

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020

PRONOUNCED ON : 16.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4548 of 2013

N.Dhanasekaran

... Petitioner

Vs.

1.The District Collector,
Salem District,
Salem.

2.The Assistant Commissioner,
Excise, Salem District.

3.The Divisional Excise Officer,
Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 28.03.2005 made in Na.Ka.No.37882/04/Kal passed by the first respondent herein and to quash the same and direct the respondents to refund the entire amount of Rs.17,15,,500/- (Privilege amount, caution deposit and license fee).

For Petitioner : Mr.Rajmakesh

for Mr.M.Guruprasad

For Respondents:Mrs.A.B.Reehana Begum, GA (T)

O R D E R

With the consent of both parties, the present Writ Petition is taken up and heard through Video Conferencing on 30.09.2020.

2. The petitioner was allotted with the licence for running a IMFL Shop No.65 (Old No.180) at Ayothiyapattinam, Valapadi Taluk, Salem District, through the proceedings of the second respondent dated 03.10.2002. The licence was for a period of one year commencing from 03.10.2002. The petitioner claims to have remitted the privilege fee, caution deposit and

licence fee of Rs.17,15,500/- and claims that he was able to run the shop only for a short period of 40 days and therefore, he is entitled for refund of the entire privilege fees.

3. This Court, by its earlier order passed in W.P.No.7512 of 2008 dated 10.11.2009, had directed the second respondent herein to consider the petitioner's representation seeking for refund of the privilege amount within a stipulated period. In consequence to the orders of this Court, the present impugned order dated 28.03.2005 has been passed, rejecting the petitioner's claim for refund, on the ground that the petitioner had not come forward to run the allotted shop.

4. The learned counsel for the petitioner, relied upon the information provided to him on 13.12.2011 under the Right to Information Act, 2005 and submitted that pursuant to his inability to run the Shop No.65 (Old No.180), the same was reallocated to third parties on 11.02.2003 and therefore, the respondents ought to have considered refund of the proportionate deposit amount, after adjustment.

5. Mrs.A.B.Reehana Begum, learned Standing counsel for the respondents submitted that as per the observations of the Hon'ble Supreme Court in the judgment made in SLP.(C) No.19277 of 2002 [State of Tamil Nadu & Others V. K.Ramanathan], the petitioner was allotted a licence for a period of one year commencing from 03.10.2002 and since he had not come forward to run the shop, he cannot claim refund of the privilege fees and hence the order of the second respondent cannot be found fault.

6. It is not in dispute that the petitioner, who was granted licence of Shop No.65 (Old No.180) from 03.10.2002, had not run the shop for the whole one year period. Apparently, the respondents have rejected the petitioner's request to refund the privilege fees, on the ground that they were unable to re-allot the shop to anybody else and thereby incurring a loss of revenue to the Government.

7. As per the orders of the Hon'ble Supreme Court referred above, the notified number of shops allotted cannot exceed the number of shops allotted for a particular area and hence the claim of the respondents that there could be a loss of revenue because of the non running of the shop allotted to the petitioner, seems to be acceptable.

8. However, on the request made by the petitioner under the RTI Act, the second respondent has informed him that Shop No.180 (New No.65), which was not run by the petitioner, was reallocated to third parties on 11.02.2003 and they had also collected the privilege fee along with the cash deposit and licence fee for the same. The shop allotted to the petitioner

was not run between 03.10.2002 and 11.02.2003 and it can thus be said that the Government could have suffered a loss of revenue for 131 days between 03.10.2002 and 11.02.2003. Thereafter, since the shop was reallocated to third parties on 11.02.2003 and the privilege fees was also collected, the claim that the Government had suffered loss from 11.02.2003 is unacceptable. Consequently, the petitioner herein would be entitled for refund of privilege fees from 11.02.2003 onwards.

9. It would be appropriate to point out that this is not a normal case of breach of the licence conditions but the allotment of the shop was on exigent conditions, pursuant to the orders of the Hon'ble Supreme Court. The respondents has also chosen to re-allot the IMFL shop allotted to the petitioner without due process of law. Hence this Court is of the view that the respondents can be ordered to refund the balance of the privilege fees to the petitioner, calculated from 11.02.2003 onwards.

10. In the light of the above observations, the impugned order dated 28.03.2005 made in Na.Ka.No.37882/04/Ka1 passed by the first respondent herein is quashed. Consequently, the respondents herein are directed to refund the privilege fees, cash deposit and licence fee for the IMFL Shop No.65 (Old No.180) in Ayothiyapattinam Town Panchayat, Valapadi Taluk, Salem District, after deducting the proportionate amount of the deposit amount for the period between 03.10.2002 and 11.02.2003. The petitioner shall not be entitled for interest on this. The respondent shall endeavor to refund the amount, atleast within a period of three months from the date of receipt of a copy of this order.

11. The Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-VIII)

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

DP

To

1.The District Collector,
Salem District,
Salem.

2.The Assistant Commissioner,
Excise, Salem District.

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3.The Divisional Excise Officer,
Salem.

+lcc to the Government Pleader SR.34715

W.P.No.4548 of 2013

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CB(07/12/2020)



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