

RJ-SJ-AGD-AS

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2873 OF 2021

1. **HOTEL & RESTAURANT ASSOCIATION (WESTERN INDIA),**
a company limited by guarantee and incorporated under the provisions of Section 25 of the Companies Act 1956 and having its registered office at Candy House, 1st Floor, Manglik Road, Colaba, Mumbai 400 011
2. **HOTEL OWNERS ASSOCIATION KALYAN,**
having its registered address at 701, 6th Floor, Joker Plaza Building, Opp. KC Gandhi School, Bail Bazar, Kalyan (W) - 421 301
3. **HOTEL OWNERS ASSOCIATION THANE,**
having its registered address at 101-B, Basement, Om Neelkant Coop CHS Ltd, Ram Maruti Cross Road, Ghantali, Thane - 400 602
4. **UMESH D SHETTY,**
Operating hotel Kalpavruksha having address at Pokhran Road No. 1, Vartak Nagar, Thane (West), Mumbai 400 606

5. **MIRA-BHAYANDAR HOTELS ASSOCIATION,**
having its registered address at 3/4 Sagar Tower, Opp. Indian Oil Petrol Pump, Mira road (East), Thane 401 107
6. **MOHAN SHETTY,**
operating Ratnagiri Fly restaurant and bar having address at Ratnagiri Malvani Food, Golden Empire Building, NH School Road, Near Shivar Garden, Mira Road (East), Mira-Bhayander – 401 107
7. **VASAI TALUKA HOTEL ASSOCIATION,**
having its registered address at Flat No. 102, Veer Savarkar Nagar, Behind Rishikesh Hotel, Vasai Road (West), Palghar 401 202
8. **GOHANIA FARM HOUSE AGROTECH PVT LTD,**
operating a hotel by the name of Hotel Pritham Dhaba having address at 134/2/3, Sasupada Village, Mumbai-Ahmedabad Highway, Taluka Vasai, Palghar 401 201
9. **NAVI MUMBAI HOTEL ASSOCIATION,**
having its registered address at B-13, Ashok Commercial Complex, Sector – 18, Navi Mumbai 400 705
10. **HOTEL OWNERS ASSOCIATION OF DOMBIVLI,**
having its registered address at Jayaram Sadan, 3rd Floor, Above Hotel

...Petitioners

Durga, Phadke Road, Dombivali (East)
421 201

~ VERSUS ~

1. **COMMISSIONER, STATE EXCISE, MAHARASHTRA,**
having its office at Second Floor, Old Custom House, Shahid Bhagat Singh Road, Fort, Mumbai 400 023.
2. **SUPERINTENDENT, STATE EXCISE, MAHARASHTRA,**
through the Collector, Mumbai City, having its office at Old Custom House, Shahid Bhagat Singh Road, Fort, Mumbai 400 023.
3. **STATE OF MAHARASHTRA,**
through the Department of State Excise having its office at Mantralaya, Mumbai 400 032

...Respondents

WITH

WRIT PETITION NO. 1980 OF 2021

1. **INDIAN HOTEL & RESTAURANT ASSOCIATION,**
having its registered office at B-2, Wadala, Shri Ram Industrial Estate, Ground Floor, GD Ambedkar Marg, Near Wadala Telephone Exchange, Wadala, Mumbai 400 031.
2. **SHRIDHAR SHETTY,**
Operating hotel Shivkrishna having address at Opposite Hotel Mahalxmi, Andheri Kurla Road, Sakinaka, Andheri

(East) 400 069

3. **VIVEK M NAYAK,**
Operating Mathaar Restaurant & Bar
having its address at 19th Road,
DK Sandhu Mark, Chembur,
Mumbai 400 071

