(2007) 02 RAJ CK 0034

In the Rajasthan High Court

Hotel Residency Palace APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Rajasthan Excise (Grant of Hotel Bar/Club Bar/Restaurant Beer Bar Licences) Rules, 1973 — Rule 3

Rajasthan Excise Rules, 1956 — Rule 72A

Citation : (2008) 1 RLW 87

Hon'ble Judges : S.N. Jha, C.J;Govind Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—This special appeal is directed against the order of the learned Single Judge dated 12.5.2005 dismissing the writ petition of the appellant along with another writ petition preferred by Hotel Rajputana Palace. Facts of the case briefly stated are as follows:

2. The appellant which is engaged in hotel business obtained licence for retail sale of foreign liquor in the hotel premises in terms of the Rajasthan Excise (Grant of Hotel Bar/Club Bar/Restaurant Beer Bar Licences) Rules, 1973 read with the Rajasthan Excise Rules, 1956 under the Rajasthan Excise Act, 1950. The case of the appellant is that it held licence for the period 2004-05 expiring on 31.st March, 2005. On 28.2.2005 the appellant submitted application after depositing the required amount in terms of Rule 72A of the Rules of 1956 which requires application for renewal should be made at least one month before commencement of the year along with the prescribed licence fee Rs. 1.50 lakhs, and it was entitled to have the licence renewed on the same terms and conditions as prevailing on 28.2.2005 in accordance with the existing licence. However, the respondents demanded higher licence fee as per the amended rule which came into force with effect from 1.4.2005 by which the licence fee had been raised from Rs. 1.50 lacs to Rs. 3.00 lacs. In the circumstances, even

though the appellant deposited the entire licence fee as prescribed in the rules, the licence was not renewed, and by communication dated 8.4.2005 it was asked to deposit further amount of Rs. 1.50 lacs. Feeling aggrieved the appellant filed writ petition for quashing the communication dated 8.4.2005 and a direction upon the respondents to renew the licence for the year 2005-06 forthwith. The writ petition having been dismissed by the learned Single Judge, the appellant has come to the Division Bench in appeal.

3. Shri Sunil Joshi appearing for the appellant submitted that in terms of Rule 72A of the Rajasthan Excise Rules, 1956, application for renewal is required to be filed at least one month before commencement of the year that is the next year, "along with a treasury receipt showing payment of licence fees". According to the counsel, on plain reading of the rule, it is clear that what the licensee is required to deposit for getting the licence renewed is the licence fees in force at the relevant time on the date of application. Any subsequent revision/increase in the licence fee by amendment is not relevant as it cannot be retrospectively applied. In the instant case, it was submitted, the appellant had a right to get the licence renewed as per the existing terms and conditions and on deposit of the fees as applicable at the relevant time, and the respondent authorities have no right to demand additional amount on the strength of subsequent amendment, and the renewal of licence could not be withheld or refused on that ground. In support of his submissions, counsel placed reliance of State of Rajasthan and Ors. v. Hotel Hillock Pvt. Ltd. 2002 (2) RLR 197 , Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh, and M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others,

4. Before considering the submissions of counsel, it would be appropriate to notice the relevant provisions at one place. Section 24 of the Rajasthan Excise Act provides for grant of exclusive privilege of manufacture, sale - by wholesale or by retail - etc. of country liquor, foreign liquor etc. under a licence. Section 41 of the Act empowers the State Government to make rules, among other things, prescribing the procedure to be followed in the matter of grant of licence for vend by wholesale or by retail any excisable article. In exercise of the said power the State Government has framed the Rajasthan Excise Rules, 1956 (in short, ''the 1956 Rules'') and the Rajasthan Excise (Grant of Hotel Bar/Club Bar/ Restaurant Beer Bar Licences)Rules, 1973(in short, ''the 1973 Rules''). The 1956 Rules are general in application as compared to the 1973 Rules which are applicable to hotels, clubs and restaurants and have an overriding effect in case of any conflict. The relevant provisions are as under-

Rules of 1956

72A. Application for Licences-Every application for a licence shall clearly describe the premises in which the applicant intends to conduct his business and shall be submitted in case of renewal at least one month before the commencement of the year "and where the licence is granted for a longer period at least one month before the commencement of the first year of the period," for which it is required

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and shall be accompanied by a treasury receipt showing payment of licence fee, provided where an application for renewal of licence is not made within the prescribed period, it shall be accompanied by additional fee, at the following rates:

(i) Rs. 5,000A or 5% of the licence fee whichever is less, if the delay in deposition of fee is upto one month.

