IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

Coram

The Hon'ble Mr.Justice R. SURESH KUMAR

W.P.No.27260 of 2003

N.Savitha ...Petitioner

Vs.

1. The District Collector
   Coimbatore District,
   Coimbatore - 18.

2. The Deputy Commissioner of Excise
   O/o. Collectorate,
   Coimbatore,
   Coimbatore District - 18.

3. Dhanabalan
   Valar Wines,
   Narsipuram Road,
   Thondamuthur,
   Coimbatore. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified mandamus, calling for the records relating to the proceedings made in Na.Ka.386/2003/Coi.5, dated 28.02.2003 passed by the second respondent and quash the same and direct respondents 1 and 2 to refund a sum of Rs.7,70,900/- being the privilege amount paid by the petitioner for vending of IFML retail shops for the excise years 2002-2003 to locate a wine shop at Thondamuthur Town Panchayat, Coimbatore District.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.K.Ravikumar
Additional Government Pleader
for R1 and R2

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, calling for the records relating to the proceedings made in Na.Ka.386/2003/Coi.5, dated 28.02.2003 passed by the second respondent and quash the same and direct respondents 1 and 2 to refund a sum of Rs.7,70,900/- being the privilege amount paid by the petitioner for vending of IFML retail shops for the excise years 2002-2003 to locate a wine shop at Thondamuthur Town Panchayat, Coimbatore District.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows :

(i) The petitioner was the licensee of Indian Make Foreign Liquor (IMFL) shop at Thondamuthur Town Panchayat at Coimbatore District, sometime in the year 2001-2002. Once the license period for the excise year 2001-2002 was over, for the next extension of the license for the Excise year 2002-2003, the petitioner wanted to retain the IMFL shop, which he has already held for the previous year.

(ii) At that time, a notification seems to have been issued by the respondents inviting three shops instead of two shops already existing in the Thondamuthur Town Panchayat area. At that time, there had been litigations before this Court as well as before the Hon'ble Supreme Court with regard to the extension of the license for the existing license holders of the IMFL shop throughout the State.

(iii) In so far as the three shops notified by the respondents for the Thondamuthur Town Panchayat are concerned, it is the stand of the petitioner that, since the petitioner was holding the license for one of the IMFL shop out of the two shops for the said area for the excise year 2001-2002 and since the same has been decided to enhance into three shops, the petitioner did not want to renew the license or take up any shop and therefore even though she had paid money for the extension of the license for the existing shop on 28.09.2002, she made a representation on 04.10.2002 to the respondents to refund the money.

(iv) Since the said representation had not been considered, the petitioner approached this Court by filing the writ petition in W.P.No.776 of 2003. In the said writ petition, this Court after hearing both sides passed the following order :

> "Heard the learned counsel appearing for the parties. It appears that in similar matters I have already disposed of number of case following the decisions of the Supreme Court as well as by this Court. Following the ratio

> laid down in those decisions, it is directed that the respondents shall refund the amount which has already been deposited by the petitioner, within a period of eight weeks from the date of communication of this order. This direction is subject to the condition that the respondents shall ascertain as to whether the shops in the area had exceeded the number of shops as specified in the notification. If the amount is not refunded within the period indicated above, the same shall carry interest at the rate of 8% p.a., thereafter. The writ petition is disposed of accordingly. Consequently, W.P.M.P.No.954 of 2003 is closed."

(v) Pursuant to the said direction issued by this Court as referred to above, the present impugned order has been passed by the respondents on 28.02.2003, whereby they directed that the third shop which has already been allotted to the petitioner, since it had not been taken by the petitioner, the amount the petitioner paid in anticipation of extension of license for her existing shop shall not be refunded to her, as per the order of this Court, dated 09.01.2003 made in W.P.No.776 of 2003. Aggrieved over the said order, dated 28.02.2003 passed by the second respondent, the petitioner has moved the present writ petition with the aforesaid prayer.

3. I have heard Mr.G.Ethirajulu, learned counsel appearing for the petitioner who would submit that, there has been a clear direction by this Court in the earlier writ petition filed by the petitioner, i.e., in W.P.No.776 of 2003, by order, dated 09.01.2003, where the learned Judge has given a direction to the respondents to refund the amount. The only condition imposed by the learned Judge to the respondents was to verify whether there had been excess shops than the notified shops. In this regard, the learned counsel appearing for the petitioner has drawn the attention of this Court on the representation the petitioner had given on 04.10.2002, which in fact triggered the petitioner to file the earlier round of litigation.