...Petitioners

~ VERSUS ~

1. **COMMISSIONER, STATE EXCISE,
MAHARASHTRA,**
having its office at Second Floor, Old
Custom House, Shahid Bhagat Singh
Road, Fort, Mumbai 400 023.
2. **SUPERINTENDENT, STATE
EXCISE, MAHARASHTRA,**
through the Collector, Mumbai City,
having its office at Old Custom House,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 023.
3. **STATE OF MAHARASHTRA,**
through the Department of State Excise
having its office at Mantralaya,
Mumbai 400 032

...Respondents

APPEARANCES

**FOR THE PETITIONERS
IN WP/2873/2021**

**Mr Virraag Tulzapurkar, Senior
Advocate, with Mr Ramesh
Soni, Mr Sameer Pandit with
Ms Krina Gandhi i/b Wadia
Ghandy & Co.**

**FOR THE PETITIONERS
IN WP/1980/2021**

**Mr Ramesh Soni, with Mr Sameer
Pandit with Ms Krina Gandhi,
i/b Wadia Ghandy & Co.**

FOR THE STATE

Mr Ashutosh A Kumbhakoni,
Advocate General, with Mr
Akshay Shinde, “B” Panel
Counsel, Mr Milind More Addl
GP, Mr Manoj Badgujar, AGP.

CORAM : G.S.Patel &
Madhav J Jamdar, JJ

RESERVED ON : 25th March 2022

PRONOUNCED ON : 29th March 2022

JUDGMENT (Per GS Patel J):—

1. Eight of the ten Petitioners in Writ Petition No 2873 of 2021 and the first petitioner in Writ Petition No 1980 of 2021 are associations of hotels; the others are individual members of one or the other of these associations. We heard these two petitions along with Writ Petitions (L) No 7126 of 2022 and Writ Petition (L) No 7848 of 2022, both filed in March 2022, on 25th March 2022. All petitioners were represented by common attorneys and by a single senior counsel, Mr Tulzapurkar. On 25th March 2022, after the hearing concluded, we reserved judgment and posted the matters for pronouncement on 30th March 2022 — in our anticipation then the earliest possible date by which the judgment could be dictated, transcribed and corrected. As it happens, our draft was ready by the evening of 28th March 2022. That evening, we received a praecipe seeking a listing today, 29th March 2022, saying that the Petitioners in the two 2022 Writ Petitions sought to unconditionally withdraw them. We have listed all four petitions at 10:30 am on the supplementary board today. By a separate order, we have permitted

the withdrawal of the two 2022 petitions. We also advance the date for pronouncement of judgment in the two 2021 Petition. No one can object to a judgment being pronounced earlier rather than later.

2. Vending of foreign liquor is controlled by licenses under the Maharashtra Prohibition Act, 1949 in Form FL-III, renewable annually. Foreign liquor is sold at the Petitioners' hotels. The Petitioners are unwilling to pay the license renewal fees prescribed by the State Government. They have paid 50% of the revised fees for 2021–2022. They are unwilling to pay more. They demand concessions. They complain of discrimination at the hands of the Respondents.

3. Under Rule 45 of the Maharashtra Foreign Liquor Rules 1953 (“**the MFL Rules**”) and Rules 3 and 4 of the Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of a Licenses) Rules 1996 (“**the Periodicity Rules**”), a FL-III license is valid from 1st April to 31st March. Rule 3 of the Periodicity Rules requires that revised license fees be notified in the Official Gazette.

4. On 28th January 2021, Respondent No. 1 issued the impugned notification prescribing the license fees for 2021–2022.¹ The Petitioners made two representations on 25th March 2021 and 27th March 2021 against this notification. The Petitioners sought a time-extension or an instalment payment facility. They also demanded a reduction because they were being allowed to operate only at 50%

¹ Petition, Exhibit F, *p.* 44. The 2022 Writ Petitions impugned an identical notification of 28th January 2022.

(because of the Covid-19 pandemic restrictions). They also sought that those who had already paid 100% for the previous year should be allowed to 'adjust' 50% for the 2021–2022 period.

