

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.37620 of 2003

V.Ramaiyan

.. Petitioner

..Vs..

1.District Collector,
Thanjavur District, Thanjavur.

2.The Assistant Commissioner (Excise),
Thanjavur District, Thanjavur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent's order RC.69462/2002 Ex.5 dated 27.09.2003 and quash the same and direct the respondents to return the entire amount paid by the petitioner towards the privilege amount, security deposit and licence fee.

For Petitioner : Mr.K.Sakthivel

For Respondent : M/s.M.Lalitha

Government Advocate

O R D E R

Heard Mr.K.Sakthivel, learned counsel appearing for the petitioner and M/s.M.Lalitha, learned Government Advocate for the respondents.

2.This writ petition has been filed challenging the order passed by the first respondent dated 27.09.2003 in so far as it has not directed the refund of the entire privilege amount paid by the petitioner, namely, Rs.10,35,000/-, security deposit of Rs.1,00,000/- and restricting the refund to Rs.6,03,986/- towards the said amount and Rs.2,918/- towards the licence fee.

3.The writ petition was listed earlier before the Court on 29.06.2017. The Court noted that in spite of lapse of 13 years, the first respondent or the second respondent has not filed any counter affidavit and therefore, necessary action has to be taken against the officials and a report has been called for. Though the order has been communicated to the respondents, till

date, no counter affidavit has been filed. Therefore, this Court is inclined to proceed further on the available materials.

4.The short question which arises for consideration in this writ petition is whether the petitioner was entitled to refund of the full privilege amount, full licence fee and full security deposit which he had remitted for securing a licence for retail vending of Indian Made Foreign Liquor (IMFL). The facts are not in dispute, namely, that a notification was issued by the respondent on 10.07.2002 calling for the right to grant the privilege in respect of various areas notified therein. In this writ petition, we are concerned about the Orathanadu Town Panchayat area in Thanjavur District. The petitioner applied for allotment of one of the shop in Orathanadu Town Panchayat area by remitting a sum of Rs.500/- towards the application fee. The privilege amount fixed for the said shop was Rs.10,35,000/- and therefore, the petitioner remitted Rs.5,17,500/- by way of Demand Draft towards 50% of the privilege amount. The lot was fixed on 22.07.2002 and later adjourned to 25.07.2002. By proceedings dated 09.09.2002, the second respondent declared that the petitioner is selected in respect of one of the five shops in Orathanadu Town Panchayat area and directed the petitioner to pay the remaining privilege amount of Rs.5,17,500/- and security deposit of Rs.1,00,000/- apart from licence fee of Rs.5,000/-.

5.The petitioner is stated to have availed loan and remitted the amount so as to enable him to obtain a licence to vend IMFL for the excise year 2002-03. The fact remains that no licence was issued to the petitioner and in the meantime, because of a decision of this Court the earlier licensees who were granted licence for the excise year 2001-02 were permitted to continue by the Court vide judgment dated 25.09.2002. As against the said order, the respondents had preferred an appeal to the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 03.10.2002 issued an interim direction to the State Government to grant licence to both existing as well as new applicants by drawing fresh lot within a period of six weeks, i.e. upto 12.11.2002. The petitioner by his representation dated 03.10.2002 addressed to the Commissioner of Prohibition and Excise Department clearly stated that he does not want to apply for obtaining a licence and requested for refund of the full privilege amount, caution deposit and licence fee. In response to the said representation, the second respondent sent a reply on 18.10.2002 stating that for Orathanadu Town Panchayat area nine shops will be allowed, namely, the existing licensee will also be allowed to continue.

6.In the meantime, the Hon'ble Supreme Court passed final orders in the appeal filed by the State Government by judgment dated 13.11.2002. The effect of the order being that all the

existing licensees, i.e. the previous licensees for the block period who had remitted the year's licence fee by 31.07.2002 as well as all of them who were granted licence for a period of six weeks subsequent to the interim order granted by the Court on 25.09.2002 and the order of the Hon'ble Supreme Court dated 03.10.2002 on payment of the proportionate licence fee will be granted licence for the balance period of the excise period 2002-03 culminating on 15.09.2003. In terms of the said letter, the second respondent by letter dated 27.11.2002 informed the petitioner that unless he makes an application before 30.11.2002 the privilege amount and caution deposit would be forfeited. The petitioner submitted a representation on 28.11.2002 seeking for return of the privilege amount and the caution deposit on the ground that the number of notified shops for Orathanadu Town Panchayat was only five and out of which, there were five shops run by the old licencees and for one additional shop, there will be four new licencees and as such, he was not interested and requested for refund.

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 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 like 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 licensee 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.

10. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

cse

To

1. District Collector,
Thanjavur District,
Thanjavur.

2. The Assistant Commissioner (Excise),
Thanjavur District,
Thanjavur.

+1cc to Mr.K.Sakthivel, Advocate SR.No.50528

W.P.No.37620 of 2003

SR(CO)
GN(11/08/2017)