4. According to the learned counsel appearing for the petitioner in the said representation, dated 04.10.2002, the petitioner has stated the following :

> "I am a licence holder of the IMFL shop situated in Thondamuthur Town Panchayat in Coimbatore South Taluk bearing its shop No.133 and the licence number for the excise year 2001-2002 is 151. The above licence originally issued for the period from

> 01.08.2001 to 31.07.2002. Thereafter it was renewed for the further period of 2 months up to 30.09.2002, the same was renewed in 4 times each for period of 15 days.
> Meanwhile the draw for IMFL lot was conducted by you on the 2nd day of September 2002. For the Excise year 2002-2003 you have notified 3 shops in Thondamuthur Town Panchayat, therefore I have not made any application for the lot conducted for the above shop. The reason for non participation for lot was previously for the excise year 2001-2002 there was only two shops in the above Panchayat and thereafter it was increased to 3 shops."

5. By relying upon those averments in the said representation, dated 04.10.2002, the learned counsel for the petitioner would submit that, since the grievance of the petitioner was that, the respondents increased the number of shops from 2 to 3 in the town panchayat limit of Thondamuthur and that, it is the reason why he did not show any interest to make application for license or renewal of the shop. Only based on these representation, a direction was given by this Court as referred to above in the earlier writ petition.

6. Therefore, the notification which has been mentioned in the order of the learned Judge should be pertaining to the existing notification for the Excise year 2001-2002 and whether any excess shops have been provided for beyond the notification.

7. However Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents would submit that, the fee paid seeking extension of license is for the Excise year 2002-2003, for which notification was specifically issued to locate three shops in the Thondamuthur town panchayat area. Out of the three shops, two shops have already been given license to the needy licensee and with regard to the third shop, the petitioner had paid the amount. Even though it had been allotted to her, she had not taken the same and she had not located the same, thereby she caused loss to the revenue.

8. The learned Additional Government Pleader would further submit that, the word "the notification" mentioned by the learned Judge referred to above is nothing but the notification for the Excise year 2002-2003, under which since three shops had already been notified, the respondents had not exceeded the three shops. Therefore by strictly interpreting the order of the learned Judge, the petitioner is not entitled to get any refund. Therefore the order passed by the respondents can be sustained.

9. The learned Additional Government Pleader appearing for the respondents by relying upon the averments made in the counter affidavit would also submit that, out of the three shops, Shop No.1 was allotted on 02.09.2002 to M.K.Manickam and Shop No.2 was allotted to one K.Dhanapalan on 09.09.2002. Therefore when the third shop was allotted to the petitioner, she did not come forward to take up. Therefore it is a fault on the part of the petitioner alone and hence she is not entitled to get back the privilege amount she already paid. Therefore in accordance to the said order passed in W.P.No.776 of 2003 in earlier round of litigation, as referred to above, the petitioner is not entitled to get back the amount.

10. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader and also perused the materials placed before this Court.

11. It is not in dispute that, the petitioner was license holder in one of the shop in the particular locality, i.e., Thondamuthur Town Panchayat limit for the Excise year 2001-2002, where two shops were notified and running. Subsequently when the department enhanced to 3 shops, they given a notification under which three shops were to be allotted in that area. Based on such notification, according to the counter affidavit filed by the respondents, a lot was fixed on 02.09.2002. This factor has been averred in paragraph 5 of the counter affidavit, which reads thus :

> "Regarding the contents in Para 3 of the affidavit of the petitioner, it is submitted that the petitioner herself has accepted the fact of availability of renewal of licenses to only those licensees who had remitted the required fees before 31.07.2002 as ordered by this Hon'ble Court and the Apex Court. Therefore, it goes without saying that the petitioner was not entitled to the renewal of the license. However, the petitioner was also allotted the third shop in the Town Panchayat of Thondamuthur. But the petitioner failed to fix up a shop in appropriate place in the area of Thondamuthur Town Panchayat and also did not come forward to file her application for grant of license. The petitioner herself has accepted that she did not participate in the lot held on 02.09.2002. Thus it may kindly be seen that the petitioner was provided with adequate opportunities and yet she failed to avail the same."

