2025:BHC-AUG:31737

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO.6567 OF 2022

Smt. Pramila Ganeshlal Jaiswal
Age : 80 years, Occu : Business &
CL-III Licensee bearing License No.19,
Chikalthana, Aurangabad … Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai – 400 032.

2. The Commissioner of State Excise,
Maharashtra State, Old Custom House,
Mumbai – 400 023.

3. The Collector,
Aurangabad

4. The Superintendent of State Excise,
Aurangabad … Respondents

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Shri. V. P. Latange, Advocate for the Petitioner
Shri. A. D. Wange, AGP for the Respondents – State.

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CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 17.11.2025
PRONOUNCED ON : 19.11.2025

ORDER :-

. Heard finally at the stage of admission with the consent of both the sides.

2. This is the Writ Petition under Article 227 of the Constitution of

India against the Order dated 06.08.2021 passed by the Respondent No.1 – State and consequent order dated 13.08.2021 issued by the Respondent No.4 – Superintendent of State Excise, Aurangabad directing the Petitioner to pay the interest of Rs.11,19,653/- on the amount of fees towards renewal of the CL-III license No.19 to run the retail sale of country liquor.

3. The Petitioner, under the said license was running the country liquor retail outlet at Chikalthana till 2008. The license was renewed till 2015-16. Since the premises where the retail sale was being done, was demolished due to road widening, there was no business or retail sale on the said license. On 30.04.2021 the Petitioner filed the Application for renewal of the license for the year 2016-17 to 2021-22. On the Application made by the Petitioner, the Government directed the Respondent Nos.2 and 4 to renew the license by recovering the license fee and interest thereon, by impugned order dated 06.08.2021. Consequently, the Respondent No.4 by the impugned order dated 13.08.2021 directed the Petitioner to pay Rs.20,08,390/- towards renewable fees and Rs.11,19,653/- towards interest thereon totaling to Rs.31,28,043/- towards renewable of the said license. The Petitioner, under protest paid the said amount and challenged the same in the present Writ Petition.

4. According to the learned Advocate for the Petitioner, the interest charged under the impugned communication is without any authority of law. This Court in Writ Petition No.13623 of 2018 decided on November 21, 2019 dealt with the similar issue and set aside the order of charging interest on the renewable fees. He submits that, the issue involved is covered by the said order of this Court. As the shop was closed, there was no business on the Petitioner's license and there was no generation of revenue and therefore, there is no question of charging interest by the Authority. He would submit that the Petition be allowed.

5. The learned AGP appearing for all the Respondents supports the impugned order. He submits that, the Respondents were well within their powers to recover the renewal fees with interest and no interference is called for in the impugned orders and the Petition be dismissed.

6. There is no dispute in respect of the aspect that, the Petitioner was issued the CL-III license for retail sale of the country liquor and the business under the said license took place till 2008, though the license was renewed till 2015-16. There was no business on the said license due to demolition of the shop because of widening of the road and subsequently on 30.04.2021 the Application for renewal of the said

license of the Petitioner was submitted for the period from the year 2016-17 to 2021-22.

7. Copy of the order of this Court in the above referred Writ Petition No.13623 of 2018 dated 21.11.2019 is enclosed at Exh. 'J' to the Petition. Perusal of the same show that, this Court had considered the identical issue. It would be profitable to reproduce the relevant paragraph nos.1, 2, 7 to 11 of the said Judgment, which read thus:

> *"The petitioner had a licence to sell liquor. His business— M/s. Ruchira Wines—was initially located at Shivaji Park, Dadar (West), Mumbai. Later, it was shifted to Shivaji Nagar, N.M. Joshi Marg, Mumbai. As he had to vacate the tenanted shop, be could not run the business beyond 2001.*
>
> *2. Under the Bombay Prohibition Act, no fresh licences can be granted, but the Government renews or revives old licences. So in 2017, the petitioner applied to the authorities to have his licence renewed. It was renewed. As Section 49 of the Bombay Prohibition Act mandates, the petitioner was required to pay the licence fee for all the previous years when he did not run the shop. The licence fee would be reckoned as if the licence remained uninterrupted or renewed periodically. Therefore, on the petitioner's application, the second respondent passed the impugned order, dated 1st October 2018.*
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> *7. Section 49 of the Act, true, is silent whether the authorities can levy interest on the accumulated licence fee. It begins with a non-obstante clause. It gives the State Government "exclusive right or privilege" to deal in or with any intoxicant, hemp, or toddy. If this Act, Rule, or Order levies any fees for any licence, permit, pass, authorization, or other permission given to any person to deal in liquor, the fees "shall be deemed to include the rent or consideration for the grant of such right or privilege". The provision reads:*
>
>> *49. 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 any intoxicant, hemp*

> *or toddy, and whenever under this Act or any rules or orders made thereunder any fees are levied and collected for any licence, permit, pass, authorisation or other permission given to any person for any such purpose, such fees 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.*

8. Evidently, Section 49 only talks about the licence fee, but not about interest. Granted, the amended Section 114 of the Act empowers the authorities to collect interest @ 2% per month under certain circumstances. It pays to extract that provision, too. And it reads:

> *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 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.*
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> *(italics supplied)*

9. Section 49 of the Act was subjected to judicial interpretation on more than one occasion. A learned Single Judge of this Court in Smt. Keti Ardeshir Kapadia has held that the authorities have no power to levy and collect interest under Section 49 of the Act. Later, approving that view, a learned Division Bench in Maheshprasad Dwarkadas Jaiswal has held to the same effect. In paragraph 8 of the judgment, the Division Bench has observed:

> *"[O]n careful consideration of section 49 of the Bombay Prohibition Act, 1949 and the relevant circulars, particularly, the circular dated 21.4.1983 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."*

10. Indeed, the judicial dictum is unmistakable. That said, in neither judgment has Section 114 of the Act fallen for consideration, though the amended version was on the statute book by then. Section 114, I reckon, applies to the recovery of interest from the date of demand. Here, when the petitioner wanted to have the licence renewed, the Authorities ordered or demanded the accumulated licence fee. Then, as per Section 114, the interest would apply only from the date of demand.

