

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).27655/2009

(From the judgement and order dated 18/06/2009 in WA No.1834/2008 of The  
HIGH COURT OF KARNATAKA AT BANGALORE)

H.G.UMAPATHI

Petitioner(s)

VERSUS

STATE OF KARNATAKA & ANR.

Respondent(s)

(With prayer for interim relief)  
(For final disposal)

Date: 21/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr.R.S.Hegde, Adv.  
Mr.Chandra Prakash, Adv.

For Respondent(s) Ms. Anitha Shenoy, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The petitioner succeeded in convincing the learned Single Judge of the Karnataka High Court to order refund of the alleged excess licence fees collected from him in contravention of Rule 5-A(3) of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 (for short, 'the Rules') but could not persuade the Division Bench of the High Court to approve the view taken by the learned Single Judge. This is the reason why he is before this Court.

The petitioner was granted CL-2 licence in 1992 for sale of Indian and Foreign liquor. The term of his licence appears to have been extended from time to time till 30.6.1999. Thereafter, he stopped the business of selling liquor.

With a view to take advantage of Rule 5-A, which was inserted in the Rules vide Notification dated 24.6.2000, the petitioner submitted an application sometime in 2007 for renewal of his licence. The Competent Authority allowed the application of the petitioner subject to the condition that he shall pay 100% licence fees in terms of Rule 8 for the entire period during which he did not have the licence. The petitioner paid the fees and then made representation dated 12.12.2007 for the refund of 50% fees by asserting that the levy of 100% fees was contrary to Rule 5-A(3) of the Rules. The Competent Authority rejected his representation vide endorsement dated 29.4.2008 / 3.5.2008.

The petitioner challenged the aforesaid communication in Writ Petition No.9397/2008 (Excise). The learned Single Judge referred to Rule 5-A(3) of the Rules and held that the respondents were not entitled to charge 100% licence fees for the period during which the petitioner's licence was not operative. The learned Single Judge did take cognizance of the judgment of the Division Bench in Writ Appeal No.1990/2007, on which reliance was placed by the Government pleader, but did not follow the law laid down therein and held that demand for 100% fees did not have any legal basis.

On appeal, the Division Bench of the High Court referred to

Rule 5-A of the Rules and the judgment of the coordinate Bench in Writ Appeal No.1990/2007 Narasegowda v. State of Karnataka and others and held that the direction given by the learned Single Judge for refund of 50% fees was legally unsustainable.

We have heard learned counsel for the parties. Rule 5-A of the Rules, which has bearing on the decision of this petition, reads as under:

"5-A. Renewal of Licence :- (1) The Excise Commissioner or the Deputy Commissioner, as the case may be, may on an application made to him along with the licence fee prescribed in Rule-8 renew the licence granted under these rules.

(2) Every such applications shall be made at least one month before the expiry of the licence already granted:

Provided that the Excise Commissioner or the Deputy Commissioner, as the case may be may accept and consider any such application made after the aforesaid period of one month, if he is satisfied that the applicant had sufficient cause for not making the application within the period.

(3) The licences granted prior to the first of July, 1999 may be renewed at the discretion of the Excise Commissioner or the Deputy Commissioner, as the case may be, on payment of 50% (fifty per cent) of the fee prescribed under Rule 8 in respect of the entire period for which licence was not granted, for the purpose of maintaining continuity of the licences:

Provided that while renewing the licence under the sub-rule the Excise Commissioner or the Deputy Commissioner, as the case may be shall ensure that the total number of licences granted or renewed do not exceed the quota fixed in Rule 12 for grant of each kind of licence for an area."

The above-reproduced rule was inserted in the backdrop of judgment dated 21.7.1999 of the Division Bench of the High Court in Writ Appeal No.1479/1998 State of Karnataka and others v. Partice D'souza wherein it was held that in the absence of any provision in the Act or the Rules, the State Government did not have the jurisdiction to charge fees for renewal of licences.

Rule 5-A(1) empowers the Excise Commissioner or the Deputy Commissioner, as the case may be, to renew the licence granted under the rules subject to the payment of licence fees prescribed under Rule 8. Rule 5-A(2) lays down that an application for renewal of licence must be made one month before the expiry of the licence already granted. By virtue of proviso to this rule, the Excise Commissioner or the Deputy Commissioner, as the case may be, can accept an application made after one month, if he is satisfied that the applicant had sufficient cause for not making the application within the prescribed period. Rule 5-A(3) contains a special provision for what the rule making authority has termed as renewal of licences granted prior to 1.7.1999. This rule confers discretion upon the Excise Commissioner or the Deputy Commissioner, as the case may be, to renew the licence granted prior to 1.7.1999 subject to the condition of payment of 50% of the fees prescribed under Rule 8 in respect of the entire period for which the licence was not granted.

Although, a cursory reading of Rule 5-A(3) gives an impression that renewal of the licence granted prior to 1.7.1999 can be obtained on payment of 50% of the fees prescribed under Rule 8, but on a careful examination of the scheme of renewal, we are inclined to agree with the learned counsel for the State that the concession envisaged in that rule is confined to the period prior to 1.7.1999 and anyone who is desirous of obtaining renewal for the subsequent period has to pay full licence fees. Any other interpretation of the rule will make it wholly arbitrary and discriminatory because a person seeking renewal of the current licence

after 24.6.2000 will have to pay full fees prescribed under Rule 8 whereas a person like the appellant, who sought renewal after a gap of 8 years, will get the benefit of renewal by just paying 50% of the prescribed fees. In our considered view, the rule making authority never intended to confer undue advantage upon those who did not seek renewal of licence for years together.

The argument of Shri R.S. Hegde, learned counsel for the petitioner that the requirement of payment of 50% fees has been incorporated under Rule 5-A(3) because the licensee did not do business during the intervening period sounds appealing but lacks merit. A licensee who did not seek renewal after 1.7.1999, cannot take advantage of his own inability or fault and seek continuation of licence by paying 50% of the prescribed fees because all others seeking renewal are required to pay full fees prescribed under Rule 8. If the argument of the learned counsel is accepted, the rule will become vulnerable to the attack of constitutionality and keeping in view the settled law that the Court must lean in favour of constitutionality of the statutory provisions, we have no hesitation to reject the argument.

For the reasons stated above, we hold that the special leave petition is meritless and is liable to be dismissed. Ordered accordingly.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

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