(2005) 06 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19866 of 2000

Y. Sanjeeva Reddy APPELLANT

Vs

Commissioner of Prohibition and Excise and Others RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 25, 25(1), 25(6), 25(7), 26A

Citation : (2005) 4 ALD 837 : (2005) 5 ALT 106 : (2005) 2 APLJ 469

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner herein was granted a licence in Form IL-24 under Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (for brevity ''the Rules'') for the year 1998-99 i.e., 1-4-1998 to 31-3-1999. As required under Rule 26-A of the Rules, he applied for renewal of licence for the subsequent year 1999-2000. The same was not done. The petitioner made representation for refund of the amount of Rs. 1,00,000/- paid towards part of the licence fee and return of Fixed Deposit Receipts (FDRs) in a sum of Rs. 2,00,000/-. It was not done. He, therefore, filed the present writ petition seeking a writ of mandamus directing the respondents to refund the licence fee paid by the petitioner.

2. Initially for the year 1998-99 the petitioner was granted licence to run IL-24 shop in premises bearing No. 7/228, Opp: R.T.C. Bus Stand, Gooty. It was a rented premises. The landlady did not give her consent for running the shop for the year 1999-2000. Therefore, the petitioner made a representation to the Commissioner of Prohibition and Excise, first respondent herein, to permit for shifting of IL-24 shop to another premises bearing Door No. 5/259, Chinthapalli village, Pathikonda Raod, Gooty. By that time the application made by the

petitioner under Rule 26-A for renewal of licence is pending. Be that as it is, by order dated 28-5-1999 the first respondent rejected the request of the petitioner to shift the Wine Shop to the new place where shifting was sought. In the meanwhile, the petitioner continued his business upto 30-4-1999 and later by reason of rejection of permission for shifting of the shop, the licence was not granted for the year 1999-2000. Therefore, the petitioner made an application to the third respondent for refund of the licence fee and also the bank guarantee paid, in, vain. In brief these are admitted facts.

3. Counter-affidavit is filed by the third respondent on behalf of all the respondents opposing the writ petition. It is stated that the petitioner continued his business till 30-4-1999, and therefore, he is not entitled for any refund. It is also stated that for the year 2001-02 on a request made by the petitioner, the licence was renewed for running IL-24 shop in the new premises on condition that the petitioner should not claim refund of the licence fee paid for the year 1999-2000 and that the licence was renewed by the first respondent. It is, however, not denied even for the year 2001-02 the third respondent did not grant licence to the petitioner because the proposed premises was situated in a separate revenue village. It is also not denied that the house owner of the premises bearing No. 7/228 forcibly evicted the petitioner on 1-5-1999 and he did not carry on his business thereafter.

4. Learned Counsel for the petitioner Sri O. Manohar Reddy contends that the petitioner has submitted an application under Rule 26-A(1) of the Rules, within the stipulated time, duly paying the amounts and also furnishing bank guarantee/ FDRs. Once the licence was not sanctioned, it was incumbent on the part of the authorities to refund the licence fee as per Rule 25(7) of the Rules. Opposing these contentions, per contra the learned Assistant Government Pleader for Excise Ms. Sridevi contends that as the petitioner carried on business upto 30-4-1999 he is not entitled for any refund of licence fee. She, however, does not dispute that beyond 30-4-1999 the petitioner did not carry on the business.

5. Rule 25 of the Rules deals with licence fee. As per sub-rule (1) of Rule 25 of the Rules, the annual licence fee for each of the licences, including the licence in Form IL-24, shall be paid before the commencement of the lease year to which it relates in one lumpsum or in instalments shown in the schedule appended to the Rules. In case the licensee opts to pay the licence fee in instalments and fails to remit the instalments on the due date, the licence is liable to be cancelled. Sub-rule (7) of Rule 25 of the Rules stipulates that in case a licence is refused, the fee paid shall be refunded, whereas sub-rule (6) of Rule 25 of the Rules states that in case of surrender of licence in the middle of the lease year, the licence fee shall be payable upto 31st March of that lease year in which the surrender becomes effective.

6. Rule 26-A of the Rules deals with renewal of licence and the licencee is required to make an application for renewal one month in advance of its expiry together with a challan in original in support of having paid the required licence

fee. Sub-rule (2) of Rule 26-A of the Rules is relevant and reads as under:

"26-A (2) In case the application for renewal of licence is made as prescribed in sub-rule (i) and if the licence is not duly renewed and returned before the licence expired, the licence 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 be open to the licencee to continue the business on the expiry of the licence."

7. In case the licence is not renewed (by passing an appropriate order) or the application is not returned, it shall be open to the licensee to carry on the business till its renewal is refused and the fact is intimated. What would happen to the licence fee paid along with the application in the event of rejection? Rule 26-A does not deal with this. Every application for renewal is also an application for fresh licence, because a licensee, at the time of seeking renewal, is required to comply with all the conditions as are mentioned in Rule 25 of the Rules, like paying part of the licence fee, giving bank guarantee, executing a counter part agreement etc. Therefore, in the case of refusal of renewal, Rule 25(7) of the Rules applies and when the authority competent to issue licence refuses to renew the licence, the licence fee paid along with the application has to be returned. However, it shall be open to the authorities to deduct proportionate licence fee for the period during which the licensee carried on business in accordance with sub-rule (2) of Rule 26-A of the Rules. On reading of Rules 25 and 26-A of the Rules together, it must be held that when the competent authority refuses to renew the licence, the amount of licence fee paid by the licensee along with the renewal application has to be returned in accordance with sub-rule (7) of Rule 25 of the Rules.

8. In this case, admittedly, the petitioner carried on business at premises bearing No. 7/228, till 30-4-1999, and therefore, the proportionate licence fee for the month of April, 1999 has to be deducted. The balance of licence fee as well as the bank guarantee and/or FDRs given by the petitioner has to be refunded/ returned by the Department without any demur and any rejection for refund of the amount would be illegal.

9. Therefore, this writ petition is allowed directing the third respondent to take necessary action to refund the proportionate licence fee after deducting the licence fee for one month and also return the bank guarantee and/or the FDRs submitted by the petitioner at the time of submission of application for renewal of licence in April, 1999, within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