(ii) Rs. 10,000/- or 10% of the licence fee which ever is less, if the delay in deposition of fee is more than a period of one month.

...

Rules of 1973

3. Eligibility and procedure for grant of hotel licence- (1) Any person who owns and runs a hotel as defined in these rules and who does not possess any of the disqualifications mentioned in Sub-rule (8) below shall be eligible to apply for a Hotel Bar/club Bar licence.

...

(3) Every application for a Hotel Bar/club Bar licence shall be properly signed and shall be accompanied by the following amount of initial fee which shall be in addition to the usual annual fee payable under Rule 69(1) of the Rajasthan Excise Rules, 1956.

...

7A. Fees for the renewal of licences-(1) A licence granted under the principal rule shall expire on the 31st day of March every year.

(2) A person possessing a licence under these rules and seeking renewal of the same shall apply in accordance with Rule 72-A of the Rajasthan Excise Rules, 1956 and such application shall be accompanied by a treasury receipt showing the payment of (i) renewal fee equivalent to the initial fee prescribed in Rule 3(3), and (ii) the usual licence fee payable under Rule 69(1) of the Rajasthan Excise Rules, 1956.

8. Rules to have overriding effect- In case there is any conflict between the provisions of these rules and the Rajasthan Excise Rules, 1956, the former shall prevail.

5. a reading of the above provisions, it would appear that though licence may be granted for longer period, in the case of Hotel Bar/Club Bar/Restaurant Bar licence, by virtue of the provisions of Rule 7A of the 1973 Rules the licence expires on 31st March of every year which means that the licence is granted only for one year at a time. Though the licensee has right to apply for renewal of the licence, on such renewal it will be deemed to be a fresh licence for the next year. The period of such licence commences from 1st of April of the relevant year, and therefore the terms and conditions of the existing licence for the year prior to the

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relevant year would be totally irrelevant for the purpose of determining the rights and obligations under the new license.

6. Submission of counsel for the appellant however was that as the application for renewal is to be made at least one month before commencement of the next year, after depositing the licence fees, it would follow that licence fee which was payable on the date of application for renewal should be treated as the requisite licence fee and notwithstanding any increase/revision of the fees by subsequent amendment, the licensee cannot be asked to deposit the additional amount on the strength of such amendment for having its licence renewed. Counsel emphasized that additional fee can be asked for only if the application for renewal of licence was not made within the prescribed period, that is, at least one month before commencement of the next year.

7. The submission of the counsel overlooks the legal position that the licence of Hotel Bar/Club Bar is issued for a period of one year coming to an end on 31st March of the year. As observed above, grant of licence for the next year - including renewal thereof for the next year - will be governed by the terms and conditions applicable in the next year. The idea underlying submission of application for renewal of licence at least one month before commencement of the next year is to enable the authorities to process the application and take the decision taking into account the past conduct etc. of the licensee. It is relevant to mention here that Rule 3 of the Rules of 1973 contains detailed procedure and lays down guidelines for grant/rejection of the application including application for renewal of the licence. Having regard to nature of the liquor business and the fact that licence commences from 1st April of the relevant year, it is essential that application for licence - for renewal or otherwise - is made well in advance so that applications are processed, due enquiries made after which licence may be granted or refused, as the case may be. Submission of application however, does not by itself create any right because renewal cannot be claimed as a matter of right. No doubt renewal of licence stands on a better footing compared to application for fresh licence but it does not mean that renewal will be on same terms and conditions as mentioned in the erstwhile licence as existing prior to the relevant year. On such renewal it is to be treated as a fresh licence for the next year. It is relevant to point out that there is no separate provision for renewal of licence and it is governed by the common provisions of Rule 72A of the 1956 Rules and Rule 3 of the 1973 Rules.

8. Adverting to the instant case, it is not in dispute that the annual licence fees during the year 2004-05 was Rs. 1.50 lacs which was raised to Rs. 3.00 lacs by amendment in the Table of Rule 3(3) of the 1973 Rules with effect from 1.4.2005 by virtue of the notification S.O.I dated 1.4.2005. It would thus follow that since period of licence commences from 1.4.2005 of the relevant year, by reason of increase in the licence fee by way of amendment of the rule, the licensee had no option but to pay the licence fee which came into force with effect from 1.4.2005. The fact that the appellant had filed application for renewal of licence

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on 28.2.2005 was relevant only for the purpose of compliance of Rule 72A which requires that application for renewal of licence should be made at least one month before commencement of the year along with a treasury receipt showing payment of the licence fees. It does not mean that liability of appellant would be limited to the scale of fee prescribed under Rule (3) of the Rules of 1973 prior to its amendment by notification dated 1.4.2005. The "additional fee" referred to in the latter part of Rule 72A merely signifies payment of penalty for not making application within the prescribed period. It has no other significance. It may be clarified here where the licence fee is raised after submission of the application for renewal (but before the commencement of the next year), the application cannot be rejected on the ground that the fee existing on the date of the commencement of the licence has not been deposited. In such a case, a reasonable opportunity has to be given to deposit the balance amount.

