(1997) 09 AP CK 0049

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 7484 and 7486 of 1991

K. Chandra Sekhara Rao APPELLANT

Vs

Deputy Commissioner of Excise and Another RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Citation : (1997) 6 ALT 658 : (1998) 1 APLJ 108

Hon'ble Judges : Y. Bhaskar Rao, J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : D. Krishna Murthy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Rajagopala Reddy, J.—Since the question of law raised is common, these writ petitions are disposed of by common order.

2. The facts of W.P. No. 7486/91 are as follows: The petitioner started a partnership firm in the name of M/s Rama Krishna Wines and Bar at Gaddipadu village in Guntur District. Bar licence was obtained as per A.P. Foreign Liquor and Indian Liquor Rules, 1980 (for short "the Rules") on 12-8-1988 for a block period of 5 years and he has been carrying on the business. While the matter stood thus, the 2nd respondent issued notice dated 27-11-1989 informing that the licensee''s premises falls within the limits of Guntur Municipality w.e.f. 28-12-1987 and hence he was liable to pay the differential licence fee of Rs. 97,000/- with effect from 12-8-1988,, the date of issuance of licence. It was mentioned in the said notice that" the Government of A.P. by G.O.Ms. No. 944, M.A., dated 25-11-1987, included Gaddipadu village in the Guntur Municipality. The petitioner submitted his explanation stating that Gaddipadu village was not included in Guntur Municipality and that the respondents had no power to enhance the licence fee after the licence was granted. It was also stated that the respondents had no power to collect the licence fee with retrospective effect. The explanation was rejected and the petitioner was directed to pay Rs. 97,500/-

from 12-8-1988 to 30-9-1990, by an order dated 12-1-1990. The petitioner carried the matter in appeal before the Dy. Commissioner of Excise, Guntur, the 1st respondent herein, who subsequently dismissed the appeal by an order dated 8-3-1991. This order is under challenge in this writ petition.

3. The facts of W.P.No. 7484/91 are as follows: In this case also the petitioner obtained bar licence as per the Rules on 1-10-1988 for a block period of 5 years. In the show-cause notice issued on 27-11-1989, the 2nd respondent directed the petitioner to pay the differential licence fee of Rs. 52,500/- w.e.f. 1-10-1988, the date of issue of original licence. It was mentioned in the notice that Gaddipadu village was included in the Guntur Municipality w.e.f. 28-12-1987 by G.O.Ms.No. 944, M.A., dated 25-11-1987. The petitioner''s explanation having been rejected, the matter was carried in appeal before the Dy. Commissioner of Excise, Guntur, the 1st respondent herein, who dismissed the appeal by an order dated 8-3-1991, which is now under challenge in this writ petition.

4. It is the case of the respondents as is evident from the counter-affidavit filed by the 2nd respondent in W.P.No. 7484/91, that Gaddipadu village fell within the Guntur Municipal limits w.e.f. 28-12-1987 as per the G.O.Ms.No. 944, Municipal Administration, dated 25-11-1987. The licensee has to remit licence fee at the rate applicable to the Guntur Municipality from the date of the issue of the licence, which is an event subsequent to the date of the above G.O. Hence the licensee was liable to pay the differential licence fee from the date of issue of licence. The Government is empowered to enhance the licence fee due to change of the conditions of the locality such as increase in population of the locality or its distance from the periphery of any Municipality or Corporation, in which the licenced premises is situated as per Schedule-I of Rule 25 of the Rules. It was further stated that the licensee was bound by counter-part agreement executed by him undertaking to pay any increased licence fee as and when levied.

5. The following three contentions were raised by the learned Counsel for the petitioners:

(i) In view of the absence of any material to show that Gaddipadu village falls within the Guntur Municipality, the differential levy is illegal,

(ii) The Government has no power to enhance the licence fee once the licence was granted fixing licence fee.

(iii) The levy of the differential licence fee retrospectively is not permissible.

6. There is no difficulty in holding that Gaddipadu village fell within the Municipal limits of Guntur Municipality w.e.f. 28-12-1987 as stated in the notice and also in the counter-affidavit as per amendment issued in O. Ms. No. 944, M.A., dated 25-11-1987. The Commissioner of Guntur Municipality in his letter dated 22-2-1990 has also stated that Gaddipadu village was included within Guntur Municipality limits from 28-12-1987. The Chairman of Urban Development Authority, Vijayawada, has also stated that the said village was included in

Guntur Municipal limits. In view of the above material it cannot be said that there was no material to show that Gaddipadu village fell within'' Guntur Municipal limits.

7. The next question is whether the Government is empowered to collect the enhanced licence fee. Licence was granted to the petitioners in August 1988/ October, 1988. Even by that date Gaddipadu village was within the municipal limits of Guntur and the licence fee ought to have been fixed for the shops of the petitioners on the basis of population of the Municipality. The petitioners'' liability was therefore already subsisting at the time of grant of licence. However, by oversight lesser licence fee was fixed by the authorities. Thus there is no increase in the levy after the licence was granted. What is now being collected is the levy that is payable by the petitioners on the date of issue of licence. Hence the question whether the Government has got power to levy enhanced licence fee during the currency of licence may not arise in this case. This question is squarely covered by a decision in M/s. Swagath, Miryalaguda v. Excise Superintendent, Nalgonda District, 1993 (2) An.W.R. 601. Further in view of the fact that the petitioners had already executed a counter-part agreement undertaking to pay any increased levy, it is not open to the petitioners to question the demand now made. The petitioners are, therefore, estopped to make any grievance to the increased levy on any ground. They are bound to pay any increased licence fee which was fixed in accordance with the Rules. Further it is significant to notice that the impugned demand was not questioned on the ground of arbitrariness. We have considered this legal aspect in Sri Rama Wines and Ors. v. The Excise Superintendent, Adilabad (W.P.No. 13903/89 disposed on 2-9-1997), holding that the authorities are empowered to collect any differential licence fee.

8. The contention regarding the retrospectivity of levy is misconceived. As seen above, the petitioner''s liability to pay the enhanced levy as per the population of the Municipality already existed as on the date of the issue of licence. The date of notice cannot be said as the date of the enhanced levy. By virtue of the notice the demand was made for the payment of the licence fee, which was payable by the petitioners as on the date of issue of licence. Thus, we do not find any levy of licence fee retrospectively.

9. In view of the above discussion, the writ petitions fail and are accordingly dismissed; in the circumstances no costs.

