(1997) 09 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13903 of 1989

Sri Rama Wines and Others — APPELLANT

Vs

Excise Superintendent, Adilabad — RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 25, 30
Andhra Pradesh Excise Act, 1968 — Section 28, 29

Citation : (1998) 2 ALD 686 : (1998) 1 ALD(Cri) 486 : (1997) 6 ALT 788

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

Bench : Division Bench

Advocate : Mr. R. Subhash Reddy, for the Appellant; Government Pleader for Excise, for the Respondent

Judgement

V. Rajagopal Reddy, J

1. The petitioners are the licensees of FL-17 and FL-24. The licences were granted under Indian-made Foreign Liquor Rules, 1970 (for short ''the Rules'') which have been framed in exercise of rule-making powers conferred under the A.P.Excise Act, 1968 (for short the Act'') . The licences were valid for a period of 5 years commencing from 1-10-1987 to 30-9-1992. The licence fees for FL-24 was Rs. 27,000/- and for FL-27 was Rs. 36,000/- prior to publication of GO.Ms. No. 18, Mpl.Admn. & Urban Development Department, dt. 9-1-1989. By the said GO. Sirpur area was included in the area of Kagaznagar Municipality with effect from 20-1-89. Kagaznagar municipality had a population of 18,120 and on the basis of the said population, the licence fees was originally levied. After the inclusion of Sirpur area, which comprises of population of 33,536, into Kagaznagar Municipality the population increased to a total of 51,656. A show cause notice dt. 17-9-89 was issued by the respondent calling upon the petitioners to pay the differential amount of license fees and also the enhanced amount of licence fees which was fixed in the notification issued on 20-1-1989. The petitioners challenge the demand made by the respondent for the enhanced

licence fees on the ground of increase in the population of Kagaznagar Municipality, in this writ petition.

2. It was contended by the learned Counsel for the petitioners that licences fees been granted on the basis of population existing as on 1-10-1987 and the period of licence being 5 years the licence fees cannot be altered to the disadvantage of the petitioners during the subsistence of the said period of licence. The Respondent has no jurisdiction to demand more licence fees than was prescribed at the relevant time.

3. In the counter-affidavit filed by the respondent, it is stated that in GO. Ms. No. 18, dt.9-1-1989, Sirpur area was included into the limits of Kagaznagar Municipality w.e.f. 20-1-1989. By virtue of such merger .the population of the present Kagaznagar Municipality increased to 51,656. Under Rule 25 of the Rules licence fees has to be called on the following rated where the population is above 50,000:

1. FL-24 ...Rs. 40,5007-

2. FL-17. ..Rs. 54,0007-

It was also stated that the petitioners had given an undertaking under clause (iv) in ''counterpart agreement'' in Form FL.28, to pay enhanced licence fees that might be levied by the licensing authority.

4. The learned Government Pleader, therefore, contended that the enhancement of licence fees was necessitated on account of the increase in the population of the Municipality and that the petitioners having given an undertaking, making themselves liable to pay any enhanced levy, are estopped from questioning the same.

5. To appreciate the above contention, it is necessary to notice some of the statutory provisions, relating to licences, made under the Act. Chapter- VI of the Act deals with licences. Sub-section (1) of Section 28 of the Act provides that every licence granted is subject to certain restrictions and conditions. The licence shall be in the prescribed form and shall also contain such particulars as prescribed under the Rules. Section 29 empowers the authority to require the licencee to execute a counterpart agreement in conformity with the tenor of his licence. Rule 25 of the Rules, provides for the payment of annual licence fees, which is at the rates shown in the schedule appended to the Rules. The licence fees fixed in die schedule is based upon and is directly proportional to the population of the village/town/city. A uniform slab is fixed for any area having population not exceeding 10,000 and another slab for an area above 50,000 and yet another slab for an area above 500 but does not exceed 3 lakhs, etc. Rule 30 of the Rules provides for making an application for the grant of licence. Sub-Rule (3) mandates the applicant to execute a counter-part agreement in Form FL-28. Clause (iv) of the agreement is an undertaking by the applicant to pay licence fees including any enhanced licence fees levied from lime to time.

