(2011) 02 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9946 of 2009

N. Raji Reddy APPELLANT

Vs

The Commissioner of Prohibition and Excise and The Prohibition and Excise Superintendent, Collectorate RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 24, 25, 25(7), 25(9), 26
Andhra Pradesh Excise Act, 1968 — Section 15, 31

Citation : (2011) 4 ALD 128

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : Chilumala Pratap Reddy, for the Appellant; G.P. for Prohibition and Excise, for the Respondent

Final Decision : Allowed

Judgement

Noushad Ali, J.—The order of the 1st Respondent viz., the Commissioner of Prohibition and Excise, A.P., dated 29.04.2009 in Cr. No. 8376/2005/CPE/M-3, declining to refund the fee paid by the Petitioner towards renewal of his retail licence for sale of Indian Liquor/Foreign Liquor and Beer is under challenge in this writ petition.

2. The Petitioner obtained a retail licence IL-24 to sell Indian Liquor/Foreign Liquor and Beer under the provisions of A.P. Excise (Indian Liquor and Foreign Liquor Retail Sale Conditions of Licence) Rules 1993 and the A.P. Indian Liquor and Foreign Liquor Rules 1970 for the excise year commencing from April 1998 to 31.03.1999. He applied for renewal of licence for the excise year 1999-2000 commencing from 01.04.1999 to 31.03.2000 by paying fee of Rs. 67,000/- representing 1/3rd of the licence fee towards 1st installment. Even though the application was filed on 30.04.1999, he submitted bank guarantee representing the 2/3rd balance amount only on 3.05.1999. The licensing authority declined to

entertain the application as the said bank guarantee was not furnished within the stipulated time. Therefore, the Petitioner sought refund of the said amount. The 1st Respondent by means of the impugned order rejected the request of the Petitioner, basically on the ground that there is no provision in the Rules for refund of the fee paid for renewal of licence.

3. Heard Sri C. Pratap Reddy, learned Counsel for the Petitioner and learned Government Pleader for Respondents.

4. The learned Counsel for the Petitioner while referring to the earlier litigation whereby the Petitioner had approached the consumer forum seeking refund; a writ petition W.P. No. 11659 of 2008 whereby this Court directed to consider the request of the Petitioner for refund; and a contempt case C.C. No. 160 of 2009 complaining non-compliance of the orders in the said writ petition, would contend that the application submitted for renewal was not entertained as the Petitioner failed to furnish bank guarantee within the stipulated time and as such the Petitioner did not run the shop after the expiry of licence on 31.03.1999. He would therefore contend that the Petitioner is entitled for refund of licence fee in terms of Rule 25(7).

5. While refuting the said contention, the learned Government Pleader would submit that in terms of Rule 26-A (2) the Petitioner was entitled to run the business until the renewal was refused and as such in all probability the Petitioner had conducted business. The learned Government Pleader would also submit that the refund contemplated under Rule 25(7) would apply only to such cases in which renewal is refused by making an order in writing and communicated. In the instant case no such order was made, but merely the application was not entertained as bank guarantee was not furnished within time. Therefore, the Petitioner is not entitled for refund in terms of Rule 25(7). By placing reliance on Sri Narasimha Wines and Others Vs. The Proh and Excise Superintendent and Others, and on a Full Bench judgment of this Court in W.P. No. 15904 of 1994, dated 17.03.2005 in the case of S.L.V. Wines v. State of A.P. rep. by Prl. Secretary, Excise (Revenue), Hyderabad, the Government Pleader would contend that the writ petition seeking refund of licence fee is not maintainable.

6. Since the maintainability of the Writ Petition is challenged, this issue deserves to be considered first.

7. It is the contention that once fee is paid, the same is not liable to be refunded and a writ for refund is not maintainable. Reliance is placed on the judgments in Sri Narsimha Wines v. Prohibition and Excise case and on a Full Bench judgment of this Court in W.P. No. 15904 of 1994, dated 17.03.2005 in the case of S.L.V. Wines v. State of A.P. rep. by Pri. Secretary, Excise (Revenue), Hyderabad.

8. In Sri Narsimha Wines'' case, the Petitioners therein were granted licence from 17.05.2000 to 31.03.2001 for the lease year 2000-2001. As the lease year commenced from 1st April the Petitioners sought for remission of licence fee for

the period during which the licence was not operative. Considering the provisions of Rules 24 and 25 in the context of the payment of licence fee for the entire lease year, it was held therein that Writ of Mandamus cannot be issued directing statutory authorities to act contrary to law.