5. The Petitioners filed this Petition on 28th April 2021. On 6th May 2021, this Court granted ad-interim relief in the following terms:

“The Writ Petition has been filed seeking the following reliefs:

a. That this Hon'ble Court be pleased to pass a writ, order and direction quashing and setting aside the Notification dated January 28, 2021 issued by the Respondent No. 1

b. That this Hon'ble Court be pleased to pass a writ, order and direction directing the Respondent No. 1 to treat the commencement date of the license period for FL-III license for Financial Year 2021-22 as the date on which restrictions imposed on the operations of the place of business of FL-III licenses in the State of Maharashtra are lifted and FL-III licenses are permitted to carry on their business as per the hours and conditions set out in the Maharashtra Prohibition Act and Rules made thereunder;

(c) That this Hon'ble Court be pleased to pass a writ, order and declaration that the outbreak of COVID-19 and the ensuing restriction on operation of FL-III licenses are relevant facts to determining the quantum of license fees for FL-III licenses for FY 2021-22 and further direct Respondent NO. 1 to take into account such factors while determining the quantum of license fees for FL-III license for FY 2021-22;

(d) In the alternative to prayer (b) and (c) this Hon'ble Court be pleased to pass a writ, order and direction directing the Respondents to proportionately reduce the license fees for determining the quantum of license fees for FL-III licenses for FY 2021-22;

(e) In the alternative to prayer (b) and (c) this Hon'ble Court be pleased to pass a writ, order and direction directing the Respondents to proportionately reduce the license fees for FL-III licenses for FY 2021-22 for a number of days that the Government of Maharashtra restricted FL-III license from carrying on their regular business for the hours and days permitted under the Maharashtra Prohibition Act and Rules made thereunder;

(f) That this Hon'ble Court be pleased to pass a writ, order and direction directing Respondent No. 1 extend the deadline to pay license fees for FY 2021-22 to June,30 2021 or till such time as FL-III license holders are permitting to freely carry on their business without restrictions;

(g) Pending admission, hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the effect and operation of the Notification dated January,28, 2021 issued by Respondent No. 1;

(h) Pending admission, hearing and final disposal of this Petition, this Hon'ble Court be pleased to restrain the Respondent from cancelling the license of FL-III licensees or taking any other coercive action for non-payment of license fees for FY2021-22 as prescribed under the Notification dated January 28, 2021.

2. Learned Addl. G.P. has pointed out that 90% of the FL-III license holders have already paid the license fees for the year 2021-22.

3. In the circumstances, by way of ad-interim relief we only direct that in the event the members of Petitioner Association deposit 50% of the license fees in this Court within one week from today, the representations of the Petitioner Association at Exhibits - N and O (page Nos. 146 and 147 of the Writ Petition) be decided on or before 31st May, 2021.

4. We record the statement of learned Senior Counsel for the Petitioners that the list of members of the Petitioner's Association shall be filed on 10.05.2021 and a copy thereof shall be forwarded to the office of the Govt. Pleader on 10.05.2021 itself. The list of members who have deposited 50% of the license fees in this Court shall be communicated by the Advocate of the Petitioners to the office of the Govt. Pleader by 17th May, 2020 with proof of payment.

5. In the event the deposit is made within one week from today as directed, no coercive action shall be taken against those members of the Petitioner Association who have made the deposit until the next date.

6. We make it clear that in so far as those members of the Petitioner Association who have not deposited the license fees as directed, the Respondents are free to take action against them as they deem fit.

6. The State Government rejected the Petitioners' representations on 4th June 2021.

7. Mr Tulzapurkar assails the impugned notification (increasing the FL-III license fees) on several grounds. He says no reasons are

disclosed for changing the license fees. He submits that Rule 2 of the Periodicity Rules requires that if there is change (decrease or increase) of more than 10% from the previous year's fees, the changed rates can only be notified after a prior direction from the State Government. He says there is no such direction. But, as we shall see, this argument is more than a little specious in view of what transpired since the onset of the Covid-related lockdown. In any case, the impugned notification of 28th January 2021 itself refers to a Government letter Home Department No BPA.0121/CR-12/EXC-2 also dated 28th January 2021.

