

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8076 OF 2023**

Shri. Mahesh Motiram Aswani

....Petitioner

V/s.

The State of Maharashtra & Ors.

....Respondents

Mr Drupad Patil i/by. Mr. Santosh L. Patil, for the Petitioner.

Mr. A.P. Vanarse, AGP for Respondent Nos.1 to 3.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 October 2023.

P.C. :

1. Petitioners are aggrieved by the decision of the Collector, State Excise demanding privilege fees of Rs.29,70,020/- for shifting of the license to the original place from which it was earlier shifted owing to the restriction put on account of the judgment of the Apex Court. It is the case of the Petitioner that his earlier shifting of the license was not on account of his own volition but on account of specific directions issued by the Apex Court. After the judgment of the Apex Court was reviewed and the restrictions were relaxed, the Petitioner shifted back to his original place of business. However the second

shifting is treated by the Respondents as a voluntary shifting and accordingly privilege fees of Rs.29,79,020/- is demanded by the Collector, State Excise. Petitioner challenged the decision of the Collector before the Commissioner of State Excise, who rejected Petitioner's Appeal by order dated 25 January 2019. Petitioner's Revision came to be rejected by Minister, State Excise by order dated 30 August 2019. This is how the present petition is filed.

2. I have heard Mr. Patil, the learned counsel appearing for the Petitioner and Mr. Vanarse, the learned AGP appearing for the State Excise.

3. It must be observed at the very outset that the issue involved in the present Appeal is no longer *res-integra* and is covered by the judgment of this Court in **Vikram Uddhav Chug vs. State of Maharashtra & Ors.** 2019 (1) Mh.L.J. 931. This Court has held in paras-16 to 21 as under :

16. We have heard learned Counsel. Admittedly, the petitioner was having a liquor license in respect of the old premises. Pursuant to the order of the Hon'ble Supreme Court, an application was made by him for shifting of the license to new premises. Though respondents allowed the petitioner to shift, the petitioner could not shift to the new premises due to personal reasons and therefore applied for cancellation of his application for shifting. The same was granted by the respondent No. 3. The respondent No. 3 further informed the petitioner to find suitable place for shifting of his license premises.

17. It can thus be seen that the petitioner on his own volition never intended to shift his license from one site to another site. It is on account of the directions of the Apex Court dated 15-12-2016 which held there could be no liquor shop within 500 mtrs. from the National/State Highway, that the petitioner had to make an application for shifting. Later on, the Hon'ble Supreme Court by the order dated 11th July, 2017 clarified that the prohibition mentioned in order dated 15-12-2016 shall not be applicable in cases where the licenses are situated within Municipal Corporation and Municipal Council areas. It can thus be seen that the prohibition contained in the order dated 15-12-2016 now does not apply to the petitioner's old premises in view of the clarification of its earlier order by Hon'ble Supreme Court. In fact even the respondents have not charged any privilege fees for shifting of the license from old premises to new premises which shifting was necessitated and was the outcome of the directions of the Apex Court dated 15-12-2016.

18. The Apex Court having clarified its earlier order by a subsequent order dated 11th July, 2017 and as the petitioner wants to continue his license in respect of the old premises, the question of charging any fees for transfer of license from one site to another does not arise at all. In view of the clarificatory order of the Apex Court, there is no need for the petitioner to shift from old premises to new premises. The petitioner's license in the old premises stand protected and the petitioner is entitled to carry on business in the old premises. But for the directions of the Hon'ble Supreme Court on 15th December, 2016 the petitioner would not have applied for transfer of the license from old premises to new premises. The transfer of the license was not on the petitioner's own volition but in compliance with the directions of the Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court having issued necessary clarifications vide order dated 11th July, 2017, as a result of which the shop of the petitioner is not affected, the petitioner cannot be penalized only because he had already applied for shifting from old premises to new premises. It is a matter of record that the petitioner did not shift to the new premises. As a matter of fact the application made by him for shifting to new premises which was earlier granted was also cancelled at his request and the respondents themselves had called upon the petitioner to find out suitable premises for shifting of his license.

19. We may make a profitable reference to the decision of the Apex Court in the case of Raj Kumar Dey and others vs. Tarapada Dey and others, reported in (1987) 4 SCC 398 in this context. In para 6 it is held thus :

"6. We have to bear in mind two maxims of equity which are well settled, namely, *actus curiae neminem gravabit* - An act of the

Court shall prejudice no man. In Broom's Legal Maxims, 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution."

20. A useful reference can also be made to the decision in the case of Gursharan Singh and others vs. New Delhi Municipal Comminee and others. reported in (1996) 2 SCC 459 wherein the principle laid down in Raj Kumar Dey's case (supra) is followed.

21. In this view of the matter, the petitioner cannot be faulted for making an application for shifting his license from old premises to new premises. The respondent No. 3 and 4 were justified in not charging f. es for transfer the license from old premises to new premises in view of the Circular dated 7th June, 2017. Conscious that as a result of the shifting for which the applicants are not at fanit and even as the applicants would have to face severe hardships and monacy loss, the State Government had taken a decision not to charge any fees for transfer from the old premises to the new premises. Pursuant to the clarification issued by the Hon'ble Supreme Court, if the license of the petitioner as regards the old premises stand protected, the question of the respondents demanding transfer fee under Rule 4 (b) of the Rules 1954 does not arise. In the present fa situation the respondents are not at all justified in raising the demand for transfe fee on the pretext that Rule 4(b) of the Rules 1954 is attracted, as the petitione cannot be said to have made any application for transfer from one site to anothe site since the petitioner wants to carry the business in the old premises isself our opinion, the impugned Demand Notice is completely arbitrary and imations and therefore deserves to be quashed and set aside.

4. Since the issue involved in the present case is directly covered by the judgment of Division Bench of this Court in ***Vikram Uddhav Chug*** (supra), the demand of privilege fees by the State Excise for second shifting cannot be sustained.

5. Accordingly, the order passed by the Collector, State Excise dated 23 April 2018, by the Commissioner of State Excise on

25 January 2019 and the Minister, State Excise on 30 August 2019 are set aside. The Respondents are directed to refund the prevlige fees deposited by the Petitioner under protest within a period of four months from today. With the above directions the Writ petition is **disposed of.**

SANDEEP V. MARNE, J.

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