(2005) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 16648, 16676, 17038 of 2003 and 5670, 5882 and 5900 of 2004

Tirumala Wines APPELLANT

Vs

Government of A.P. and Another RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 23, 24, 25, 25(9), 26
Andhra Pradesh Excise Act, 1968 — Section 13, 15, 17, 17(2), 2(12)

Citation : (2005) 4 ALD 53 : (2005) 3 ALT 728 : (2005) 2 ALT 728

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : V. Srinivas, in WP Nos. 16648 of 2003 and 5670 of 2004, P. Sri Raghu Ram, in WP Nos. 17038 of 2003 and 5900 of 2004 and G. Jhansi, in WP Nos. 16676 of 2003 and 5882 of 2004, for the Appellant; Government Pleader, for the Respondent

Judgement

V. Eswaraiah, J.—M/s. Tirumala Wines filed WP No. 16648 of 2003 (hereinafter referred to as Tirumala Wines) seeking to issue a writ of mandamus declaring the action of the 1st respondent-the Commissioner of Prohibition and Excise, Exhibition Grounds Road, Hyderabad, and the 2nd respondent-the Prohibition and Excise Superintendent, Visakhapatnam, in rejecting its claim for refund of the excess licence fee illegally collected for the period from 1998-99 to 2003-04 as unconstitutional and illegal, and to direct the respondents to refund the said amount. Tirumala Wines also filed WP No. 5670 of 2004 to declare the action of the respondents in not renewing its licence for the year 2004-05 by treating the shop of the Tirumala Wines as located at a distance beyond 5 Kms. from the limits of the Municipal Corporation of Visakhapatnam, as illegal and arbitrary, and to direct the respondents to renew its licence by collecting the appropriate licence fee as applicable to the shops situated in a Gram Panchayat area since it is also situated in Gram Panchayat Area and it is beyond a distance of 5 kms. from the limits of Municipal Corporation of Visakhapatnam.

2. Similarly, M/s. Steel City Beer and Wines IL-24 filed WP No. 17038 of 2003 (hereinafter referred to as Steel City Wines) to declare the order of the 1st respondent in rejecting its request for refund of the proportionate licence fee for the lease years from 1998-99 to 2002-03, and to direct the respondents to refund the excess licence fee paid by it for the lease years 1998-99 to 2003-04. It also filed WP No. 5900 of 2004 to declare the action of the respondents in not renewing its licence for the Excise Year 2004-05 by treating its shops as located within 1 Km. peripheral distance from the limits of Gajuwaka Municipality as illegal and arbitrary, and to direct the respondents to renew the Excise IL 24 licence of the Steel City Wines by collecting the appropriate licence fee as applicable to the shops situated at Desapathrini Palem Village, which is beyond the distance of 2 kms. from the Gajuwaka Municipality limits.

3. Ch. Jyothi Srinivas, licensee of M/s. Durga Wines filed WP No. 16676 of 2003, to declare the order of the 1st respondent, dated 8-7-2003, as illegal, arbitrary and contrary to the rules, and to direct the respondents to refund the excess licence fee paid by it. It also filed WP No. 5882 of 2004, to declare the action of the respondents in not renewing its licence for the Excise Year 2004-05 by treating the shop of Durga Wines as located at a distance beyond 2 Kms. from the limits of Gajuwaka Municipality as illegal and arbitrary, and to direct the respondents to renew the excise licence of Durga Wines by collecting appropriate licence fee as applicable to the shops situated beyond 2 kms. distance from the Gajuwaka Municipality.

4. The 1st respondent-Commissioner for Prohibition and Excise, Hyderabad, rejected the request of the Tirumala Wines for refund of the proportionate licence fee for the lease years 1998-99 to 2003-04. The 1st respondent also rejected the request of the Steel City Wines for refund of the proportionate licence fee for the lease years 1998-99 to 2002-03. Insofar as Durga Wines is concerned, its request for refund of the proportionate licence fee for the lease years 2000-01 to 2002-03 was rejected by the 1st respondent. The 1st respondent through different proceedings dated 8-7-2003, issued the rejection orders, in respect of Tirumala Wines, Steel City Wines and Durga Wines.