9. In M/s. S.L.V. Wines case, this Court was dealing with a case of remission of licence fee for certain period during which the shop of the Petitioner was illegally closed. In that case licence was suspended and the shop was sealed on a complaint and after enquiry the complaint was found to be false and the suspension was revoked. The Petitioner sought for remission of licence fee on account of the wrongful closure of the shop. In the light of the provisions of Section 31 of the A.P. Excise Act, 1968 and the judgment in Sri Narsimha Wines'' case, it was held therein that no such remission could be granted.

10. The instant case is not the one involving remission of licence fee, but it relates to the refund on account of the non-renewal of the licence to carry on business. Therefore, the judgments relied are not applicable to the facts of the case. Fee relates to the principle of quid pro quo. Unlike levy of tax, no fee can be levied unless some benefit/service accrues to the payer. Section 15 of the A.P. Excise Act, 1968 provides that no person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted in this behalf. Sale of intoxicant is thus regulated. A.P. Excise (Indian and foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 and the A.P. (Indian Liquor and Foreign Liquor) Rule, 1970 provide for the procedure, conditions fees etc. A licence obtained in terms of the Rules enables the licensee to carry on business as quid pro quo for payment of fee. Sub-rule (7) of Rule 25 therefore provides that in case licence is refused, the fee paid shall be refunded. Thus, both on principle and statutory mandate, once renewal is refused, it is not permissible for the Respondents to appropriate the amount and the same is liable to be refunded. A writ seeking refund of fee is therefore maintainable.

11. That takes us to the next contention viz., when an application for grant/ renewal is not entertained, whether it amounts to refusal to grant/renewal of licence as contemplated under Sub-Rule 7 of Rule 25. It is the contention of the Respondents that in the instant case the application filed by the Petitioners was not even entertained and therefore no orders were passed refusing the renewal as such mere non-entertaining of the application without there being an order in writing does not amount to refusal.

12. As mentioned above, the licensing procedure and incidental things relating thereto are prescribed under the A.P. (Indian Liquor and Foreign Liquor) Rules, 1970. Under Rule 26 the Prohibition and Excise Superintendent is competent authority to grant retail licence in Form IL-24. Rule 24 prescribes that every licence (other than Form IL-22 or special licence) shall be valid for a lease year commencing from 1st April, ending with 31st March of the subsequent year subject to payment of annual fee in one lump sum. Rule 25 (9) inter alia prescribes that annual licence fee for the licences in Form IL-24 shall be as

amended from time to time at the rates shown in the schedule of the rules and the fee for the lease year shall be paid before the commencement of the lease year in one lump sum or in three equal installments or in the manner as notified from time to time. Where the licence is issued before the 31st May of the lease year, the first installment i.e., 1/3rd of the fee shall be paid before the issue of licence together with a bank guarantee or fixed deposit receipt/national savings certificate for an amount equal to 2/3rd of the balance fee. The 2nd and 3rd installments shall be remitted on or before 1st July and 1st October of the lease year respectively.

13. Rule 26-A prescribes the manner in which the application shall be filed. Since the said rule has a direct bearing on the instant case, it is extracted as under:

Rule 26-A (1) (a): An application for the renewal of the licence shall bear a Court fee stamp of (the requisite value as per the provisions of the Indian Stamp Act, 18.99) and shall be submitted to the authority competent to renew the licence, one month in advance of its expiry together with a challan in original in support of having paid the required licence fee);

(Provided that the Commissioner of Prohibition and Excise may, subject to such terms and conditions as he may deem fit to impose, permit the licensee to submit application on such date as may be specified for renewal of licence before the expiry of the period of the licence and also to pay the licence fee in such manner as he deems fit.

Provided further the Commissioner of Prohibition and Excise for the special reasons to be recorded therein (subject to such terms and conditions as he deems fit to impose may consider to) entertain the application for renewal up to 30th April of every year with a rate of Rs. 100/- per each day of delay (and in accordance with the guidelines issued by the Government from time to time) after the expiry of the period of licence).