8. Additionally, Mr Tulzapurkar submits that the State Government wrongfully refused to extend the payment deadline or to grant instalment payment facilities. It failed to consider the impact that the Covid-19 pandemic restrictions had on the Petitioners and their businesses. Therefore, Mr Tulzapurkar submits, the impugned notification is unreasonable, irrational, arbitrary and liable to be struck down.

9. Rule 10 of the Maharashtra Foreign Liquor (Sale on Cash Register of Sales, etc.) Rules, 1969 (“**the Cash Register Rules**”) permits FL-III license holders to conduct their business seven days a week between 11:30 am and 1:30 am. Mr Tulzapurkar submits that since the Petitioners' business hours were restricted during the pandemic, they are entitled to a concession/refund or adjustment of the license fees under this Rule.

10. Then Mr Tulzapurkar turns to the Bombay Prohibition Act, 1949, particularly Sections 54, 55 and 56. He submits that Section 56 read with Section 54 entitles the Petitioners to a refund in cases where the license is cancelled by the granting authority for any reason which is not the licensee's fault or due to a breach on the part of the licensee. These Sections read:

54. Power to cancel or suspend licences and permits.

(1) The authority granting any licence, permit, pass or authorization under this Act may for reasons to be recorded in writing cancel or suspend it;

(a) if any fee or duty payable by the holder thereof is not duly paid ;

(b) if the purpose for which the licence, permit, pass or authorization was granted ceases to exist;

(c) in the event of any breach by the holder of such licence, permit, pass or authorization or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms or conditions of such licence, permit, pass or authorization or of any licence, permit, pass or authorization previously held by the holder;

(d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or if the holder of the licence, permit, pass or authorization is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930 or under the Drugs Act, 1940 or under the Bombay Drugs (Control) Act, 1952 or under the Indian Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both

inclusive) of the Indian Penal Code, or of any offence punishable under Article 8 of the Schedule to section 167 of the Sea Customs Act, 1878;

(e) if the licence, permit, pass or authorization has been obtained through wilful misrepresentation or fraud.

(2) Where a licence, permit, pass or authorization held by any person is cancelled, under sub-section (7), the authority aforesaid may cancel any other licence, permit, or pass or authorization granted or deemed to have been granted to such person under this Act.

(3) Notwithstanding anything contained in this section, the State Government may, for reasons to be recorded in writing, suspend or cancel any licence, permit, pass or authorization.

55. Holder of licence, etc., not entitled to compensation or refund of fee for cancellation or suspension thereof.

No holder of a licence, permit, pass or authorization shall be entitled to any compensation for the cancellation or suspension of the licence, permit, pass or authorization under section 54 nor to a refund of any fee or deposit made in respect thereof.

56. Cancellation for other reasons.

(1) Whenever the authority granting a licence, permit, pass or authorization considers that it should be cancelled for any cause other than those specified in section 54, he may cancel it either—

(a) on the expiration of not less than fifteen days' notice in writing of his intention to do so; or

(b) Forthwith without notice, recording his reasons in writing for doing so.

(2) Where a licence, permit, pass or authorization is cancelled under sub-section (1), a part of the fee for the licence, permit, pass or authorization proportionate to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or authorization shall be refunded to him after deducting any amount due from him to the State Government.

(Emphasis added)

11. In the context of the Disaster Management Act, 2005, Mr. Tulzapurkar draws our attention to Sections 23, 38 and 39. He submits that Section 38 casts a duty upon the State to mitigate losses and also to provide rehabilitation to victims of such disasters. The foreign-liquor vending hotels are, he says, 'victims' of the 'Covid-19 disaster' and they are entitled to be 'rehabilitated'.

