



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P. (MD)No.5693 of 2011

and

M.P. (MD)No.1 of 2011

V.Arumugam Pillai

: Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Commissioner of
Prohibition and Excise,
Ezhilagam, Chennai-600 005.

2.The District Collector,
Collectorate, Karur,
Karur District.

3.The Assistant Commissioner (Excise),
Collectorate,
Karur, Karur District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent culminating in the order dated 29.04.2011 bearing Ref.No.Rc.J1/11878/2008 and quash the same and direct the third respondent to refund the sum of Rs.71,633/- with interest at 24% p.a.

For Petitioner

: Mr.M.Aravind Subramaniam

For Respondents

: Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

ORDER

The petitioner was issued with a licence to run a Retail Vending Liquor shop for a period between 24.12.2001 and 31.07.2002. As per the conditions of licence, he was directed to deposit a sum of Rs.5,00,000/- towards privilege fee, Rs.5,000/- towards licence fee and Rs.1,00,000/- towards security deposit. Even though it was informed that he will be given a licence for a period of 12 months, it was restricted to 7 months. Therefore, the petitioner has filed a Writ Petition in W.P.No.8369 of 2003 for refund of the excess amount collected from him. The Writ Petition was ordered and confirmed by the judgment of a Division Bench of this Court. Thereafter, pursuant to the contempt proceedings, the third respondent has refunded the



licence fee, but, however, deducted a sum of Rs.71,633/- towards fine for non-lifting of the minimum required quantity, as per Rule 30(2) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989. In that process, it is mandatory that reasonable opportunity should be given to the licensee. But the third respondent has not provided a reasonable opportunity. Aggrieved over the same, the petitioner has approached this Court vide W.P.(MD)No.2949 of 2008. This Court, by its order dated 08.02.2011, disposed of the Writ Petition with a direction to the third respondent/Assistant Commissioner (Excise) to issue a notice with regard to the proposed levy of penalty upon the petitioner and provide a reasonable opportunity of submitting his objections and personal hearing and thereafter, to decide the same. But, contrary to the directions issued by this Court, the third respondent, once again, vide his proceedings in Rc.J1/11878/2008, dated 29.04.2011, passed a very same order without giving any reasonable opportunity to the petitioner. This order has been challenged in the present Writ Petition.

2. Heard both sides.

3. On the face of it, it is seen that opportunity of filing objections as well as personal hearing was not accorded to the petitioner before passing the impugned order. The mechanical action of the third respondent shows non-application of mind.

4. In view of the above, the impugned order dated 29.04.2011 is liable to be set aside and accordingly, set aside. The matter is remanded back to the third respondent for fresh consideration. On remand, the third respondent is directed to adhere to the directions issued by this Court in W.P.(MD)No.2949 of 2008, dated 08.02.2011, provide reasonable opportunity to the petitioner and thereafter, dispose of the matter, within a period of four weeks from the date of receipt of a copy of this order.

5. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

SML

To

1.The Commissioner of Prohibition and Excise,
State of Tamil Nadu,
Ezhilagam, Chennai-600 005.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Collector,
Collectorate, Karur,
Karur District.

3.The Assistant Commissioner (Excise),
Collectorate,
Karur, Karur District.

+1 CC to M/s.M.ARAVIND SUBRAMANIAM, Advocate (SR-94316[F] dated 24/10/2019)

+1 CC to M/s.SPL GP (SR-94284[F] dated 24/10/2019)

Order made in
W.P. (MD)No.5693 of 2011

KK/SAR/25.10.2019/3P-6C/