(2020) 02 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 2629 of 2019

M/s Vidarbha Bottlers Pvt. Ltd APPELLANT

Vs

Honorable Minister Of State State Excise And Anr RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Maharashtra Prohibition Act, 1949 — Section 54, 54(1)(a), 54(1)(c), 54(1)(a)(c), 55, 56, 137

Citation : (2020) 02 BOM CK 0010

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : S. Zia Qazi, Mrunal Naik

Final Decision : Allowed

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.

2. By this writ petition, the petitioner has challenged order dated 05/12/2018, passed by the respondent No.1 and order dated 28/06/2018, passed by the

respondent No.2, whereby licence of the petitioner â?" establishment for running business of manufacturing country liquor has not been renewed by

exercise of power under the provisions of the Maharashtra Prohibition Act, 1949.

3. The petitioner was holding licence for manufacturing country liquor. On 13/05/2016, the respondent No.2 passed an order cancelling / refusing to

renew the aforesaid licence of the petitioner, purportedly exercising power under Section 54 of the Maharashtra Prohibition Act, 1949. The ostensible

reason for passing the said order was that the petitioner was allegedly in arrears of huge amount of sales tax dues. Reliance was placed on the

Government Resolution dated 03/09/2005, while passing the said order.

4. The petitioner challenged said order dated 13/05/2016, before this Court. On 13/06/2018, a Division Bench of this Court passed an interim order,

coming to the conclusion that the respondent No.1 was unable to demonstrate any provision in the aforesaid Act empowering the said respondent to

cancel / refuse renewal of licence of the petitioner on the ground of sales tax dues. The Division Bench of this Court found that there was no power

with the respondent No.2 or any other Authorities of the State under the provisions of the aforesaid Act to pass such an order by acting as an agent of

the Sales Tax Department for recovering its dues. The Division Bench of this Court further directed that the establishment of the petitioner should be

de-sealed forthwith to permit the petitioner to run the business and it was further directed that the State Excise Department would take a decision on

renewal of licence of the petitioner by ignoring the Government Resolution dated 03/09/2005.

5. Pursuant to the said interim order passed by the Division Bench of this Court on 28/06/2018, the respondent No.2 passed its order on the claim of

the petitioner for renewal of its licence. Although the respondent No.2 did not refer to the Government Resolution dated 03/09/2005, in order dated

28/06/2018, it was held that renewal of the licence of the petitioner was being withheld by exercising power under Section 54(1)(a) and (c) of the said

Act.

6. When the petitioner sought to amend the pending writ petition before this Court to incorporate challenge to the said order dated 28/06/2018, passed

by the respondent No.2, an objection was taken on behalf of the respondents that an alternative remedy of appeal was available under Section 137 of

the aforesaid Act. On this basis, the Division Bench of this Court disposed of the writ petition, by keeping all questions open and permitted the

petitioner to exhaust the aforesaid alternative remedy.

7. Accordingly, the petitioner filed an appeal before the respondent No.2, which stood dismissed by impugned order dated 05/12/2018. The reasoning

adopted by the respondent No.1 was similar to the reasoning given by the respondent No.2 while passing impugned order dated 28/06/2018. This

Court issued notice for final disposal on the present writ petition and accordingly, it is heard finally at admission stage.

8. Mr. S. Zia Qazi, leaned counsel appearing for the petitioner submitted that the

impugned orders deserved to be set aside. It was submitted that the

main thrust of the impugned orders was that Section 55 of the aforesaid Act provides that holder of license would not be entitled for compensation or

refund of fees in case of cancellation or suspension of the licence. It was submitted that the said provision was being read by the respondents in an

isolated manner and without reference to other provisions of the said Act. It was submitted that if the very order withholding renewal of licence was

found to be unsustainable, there was no question of Section 55 of the Act operating against the petitioner. It was pointed out that the findings rendered

by the respondents regarding exercise of powers under Section 54(1) (a) and (c) of the said Act was also unsustainable, because neither was any fee

or duty payable by the petitioner nor was there any allegation of breach of terms and conditions of the licence. On this basis, it was submitted that the

impugned orders were unsustainable. A consequent relief was sought to the effect that since the petitioner had already deposited amounts towards

renewal of licence for the years 2016-17, 2017-18, the said amount lying with the respondents ought to be adjusted towards renewal of license for the

year 2020 onwards for a period of two years and that credit ought to be given to the petitioner for the said amount lying with the respondents in

connection with the renewal of license for coming two years.

9. On the other hand, Mrs. Mrunal Naik, learned AGP submitted that in the impugned order, reliance was not placed on the Government Resolution

dated 03/09/2005 and, therefore, the authorities had clearly abided by interim order dated 13/06/2018, passed by the Division Bench of this Court. It

was submitted that under Section 55 of the said Act, the authorities were not liable to refund any fee or deposit made by the holder of the licence and

that, therefore, since there was a source of power, which was exercised by the respondents herein, no indulgence could be shown to the petitioner in

the facts and circumstances of the present case. It was further submitted that since the licence of the petitioner was not operating in the year 2016-17,

the respondents were justified in refusing to renew the licence and in any case there was no question of giving credit to the petitioner for the amounts

deposited for the years 2016-17 and 2017-18.

