IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.A.No.1338 of 2017
and CMP No.18506 of 2017

1. The District Collector,
Thanjavur District,
Thanjavur.

2. The Assistant Commissioner [Excise],
Thanjavur District,
Thanjavur ... Appellants

versus

V.Ramaiyan ... Respondent

Writ Appeal filed against the order dated 19.07.2017 in W.P.Nos.37620 of 2003.

For Appellants : Mr.Elumalai.
Government Advocate

JUDGMENT

(Order of the Court was delivered by **S.MANIKUMAR, J.**)

Challenge in this appeal is to an order made in W.P.No.37620 of 2003 dated 19.07.2017, by which, the writ Court directed refund of a sum of Rs.4,31,014/-, privilege amount deducted, Rs.2,082/-, licence fee deducted and Rs.1,00,000/- paid as security deposit, within a period of four weeks from the date of receipt of a copy of the order made in the writ petition, failing which the said amount, shall carry interest @ 18% per annum, from the date on which the petitioner remitted the said sum in September 2002, till the date of payment.

2. Short facts leading to the appeal are that respondent, applied for licence for a shop in Orathanadu Town Panchayat, Orathanadu Taluk, Thanjavur District. Privilege amount fixed was Rs.10,35,000/-, Respondent remitted Rs.5,17,500/- by way of demand draft towards 50% of the privilege amount, besides application fee. Vide proceedings dated 09.09.2002, he was chosen for issuance of licence and directed to pay the remaining privilege fee of Rs.5,17,500/-. Assistant Commissioner (Excise), Thanjavur District, Thanjavur requested the respondent to pay Rs.1,00,000/- towards Security deposit and Rs.5,000/- for licence fee. Licencee was not issued to similar applicants, at the instance of ex-licencees obtaining orders from this Court for continuation. Matter went up to Hon'ble Supreme Court. In the abovesaid circumstances, the respondent did not opt to take licence and sought for refund. Request of the respondent has been rejected, vide order dated 27.09.2003 by the District Collector, Thanjavur, as hereunder.

> *"4. Out of 5 IMFL shops notified in Orathanadu selection grade town panchayat four IMFL shops were allotted to Ex-licensees as per court order and one shop was left vacant.*

Hence the representation of Thiru V.Ramiayan dated 28.11.2002 for the refund was not considered at that time as per the Supreme Court order dated 13.11.2002. To avoid further loss of revenue to Government one shop left vacant was alloted to Orathanadu Agricultural Co-operative Marketing Society on nomination basis as per the Government instructions for the period from 4.3.2003 to 15.9.2003 by collecting proportionate privilege amount in seven monthly instalments. Accordingly the final instalment and the period of licence came to an end on 15.9.2003. In these circumstances, it is ordered to be refunded the proportionate privilege amount and licence fee to Thiru.V.Ramaiyan s/o. Velayutham, Nadu Theru, Thirumangalakottai Melaiyur, Orathanadu Taluk, as detailed below after deducting the amount for the period from 3.10.2002 to 3.3.2003 for which the IMFL shop was left vacant which is considered to be loss of revenue to the Government.

S.No.	***Details of proportionate amount***	***Amount remitted Rs.***	***Amount Deducted Rs.***	***Net amount refunded Rs.***
1.	Privilege amount	10,35,000	4,31,014	6,03,986
2.	Licence fee	5,000	2,082	2,918

3. Being aggrieved, respondent filed W.P.No.37620 of 2003, praying for a writ of certioraified mandamus, to quash the abovesaid order dated 27.09.2003 and consequently, prayed for a direction to the appellants herein, to return the entire amount, paid towards privilege amount, security deposit and licence fee. In the supporting affidavit, respondent has

contended that due to the orders of the Courts, fresh applicants, were not issued licences. Erstwhile licencees, were allowed to continue. The Assistant Commissioner (Excise), Thanjavur District, Thanjavur, 2nd appellant herein has returned the entire privilege and cautioned deposit made by others, but did not return the same to the respondent. Respondent has also set out the details of the amount remitted towards privilege, licence fee and security deposit.

