**(2003) 03 AP CK 0072**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No''s. 17837 and 20258 of 2002

Mahati Wines APPELLANT

Vs

Revenue Department and Others RESPONDENT

**Date of Decision :** 20-03-2003

**Acts Referred:**

**Citation :** (2003) 3 ALD 24 : (2003) 3 APLJ 23

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** A. Giridhar Rao, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

V.V.S. Rao, J.—In the event of permission being granted for shifting of IL-24 shop from one licensed premises to other, what is the licence fee to be collected? This question of some seemingly importance that falls for consideration in these writ petitions. As the question arises in both the writ petitions, both are being disposed of by this common order.

2. The petitioner in W.P. No. 17837 of 2002 was initially granted a licence in Form IL-24 under A.P. Indian Liquor and Foreign Liquor Rules, 1970 (''the Rules'') for running a wine shop at Eepurupalem village during the year 1998-99. The petitioner in W.P. No. 20258 of 2002 was granted such a licence in the same village for the same year. As there was agitation in the said village, the third respondent, on an application made by the petitioners, permitted shifting of their IL-24 shops to other places. The petitioner in W.P. No. 17837 of 2002 was permitted to shift the shop to East Gangavaram village and the petitioner in W.P. No. 20258 of 2002 was permitted to shift the shop to P. Dornala village in Prakasam District.

3. The licence is granted for a period of one year as per Rule 24 of the Rules. A licensee is required to take renewal under Rule 26-A of the Rules by applying one month in advance of expiry of the licence. The petitioners'' obtained licence by

paying the required slab rate of licence fee at Rs. 4,50,000/-. It appears, for the year 2002-03 in East Gangavaram village as well as P. Dornala village, the Government and the Commissioner of Prohibition & Excise permitted an additional shop each. For the new licensees, the licence fee levied was Rs. 3,00,000/- because the population of the villages was less than 10,000. Having come to know this, the petitioners filed these writ petitions seeking a declaration that the action of the respondents in fixing the licence fee at Rs. 4,50,000/- for the excise year 2002-03 is illegal, discriminatory and un-reasonable.

4. In W.P. No. 17837 of 2002, a counter affidavit is filed by the respondents inter alia stating that originally the petitioner was granted licence at Eepurupalem village where the applicable slab rate of licence fee is Rs. 4,50,000/-. Therefore, even if the shops are permitted to be shifted under Rule 25, the petitioners are liable to pay the said licence fee.

5. A licensee under the Rules is required to pay annual licence fee from time to time at the rates shown in the schedule appended to the Rules. Schedule appended to the Rules prescribes the following rates for those who obtain licence in Form IL-24 vide item 8.

IL-24 -Retail licence for the sale of all kinds of Indian Liquor, Foreign Liquor and/or Beer not to be consumed on the premises (''Off'' licence)

(a) Rs. 2,00,000 (Rupees two lakhs) per year in the place where the population of the village/town/city does not exceed 10,000;

(b) Rs. 3,00,000 (Rupees three lakhs) per year in places where the population of the village/town/city is above 10,000 but does not exceed 50,000;

(c) Rs. 6,00,000 (Rupees six lakhs) per year in places where the population of the village/town/city is above 50,000 but does not exceed 3,00,000; and

(d) Rs. 9,00,000 (Rupees nine lakhs) per year in places where the population of the village/town/city is above 3,00,000:

Provided that the licence fee in respect of Retail Shops situated within a belt of 5 kms. from the periphery of Municipal Corporations shall also be at the rate of fee of retail shops situated within the limits of such Corporations;

Provided further that the licence fee in respect of retail shop situated within a belt of 1 km. From the periphery of Municipalities and Notified areas shall also be at the rate of licence fee of retail shops situated within the limits of such Municipalities and notified areas;

Provided also where a retail shop falls within the belt area of a Corporation as well as a Municipality and notified area the licence fee payable shall be the fee applicable to the retail shop situated in the belt area of the Corporation.

6. Reading the above proviso, it shows that where the population of the village/town/city does not exceed 10,000, the annual licence fee payable is Rs.

 

3,00,000/-; where the population is above 10,000, but does not exceed 50,000, the licence fee payable is Rs. 4,50,000/-. It is not denied that the population of East Gangavaram village as well as P. Dornala village is less than 10,000. Therefore, in the admitted position, is it permissible for the licensing authority to collect Rs. 4,50,000/- as annual licence fee?

7. Item 8 of Schedule read with Rule 25 of the Rules does not anywhere stipulate that a person who obtains licence in a village/town/city falling in higher slab of licence fee, is liable to pay the same licence fee even when IL-24 shop is shifted to a village/town/city with less slab rate of licence fee. The Rules have taken sufficient care insofar as Municipalities or Municipal Corporations are concerned. The relevant entry in the Schedule provides that in respect of retail shop situated within a belt of 5 k.m. from the periphery of municipal corporation and/or 1 k.m. from the periphery of municipalities and notified areas shall also be at the rate of licence fee of retail shop situated within the limits of such corporations and municipalities. The Rule does not lay down anywhere that when a person who obtains licence at a place with annual licence fee of Rs. 4,50,000/- shifts his shop to another place where the population is less, should also pay the same licence fee prescribed for a place with higher population.

8. Rule 35(2) also does not enable the Commissioner or appropriate authority to impose any condition while permitting shifting of the shop. The only condition prescribed is levy of fee of Rs. 10,000/- for granting permission for shifting of the licensed premises within the same revenue village or town or Excise Station.

9. Further, on their own showing, the respondents have sanctioned additional shops in both the villages and levied licence fee of Rs. 3,00,000/-. If the contention of the Asst. Govt. Pleader for Excise is accepted, it results in invidious discrimination which has no rationale nor such classification is justified in the known principles of law.

10. In the result, for the above reasons, the writ petitions are allowed. There shall be no order as to costs.

 