9. In State of Rajasthan v. Hotel Hillock Pvt. Ltd. (supra) on which heavy reliance was placed by the counsel for the appellant, the dispute related to the year 1998-99. Initial fee of Rs. 2 lakhs had been deposited in terms of Rule 3(3) of the Rules of 1973 and in addition thereto, Rs. 3,000/- had also been paid as minimum vend fee payable under Rule 69(1) of the Rules of 1956. During currency of the licence, on 9.7.1998 the vend fee payable under Rule 69(1) and fees payable for per bulk litre on consumption under Rule 3(3) of the Rules of 1973 was upwardly revised by amending the rules. As a result of the amendment, the initial fee for renewal under Rule 3(3) read with Rule 7A of the Rules of 1973 was raised to Rs. 4.50 lakhs and minimum vend fee was fixed at Rs. 25,000/- under Rule 69(1) of the Rules of 1956. Demand was made at the amended rates which gave rise to dispute. The question for consideration - as framed by the Division Bench - was whether the demand for initial renewal fee payable by an applicant and paid along with renewal application can be enhanced on account of amendment in rule prescribing licence fee during operative period of licence, but after the renewal has become effective, and whether such amendment is not retrospective. The question was answered in favour of the licensee.

10. The ratio of decision supports the view which we have taken above. It goes without saying - as held by the Division Bench - that once licence is granted or renewed, as the case may be, upon such grant or renewal, the licensee acquires certain rights and it is entitled to operate the licence on the terms and conditions as mentioned therein, and any amendment or revision in the licence fee by amendment or otherwise cannot be applied to its prejudice. The action was found to be unjustified as it was founded on an amendment/revision during currency of the licence. The instant case stands on a different footing on facts inasmuch as the amendment of the rule raising the licence fee came into effect from 1.4.2005. There was no ''mid-term'' revision/enhancement of the rates. If the period of licence commences from 1st April - which cannot be disputed, it would be naturally governed by the rules in force. Had the rates been revised subsequently, that is after 1.4.2005, the position would have been different. In

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that case the instant case would have stood on the same footing as M/s. Hotel Hillock Pvt.Ltd.

11. In Vijayalakshmi Rice Mills v. State of Andhra Pradesh. The facts were as follows: The Rice (Andhra Pradesh) Price Control Order, 1963 contained provisions for compulsory sale of rice by the Millers at controlled price fixed by the Central Government from time to time. The appellant sold various quantities of a particular variety of rice (which was subject matter of dispute) for which they were paid at the prescribed rate. By amendment, later, a higher rate/price was fixed by the Central Government which led to representations by the appellants for payment of the enhanced price. The question which arose for consideration was whether the appellants were to be paid the price for supply made by them from 26.1.1964 to 21.2.1964 at the rate of Rs. 46.89 per quintal or at the enhanced rate of Rs. 52.25 per quintal as fixed by the amendment order. It was held that as the transaction was already complete by the time the amendment came into force, it could not be given retrospective effect, and as the appellants had already been paid the price at the rate then applicable for the quantity sold by them, they were not entitled to claim a higher price subsequently fixed by amendment. The decision lends no support to the case of appellant.

12. The case of Gurucharan Singh Baldev Singh v. Yashwant Singh and Ors. (supra) was cited in support of the proposition that the application for renewalis to be considered as per the provisions in vogue at the time of application. The decision is totally irrelevant for the purpose of this case. That was a case of repeal of enactment and the question for consideration was whether the repeal would entail rejection of the renewal application. It was held that despite the repeal of old Act, the application for renewal has to be decided as per the repealed law by virtue of the saving Clause of the repealing enactment. The Court also referred to Section 6(c) of the General Clauses Act which provides that notwithstanding repeal of any enactment, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. In that connection, the Court made observation about the nature of right of the permit-holder for renewal of permit - on which counsel placed particular reliance. These observations are totally irrelevant in the facts of the present case.

In the above premises, the contentions of the counsel for the appellant having been dealt with and rejected, we find no merit in this appeal which is accordingly dismissed.

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