
(2009) 06 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 2005 of 1994

Om Traders

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Bombay Prohibition (Privileges Fees) Rules, 1954 — Rule 2, 4, 5, 6
Bombay Prohibition Act, 1949 — Section 137, 143(2)

Citation : (2009) 6 BomCR 364

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : D.B. Sawant, for the Appellant; A.R. Patel, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—By this petition, the petitioners have challenged the order passed by the Collector of Kolhapur, State Excise Department, Kolhapur, by which the petitioners have been directed to pay privilege fees at a certain rate. Aggrieved by the order of the Collector, the petitioners preferred an appeal before the Commissioner of State Excise, Maharashtra, which has been dismissed. That order has also been challenged in the present petition.

2. The undisputed facts in the present petition are as follows:

The petitioners were issued an F.L-1 licence and carry out business at Village Shirol, Dist. Kolhapur. The petitioners applied on 25.9.1992 for transfer of their F.L-1 licence from Shirol to Nagaon since their premises in Shirol were insufficient for storing Indian Made Foreign Liquor in large quantities. The Collector of Kolhapur i.e. Respondent No. 3, by his order dated 31.10.1992 granted the petitioner permission to transfer the licence from Shirol to Nagaon on payment of 10% of the licence fees under the provisions of Rule 4 of the Bombay Prohibition (Privileges Fees) Rules, 1954 (in short, "Privileges Fees Rules").

3. It appears that, thereafter the premises of the petitioners were inspected by the Deputy Commissioner (Assessment) and he submitted a report. The Collector thereafter issued demand notice dated 26.2.1993 raising a demand on the petitioners for payment of a sum of Rs. 15,000/- by way of licence fees. The Collector directed the petitioners to pay Rs. 13,500/- as the petitioners had already paid Rs. 1500/-. The demand notice states that since the Deputy Commissioner (Assessment) was of the view that there was no specific provision for transfer of the premises from one site to another, the transfer had to be treated as the grant of a new F.L-1 licence after surrendering the original.

4. The petitioners preferred an appeal u/s 137 of the Bombay Prohibition Act being Appeal No. 59 of 1993. This appeal was finally dismissed after hearing the petitioners.

5. The appellate authority held that there was no provision in the rules for shifting or transferring the licence from one site to another. It is this order which has been impugned in the present petition besides the demand notice.

6. Mr. Sawant, appearing for the petitioners has drawn my attention to the provisions of the Privileges Fees Rules, which have been framed u/s 143(2)(u) of the Bombay Prohibition Act, 1949. Sub-rule (ii) of Rule 2 defines "licence" as a licence granted under any of the provisions of the Act or the rules, orders or regulations made thereunder. Rule 4 provides for the fees payable on transfer of a licence from one site to another. It reads as under:

4. Fees for transfer of a licence from one site another. - The fee for the privileges of having the transfer of a licence from one site to another shall be ten per cent of the fee chargeable for grant or renewal or continuance of such licence, whichever is higher:

Provided that such fee shall in no case be less than Rs. 1.

7. The learned advocate Mr. Sawant submits that no distinction is made in Rule 4 in respect of the F.L-1 licence and the other 3 licences which can be issued under the aforesaid Act. He therefore submits, that Rule 4 would be applicable and had rightly been applied, initially, by the order dated 31.10.1992.

8. An affidavit has been filed by the Deputy Superintendent, State Excise, Kolhapur, in which he has conceded that the petitioner had applied for a transfer of the FL-1 licence from Shirol to Nagaon. He has stated that there was no provision under the Rules of 1953 to transfer the F.L-1 licence from one premises to another. He has further averred that the petitioners had been granted permission erroneously to transfer the F.L-1 licence by the order of 31st October, 1992 by accepting the 10% of the licence fees.

9. I have perused a copy of the Bombay Foreign Liquor Rules, 1953. These rules are applicable for the purposes of licencing, importing and exporting foreign liquor. Several types of licences have been defined under these rules including the club licence, hotel licence, however, there is no provision in these rules with

respect to transfer of licence from one premises to another. Therefore, the transfer of a liquor licence from one site to another would be governed by the Privileges Fees Rules, 1954. These rules are applicable irrespective of the nature of the licence. A perusal of Rule 5 of the Privileges Fees Rules indicates that, wherever the legislature wanted to draw a distinction between F.L.I, F.L.II AND C.L.II and C.L.III licences, it has done so. Rules 5 and 6 indicate that the legislature has made a distinction between such licences wherever it found to be necessary. However, with respect to the transfer of a licence from one site to another, which is provided for under Rule 4 of the Privileges Fees Rules, there is no differentiation made depending on the nature of the licence issued. Therefore, the submission of Mr. Sawant must be accepted. The petitioners ought to have been charged fees at the rate of 10% of the fee chargeable for grant or renewal of fees for the licence, whichever is higher.

10. The impugned orders passed by the Collector and the Commissioner of State Excise, are set aside.

11. Writ petition allowed. Rule made absolute. No order as to costs.