5. The case of Tirumala Wines is that IL-24 licence was granted to it for the Excise Years 1998-99, and later on, it was being renewed for the subsequent years upto 2001-02, by treating the location of Tirumala Wines as situated within 5 Kms., from the Municipal Corporation limits of Visakhapatnam. Later, Tirumala Wines has realized that the distance between the Tirumala Wines and the Municipal Corporation limits of Visakhapatnam is more than 5 kms, and therefore, it made a representation to the 2nd respondent on 20-10-2001, seeking refund of the excess licence fee collected from it by the authorities, since the actual distance between the shop and the outer limits of the Municipal Corporation of Visakhapatnam is 5.63 Kms, and that according to Tirumala Wines, it is entitled for refund of the excess amount collected from it. The 2nd respondent vide his letter dated 15-11-2001, reported to the 1st respondent that

the enquiry conducted by him revealed that the distance between Tirumala Wines and the peripheral limits of Municipal Corporation of Visakhapatnam is 5.63 kms. The Deputy Commissioner of Prohibition and Excise, Visakhapatnam, also addressed a letter, dated 7-12-2001, to the 1st respondent, stating that the claim of Tirumala Wines for refund of the excess licence fee is genuine. Thereafter, the 1st respondent vide his letter, dated 25-1-2002, asked the 2nd respondent to clearly indicate the belt area from shops to the Municipal Corporation periphery in blue print showing the distance from point to point along with the route. The 2nd respondent vide his reply, dated 17-12-2002, furnished the required sketch to the 1st respondent. But, however, the 1st respondent addressed another letter, dated 15-3-2002, to the 2nd respondent requiring him to furnish further particulars regarding the alternative road connecting the Corporation to the licenced premises of Tirumala Wines. The 2nd respondent replied on 21-3-2002, enclosing all necessary certificates obtained by him from the revenue officials showing the distance between the Tirumala Wines and the limits of Municipal Corporation of Visakhapatnam as beyond 5 Kms, Subsequently, the 1st respondent addressed a letter, dated 11-9-2002, to the 2nd respondent seeking a report from him regarding the total number of shops existing in Visakhapatnam City ad also directed to obtain a sketch from the ''VUDA'', for which a reply was given on 14-9-2002. When the 1st respondent called upon the 2nd respondent to furnish further particulars in order to settle all such cases of refund, the 2nd respondent submitted his reply on 20-3-2003, giving statistical details of all the shops which are seeking refund of excess licence fee, and also submitted that in respect of M/s. Supraja Wines and M/s. Prabha Wines, the excess licence fee was refunded, as the said shops were situated at a distance beyond 5 Kms. from the periphery of Municipal Corporation of Visakhapatnam and that the Tirumala Wines is also entitled for refund of the excess licence fee paid by it. Thereafter, the Deputy Commissioner of Prohibition and Excise sent his remarks stating that the sale of liquor by the Tirumala Wines has been more or less on par with the shops situated in the Municipal Corporation Limits, and on that ground the excess licence fee may not be refunded. Basing on the remarks of the Deputy Commissioner of Prohibition and Excise, the 1st respondent through impugned proceedings, dated 8-7-2003, rejected the request of Tirumala Wines for refund of the excess licence fee paid by it for the years 1998-99 to 2003-04, and also on the grounds that Tirumala Wines has signed the counterpart Agreement in Form 28-A every year while taking the licence, agreeing to pay the licence fee as demanded from year to year and that it has also agreed that it will not cause any loss to the Government Revenue.

6. The Steel City Wines appeared to have made an application before 1-4-2001, for refund of the excess licence fee, on the ground that its licenced premises is situated 1 km. away from the Gajuwaka Municipality and therefore, it is not liable to pay the licence fee payable in respect of Gajuwaka Municipality, but it is liable to pay the licence fee as per the population of the Desapathrunipalem Gram

Panchayat. The request of the Steel City Wines for refund of the excess licence fee for the Excise Years 1998-99 to 2002-03 was also rejected on similar grounds as in the case of Tirumala Wines. Further, it is stated that u/s 29(b) of the A.P. Excise Act, 1968, the licensee has executed a counterpart agreement in conformity with the tenor of his licence and that it has also agreed to safeguard the revenue of the State. Despite the same, the licensee has come up with a plea for refund of the excess licence fee paid, only in the year 2003. Therefore, Steel City Wines is not entitled for refund of the proportionate licence fee.

7. The case of Durga Wines is that it made a representation on 5-2-2001, for refund of the excess licence fee paid by it for the Excise Years 2000-01 to 2002-03, stating that its location at Desapathrunipalem Village is 1 km. away from the periphery of the Gajuwaka Municipality and therefore, the licence fee applicable in respect of shops situated at Gajuwaka Municipality, is not liable to be paid by it, since its shop is situated at Desapathrunipalem Village, which is 2.8 kms. away from the Gajuwaka Municipality. But the said application was also rejected by the impugned order dated 8-7-2003.