(b) Before issue of a licence the licensee shall execute a counter part agreement in Form IL-17, or IL-17-A or IL-17-B or IL-28 other than licences under IL-24/ IL-28-A Licences under IL-24 as the case may be on the stamp paper of requisite value as per the provisions of the Indian Stamp Act, 1899.

(2) In case the application for renewal of licence is made as prescribed in Sub-rule (1) and if the licence is not duly renewed and returned before the licence expired, the licensee shall have the right to carry on business till its renewal is refused and the fact intimated. If the application is not made within time it shall not, however he open to the licensee to continue the business on the expiry of the licence.

14. On a consideration of Rules 24 and 25 it emerges that the period of licence is for one year commencing from 1st April and ending with 31st March of the succeeding year and that the licence fee shall be paid either in lump sum or in three equal installments. In the event of payment of installments, the first 1/3rd

installment shall be paid before the issue of licence and in addition thereto, bank guarantee or fixed deposit receipt/NSS certificate for the remaining two installments representing 2/3rd of the balance amount shall be furnished. Rule 26-A prescribes that an application for renewal of the licence shall be filed one month in advance of its expiry and such application shall bear a Court Fee stamp and accompanied by a challan in original towards payment of the required licence fee. The Commissioner of Prohibition and Excise, however, on such terms and conditions deemed fit, allow the licensee to submit application on any specified date before the expiry of the period of licence and also to pay licence fee. The Commissioner is further authorized for special reasons to entertain a renewal application up to 30th April with a rate of Rs. 100/- per each day of delay and in accordance with the guidelines issued by the Government after the expiry of the period of licence. Thus, it is evident that an application for renewal should be made at least one month in advance of the expiry of the licence period. The same is relaxable on such terms and conditions as may be deemed fit by the Commissioner, at any rate up to 30th April of the year on a payment of Rs. 100/- per each date of delay after the expiry of the period of licence.

15. In the instant case the licence period was expiring on 31st March, 1999. The Petitioner in the ordinary course should have submitted application one month in advance thereof, but he submitted application on 30.04.1999 i.e. after the expiry of licence. Therefore the case of the Petitioner falls under the second proviso to Rule 26-A. In terms of the said proviso a belated application is entertainable subject to payment of Rs. 100/- for each day of delay and subject to such terms and conditions as may be deemed fit and imposed by the Commissioner. Thus, Rule 26-A has prescribed a period of limitation within which a renewal application should be filed, maximum period being the expiry of the period of licence or up to 30th April, as the case may be. The Rules have not provided for submitting applications beyond the said period. As noticed above, the Petitioner in the instant case submitted the application on 30th April, 1999. Technically, therefore, the application was entertainable and in the normal course the Commissioner being competent would have entertained it, provided that the application had complied with the conditions stipulated in Rule 26-A (1) (a) and the second proviso thereto viz., the payment of the licence fee and the late fee of Rs. 100/- per each day of delay in submitting the application. Admittedly, the Petitioner did not pay the licence fee by enclosing bank guarantee towards 2/3rd amount before the expiry of licence i.e., 31.03.1999 but the bank guarantee was submitted only on 03.05.1999. He also did not remit the late fee. Therefore, such an application, which does not comply with the mandatory requirements, cannot be construed an application at all for taking cognizance and further action. An application that has been filed beyond the period of limitation or an application that has been filed without payment of the requisite licence fee/late fee does not deserve consideration and the Commissioner is not competent even to entertain such applications. Such applications should invariably fail and liable to be rejected. This being the legal spectrum, the contention that since the

Commissioner did not pass any orders either way - either renewing or refusing to renew the licence, or communicated his decision on the renewal application - the Petitioner is not entitled for refund does not commend acceptance. In fact, the counter of the 1st Respondent asserts that the Authority has no jurisdiction to consider the cases of renewal after expiry of 30 days of licence period and thus admits the said legal position. In the light of the above legal spectrum, it must be held that when an application is not entertained, it should be deemed to have been refused. It is on record and also evident from the impugned order that the Petitioner did not run his business due to non-renewal of his licence for the year 1999-2000.

16. For the foregoing reasons, the impugned order of the 1st Respondent viz., the Commissioner of Prohibition and Excise, A.P., dated 29.04.2009 in Cr. No. 8376/2005/CPE/M-3 is held unsustainable and accordingly set aside. The Respondents shall refund the fee paid by the Petitioner.

17. The Writ Petition is accordingly allowed. No costs.