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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10661 OF 2021

NARESH YALLADAS LACHMAPURE
VS
THE STATE OF MAHARASHTRA AND OTHERS

AND

WRIT PETITION NO.10791 OF 2021

ANNASAHEB HARIBHAU JADHAV (DIED)
THROUGH LEGAL HEIR
ABHIJIT ANNASAHEB JADHAV
VS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. Vikram S. Undre, Advocate for the petitioner
Mr. R. K. Ingole, AGP for the respondent Nos. 1 to 4

CORAM : KISHORE C. SANT, J.

RESERVED ON : 07th OCTOBER, 2024

PRONOUNCED ON : 14th DECEMBER, 2024

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1. The common questions arise for consideration in both the petitions.

2. The petitioner in WP/10661/2021 has approached

this court challenging the judgment and order passed by the learned Minister, Sate Excise dated 05-09-2019 bearing No. RVD-0819/Pra.Kra.259/188/State Excise-3 under the Bombay Prohibition Act. The respondents are the authorities under the State Excise Department.

3. The petitioner in WP/10791/2021 has approached this court challenging the judgment and order passed by the learned Minister, Sate Excise dated 05-09-2019 bearing No. RVD-0819/Pra.Kra.260/189/State Excise-3 under the Bombay Prohibition Act. The respondents are the authorities under the State Excise Department.

4. The dispute is in narrow compass as to whether the interest can be levied on the amount paid for renewal of license for the period for which the license was in dormant condition in view of section 49 of the Prohibition Act.

5. The facts in WP/10661/2021 in short are that, the

petitioner happens to be a partner in CL-III license No.138 (New No.90). Said license was not renewed from 1975 till 2019-2020. The petitioner approached the Hon'ble Minister, State Excise for renewal of the license. The Hon'ble Minister, State Excise renewed the license and permitted to shift the place of business from Solapur to Shrikrishna Nagar Jalna. This was subject to payment of renewal fees alongwith interest on the said renewal fees. The petitioner deposited the entire renewal fees alongwith interest as directed by the Hon'ble Minister,. He thus paid Rs.13,00,723/-. Pursuant to the order passed by the learned Minister, the Superintendent informed by communication dated 23-07-2020 to pay renewal fee with interest. The petitioner, therefore, has approached this court. It is the case of the petitioner that renewal fees from 1975 till 2019-2020 comes to Rs.13,00,723/-. The license also came to be transferred from Bhandarkawathe, Tq. Solapur, Dist. Solapur to Jalna. The petitioner is aggrieved only to the extent of direction to deposit the interest on the renewal fees.

6. The facts in WP/10791/2021 in short are that, the petitioner has a license CL-III license No.139 at Wadala, Tq. Uttar Solapur, Dist. Solapur (New No.90). Said license was not renewed from 1975 till 2019-2020. The petitioner approached the Hon'ble Minister, State Excise for renewal of the license. The Hon'ble Minister, State Excise renewed the license and permitted to shift the place of business from Solapur to Latur. This was subject to payment of renewal fees alongwith interest on the said renewal fees. The petitioner deposited the entire renewal fees alongwith interest as directed by the Hon'ble Minister,. He thus paid Rs.16,37,850/-. Pursuant to the order passed by the learned Minister, the Superintendent informed by communication dated 23-07-2020 to pay renewal fee with interest. The petitioner, therefore, has approached this court. It is the case of the petitioner that renewal fees from 1975 till 2019-2020 comes to Rs.16,37,850/-. The license also came to be transferred from Dist. Solapur to Latur. The petitioner is aggrieved only to the extent of direction to deposit the interest on the renewal fees.

The Common Submissions Are As Under:

7. The learned advocate for the petitioners vehemently argued that under Section 49 of the Maharashtra Prohibition Act gives power to the Government to charge for permit of manufacture and sale of liquor. It is subject of renewal fees however, there is nothing to charge for interest on the liquor license for the period for which it was dormant. The order of the learned Minister is, thus, without any provision of law. In the present case the amount of interest is equal to the amount of renewal fees and he prayed for refund of the said interest amount. He relied upon the order passed in the case of Ashok Pandurang Rane Vs State of Maharashtra in CA/2300/2019 in WP/13623/2018.

8. At the outset the learned AGP submits that the petitions are not maintainable as the impugned orders are challenged after two years and thus there is delay and laches which are not explained. The learned AGP on the other hand opposed the petitions. He submits that when the learned

Minister has exercised the powers he has every authority to charge the interest on the amount of renewal fees. The learned Minister has exercised the powers under Section 138 of the Maharashtra Prohibition Act. He submits that in view of the Maharashtra Country Liquor Rules, 1973 license renewal fees has to be paid for every year before 31st March in view of Rule 24(2-A) of the said Rules. If there is no renewal of license, the license seized to be in existence. Section 114 of the said Act provides that expired license can be renewed by recovering the license fees with interest. He relied upon notification dated 18-05-1998. He submits that if in any case license is not renewed, same is to be renewed on paying requisite fees. When the license fees is not paid it naturally carries interest. It is further submitted that in fact now the petitions are not for challenging the action of charging of interest but is for recovery of the amount of interest. He relied upon the order passed by this court. He submits that issue of charge of interest under Section 114 of the Act is referred to a larger bench in writ petition No. 477/2020 and same is pending. He thus ultimately prayed for

rejection of the writ petition.

9. It is thus clear that only question this court has to consider is about the charging of interest on the renewal fees.

10. The learned advocate for the petitioner has relied upon the judgment in following case 1] WP/199/2006 Smt. Ketī Ardeshir Kapadia Vs The State of Maharashtra 2] WP/11765/2019 Shubhada Sharad Bhole Vs The State of Maharashtra and 3] WP/1088/2021 Suresh Shantaram Todankar VS The State of Maharashtra. In the case of Keti Kapadiya (supra) this court has held that there is no provision to recover interest over the license fees. Interest can be recovered only on the amount which is lent and the amount which is found due or recoverable as debt for a period for which business was not being operated by the petitioner, no license fees could be treated as legally recoverable debt on the petitioner. In view of this recovery of interest is held to be not permissible under any contract, usage or other legal provision. The order impugned in

the said petition for recovery was set aside to the extent of interest charged by authorities. In the case of Shubhada Bhole (supra) this court held that the authorities cannot levy interest in exercise of review jurisdiction. In the said case though the order of renew license was passed on the recovery of entire license even from 01-04-1975 till 31-03-2014 and order was passed even to shift the license in Nanded District. In review jurisdiction interest was directed to be recovered. In this view this court held that no interest could have been levied while exercising review jurisdiction. While passing this order this court has also considered the judgment of Keti Kapadiya (supra) and some other judgments including the case of Suresh Todankar (supra). In the said case also in the order there was interest levied however, in review, the government directed to pay interest on the fees. This court held that respondent-State lack statutory powers to entertain the review and interest would not have been directed to be paid.

11. This court thus finds considerable force in the

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argument of the learned advocate for the petitioner. The petition therefore deserves to be allowed. In view of the same, the petitions stand allowed in terms of prayer clause-A.

[KISHORE C. SANT, J.]

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