet being pending. Both the Petitioner and Sunny Gold Wineries asked the Commissioner of State Excise to withdraw that show cause notice. The Petitioner filed Writ Petition No. 6541 of 2015 on account of the continued inaction regarding the license transfer application. In this Writ Petition No. 6541 of 2015, by its order of 21st April 2016, this Court directed the 2nd Respondent to decide the Petitioner's application on merits within eight weeks. A copy of that order is annexed.

5. It seems that by an order of 8th July 2016, a copy of which at page 66 and is the order impugned in the present Writ Petition at Exhibit "H", 2nd Respondent declined to issue the NOC or the No Dues Certificate.

6. We turn immediately to the impugned order. The relevant portion of the impugned order is at page 67. On any reasonable reading of this, it appears that there are only two reasons for rejecting the Petitioner's transfer application. The first is that it was found that the license transferor company Sunny Gold Wineries was heavily indebted to the State Government in its Sales Tax Department and there were large amounts of unpaid Sales Tax dues.

The second ground is incomprehensible because it seems to suggest that prior permission was required from the State Excise Department before effecting a transfer.

7. To continue the factual narrative, the Petitioner made a representation by a letter of 7th December 2016. There was no response. A reminder followed on 18th July 2017 and this was a representation at the highest level by which the Petitioner said that it had only sought a transfer of the license from Sunny Gold Wineries and not a transfer of the assets and liabilities. Importantly, the Petitioner had not sought to take over Sunny Gold Wineries' manufacturing unit either and there would be no question of prior permission. The important point here was the representation by the Petitioner that although the license for manufacturing was the subject of the agreement of 2013, there was no proposal by the Petitioner to take over the physical assets and the manufacturing unit or plant of Sunny Gold Wineries.

8. Representations continued to be made and ultimately the Petitioner filed a Revision Application in 2019 before the Hon'ble Minister.

9. The Affidavit in Reply more or less reiterates the case made out in documentation. At page 97, the part of paragraph 4, the authorities have said that Sunny Gold Wineries was in arrears of over Rs. 37 crores in Sales Tax dues and that on a subsequent assessment the amount was found to be in excess of Rs. 43 crores. Paragraph 6 at page 98 accepts that a revision was filed by Petitioner but says that a hearing was held on 30th May 2022 and that it was the Petitioner who sought time.

10. There is a fairly detailed Rejoinder. To this are annexed several documents that prima facie indicates that the revision was never finally disposed of and that it was not the Petitioners that sought time. We need not enter into that controversy at all. The only two grounds given in the impugned communication for refusing to transfer the IMFL manufacturing licenses are the dues of the Sales Tax Department and that the Petitioner and the Sunny Gold Wineries did not take "prior approval" of the Excise Department before their agreement for transfer.

11. Mr Jha for the Petitioner relies upon a decision of a learned Single Judge of this Court in *Vidarbha Bottlers Pvt Ltd v Honorable Minister of State, State Excise.*[1] He submits that the present case is on all fours with *Vidarbha Bottlers*. Even there, the same argument was taken that the failure or refusal to renew the license was on account of alleged arrears of sales tax dues. Reference was made *inter alia* to Section 55 of the Maharashtra Prohibition Act. This only says that where the Excise Department cancels or suspends a license, permit, pass or authorization under Section 4, the holder of that license, permit etc, is not entitled either to compensation or to a refund, even a pro rata refund. The learned Single Judge found that in the matter before him was an allegation of arrears of sales tax dues. This could not, it was held, be a germane reason for the exercise of a discretionary, administrative, or executive power. Under Section 56

1 2020 SCC OnLine Bom 208.

of the Act, a license may be granted on certain conditions being fulfilled but a cancellation requires a notice and a hearing.

12. Mr Jha also places a reliance on a Division Bench judgment of this Court recently delivered on 14th July 2022 in *Blanchi Anthony D'Souza v State of Maharashtra & Ors.*[2] The Division Bench clearly found, where the challenge was a charge of interest, that an applicant must of course pay the license fees at the time of renewal. But where the department has not processed the application for renewal, there can be no question of asking for renewal for the period during which the application for renewal was pending.