8. Learned Counsel for the petitioners submits that the said acts of the Commissioner rejecting the request of the petitioners to refund the excess licence fee is illegal, arbitrary and against the principles of natural justice, and the fact that licence fee is refunded to some other licensees itself shows that the petitioners were discriminated by the 1st respondent in respect of the same claim. Further, the learned Counsel submits that the respondents have collected excess licence fee even in respect of renewal for the year 2003-04 in spite of the fact that the shops of the petitioners were situated beyond 5 Kms. and 1 Km. from the limits of Municipal Corporation of Visakhapatnam and Gajuwaka Municipality respectively, and the same is illegal. Therefore, the petitioners are entitled for refund of the excess licence fee illegally collected from them for the Excise Years 1998-99 to 2003-04.

9. Counter-affidavits have been filed by the respondents stating that the Government introduced a new excise policy for grant of IL-24 (Retail) licences for the year 1998-99 onwards commencing from 1-4-1998 to 31-3-1999 in order to allot retail outlets to the eligible applicants on payment of the prescribed fee and on completion of other formalities as laid down in the rules. As per the said Government Policy, all the petitioners herein have applied for grant of IL-24 licence, and on fulfillment of all the formalities, IL-24 licenses have been granted to them for the Excise Year 1998-99. The petitioners themselves have paid the licence fee assuming that their shops are situated within 5 kms. and 1 km. from the periphery of Municipal Corporation of Visakhapatnam and Gajuwaka Municipality respectively, and that they themselves have applied for renewal of the same for the subsequent years, and accordingly, the renewals were also granted for the Excise Years 1999-2000, 2000-2001 and 2001-2002. Tirumala Wines filed an application for the first time on 20-10-2001, requesting for refund of the proportionate licence fee paid by it stating that it is situated beyond 5

Kms. from the periphery of the Municipal Corporation of Visakhapatnam, and the population of Chinamusidiwada, where Tirumala Wines is situated, is 3930 as per 1991 census, which is below 10,000, and therefore the licence fee applicable in respect of Gram Panchayat having population below 10,000 is only liable to be paid by it. Insofar as Durga Wines is concerned, its licensee Ch. Jyothi Srinivas, filed an application on 5-2-2001, requesting for refund of proportionate license fee paid by it stating that its shop is actually situated beyond 1 Km. from the periphery of Gajuwaka Municipality. As far as Steel City Wines is concerned, it filed an application for refund of the proportionate licence fee after a period of 3 1/2 years of sanction of the licence, which cannot be taken into account, as the said application is time barred. It is stated that the petitioners themselves have executed to a counterpart agreement with the department agreeing to pay the licence fee every excise year, and thus, as per the counterpart agreement, the licence fee is not liable to be refunded. It is further stated that the petitioners were granted the licences in respect of the premises selected by them and they have not sustained any losses. Therefore, it is not open for them to seek any refund of the licence fee.

10. As regards the location of the shop of Tirumala Wines is concerned, there is no dispute that the shop of Tirumala Wines is situated 5 Kms. away from the periphery of the Municipal Corporation of Visakhapatnam. Similarly, the shops of Steel City Wines and Durga Wines are situated in the limits of Gram Panchayat, i.e., 1 Km. away from the periphery of the Gajuwaka Municipality. The only question that arises for consideration in this batch of petitions is as to whether the petitioners herein are entitled for refund of the licence fee, in respect of Excise Years 1998-99 to 2003-04 or from the date of filing of such applications seeking refund of the excess licence fee.

11. To determine the issue in question, it is required to notice the relevant provisions of the A.P. Excise Act, 1968. Section 2(12) of the Act defines ''excise revenue'', which means revenue derived or derivable from any duty, fee, tax, rent, fine, penalty or confiscation levied, imposed or ordered under the provisions of this Act or any other law for the time being in force relating to intoxicating liquors or intoxicating drugs. According to Section 13 of the Act, no person is entitled to sell liquor without obtaining any licence under the Act. u/s 15 of the Act, a person is entitled to sell liquor within the district, if the licence is granted to him by the Prohibition and Excise Superintendent. u/s 17 of the Act, a person is entitled for grant of exclusive privilege of selling the liquor, subject to the provisions of Section 28 and any rules made in this behalf and subject to such other conditions as they deem fit to impose, grant for a fixed period to any person at any place a lease or licence or both either jointly or severally for the exclusive privilege. To grant licence for exclusive privilege in a district, the competent officer is Prohibition and Excise Superintendent. Section 23 of the Act deals with payment of excise duty or fee in addition to the excise duty or fees leviable under Sections 21 and 22, for grant of licence, as a consideration for grant of exclusive privilege in respect of sale of liquor granted u/s 17. Section 28