11. Once the authorities demand the licence fee and, thereafter, if there occurs any delay on the licencee's part, that would attract Section 114 of the Act. In other words, Section 114 is the provision that applies to 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.

Under these circumstances, I hold that the authorities' levying interest @24% per annum has no statutory backing. So I allow the Writ Petition. As a result, I set aside the impugned order, dated 12th October 2018, as well as consequential order, dated 3rd January 2019, to the extent of their levying interest. The petitioner ought to pay the licence fee as demanded, in two weeks after this order is uploaded.

In view of disposal of the writ petition, the civil application, if any, also stands closed."

8. The Division Bench of this Court in *Beena Lal Avatramani vs. State of Maharashtra and Others, Writ Petition (L) No.21926 of 2023* decided on 17.10.2023 had dealt with the issue whether the licensing authorities had the power to levy interest on accumulated license fees. The Division Bench, on considering the aspects of the matter, observed as follows:

"10. A bare perusal of the above referred provision of law shows that interest on duties, taxes or fines and fees leviable

under any of the provisions of Act under this section can be charged only when duties or taxes or fine or any other fees are not paid within the due date or the prescribed period and whenever there is such a failure to pay a duty or tax or fine or any other fees within the stipulated time, the interest would be chargeable at the rate of 2% per month from the date " it has become due". A duty or tax or fine or fees or any other fee as contemplated in Section 114 (1) would become due only when there is a failure to pay the same within the prescribed time line i.e., within the due date, that is on or before the due date or the time given for payment of the same. That means, the interest at the said rate is chargeable not from the date of the demand of the duty or tax or fine etc. but from the date on which there is a failure to pay the same within the due date or the prescribed period.

11. In the case of Kishor Pandurang Rane & Ors. Section 114 has been interpreted to indicate that the recovery of the interest shall be from the date of demand. The learned Single Judge in our opinion is right in taking a view that interest is recoverable. However, we would like to clarify that the interest, under Section 114, would be payable from the date it becomes due or from the date of demand as the case may be.

12. When we apply the above referred law to the facts of the present case, we find that Respondents have committed a serious error of law and facts in charging interest on the accumulated license fees. Now it is well settled law, as seen from the discussion made herein above, that license fee is not due and payable for the period when the license was not being operated. Besides there is no power conferred under Section 49 of the Act upon the authorities to levy interest on the license fee. The license fee interest demanded in the present case is on the amount of license renewal fee of Rs. 1,44,11,060/- and it is to the extent of Rs. 2,86,58,892/-. Having regard to the settled position of law, such interest could not have been charged upon the license renewal fees and to that extent the action of the Respondents would have to be termed as bad in law. Of course, the Respondents would be within their right to charge interest at the rate of 2% per month at least from the date of demand which is on account of Rs. 1,44,11,060/- from the date of the demand i.e., 30th August 2022, which is the date on which demand notice came to be issued.

13. As regards the contention that after having claimed concession in payment of license fees the Petitioner cannot now agitate the action of the Respondents in charging interest on the accumulated license fees, we must say that when the law does not permit the authorities to charge interest on the accumulated license fees, the demand made by the Petitioner

> *cannot be treated as estopping Petitioner from challenging other action of the authorities because, there is no estoppel against law. A useful reference in this regard may be made in the case of* ***The State of West Bengal and Ors. Vs. Gitashree Dutta (Dey)1****.*

9. In the case at hand, admittedly, there was no demand of the license fees by the authorities to the Petitioner. The Petitioner applied for renewal of the license and therefore, the impugned communications were issued. It is also clear from the papers on record that, the amount of license fees with interest was calculated and communicated to the Petitioner by communication dated 13.08.2021 and the Petitioner had paid the same under protest, on the very same day i.e. on 13.08.2021. Therefore, it is also not the case that, after issuance of the communication dated 13.08.2021, the Petitioner failed to pay the renewal fees and therefore, the authorities were entitled for interest from the date of demand. Having regard to the above referred settled position of law, the impugned communication / demand of interest by the Respondents cannot stand the scrutiny of the law and will have to be set aside. Hence, the following order:

ORDER

(i) The Writ Petition is allowed in terms of prayer clause (a) of the Petition, which reads as under:

> *"(a) The Hon'ble Court be pleased to issue appropriate writ, orders or directions under Article 226 and 227 of the Constitution of India calling for papers and proceedings in respect of Petitioner's CL-III License No.19 and after scrutinizing the validity and legality thereof the order dated 06.08.2021 passed by Respondent No.1 and*

> *order/letter dated 13.08.2021 issued by the respondent No.4 be quashed and set aside to the extent of payment of interest of Rs.11,19,653/- and therefore Respondents be directed to refund the amount of Rs.11,19,653/- to the petitioner or direct the respondent to adjust the same in the subsequent renewal fees."*

The Writ Petition stands disposed off.

(NEERAJ P. DHOTE)
JUDGE

GGP

Signed by: Gajanan G. Punde
Designation: PA To Honourable Judge
Date: 19/11/2025 19:04:42