IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9467 OF 2023

Sau. Ashadevi Jintendra Jaiswal,
Age: 45 years, Occu: Business,
R/o. Bungalow No.175-A, N-3,
CIDCO, Aurangabad. ..Petitioner

Verus

1. The State of Maharashtra,
Through Secretary;
Excise Department, Mantralaya,
Mumbai – 32.

2. The Commissioner State Excise,
Mumbai, Old Custom House,
Fort, Mumbai.

3. The District Collector,
Aurangabad.

4. The Superintendent State Excise,
Aurangabad. ..Respondents

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Mr. A. H. Kasliwal, Advocate for Petitioner.
Mr. V. S. Badakh, AGP for Respondent Nos.1 to 4..

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns order dated 13.09.2022 passed by respondent no.4, by which the proposal as regards to the liquor license of the petitioner has been repatriated to respondent nos.1 and 2.

3. Mr. Kasliwal, learned Advocate appearing for the petitioner submits that original license was granted to Mr. Ramakant Kalyan Deshmukh and it was renewed upto 1976. After death of original licensee, an application dated 22.08.2014 was moved for shifting license from District Raigad-Alibagh to District Aurangabad. After completing formalities and obtaining consent of legal heirs, the proposal was moved for transfer of license in name of the petitioner by shifting it to District Aurangabad. The Hon'ble Minister passed order dated 11.08.2014 directing transfer of license in the name of the petitioner and also shifting the same to Aurangabad District. Consequently, the petitioner moved an application seeking permission to run license in MIDC Shendra area. The reports of the Authorities were called. The respondent no.3 submitted favourable report to run license at given place. He has also passed order dated 19.07.2022 to renew license after getting deposit of the license fees and start business under license at MIDC Shendra, District Aurangabad. Consequently, on 21.07.2022 directions were given to Inspector, State Excise, Aurangabad Division to comply the requirements under order and submit the report to respondent no.3. The petitioner has accordingly deposited license fees alongwith late fees and represented respondent no.4 to execute order passed by respondent no.3-Collector as well as respondent no.1-Hon'ble Minister.

4. However, vide impugned order dated 13.09.2022 respondent no.4 by making reference to the Circulars dated 25.02.2008 and 13.02.2012 directed that proposal be forwarded to respondent nos.1 and 2 for execution of order dated 19.07.2022.

5. Mr. Kasliwal, learned Advocate appearing for the petitioner submits that approach of respondent no.4 is highly objectionable.

According to him, when respondent no.1 has passed order regarding transfer of license and respondent no.3 has directed renewal of license on payment of requisite fees, which has been deposited by the petitioner, respondent no.4 had no reason to again repatriate proposal to respondent nos.1 and 2 instead of executing order passed by respondent no.3. Mr. Kasliwal, learned Advocate would rely upon the Circulars dated 21.01.2006, 05.02.2008 and 22.10.2009 issued by the Commissioner of State Excise deprecating the aforesaid practice. Mr. Kasliwal would also rely upon the judgment of this Court in ***Writ Petition No.5849/2016*** in case of ***Vijay S/o Narayandas Rizwani Vs. The State of Maharashtra and Ors.*** dated ***07.02.2017*** to contend that once higher Authorities have passed orders directing transfer of license and also renewal thereof, the subordinate officer has to implement such order without putting any hindrance.

6. Per contra, Mr. Badakh, learned A.G.P. appearing for respondents submits that the petitioner has deposited renewal fees to the office of respondent no.4 for Financial Years 2019-2020 and 2020-2021. There is delay of approximately 29 months and 17 months respectively. In such circumstances, as per Government letter dated 25.02.2008 coupled with Government Resolution dated 13.02.2012, in case of delay of more than one year in depositing renewal fees, the proposal for renewal needs to be submitted to the Commissioner for State Excise for taking appropriate decision. In adherence to aforesaid Circular, respondent no.4 has passed the impugned order.

7. Having considered submissions advanced on behalf of the learned Advocates appearing for respective parties, it is apparent that on 11.08.2014 the Hon'ble Minister for State Excise passed an

order permitting transfer of license to Aurangabad District subject to verification of the details regarding renewal of license and recovery of license fees from 01.04.1976 till Financial Year 2014-2015. In deference to the aforesaid order passed by Hon'ble Minister, proposal was placed before respondent no.3-District Collector at Aurangabad, who is competent authority to pass order as regards to renewal of license. After hearing all concerned and examining relevant aspects, learned District Collector passed order dated 19.07.2022 permitting to run license at Shendra MIDC area on deposit of license fees upto current year. Consequently, the petitioner deposited license fees alongwith charges towards delay and made communication to respondent no.4 to execute order of District Collector. Pertinently, respondent no.4 in the impugned order has specifically referred regarding deposit of license fees from 2015 to 2023. However, recorded that license renewal fees for Financial Years 2019-2020 and 2020-2021 is delayed by 29 and 17 months respectively. Consequently, referring to the Circular dated 13.02.2012 directed that proposal be transferred to respondent no.2 for taking further decision.

8. It is apparent that order regarding renewal of license was already passed by respondent no.3 and respondent no.4 was to execute the same by accepting renewal fees. In case, there is deficiency as regards to the payment of fees, the delayed charges could have been recovered as per Rules. However, there was no reason for again forwarding the matter to respondent nos.1 and 2 referring to Circular dated 12.02.2012.

9. Perusal of Circular dated 12.02.2012 shows that, if any proposal for renewal of license has belatedly made, it shall be forwarded for approval to Government alongwith recommendations

of the Commissioner. It appears that, in case of delayed proposals for renewal, the procedure is contemplated to get approval from the higher Authorities. In present case, the issue of renewal of license was already dealt with by respondent no.3 and final order was passed. The respondent no.4 was expected to recover appropriate license fees and execute order of respondent no.3. It is, therefore, apparent that respondent no.3 has wrongly resorted to the Circular dated 15.02.2012, which has no application in the facts of this case. Therefore, no justifiable reason is discernible from the contents of the impugned order to refer the proposal again to respondent nos.1 and 2. The respondent no.4 was under obligation to implement the orders passed by the superiors. In that view of the matter, the impugned order is not sustainable in law and liable to be quashed and set aside. Consequently, following order is passed:

ORDER

a. Writ Petition is partly allowed in terms of prayer Clause (B). However, respondent no.4 shall be at liberty to recover the license fees, renewal charges alongwith late payment penalty, if any, in accordance with Rules prescribed and implement the order passed by respondent no.3 after securing aforesaid compliance.

b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024