6. As is evident from the counter-part agreement and not disputed by the learned Counsel for the petitioner, the petitioners executed the counter-part agreement in Form FL-28, to pay the enhanced licence fee that may be levied by the respondent from time to time. The licence fees was fixed initially on the basis of population of Kagaznagar municipality. As per Rule 25 of the Rules, the rates at which licence fees was payable are directly proportionate to the increase in the population, /. e., density of the population. It is, therefore, logical to enhance the licence fees when the population has been increased in Kagaznagar Municipality in 1989, The population of Kagaznagar Municipality was 18,120,in 1987, when the licence was given. In 1989, as stated supra, due to merger of Sirpur into Kagaznagar municipality , the population Kagaznagar Municipality was more or less trebled to 51,656. It is common knowledge to expect that if the area and the population in which the liquor shop is situate, is increased, the sales would be increased and the business would grow. In the circumstances, we find sufficient justification in law for the demand of enhanced licence fee in 1989, when Sirpur merged with Kagaznagar Municipality. Further as required u/s 29 of the Act and in accordance with Rule 30 of the rules, the petitioners had executed a counter-part agreement unconditionally undertaking to pay any enhanced licence fees. Having thus given an undertaking, the petitioners are estopped from questioning the liability under the said undertaking. The petitioners are therefore liable to pay the enhanced licence fees as demanded by the respondent.

7. It is next contended by the learned Counsel for the petitioners that the counterpart agreement, though entered into by the petitioners, is not enforceable, as it runs counter to the Act and the Rules, as the conditions of the licence do not contain any such obligation to pay the enhanced licence fees further, in the absence of any provision to enable the authorities to collect enhanced licence fees during the licence period the demand is illegal. We are not persuaded to accept this plea. The licence, though was granted u/s 28 of the Act, is subject to certain conditions as prescribed in the Rules. It is true that conditions of licence do not contain any such liability to pay any enhanced licence fees. But the conditions do not place any embargo on the authorities to collect the same. When such is the situation and when the authorities have been clothed with the power to require the applicant to give an undertaking for such payment, it cannot be said that the undertaking is contrary to the letter and spirit of the licence or Section 28 of the Act The counter-part agreement is a statutory one and an undertaking has been given as prescribed in CI.(iv) of Form FL28 under Rule 30. It is not far to seek the reason for requiring the licensee, to give such an undertaking. The population of a place varies due to lapse of time and also for the reason of merger of another area into the concerned village/town/ Municipality. Many other situations also can be visualised. These situations cannot be anticipated on the date of grant of licence. Since the licence fees was payable depending upon the density of the population, the Act gives the power to the authorities to require the licensee to pay the enhanced licence fee as and when levied, even during the currency of the period of licence. This power having

been given by the Act itself, it cannot be said that it runs counter to the licence granted under the Act. The counter-part undertaking has to be treated as one of the conditions of licence. The undertaking is also in consonance and tenor of the licence. A single Judge of this Court in M/s. Swagath, Miryalaguda v. Excise Superintendent, Nalgonda District, 1993 (2) An.WR 601, considering the power of the authorities to collect enhanced licence fees, held:

"On the other hand, I am inclined to think that the undertaking is in consonance with Rule 25 read with the Schedule and effectuated the spirit and purpose of the said rule- The undertaking is nothing more than a recognition and acknowledgment of the liability created by the rule itself and it is meant to cover a situation arising from the immediate non-availability of official population figures. Such undertaking does not in any way run counter to the Act or to the Rules. In the absence of a specific provision enabling the Excise officials to refix and revise the demand for licence fee, the Excise authorities can legitimately rely upon this undertaking and enforce the acknowledged liability in terms of the undertaking. Obtaining an undertaking in a situation like this can be treated as an incidental or ancillary function exercised by the Excise Authorities invested with the power to administer the Act and to recover the licence fee. I am unable to say that while obtaining such undertaking and acting in terms of the undertaking, the respondents have out stepped their authority or acted contrary to the statutory mandate."

We are, therefore, of the view that a combined reading of Sections 28,29 and Rule 25 and 30 of the Act and the Rules respectively, makes it abundantly clear that the counter-part agreement is in accordance with the Act and the Rules, investing with the power in the authorities to recover the enhanced licence fees during the licence period and thus is enforceable under law.

8. It is lastly urged by the learned Counsel for the petitioners that the merger has taken place only on 20-2-1989 and enhanced levy should be collected from that date. No foundation is made of the facts constituting the said contention in the affidavit. We are not aware when actually the merger has taken place. But it was stated in the counter-affidavit that the G.O. constituting Kagamagar Municipality with Sirpur area was published in Gazette on 22.2.1989. Hence,, it is directed that the respondent should collect the revised licence fees only w.e.f 22-2-1989 and not from 20-1-1989.

9. In the result, the writ petition is dismissed, subject to the above direction and in the circumstances, without costs.

