



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 7131 of 2018

Ram S/o Rajendraprasad Agrawal

Versus

**The Superintendent of State Excise, Nagpur having its office at
Collectorate Compound, Civil Lines, Nagpur**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.L.Jaiswal, Advocate for the petitioner.

Shri H.R.Dhumale, AGP for the respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 10th JANUARY, 2024.

Heard.

2. The petitioner has filed the present petition challenging the demand notice of Rs. 3,79,665/- towards renewal of liquor licence i.e. CL-III licence for the period from 1st April, 2018 to 31st March, 2019 and the communication dated 7th September, 2018 directing the petitioner to deposit Rs. 22,59,675/- towards renewal of license for the period 2018-2023, along with interest.

3. As far as the demand notice dated 7th September, 2018 is concerned, whereby the respondents have demanded Rs.22,59,675/- towards licence fee for the period 2018-2023 along with interest upto August, 2018 is concerned, it is not permissible under the law for the simple reason that the license of the petitioner was never renewed for five years i.e. for the period 2018-2023. The record shows that the license was renewed for the period 1st April, 2018 to 31st March, 2019 i.e. for one year.

4. In that view of the matter, when the licence was renewed for one year, the respondent cannot claim the licence fee for five years. Accordingly, the demand notice dated 7th September, 2018 is not sustainable in the eyes of law.

5. As far as the another notice dated 19th December, 2018, directing the petitioner to deposit Rs.3,79,665/- towards renewal of CL-III licence is concerned, I do not find any illegality in the same for the reason that, when the licence was renewed on 1st April, 2018 for the period of one year, the licence was at the location Maskasath, Dhemsra Mohalla, Karanjikar Line, Reshim Odi, Nagpur and therefore the licence fee applicable to Nagpur City was supposed to be paid by the petitioner.

6. However, the petitioner paid Rs.1,73,250/- towards renewal of licence under misconception that as the petitioner has applied for transfer of his licence from Nagpur to Nildoh which is a village, the licence fee applicable to such village would be payable. Hence, the petitioner deposited Rs.1,73,250/- and not the licence fee applicable to the Nagpur City.

7. As far as the interest claim on that amount is concerned, it is without any authority or power as held by the Division Bench of this Court in the case of Maheshprasad Dwarkadas Jaiswal and another Vs. the State of Maharashtra and others¹ wherein this Court has held thus:

8. The petitioners have challenged the right of the respondent to claim interest on the licensee fee. It has been held in Writ Petition No.199 of 2006 that, there is no legal provision to recover interest over the license fees. The following observations have been made on the basis of the legal position ;

"6. Perusal of section 49 of the Bombay Prohibition Act would make it amply clear that the Government is entitled to recover the license fee including rent for the grant of privileges or right to any person in order to issue the license for dealing in the liquor business. Section 49 reads as follows :-

"Notwithstanding anything contained in this Act, the State Government shall have the exclusive right or privilege of importing, exporting, transporting, manufacturing, bottling, selling, buying, possessing or using

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any intoxicant, hemp or toddy, and whatever under this Act or any license, permit, pass, thereunder any fees are levied and collected for any license, permit, pass, authorization or other permission given to any person for any such purpose, shall be deemed to include the rent or consideration for the grant of such right or privilege to that person by or on behalf of the State Government".

On careful consideration of section 49 of the Bombay Prohibition Act, 1949 and the relevant circulars, particularly, the circular dated 21-04-1983 issued vide B.P.A./1083/9/PRO/2, it is quite clear that there is no legal provision to recover interest over the license fees. It is well known concept that interest can be recovered only on the amount which is lent and the amount which is found due or recoverable as a debt. License fees which was not paid for the period during which the business was not being operated by the petitioner could not have been treated as a legally recoverable debt from the petitioner. The recovery of the interest is not permissible under any contract, usage or other legal provision."

8. In the circumstances, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The communication dated 19th December, 2018 passed by the Superintendent of State Excise, Nagpur is hereby quashed and set aside;
- iii. The liberty is granted to the petitioner to claim the reimbursement of amount from 19th March, 2018 for remaining period upto 31st March, 2019,

during which period the licence was at Nildoh which is a village and for which the licence fee was less than applicable to the Nagpur City, if such is permissible under the law.

iv. If such application is made within four weeks from today, the Superintendent of State Excise, Nagpur shall decide the same within three months from the date of filing of same, in accordance with law.

[ANIL S. KILOR, J.]