12. Based on the said lot, dated 02.09.2002, one shop was allotted on 02.09.2002 itself to M.K.Manickam and another shop was allotted to one K.Dhanapalan on 09.09.2002. However in so far as the petitioner is concerned, it is case of the respondents that, the third shop has been allotted to the petitioner but she did not come forward to take up the shop and locate the same.

13. However, the definite stand of the petitioner before this Court is that, the petitioner after knowing the fact that, the respondents decided to enhance the shop from 2 to 3, therefore she did not show any interest to take up the shop, that is the reason why she did not make any application in order to participate the lot conducted on 02.09.2002. At the same time, since litigations were pending before the Hon'ble Apex Court, where it was the legitimate expectation of all the existing license holder that, for the next 10 months, they would be provided with extension of license for the Excise year 2002-2003 and therefore since number of existing license holders had paid the privilege amount, the petitioner also decided to pay the same on 28.09.2002 on the bonafide impression that, only the existing license holders would be permitted to run the shop for the remaining period of the next Excise year.

14. Therefore it is the stand of the petitioner that, the payment made on 28.09.2002 is nothing to do with the third shop as per the notification for the Excise year 2002-2003 for the area, i.e., at Thondamuthur Town Panchayat limit.

15. The said contention of the petitioner would have some force, because, even according to the respondents, lot was fixed for the three shops as notified on 02.09.2002 itself. Pursuant to which, two shops were allotted on 02.09.2002 and 09.09.2002 to some other two individuals. So far as the third shop is concerned, though it was claimed by the respondents that the said shop had been allotted to the petitioner, there had been no proof to show that such allotment had been made to the petitioner. Moreover since the petitioner herself did not pay any privilege amount as on the date of lot or at least during the relevant time of allotment given to other two licensees for Shop Nos.1 and 2, the question of allotting the third shop to the petitioner would not have arisen at all. This is because only on 28.09.2002, the petitioner made payment. Therefore the said payment made by the petitioner can be construed only as a payment in anticipation of renewal of license to the existing IMFL license holders pursuant to the order to be passed in this regard by the Court of law.

16. Subsequently Courts have passed orders giving direction to the State Government not to give extension of license to the existing IMFL license holders throughout the State for the remaining period of the Excise year 2002-2003 and subsequently the State Government had also taken a policy decision to rout through the IMFL retail vending of liquor through TASMAC. Therefore the petitioner could not have achieved his object to get extension of license for the existing IMFL shop, which she held during the Excise year 2001-2002.

17. Therefore the said contention and the stand taken by the respondents that, the third shop was allotted to the petitioner and she did not come forward to locate the shop cannot be sustained as there was no proof to show to that effect. Moreover, when the very representation of the petitioner, dated 04.10.2002 is very clear and unambiguous to state that, because of the decision taken by the respondents to enhance the shop from 2 to 3, she did not participate in the lot and therefore she wanted the money to be return back. The word mentioned in the order of the learned Judge that "the notification" cannot be considered as the notification for the Excise year 2002-2003 for enhancing the shops to 3. Therefore it can be safely concluded that, the stand of the respondents cannot be accepted and the stand of the petitioner can alone be accepted in view of the afore mentioned facts and circumstances of the case.

18. Once the stand of the petitioner is accepted, since the petitioner has already taken the benefit of an order of this Court, where she was armed with the direction of this Court to the respondents to pay back the fee she already deposited on 28.09.2002, the present impugned order in the opinion of this Court cannot stand and therefore the same is liable to be quashed and accordingly the same is quashed.

19. In the result, this writ petition is allowed and the respondents are directed to return the amount paid by the petitioner covered under the impugned order, within a period of Eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector
   Coimbatore District,
   Coimbatore - 18.

2. The Deputy Commissioner of Excise
   O/o. Collectorate,
   Coimbatore,
   Coimbatore District – 18.

+2cc to Mr.G.Ethirajulu, Advocate, S.R.No.72463

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.72334

+1cc to the Government Pleader, S.R.No.72425

W.P.No.27260 of 2003

SSV(CO)
GSP(19/11/2018)