deals with Form and conditions of licence. Every licence granted under this Act shall be granted or issued on payment of such fees, for such period, subject to such restrictions and conditions and shall be in such form and shall contain such particulars, as may be prescribed. u/s 29 of the Act, the excise authorities are empowered to take security and counterpart agreement requiring the licensee to give security for the observance of the terms of his licence and to execute a counterpart agreement in conformity with the tenor of his licence. As per Section 30, no licence granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the licence or in any proceedings taken prior to the grant thereof. Section 31 of the Act prescribes that if the licensee violates any of the conditions of the A.P. Excise Acts and the Rules made thereunder and the terms and conditions of the licence, it is liable to be cancelled or suspended and that the licensee is not entitled for refund of the licence fee, on account of such suspension or cancellation. If the licence is ordered to be withdrawn u/s 32 of the Act, the licence is entitled to the proportionate licence fee for the unexpired portion of the term of the licence from the Government. Admittedly, licence shall be granted by the competent authority in exercise of the powers conferred u/s 17(2) of the Act and the relevant Rules made thereunder i.e., A.P. Indian Liquor and Foreign Liquor Rules, 1970 (hereinafter referred to as ''the Rules''). Therefore, in respect of the licence granted u/s 17, the licensee is not entitled to surrender the licence, and even if the licence is surrendered, he is liable to pay the entire licence fee. Admittedly, IL-24 licences are granted as per the Rules. Rule 3(ee) defines ''lease year'', which means the period of twelve months beginning from the first day of April of the year and ending with the 31st March of the following Year. Rule 3(f) defines ''licence'', which means a licence granted under these rules. Rule 3(h) defines ''off licence'', which means a licence granted under these rules for sale of the liquor in sealed or capsuled bottles without permitting consumption on the licensed premises. Under Rule 23 different kinds of licences are specified. As per Rule 24 the period of licence will be from 1st April of that year and ending with 31st March of the succeeding year, subject to payment of annual licence fee in one lump sum. According to Rule 25, the licence fee has to be paid before the commencement of lease year to which it relates in one lump sum as per the schedule mentioned therein. Under Rule 25(9) annual license fee for the licenses in Form IL-24 is to be paid as per the schedule appended to the said Rules, as amended from time to time, and the same shall be paid before the commencement of the lease year to which it relates in one lump sum or in three installments giving security and bank guarantee for the second and third installments. Under Rule 26, the Excise Superintendent is the competent authority to grant IL-24 licence.

12. There is no dispute that all the petitioners herein are IL-24 licensees. There is also no dispute that there is a right of renewal under Rule 26-A on fulfilling the formalities of payment of annual licence fee etc. Rule 29(3)(b) stipulates that the licensee has to produce the lease deed in respect of the proposed licence from

the owner of the premises, and the procedure is contemplated for filing of the application for grant of licence under Rules 30 and 31. The application for grant of IL-24 licence has to be filed in Form IL-11 and has to be addressed to the Prohibition and Excise Superintendent of the District. Under Rule 30(2) every application shall be accompanied by 1/3rd of the annual licence fee of the proposed IL-24 shop licence in the shape of Demand Draft obtained in favour of the licensing authority and a list specifying the kinds and description of liquor, which the applicant wishes to sell at the premises. The form of the application for licence to sell, as prescribed in Form IL-11, discloses that the applicant has to furnish the full residential address and details of the premises to be licensed for the purpose of the business giving a declaration that the particulars given in the above Form are true to the best of his knowledge and belief. According to Rule 31, on receipt of such application, the licensing authority shall make an enquiry and ascertain the bona fides of the applicant, his solvency and other particulars mentioned in the application, including genuineness of the liquor proposed for sale, and if the applicant is eligible for grant of licence after collecting the fee.

13. Under the Schedule of the said Rules, it is specified that in respect of IL-24 licence, licence fee has to be paid depending on the population of a place i.e., village, town or the city. At Serial No. 8 of the said schedule, it is stated that if the shop is situated at the relevant point of time within 1 Km. periphery of the Municipality, the rate of licence fee of such retail shops situated within the limits of such municipality alone is liable to be paid even if the shop is situated in a Gram Panchayat. If the shop is situated within 5 Kms. belt area of the Corporation, then IL 24 licensee is liable to pay the licence fee applicable to the retail shops situated within the limits of such Corporation.