12. Next, Mr Tulzapurkar submits that the COVID-19 pandemic curtailed the purpose for which licenses were granted. There was a virtual unilateral 'revocation' of the license for a specified period of time during the lockdown. He states that since the hours of operation had to be cut short pursuant to the lockdown guidelines, the privilege granted through the license for the sale of foreign liquor was taken away. This, in Mr Tulzapurkar's submission, renders the Petitioner's eligible for a part rebate or an adjustment in the FL-III license fees for the succeeding year.

13. In Mr Tulzapurkar's submission, the impugned notification is ultra vires Article 14 of the Constitution of India. There is invidious discrimination against the Petitioners. For other state authorities

have been allowed, and have allowed, relaxations and have received or given accommodations regarding payments and government compliances in view of the pandemic. Therefore, the Petitioners should be afforded the same. He cites Section 148-A of the Maharashtra Regional Town Planning Act, 1966 to say that the newly introduced section excludes the lockdown period from contractual timelines. If the state authorities themselves can take advantage of extended timelines due to the lockdown, it was only fitting that the citizens should receive commensurate benefit.

14. These Petitions are, at best, worthless from start to finish and, at worst, thoroughly irresponsible.

15. We find it a submission of mind-numbing insensitivity for these foreign liquor vending hotels to put themselves on the same level as the true victims who fell to the onslaught of the Covid-19 pandemic. There is no legal — let alone fundamental — right established to have a FL-III license at all. It is not compulsory. There is certainly no legal or enforceable right to have a FL-III license on terms dictated by the licensee. We do not believe the pandemic can be cited time and again by businessmen to get extraordinary concessions. The pandemic affected everyone. All businesses suffered. No exceptional prejudice was caused to the present Petitioners. The Petitioners' right to conduct business is not absolute in a time of global distress.

16. The Petitioners do not challenge the Prohibition Act or any aspect of the underlying policy that makes selling liquor the exclusive preserve of the State Government (inter alia under Section 49 of the

Prohibition Act). Every single vendor of liquor is a *licensee* of the State Government. If this be so, it is incomprehensible how a licensee can claim a legally enforceable or constitutional right to dictate the terms and conditions — including the fees — of the license without demonstrating a clear transgression of Article 14. If that challenge fails, nothing remains. There is no inherent legal or fundamental right to foreign liquor license.

17. Mr Kumbhakoni, the learned Advocate General, submits that the State Government has already bent backwards to grant concessions FL-III licensees to ameliorate the loss caused by the pandemic. For the license year 2020-2021:

- (a) The State Government by its letter dated 24th March 2020 allowed the payment of license fees in three installments for the year 2020-2021.
- (b) The State Government by its letter dated 13th April 2020 allowed a concession of 15% to those licensees who paid the entire license fee on or before 30th April 2020.
- (c) Respondent No. 1 by its letter dated 14th May 2020 extended time for the payment of license fees till 1st June 2020.
- (d) Respondent No. 1 by its letter dated 26th June 2020 further extended the time for payment of license fee and also prescribed two installments for payment.
- (e) A Government Notification dated 24th December 2020 afforded a special concession for FL-III license holders and reduced the payable license fees by 50%.

18. This is only a partial list of the State Government's steps and concessions (whether or not seen as mitigation and rehabilitation). In our view, these concessions greatly benefited the present Petitioners. Mr Kumbhakoni's list of dates from which we have extracted a few above is appended to this order.

19. More importantly, every single one of these measures were or had to be known to the Petitioners. The Petitions are totally silent on these aspects. That is yet another reason to dismiss this.