10. Heard learned counsel for rival parties and perused the material on record. Since reference has been made to certain provisions of the said Act, it

would be appropriate to reproduce the relevant portions of the said provisions.

â??54(1)(a)(c): [The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or

suspend it,]

(a) if any fee or duty payable by the holder thereof is not duly paid;

(b) .....

(c) in the event of any breach by the holder of such licence, permit, pass or authorization or by his servant or by any one acting with his express or

implied permission on his behalf of any of the terms or conditions of such licence, permit, pass or authorization or of any licence, permit, pass or

authorization previously held by the holder;

55. No holder of a licence, permit, pass or authorization shall be entitled to any compensation for the cancellation or suspension of the licence, permit,

pass or authorization under section 54 nor to a refund of any fee or deposit made in respect thereof.

56. (1) Whenever the authority granting a [licence, permit, pass or authorization] considers that it should be cancelled for any cause other than those

specified in section 54, he may cancel [it] either -

(a) on the expiration of not less than fifteen daysâ?? notice in writing of his intention to do so; or

(b) forthwith without notice, recording his reasons in writing for doing so.]

[(2) Where a licence, permit, pass or authorization is cancelled under sub-section (1), a part of the fee for the licnece, permit, pass or authorization

proportionate to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or

authorization shall be refunded to him after deducting any amount due from him to the State Government.]â??

11. A perusal of the above quoted provisions shows that if the respondents exercise power under Section 54(1)(a)(c) of the said Act, there ought to be

material on record to show that either fee or duty payable by the petitioner was not duly paid or that there had been a breach of terms and conditions

of licence on the part of the petitioner. A perusal of the material on record does not show either of the contingencies. Admittedly, neither was any fee or duty payable by the petitioner nor was there any allegation of breach of terms and conditions of licence on the part of the petitioner. Yet, the

respondents held against the petitioner and refused renewal of licence by relying upon Section 54(1)(a) and (c) of the said Act. Therefore, on the face

of it, the exercise of power by the respondents is found to be unsustainable.

12. It is also not the case of the respondents that the refusal to renew the licence of the petitioner was for any reason other than under Section 54(1)

(a) and (c) of the said Act. The initial reason given in order dated 13/05/2016 was the allegation that the petitioner was in arrears of sales tax dues.

Since the Division Bench of this Court categorically found that the respondents, while exercising of powers under the said Act, could not act as an

agent of recovery for the Sales Tax Department, the said reason is obviously not germane to the exercise of power by the respondents while passing

orders dated 28/06/2018 and 05/12/2018. Therefore, it cannot be said that the impugned orders were passed by the respondents while exercising

power under Section 56 of the said Act.

13. The question is, as to whether the respondents can place reliance on Section 55 of the said Act, even in a situation where it is found that refusal to

renew the licence was not traceable to either Section 54 or Section 56 of the said Act. In fact, this Court finds that the impugned orders are wholly

unsustainable and, therefore, it is obvious that the respondents cannot rely upon Section 55 of the said Act in an isolated manner to claim the petitioner

would not be entitled to refund of fees for cancellation or suspension of licence. If such an interpretation is permitted, it would give premium to the

illegal manner in which the respondents in the present case have refused to renew the licence of the petitioner â?" establishment. The Authorities

could take shelter of Section 55 of the Act, even when the cancellation or refusal to renew or suspension of licence is found to be illegal. Such an

interpretation cannot be countenanced.

14. Therefore, the very basis of exercise of powers by the respondents under Section 55 of the said Act is found to be fallacious.

15. In view of above, it is found that impugned orders dated 28/06/2018, passed by the respondent No.2 and dated 05/12/2018, passed by the

respondent No.1, are wholly unsustainable and they are liable to be quashed and set aside. Further question that arises for consideration is, as to whether the petitioner is entitled to claim the relief as stated in prayer clause (v), which reads as follows:

â??Or in the alternative by appropriate writ order or directions, the respondents be directed to adjust the above-mentioned amount as the license

renewal fee for the coming years till the amount is exhausted.â??

16. Since this Court has found that the impugned orders are wholly unsustainable and it is obvious that the petitioner has suffered loss of business

since the year 2016 for no fault on its part, the relief sought by the petitioner, as quoted above, also deserves to be granted.

17. Accordingly, the writ petition is allowed and disposed of in the following terms:

A) The impugned orders dated 28/06/2018, passed by the respondent No.2 and dated 05/12/2018, passed by the respondent No.1 are quashed and set

aside.

B) The petitioner is consequently held entitled for renewal of licence.

C) In view of findings given by this Court, the respondents are directed to adjust the amounts deposited by the petitioner for renewal of licence for the

years 2016-17, 2017-18 for the coming years till the amount deposited by the petitioner is exhausted.

18. Rule is made absolute in above terms. No orders as to costs.