



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2017

PRONOUNCED ON : 09.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P(MD)No.9906 of 2014

V.Kaliappan

.. Petitioner

Vs.

The District Manager,
Tamil Nadu State Marketing Corporation Ltd,
(TASMAC),
Tirunelveli District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a a Writ of Mandamus directing the respondent to refund the petitioner's security deposit of Rs.3,04,000/- deposited for the period from 01.07.2012 to 30.06.2013 for running the bar attached to TASMAC Shop No.10909, Tirunelveli with interest.

For Petitioner : Mr.R.V.Rajkumar
For Respondent : Mr.M.Muniasamy
Standing Counsel

ORDER

The petitioner prays for issue of a writ of mandamus or any other appropriate writ or order or direction in the nature of writ to direct the respondent to refund the security deposit of Rs.3,04,000/- furnished for the period from 01.07.2012 to 30.06.2013 for running the bar attached to TASMAC shop no 10909, Tirunelveli along with interest.

2. The petitioner submits that he was successful bidder for running the above mentioned bar from 01.07.2011 continuously and the refundable security deposit is adjusted in the subsequent bids. That for the period from 01.07.2013 to 30.06.2014, while remitting the bid amount of Rs.3,16,400/- the respondent had not adjusted the refundable security deposit of Rs.3,04,000/- made during the previous year on the ground of approval delay from the higher authorities. That the petitioner had to pledge his small thatched home to mobilize the full deposit amount of Rs.3,16,400/- on account of non-adjustment.

3. The petitioner submits that on sustained enquiry followed by legal notice dated 20.02.2014 issued to the respondent for the refund of the impugned deposit, he was informed that a criminal



case in crime no 86 of 2013 is pending before the Judicial Magistrate Court, Chenranmahadevi and that the refund will be considered only on the basis of the outcome of the said criminal case. That, no notice or order was served on the petitioner either by the court or the respondent. Thereafter the petitioner came to know that the case was disposed of and collected the certified copies of the papers from the court after filing third party vakalat.

4. The petitioner further submits that he was not arrayed as accused in the charge sheet and the case was registered against his staff one Mr.Karuthapandi under Section 4 (1) (a) of the Tamil Nadu Prohibition Act for possessing beer bottle in refrigerator available in the bar. That, the possession was without the permission and the knowledge of the petitioner. That the said Mr.Karuthapandi had paid the fine and the case was disposed before the National Mega Lok Adalat held on 23.11.2013.

5. The petitioner submits that a representation dated 14.05.2014 along with the case papers of the said criminal case was submitted to the respondent in person and requested refund of security deposit. He submits that the enquiry in the criminal case did not find the petitioner of any wrong doing and therefore the withholding of the security deposit by the respondent is unreasonable and arbitrary. No proceeding in the records of the respondent is pending against them and that the petitioner had performed the contract with integrity and sincerity. They contended that withholding of security deposit for keeping one beer bottle by a third party is shockingly disproportionate and amounts to victimization in violation of the doctrine of Wednesbury's principles. The petitioner had also invoked his poor background and the strain it causes to his family and livelihood and sought relief of refund with interest.

6. The respondent on the other hand submits that the flying squad inspected the bar on 10.06.2013 and found that bottles containing beer were sold and a case No 86/2013 was registered at Alangulam Police Station. Since the sale of beer bottles in the bar is against condition no 43 of the tender agreement, the respondent vide proceedings B1.1500/2010 dated 21.06.2013 had cancelled the license granted to the petitioner with effect from 10 PM on 21.06.2013 and also forfeited the deposit amount.

7. The respondents submit that the next year (01.07.2013 to 30.06.2014) also the petitioner bid successfully and had paid the bid amount in full in two installments dated 27.06.2013 and 01.07.2013 without raising any objections with regard to the previous year deposit since the impugned deposit amount of Rs 3,04,000/- was forfeited by proceedings dated 21.06.2013. In view of the proceedings dated 21.06.2013 cancelling



the licence and forfeiture of deposit, the question of refund does not arise. It was contended that the adjustment of deposit amount was done in the past years since there was no proceeding against the conduct of the bar on the petitioner. The respondent denies any request from the petitioner for refund of the said security deposit amount of Rs.3,04,000/-. The receipt of the representation and the legal notice is denied by the respondents.

8. It was further contended that since the security deposit amount of Rs 3,04,000/- had already been forfeited vide proceeding dated 21.06.2013, for breaching the tender condition no 43 and no objection was raised by the petitioner at that time by remitting the deposit amount in full for the subsequent year, the petition is liable to be dismissed.

9. I have gone through the records of the case and the rival contentions.

10. It is a fact that the flying squad detected beer bottles in the bar in violation of tender condition no 43 and in that connection charge sheet was filed against the petitioner's staff in Judicial Magistrate Court, Chernmahadevi and the same disposed of in National Mega Adalath held on 23.11.2014 on payment of fine. Therefore, the violations of condition no 43 of the tender condition stands proved. When the conditions of the contract are violated, the consequences will flow. It is the responsibility of the licensee to ensure compliance with the conditions.

11. If cancellation of licence and forfeiture of deposit is the condition of the licence for such violations then the respondents are well within their rights to enforce that condition. The cancellation of license was also not challenged by the petitioner. This court takes note of the fact that the petitioner was awarded the bid in the subsequent year. The petitioner feigning ignorance of the visit of the flying squad at his business premises, that is the only source of his livelihood, and the connected criminal case registered on the offence committed at his bar cannot be accepted.

In view of the above, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar



To,

The District Manager,
Tamil Nadu State Marketing Corporation Ltd,
(TASMAC),
Tirunelveli District.

+1cc to Mr.R.V.Rajkumar, Advocate Sr.No.71583

SSM

VB/KK/SAR2/04/09/2017/4P/3C

W.P (MD) No. 9906 of 2014

09.08.2017