



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6632 OF 2024

Jayesh Prabhakar Rai and Ors.

... Petitioners.

Versus

The State of Maharashtra

Through Principal Secretary and Ors.

... Respondents.

Mr. Nargolkar i/by Mr.Santosh Patil a/w. Ms.Shraddha Kadam for the
Petitioners.

Mr. Y.D. Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 06, 2024

P. C. :

1. By this petition, the challenge is to the order dated 14th March, 2024 passed by the Respondent No.1 i.e. State of Maharashtra through the Hon'ble Minister State Excise Department to the extent that it directs of recovery of license fees alongwith interest.
2. The Petitioners have no objection to the payment of license fees required to be paid under the statutory provisions and the grievance is restricted to payment of interest on the license fees in view of the settled position in law as enumerated in catena of decisions of this Court.
3. Learned counsel appearing for the Petitioners would submit

that the FL-II license was issued in the year 1969-1970 to the parents of the Petitioners and was not renewed beyond 31st March, 1975. After the demise of the Petitioners' father, the Authorities were approached for renewal of the license pursuant to the revised Circular of the State Government dated 13th February, 2012 directing the Collector to forward such cases to the Government, where, after the licenses were granted, business were subsequently was discontinued for one reason or another and ultimately, an Appeal under Section 137 of the Maharashtra Prohibition Act, 1949 [for short, "**Prohibition Act**"] came to be filed which was dismissed by the Commissioner of State Excise.

4. Against the order of the State Commissioner dated 9th March, 2021, the Petitioners' mother filed Revision Application under Section 138 of the Prohibition Act, which came to be decided by the Respondent No.1 by the impugned order dated 14th March, 2024, it was directed to pay the pending license fee and alongwith sum of Rs.3,55,11,098/- towards the interest to proceed further for renewal of the license. He submits that the demand of interest is contrary to the decisions of this Court, where the provisions of Section 114 of the Prohibition Act were analysed and it has been settled that when an Application for renewal of license is made and the Authority demands license fees or accumulated license fees, the license fees become due within the meaning of Section 114 of

the Prohibition Act from the date of order or the demand. In support, he relies upon the following decisions.

- (i) ***Decision of this Court in Ashok Pandurang Rane v. State of Maharashtra and Ors. passed in Civil Application No.2300 of 2019 dated 21st November, 2019;***
- (ii) ***Beena Lal Avataramani, through Power of Attorney holder Arvind Krishna Naik vs. State of Maharashtra and Ors. [2023 SCC OnLine Bom 2261];***
- (iii) ***Decision of this Court [Nagpur Bench] in Smt. Sushilabai Mohansingh Thakur vs. The State of Maharashtra and Ors. passed in Writ Petition No.477 of 2020 dated 10th November, 2023.***

5. *Per contra*, learned AGP, would firstly argue that by the impugned order what has been directed to be paid is the delayed payment charges which is distinct and separate from the payment of the interest as contemplated under Section 114 of the Prohibition Act. He would further submit that even accepting that what was levied was interest under Section 114 of the Prohibition Act, the procedure under the statutory provisions do not provide for the Authority to raise any demand and therefore there is no question of the license fees becoming due from the date of demand or the order. He submits that as against the decision of ***Ashok Pandurang Rane*** (supra), Review Petition has been filed and the same is pending.

6. I have considered the submissions and perused the record.
7. Clause (4) of the impugned order directs the payment of license fees alongwith "विलंब शुल्क", Loosely translated it would mean delayed payment charges. Although it is sought to be contended by learned AGP that the delayed payment charges is different from interest, in common parlance, interest is nothing but delayed payment charges. Even if it is accepted for the sake of argument that delayed payment charges is different from interest, the statutory provisions of the Prohibition Act should provide for levy of such delayed payment charges on the accumulated license fees. From the statutory provisions I do not find any provision which authorise such delayed payment charges to be levied on the accumulated license fees. The only provision which can be found is Section 114 (1) of the Prohibition Act, which reads thus:

114. (1) *All duties, taxes, fines (except fines imposed by a Court) and fees leviable under any of the provisions of this Act or in respect of any licence, permit, pass or authorisation granted under it and the cost of the supervising staff appointed under section 58A 8 [if not paid within the due date or the prescribed period, shall be recovered from any person liable to pay the same or from his surety, if any, with simple interest at the rate of 2 per cent. per month, from the date it has become due, as if they were arrears of land revenue."*

8. The said provision alongwith Section 49 of the Prohibition Act was considered in the case **Ashok Pandurang Rane** (supra), where the learned Single Judge had taken the view that Section

114 applies to recovery of interest from the date of demand. In the case of **Beena Lal Avatramani** (supra), the Division Bench has also taken the same view in the context of Section 114 of the Prohibition Act. The decision in the case of **Ashok Pandurang Rane** (supra) came up for consideration in a Reference before the Larger Bench in the case of **Smt. Sushilabai Mohansingh Thakur** (supra) and by judgment dated 10th November, 2023 passed in the said Writ Petition, the Larger Bench has held that when the Application for renewal of license is made and the Authority orders to pay or demands the license fees or accumulated license fees, the said license fees becomes due within the meaning of Section 114 of the Prohibition Act from the date of order or the demand and the Reference was accordingly answered. The decisions with which, I am respectfully bound, sets out an unequivocal terms that within the meaning of Section 114 of the Prohibition Act, unless there is an order or demand to pay the license fees or accumulated license fees, interest will not be leviable.

9. The impugned order when considered in the background of the settled judicial pronouncements would reveal the infirmity as alongwith the accumulated license fees though called as delayed payment charges in fact, what was levied is interest on the accumulated license fees, which has been held by this Court to become due and payable, from the date of order or demand.

Admittedly, in the present case, there is no such order or demand and therefore, Clause (4) of the impugned order to the extent that it levies delayed payment charges/interest is liable to be quashed and set aside. Accordingly, the impugned order to the extent of levying the delayed payment charges/interest is hereby quashed and set aside. Rest of the impugned order remained undisturbed.

10. Needless to clarify that as it is admitted that the original licensee has expired, appropriate proceedings would be taken out. Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]