20. According to the learned Advocate General, the impugned notification does not increase in the prescribed license fee for the year 2021–2022 by even a paisa from the fees prescribed in 2019–2020. The argument by the Petitioners that the comparison has to be to the immediate previous year is specious. For the year prior to that of the impugned notification (2021–2022), there was a rebate or a reduction *on account of the pandemic*. This was not a 'normal' change. The Petitioners cannot have it both ways: they demand a reduction (and would complain if there is none) and then they take the reduction given as a baseline to protest a reversion to the pre-Covid lockdown levels. The comparison has to be of the rates between 2021–2022 and 2019–2020. Those rates *are exactly the same*. The intervening periods saw a reduction *as a one-off concession precisely to mitigate business losses — the very demand the Petitioners make*. The logical inconsistency in the Petitioners' arguments is never resolved. There is, therefore, no substance at all regarding the Periodicity Rules, the rebates under the Prohibition Act or of any discrimination under Article 14.

21. Looking slightly ahead, we note that the State Government did propose an increase for 2022–2023. The Petitioners in the two (now withdrawn) 2022 petitions said this increase was more than 15% and required a State Government direction, which it did not have. Mr Kumbhakoni points out that there was such a direction, but that notwithstanding, and for entirely different reasons, the State Government rolled back the increase to about 7.5% for 2022–2023.

22. In paragraph 16 of its decision in *Abhishek Dahiya v State of Tripura, through the Chief Secretary, Govt of Tripura*,² on which Mr Tulzapurkar (in our view inappropriately) relies, the Tripura High Court drew a distinction between closures ordered for law-and-order reasons under the local Excise Act and those on account of Covid. Compensation, the court said, was payable only under specific circumstances. From this, Mr Tulzapurkar would have us hold that whenever there is a curtailment of his clients' liquor-vending business hours, his clients are entitled to compensation, irrespective of the conditions and circumstances in which those hours were curtailed. There is yet another fatal flaw in this argument. It assumes that there were lines of people waiting to be served foreign liquor by the Petitioners and their ilk, but the government restricted the Petitioners from going about their business. It hardly needs to be pointed that this is the stuff of fantasy.

23. But under no circumstances can the Petitioners be heard to say or even suggest that the pandemic was not their fault and therefore they should be compensated. The pandemic was not the fault of the

2 2021 SCC OnLine Tri 398.

government either. The government had a mammoth responsibility, far beyond the narrow commercial concerns of the Petitioners and their foreign liquor vending business. The Government was struggling with essential services and commodities; a class that emphatically excludes the Petitioners — even if the name of one of its vendible products is from the Gaelic translation of a Latin phrase for ‘water of life’. The needs of the many will always outweigh the needs of the few. The State was fully entitled to order the shut-down of Petitioner’s establishments in the general public interest amidst the pandemic. Such power is also conferred by Rule 9A(2)(c) of the Cash Register Rules.

24. Unfortunately, there is a limit beyond which comparisons are simply odious. A hotel or restaurant serving foreign liquor can hardly be compared to a development and planning authority under the MRTTP Act.

25. The learned Advocate General submits that 90% of the likely placed FL-III license holders have already paid the revised license fee as prescribed in the impugned notification. He tenders a chart which we take on record. This is a listing by district. Of a total of 17,605 licenses, fully 16,683 licensees have paid *one hundred percent, i.e. the full license fee* for 2021–2022. Another 922 have paid 50% (as of the date of this hearing). They are expected to pay the rest before 31st March 2022. We find it impossible to believe that the Petitioners did not know this. They have not disclosed it. That chart is appended to this order.

26. The Petitions are entirely without merit. We express our gravest displeasure at the manner in which they were pressed, knowing full-well of the pressures on this Court with a massive increase in our roster caseloads. There are hundreds of Petitions by individuals, societies and so on pending. They have waited their turn. Their cases are now delayed by this self-indulgent and self-serving foreign liquor vending hotels, in whose petition there is not a shred of merit, and some of whose contentions border on the outrageous. Relevant material has been suppressed from the Petition, including the various concessions granted by the State Government and the fact of the number of similarly placed licensees who have paid.