14. As evident from the aforesaid prescribed format for grant of licence under the relevant Rules, it is clear that it is for the licensee to furnish the particulars or the location of the shop and to pay the licence fee in advance before grant of licence, and the Excise Superintendent is under obligation to verify only the particulars furnished by the applicant. As Tirumala Wines itself has stated that the shop is situated within 5 kms. belt area of the Municipal Corporation of Visakhapatnam, the Excise Superintendent believed it and after verifying the other particulars, granted licence for the Excise Year 1998-99, which was renewed from time to time as per the request of the licencee. In respect of two other licensees also, they themselves have submitted that their shops are situated within 1 Km. periphery of the Gajuwaka Municipality, and therefore the licence fee applicable to Gajuwaka Municipality was collected from them. Hence, it cannot be said that there is a mistake on the part of the excise authorities in collecting the licence fee. The petitioners themselves have realized their mistakes and filed applications only in the year 2001, and pursuant to the filing of the said applications, the excise authorities have conducted inquiries and found that the shop of Tirumala Wines is situated 5 Kms. away from the periphery of the Municipal Corporation of Visakhapatnam and the shops of Steel City Wines and Durga Wines are situated 1 km. away from Gajuwaka Municipality, and therefore,

from the date of pointing out the mistake only, the petitioners are entitled to seek rectification of the mistake requesting the excise authorities to collect the licence fee be treating their respective shops as located beyond 5 Kms. and 1 Km. from Visakhapatnam Municipal Corporation and Gajuwaka Municipality. Having regard to the facts and circumstances herein stated, I am of the opinion, that the petitioners have no legal right to seek refund of the excess licence fee prior to the date of their filing applications, in respect of excise years for which the licence fee was already voluntarily paid without any demand or determination by the licencing authority. It any licence fee is illegally levied and demanded by the authorities, and if there is any protest from the petitioners, no doubt, the petitioners are entitled for refund of the licence fee. But, in the instant case, there was no illegal demand or levy by the authorities. In fact, the petitioners themselves have furnished the facts about their location and voluntary paid the licence fee for the Excise Years 1998-99, 1999-2000, 2000-01, as if their shops are situated within 5 Kms. periphery of the Visakhapatnam Municipal Corporation and within 1 Km. periphery of Gajuwaka Municipality. Therefore, I am of the opinion that the petitioners are not entitled for any refund of the excess licence fee in respect of those excise years, which were already expired by the date of filing of the said applications. The licence fee is fixed for a period of one year only, and the same has been paid voluntarily and that the period of licence is also over. The petitioners themselves have committed a mistake by furnishing incorrect information and there are latches in correcting and realizing their own mistakes, and therefore, for the said laches on their part, they cannot seek refund of the excess licence fee in respect of the excise years, which were already over and elapsed.

15. Further, the question of limitation does not arise in these cases. Though the claims of the petitioners are not barred by limitation, but, still I am of the opinion that the petitioners are not entitled for refund of the excess licence fee for the past excise years prior to filing their applications, for the reasons aforesaid. But, insofar as the excise years during which the petitioners filed the applications and for the subsequent excise years therefrom, I am of the opinion that the respondents have no authority to collect the excess licence fee contrary to the said Rules. Admittedly, the licence fee payable by Tirumala Wines from the year during which it filed the application to rectify the mistake, is as per the population of the Gram Panchayat, since the location of Tirumala Wines is 5 Kms. away from the Visakhapatnam Municipality, and not as per the rate, which is paid in respect of the shops situated within 5 Kms. of the periphery of the Municipal Corporation of Visakhapatnam. Similarly, in respect of Steel City and Durga Wines, as the said shops are situated 1 Km. away from the Gajuwaka Municipality, the licence fee payable from the date of their application is not as per the rate in respect of the shops situated within 1 Km. of the Gajuwaka Municipality, and they are liable to pay the licence fee, in respect of their shops, as per the population figures of their village, where their shops are situated. But the authorities without any jurisdiction whatsoever have not given any relief to

the petitioners permitting them to pay the licence fee applicable as per the Rules. Therefore, the impugned orders of the Commissioner of Prohibition and Excise are upheld to the extent of rejecting the request of the petitioners either to refund the excess licence fee or to adjust the same for the subsequent excise years, which was paid prior to the date of their filing applications. But, however, the impugned orders of the Commissioner are set aside insofar as they relate to rejecting the request of the petitioners for refund of the excess licence fee in respect of the excise years during which they filed their applications and for subsequent years.

16. Accordingly, the writ petitions are disposed of directing the respondents either to refund or adjust the excess licence fee paid by the petitioners for the subsequent years, from the year during which they filed the applications to rectify their mistake, treating the location of Tirumala Wines as situated beyond 5 Kms. of the belt area of Visakhapatnam Municipal Corporation Limits and in respect of Steel City and Durga Wines treating the shops as they are situated beyond 1 Km. from the Gajuwaka Municipality. No order as to costs.