13. We entirely approve and endorse the view of the learned Single Judge in *Vidarbha Bottlers.* We are respectfully bound by the findings of the Division Bench in *Blanchi Anthony D'Souza*. If we independently examine the reasons given by the State Government both in the impugned communication and in the Affidavit in Reply, we find that we can trace this to no known provision of the Prohibition Act. It may well be that the holder of a license may have accumulated arrears of a certain form of tax. But unless there is a specific provision in the statute that permits the excise licensing authorities to refuse or grant permission, whether it is for a renewal or transfer, on the ground that there are *other* taxes that are due, it is simply not possible for the Excise Department to do so. A taxing power and a tax recovery power must be specifically conferred by statute. That is always a jurisdictional issue and jurisdiction cannot

2 Writ Petition No. 1883 of 2022 decided on 14th July 2022.

simply be assumed just because these are different limbs of the same government.

14. The question of prior approval seems to us to be a case of complete non-application of mind. There is no warrant for the assumption that a transfer of license necessarily means a transfer of the assets used by the transferor while previously operating that license. A license is a permission. An,application can be made for the transfer of the permission/license without actually transferring the asset itself for the simple reason that the transferee may have sufficient assets and a manufacturing capacity of its own. At the very least, one would have expected some application of mind to be demonstrated to this rather than proceeding on conjecture and surmise.

15. We are of course concerned with the decision making process when we take up judicial review of administrative action or executive action. It is the decision making process in this case that we find unsustainable.

16. The result before us today is more than somewhat peculiar. The transfer application has remained pending since 2013, that is to say, for more than nine years. If the permission is to be granted today, there is undoubtedly going to be a question raised about the alleged fees for renewal that what would have been payable from 2013 onwards. It is at this point that the Division Bench judgment in *Blanchi Anthony D'Souza* referred to above would cover the situation. We reproduce paragraph 5 of that order below.

> "5. There cannot be any doubt that the petitioner has to pay the license fee at the time of making application for renewal. In the present matter, the petitioner did not deposit the license fee/renewal fee. It is also an admitted fact that the there was dispute between the petitioner and her family members and because of which further steps would not be undertaken. The dispute got resolved in the year 2013 only. No doubt, the petitioner failed to deposit the license fee for the year 2011-12 and 2012-13. The license fee for the year 2011-12 and 2012-13 is Rs.2,85,600/- per year which the petitioner is liable to deposit. Even the petitioner is liable to pay license fee for further years. However, from the year 2013-14, the petitioner is not responsible for the delay caused for processing the application for renewal and grant of extension. The petitioner cannot be penalized for no fault of her. A long delay has been caused in processing the application of the petitioner and making demand."

17. We do so because there now simply cannot be any question of the Excise Department demanding "renewal fees" for the entire period during which a transfer application was kept pending. Had the transfer being allowed, then undoubtedly the Petitioner would have been required to pay the annual renewal fees. But it is entirely unreasonable, and even arbitrary, to expect that the Petitioner should pay a renewal for something that was not renewed and for a transfer that was not granted. That can never be.

18. Finally, if there was any ambiguity about the question of liability of a successor-in-interest, this is put to rest by a decision of the Supreme Court in *Rana Girders Ltd v Union of India & Ors.*[3] Such a liability can be fastened only on the person who had purchased the entire unit as an ongoing concern and not somebody who has purchased only this or that asset. In this case, the Petitioner has not purchased any asset at all let alone the entire unit as an ongoing concern. At best, the Petitioner has endeavoured to acquire the transfer of the IMFL manufacturing license and nothing further. Even if the agreement mention 'business', this is the business of manufacturing, not the assets used to manufacture.

19. In the result, Rule is made absolute in terms of prayer clause (a) with the following clarifications:

(a) The Petitioners will need to pay all charges associated with and properly applicable to a transfer application;

(b) the Petitioners are not required to pay any renewal fees from the date of transfer application until today;

(c) the Petitioners will be required to pay the annual renewal fees from today onwards.

20. The Respondents will act on a production of an authenticated copy of this order and will issue the necessary orders within two weeks of this order being uploaded.

3 2013 10 SCC 746.

21. It goes without saying that the Sales Tax authorities will be entitled to cover the dues from the Sunny Gold Wineries Pvt Ltd in accordance with law.

22. No costs.

(Sharmila U. Deshmukh, J) **(G. S. Patel, J)**