

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.29624 of 2008 and
M.P.No.1 of 2008

D.Muhamad Musthaffa

...Petitioner

-vs-

1. The State of Tamilnadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai
2. The Commissioner
Prohibition and Excise Department,
Chepauk, Chennai - 5
3. The Assistant Commissioner [Excise]
Collectorate, Dharmapuri
4. The Assistant Commissioner (Excise)
The O/o Assistant Commissioner (Excise)
Krishnagiri.
5. The Divisional Excise Officer,
The Office of the Divisional Excise,
Hosur, Krishnagiri District

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order of the Fifth Respondent passed in Na.Ka.No.128/2007/A/, dated 10.03.2008 and quash the same and consequently direct the respondents to refund a sum of Rs.2,00,000/-, which was deposited by the petitioner as Security deposit towards retail licence no.4/DKI/2001-2002 for retail vending in Indian-Made Foreign Sprit and Beer at Nehru Nagar, Kelamangalam Village, Denkanikottai Taluk, Krishnagiri District.

For Petitioner :Mr.P.Mathivanan

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

No appearance for R2 to 5

ORDER

The writ petition has been filed questioning the impugned order bearing Na.Ka.No.128/2007/A dated 10.03.2008 passed by the fifth respondent and seeking a direction to the respondents to refund a sum of Rs.2,00,000/-, which was deposited by the petitioner as Security deposit towards retail licence No.4/DKI/2001-2002 for retail vending in Indian-Made Foreign Sprit and Beer at Nehru Nagar, Kelamangalam Village, Denkanikottai Taluk, Krishnagiri District.

2.Learned counsel appearing for the petitioner would submit that during the year 2001, the petitioner has applied for licence for retail vending of IMFL liquor. However, the Assistant Commissioner (Excise), Dharmapuri, the third respondent herein, by order dated 28.07.2001, has issued a retail licence for retail vending in Indian - Made Foreign Sprit and Beer and the petitioner has deposited a sum of Rs.2,00,000/- towards security deposit and the above licence has been issued for the period from 01.08.2001 to 31.07.2002 and thereafter, the same has been extended for another year ending on 31.07.2003. According to the learned counsel appearing for the petitioner, after the expiry of the above licence, the authorities did not return the above said amount. While so, on 23.08.2001, the third respondent has issued notice to the petitioner stating that the petitioner has lifted 27.65% of I.M.F.L. and 43.93% of Beer and therefore, the petitioner has to lift 100% liquor as fixed by the authorities on or before 25.08.2001, otherwise, steps will be taken for cancelling his licence as if he has violated licence rule No.25. However, by notices dated 05.10.2001, 23.10.2001, 19.11.2001 and 08.04.2002, the third respondent informed the petitioner that if he did not maintain 100% off-take, action would be initiated against him. According to the petitioner, he requested the third respondent to refund the security deposit of Rs.2,00,000/- and the petitioner was orally informed that he owed a sum of Rs.2,89,998/- due as penalty. In this regard, the petitioner made representations dated 22.10.2007 and 27.02.2008. Despite the same, the present impugned order has been passed withholding a sum of Rs.2,00,000/- and making further demand of Rs.96,637/-. Challenging the same, the petitioner has come to this Court.

3. But this Court is unable to accept the submissions made by the learned counsel appearing for the petitioner. Firstly, as per the conditions mentioned in the licence, when the petitioner was under compulsion, to lift 100% liquor as fixed by the authorities on or before 25.08.2001, he has lifted only 27.65% of I.M.F.L. And 43.93% and therefore, the first notice dated 23.08.2001 was issued for which the petitioner has not replied and no copy of the reply sent to the notice dated 23.08.2001 is enclosed. Secondly, when one another notice dated 21.09.2001 was issued stating that the petitioner has lifted 27.65% of I.M.F.L. and 43.93% of beer, he has not even given any reply. Thirdly, the third respondent issued four notices on 05.10.2001, 23.10.2001, 19.11.2001 and 08.04.2002 informing the petitioner that if he fails to maintain 100% off-take, action will be initiated and for which the petitioner has not given any reply. Therefore, it is not open to the petitioner to say that as per Rule 30(2) of the Tamil Nadu Liquor (Retail Vending) Rules, the respondents are under the obligation to give personal hearing. When the petitioner has been issued with four notices, namely on 05.10.2001, 23.10.2001, 19.11.2001 and 08.04.2002, he has simply kept quite and therefore, he cannot complain that the respondents are under the obligation to give personal hearing as per Rule 30(2) of the Tamil Nadu Liquor (Retail Vending) Rules.

4. As I mentioned above, when the respondents have issued several notices, the petitioner has not even given a single reply and no such copy of the reply is enclosed for any one of the notices. Therefore, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vga

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai
2. The Commissioner
Prohibition and Excise Department,
Chepauk, Chennai - 5

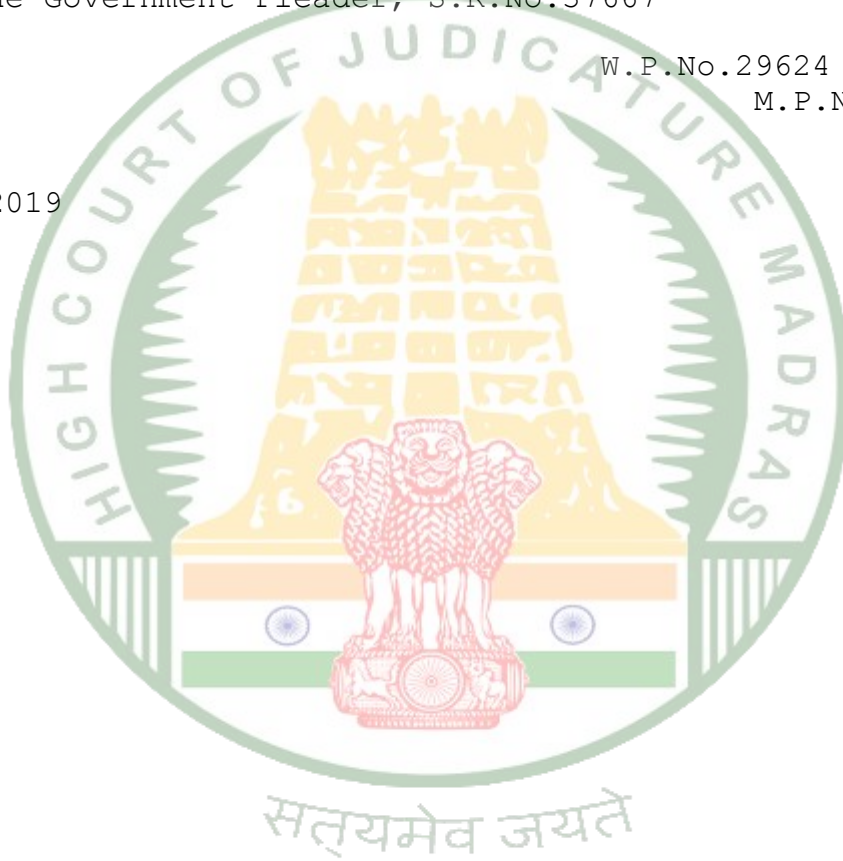
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Collectorate, Dharmapuri
4. The Assistant Commissioner (Excise)
The O/o Assistant Commissioner (Excise)
Krishnagiri.
5. The Divisional Excise Officer,
The Office of the Divisional Excise,
Hosur, Krishnagiri District

+1cc to Mr.P.Mathivanan, Advocate, S.R.No.36968

+1cc to the Government Pleader, S.R.No.37667

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KK(CO)
CS/03/06/2019



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