27. We reject both Petitions of 2021. The interim orders are vacated. The Interim Applications are disposed of.

28. But we believe it is time to send a firm signal that the time of the court is not to be taken for granted, nor should there be any attempt to gamble on litigation. When a court's time is squandered on frivolous matters, there will be consequences.

29. There will therefore be an order of costs against the eight Petitioners who are Associations (i.e., Petitioners Nos. 1, 2, 3, 5, 7, 8, 9, and 10) in Writ Petition No. 2873 of 2021, and the 1st Petitioner association in Writ Petition No. 1980 of 2021 in the amount of Rs.1 lakh each, i.e. Rs. 9 lakhs in all, to be paid into the Chief Minister's Relief Fund within two weeks from today.

30. There is an application to continue the previous ad-interim order for six weeks. It is submitted that if this is not done, the Petitioners will instantly be defaulters because the period in question is 2021–2022. We decline to extend the relief because that would give the Petitioners an unfair advantage over others similarly placed and would carve out for them alone a six-week time-extension. We have already held that there is no substance whatsoever in the any of the submissions made by the Petitioners and that these Petitions are entirely speculative. The Petitioners cannot claim to have been unaware of the possibility of them being in default. This is the price of unwise gambling on litigation. And, moreover, it was the Petitioners who insisted on an urgent priority hearing specifically citing the 31st March deadline as a ground for urgency. Surely the Petitioners could not have taken it for granted that further sops would come their way or that they were entitled as a matter of right to more time.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

Mr. Kumbhakar
602/7 25/03

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL ORIGINAL JURISDICTION
Writ Petition (L) No.11021 OF 2021
&
Writ Petition (L) No. 13220 OF 2021
(NOW NUMBERED AS 1980 OF 2021)

Hotel and Restaurant -Association Western India ... Petitioner

:Versus:

State of Maharashtra & Ors.

... Respondents

Date and Events in Writ Petition (L) no.11021 of 2021 (Hotel and Restaurant -Association Western India) and Writ Petition (L) no.13220 of 2021 (Indian Hotel and Restaurant Association) and Others.

SYNOPSIS

1. 30.01.2020 The State Government issued notification for payment of license fees for the year 2020-2021 under the Bombay Prohibition Act, 1949. The license fee was enhanced by 15% over the fees that were prescribed for the year 2019-2020 (Pg. No. 1 to 6).
2. 23.03.2020 Due to Covid Pandemic there was complete lockdown from 23.03.2020 in the State of Maharashtra.
3. 24.03.2020 The State Government by its letter allowed payment of license fees for the year 2020-2021 in three installments viz. 25% by 30.06.2020, 25% by 30.09.2020 and balance 50% by 31.12.2020 (Pg.No.7).
4. 13.04.2020 Further, the State Government by its letter allowed payment of license fees@ that was fixed for the earlier year i.e.2019-2020 itself, provided the same is paid by 30.04.2020. Thus, those licensees paying the entire license fee by 30.04.2020 could enjoy, as a

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concession or discount or the benefit of not paying the enhanced 15% license fee **(Pg.No.8 to 9)**.

5. 05.05.2020 The present Petitioner filed W.P. (L) No.11021 of 2021 ie. HRAWI filed LDVC no. 57/2020 in this Hon'ble Court and Order dtd.05.05.2020 and 12.05.2020 passed extending time from 30.04.2020 till 01.06.2020 for payment of license fee for the year 2020-2021 though @ of the year 2019-2020 **(Pg.No.10 to 16)**.

6. 14.05.2020 Accordingly, Commissioner of State Excise by its letter extended time till 01.06.2020 in terms of the Order of the Hon'ble Court for payment of license fees **(Pg.No.17)**.

7. 19.05.2020 First time after the lockdown, the Government by its order allowed sale of liquor in permit room i.e.FL-III License. **(Pg.No.18 to 22)**.