4. Though, no counter affidavit has been filed, writ Court, after hearing the learned counsel for both parties and on perusal of the material on record, at paragraph Nos.7 to 9, of the order made in W.P.No.37620 of 2003 dated 19.07.2017, held as follows:

> "7. *It appears that along with the petitioner, there were totally four persons who were new applicants and all of them informed the respondents that they are not interested in taking the shop as there was only one shop available and four have already been allotted to ex-licencees and sought for refund. The respondents are stated to have refunded the entire licence fee and the privilege amount to the other four persons but so far as the petitioner is concerned, they have refunded only part of the amount. In the impugned order, the period between 03.10.2002 to 03.03.2003 has been taken as a period between for which the privilege amount paid by the petitioner has been adjusted and the balance amount has been refunded. The correctness of this has to be decided in*

this writ petition. As mentioned above, the petitioner was never granted licence and because of the orders passed by this Court as well as the Hon'ble Supreme Court, the ex-licencees were permitted to continue in respect to four shops. Therefore, there was only one shop remaining for which there were four contenders including the petitioner. All four of them refused to take the shop and therefore, the respondents have exercised their powers under the relevant rules and allotted the shop to Orathanadu Agricultural Co-operative Marketing Society on nomination basis for the period from 04.03.2003 to 15.09.2003. When the other contenders lie that of the petitioner have been refunded the full privilege amount and licence fee, there cannot be any discrimination in so far as the petitioner is concerned. That apart, the question of levying penalty or computing of notional loss would arise only when a licence is granted and the licencee failed to perform the conditions in the licence or failed to lift the minimum off take, etc.

8. In the instant case, because of Court orders and because the petitioner at the earliest point of time represented that he wanted refund of the entire amount, the respondents having not acted upon the same cannot now penalize the petitioner for no fault committed by him. It is beyond one's comprehension that four people can be allotted one shop. Therefore, the respondents having taken a decision to allot the shop on nomination basis to the Co-operative Society, the petitioner cannot be held liable for any loss for the period between 03.10.2002 to 03.03.2003. Thus the *impugned order in so far as it has deducted a sum of Rs.4,31,014/- from the privilege amount and Rs.2,082/- from the licence fee is erroneous. Further, the retention of the security deposit on the alleged ground that it is retained for levy of penalty is also erroneous.*

9. In the light of the reasons assigned in the preceding paragraphs, this writ petition is allowed and there will be a direction to the respondents to refund a sum of Rs.4,31,014/- being the amount deducted from the privilege amount, Rs.2,082/- being the amount deducted from the licence fee and Rs.1,00,000/- paid as security deposit shall be refunded to the petitioner by way of Demand Draft within a period of four weeks from the date of receipt of a copy of this order, failing which, the amount shall be paid to the petitioner together with interest @ 18% per annum from the date on which the petitioner has remitted the same, i.e. September 2002 till the date of payment."

5. Being aggrieved, instant writ appeal has been filed solely on the ground that as per G.O.Ms.No.115, Prohibition and Excise (VI) Department dated 22.06.2007, if a selected applicant does not make an application for grant of licence in conformity with sub-rule7, the privilege amount remitted by him shall be forfeited to the Government without any notice to the applicant. The shop shall be re-notified for grant of privilege.

6. Alongwith the memorandum of grounds, counter affidavit of the

Assistant Commissioner (Excise), Thanjavur, has also been filed.

7. Though appeal has been filed, placing reliance on G.O.Ms.No.115, Prohibition and Excise (VI) Department dated 22.06.2007, even in the counter affidavit of the Assistant Commissioner (Exice), Thanjavur, contention of the respondent that refund has been made to other four fresh licencee, has not been rebutted. Fact that the fresh applicants also could not be granted licence, in view of the orders of this Court and Hon'ble Supreme Court, allowing the ex-licencees to continue, is also not disputed. From the material on record, it could be deduced that except the respondent all the other fresh applicants, i.e., those who opt out to get licence for privilege sale of Indian Made Foreign Liquour, has been refunded full privilege amount and licence fee.

8. Writ Court has adverted to the above, and held that there cannot be any discrimination insofar as refund of full privilege amount and licencee fee to the respondent alone and directed refund. Order of the writ Court cannot be said to be manifestly incorrect, warranting intervention. There is no merit in the appeal. Hence, writ appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

[S.M.K., J.] [R.S.K., J.]
26.10.2017

Index : Yes/No.
Internet : Yes
Speaking/Non-speaking orders
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