

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.07.2018
CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.No.68 of 2009

1. M.Suresh (Deceased)
2. K. Kanimozhi
3. Minor.S.Sathishkumar
Rep. by mother Mrs.K.Kanimozhi
4. M.Mary
5. N.Muthu

(P2 to P5 are substituted, as per
Court Order Dated 29.06.2018 in
W.M.P.No.19089 of 2018)Petitioners

Vs.

1. The Assistant Commissioner (Excise)
Kancheepuram.
2. The District Collector
Kancheepuram.
3. The Commissioner of (Prohibition and Excise)
Chepauk, Chennai - 600 005. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Impugned Order dated 17.04.2008 in Proceedings. No.P & E 9(1)/2203/06 of the Third Respondent and quash the same and consequently direct the First Respondent to refund the amount of Rs.17,15,000/- deposited by the petitioner in respect of the IMFL Shop at Nandambakkam Town Panchayat pursuant to the lot held on 09.09.2002.

For Petitioners : Mr.C.Suraj

For Mr.H.Karthik Seshadri

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader.

O R D E R

This Writ Petition has been filed to call for the records connected with the Impugned Order dated 17.04.2008 in Proceedings. NO.P & E 9(1)/2203/06 of the Third Respondent and

to quash the same and consequently, to direct the First Respondent to refund the amount of Rs.17,15,000/- deposited by the petitioner in respect of IMFL Shop at Nandambakkam Town Panchayat pursuant to the lot held on 09.09.2002.

2. The case of the petitioner is that he had participated in the draw of lots in respect of IMFL Shop notified for Nandambakkam Town Panchayat which held on 09.09.2002 and he was declared as a successful bidder. Thereafter, he had remitted a sum of Rs.16,10,000/- on 11.09.2002 together with the license fee of Rs.5,000/- and a Security Deposit of Rs.1,00,000/- and furnished IMFL stock lifting undertaking in a stamp paper of Rs.10/-. While so, by letter dated 09.09.2002, the 1st respondent had requested the petitioner to file an application in Form VI along with an affidavit of identity sworn in before a Notary public and also to select a suitable building for locating the shop and to intimate to the licensing authority. Since the petitioner did not comply with the said request, a notice dated 05.11.2002 was issued to him to show cause as to why the privilege amount of Rs.16,10,000/- together with the license fee of Rs.5,000/- and a Security Deposit of Rs.1,00,000/- should not be forfeited to Government. The petitioner did not even respond to the same, hence, the Assistant Commissioner (Excise), Kancheepuram, had passed on order forfeiting the privilege amount of Rs.16,10,000/- which was remitted by the petitioner in connection with an IMFL shop notified for Nandambakkam Town Panchayat.

3. Aggrieved by the order of the Assistant Commissioner (Excise), Kancheepuram, the petitioner had preferred an appeal before the District Collector, Kancheepuram. By order dated 13.10.2005, the District Collector, rejecting the appeal petition, had upheld the forfeiture order passed by the Assistant Commissioner (Excise), Kancheepuram. As against the said order, the petitioner had preferred another appeal before the Commissioner of (Prohibition and Excise), Chepauk, but, it was also dismissed on 17.04.2008 upholding the order of the District Collector, Kancheepuram. Hence, the petitioner, with no other alternative, has filed this Writ Petition to quash the Impugned Order passed in Proceedings. No.P & E 9(1)/2203/06 dated 17.04.2008 and to direct the First Respondent to refund the amount of Rs.17,15,000/- deposited by the petitioner in respect of IMFL Shop at Nandambakkam Town Panchayat, pursuant to the lot held on 09.09.2002.

4. The petitioner's contention is that he was not granted licence for a period of one year from 2002 to 2003, due to some litigation was pending against the Government in this regard and hence, it was not found worthwhile to him to carry on the trade in Nandambakkam Town Panchayat with four shops. Further, the

petitioner would contend that he had given a representation to the 1st respondent to withdraw the offer and to refund the amount paid by him, but, it was not complied by the respondent.

5. On perusal of the records, it could be seen that as per Rule 13 (7) of Tamil Nadu Liquor (Retail Vending) Rules, 1989, then in force, where the selected applicant is intimated about his selection, after payment of privilege amount and license fee, he shall select a suitable building within the notified area for locating the shop and shall apply in Form - VI A to the licensing authority, within seven days from the date of receipt of such intimation. Further, as per Rule 13(9), if the selected applicant does not make an application in conformity with Rule 13(7), the privilege amount remitted by him, shall be forfeited to the Government, without any notice to the applicant.

6. In the present case, the petitioner had failed to apply in Form-IV A, after locating the shop within the stipulated period and therefore, as per Rule 13(9) of Tamil Nadu Liquor (Retail Vending) Rules, 1989, the Commissioner of (Prohibition and Excise), Chepauk, Chennai, had rightly rejected the appeal petition by his Proceedings.No.P & E 9(1)/2203/06 dated 17.04.2008, upholding the order of the District Collector, Kancheepuram.

7. The learned Government Pleader for the respondents would submit that as per the order of the Commissioner of (Prohibition and Excise), only the privilege amount of Rs.16,10,000/- which was remitted by the petitioner, was forfeited to the Government and the remaining fees i.e. the license fee Rs.5000/- and the security deposit Rs.1,00,000/-, remitted by the petitioner is to be refunded by the authorities.

8. Under these circumstances, the petitioner is directed to make a representation to the authorities concerned for refund of the other amounts which have been deposited by him and the respondents are directed to consider the same and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

9. With the above directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1. The Assistant Commissioner (Excise)
Kancheepuram
2. The District Collector
Kancheepuram.
3. The Commissioner of (Prohibition of Excise)
Chepauk, Chennai - 600 005.

+1cc to Mr.Karthick Seshadri, Advocate, S.R.No. 49146

+1cc to the Government Pleader, S.R.No. 49331

W.P.No.68 of 2009

AK(CO)
GN(08/01/2019)



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