8. 26.06.2020 Government and Commissioner by letter allowed payment of license fees for the year 2020-2021 in two installments of 50% each viz. first instalment by 30.09.2020 and the second by 31.12.2020 **(Pg.No.23 to 24)**.

9. 30.09.2020 Further, Government by letter allowed payment of the aforesaid first instalment that was due on 30.09.2020 by all licenses till dtd.30.12.2020. Thus, the entire license fee for the year 2020-2021 could be paid by 31.12.2020 **(Pg.No.25)**.

10. 13.10.2020 The District Collector issued letter allowing permit room i.e.FL-III licenses to serve liquor till 10.00 p.m. **(Pg.No.26 to 29)**.

11. 24.12.2020 Thereafter, Government Notification issued regarding payment of license fee for the year 2020-2021 by rolling back enhancement of 15% that was made over the license fees for the

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year 2019-2020 for all categories, including the FL III licenses. Additionally, for the FL III license holders discount or concession or benefit of paying 50% less fees prescribed by the Notification of 2019-2020 (Pg.No.30 to 31).

12. 28.01.2021 Government issued Notification for payment of license fees for the year 2021-2022 without any increase in the license fee prescribed for the year 2019-2020 (Pg.No.32 to 38).

13. 30.03.2021 This notification was challenged by Bruhan Mumbai DaruVikreta Sangh i.e. C L III license holders, by filing W.P.(L)no.5647 of 2021, in which, this Hon'ble Court by Order admitted the matter and refused the interim relief to the Petitioner (Pg.No.39 to 43).

14. The same notification dtd.28.01.2021 has been challenged by the present Petitioners and this Hon'ble Court has allowed the Petitioners to pay 50% of the license fees and to carry on their business. This order is restricted only to the members of the Petitioners Association. The State has filed affidavit in the matter and has also rejected their representation.

15. 13.08.2021 Identical issue raised before this Hon'ble Court Bench at Nagpur in Writ Petition No.2685 of 2021 filed by Manorama Rajkumar Jaiswal. This Hon'ble Court by order dt.13.08.2021 has refused interim relief to the Petitioner stating that interim relief is not different than the final relief and the said petition has been withdrawn by the Petitioner as per order dtd.17.09.2021 (Pg.No.44 to 45).

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①

ms Kumbhkar

25/3

District wise details of Licenses paying 100% & 50% License fees for the year 2021-22

Sr. No.	District Name	No. of License	100% Payment	50% Payment
1	2	3	4	5
1	MUMBAI CITY	528	481	47
2	MUMBAI SUBURBAN	1329	1032	297
3	THANE	1356	1093	263
4	PALGHAR	446	382	64
5	RAIGAD	430	415	15
6	PUNE	2921	2725	196
7	AHMEDNAGAR	689	689	0
8	SOLAPUR	549	549	0
9	KOLHAPUR	805	805	0
10	SANGLI	577	577	0
11	SATARA	453	453	0
12	SINDHUDURGA	133	133	0
13	RATNAGIRI	216	216	0
14	NASHIK	610	610	0
15	NANDURBAR	119	119	0
16	DHULE	241	241	0
17	JALGAON	568	568	0
18	AURANGABAD	657	630	27
19	LATUR	609	609	0
20	OSMANABAD	337	337	0
21	NANDED	481	481	0
22	BEED	365	365	0
23	PARBHANI	160	150	10
24	HINGOLI	120	120	0
25	JALNA	312	310	2
26	NAGPUR	727	726	1
27	BHANDARA	191	191	0
28	GONDIYA	137	137	0
29	CHANDRAPUR	270	270	0
30	AMRAVATI	367	367	0
31	AKOLA	149	149	0
32	WASHIM	101	101	0
33	YAVATMAL	306	306	0
34	BULDANA	346	346	0
	All Maharashtra	17605	16683	922