IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 17983 of 2014
and
M.P. No. 2 of 2014

A. Muthusamy ...Petitioner

-vs-

1. The Government of Tamilnadu,
   Rep. by its Secretary,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai - 600 009.

2. The District Collector,
   Salem District,
   Salem.

3. The Assistant Commissioner (Excise)
   Salem,
   Salem District.

4. The Divisional Excise Officer,
   Divisional Excise Office,
   60, Bretts Road,
   Mulluvadi Gate,
   Salem - 1. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Third Respondent in his office Ref: NA.KA.No.60133/2007/ (82) KA1, dated 11.10.2007 and NA.KA.NO.62077/2007/ (168) KA.1, dated 29.10.2007 and the Memos issued by the Fourth Respondent in his office Ref:Ci.Pa.14/08/A and Ci.Pa.22/08/A, dated 03.01.2014 and quash the same.

For Petitioner : Mr. P.Mani
For Respondents : Mr. N. Inbanathan
Additional Government Pleader

O R D E R
(through video conference)

Heard Mr. P.Mani, Learned Counsel for the Petitioner, Mr. N.Inbanathan, Learned Additional Government Pleader, appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had been granted licence as IMFL Retail Vendor for Shop Nos. 42/01-02 and 168/01-02 in Division 47 and 32 of Salem Town for the excise year 2001-2002. It requires to be noticed that Rule 30(2) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, introduced with effect from 02.06.2001, provides that a licensee of IMFL shop should lift minimum target off-take of liquor fixed for the shop and failure to comply with that condition for two months consequently would inflict penalty in proportion to the loss of revenue to the Government and such failure for another two months consequently would make the licence to be cancelled and the shop to be re-notified for grant of privilege. The validity of the said rule, was challenged by the Petitioner and other similarly placed licensees before the Division Bench of this Court, and in the order dated 04.11.2003 in W.A. No. 417 of 2002 etc., batch, it was held as follows:-

> "3. This batch of Writ Petitions relate to the excise year 2001-02 and the compensation for not complying with the minimum off take is drastically reduced to 20% of the deficit of the minimum off take for the first violation and 30% for the second violation. If there is a third violation, the license is liable for cancellation with forfeiture of privilege fee and security deposit. But it is not applicable herein, as the licenses have already expired long back in the year 2002.
>
> 4. Mr.K.M.Vijaya, Learned Senior Counsel and other Learned Counsel, who are appearing for such of those petitioners who have challenged the virus of Rule 30 of the Rules mentioned supra, submit that the issue with regard to constitutionally may be kept open with an avenue to the Petitioners to enable them to plead the application of concession of 20% of the value of the deficit off take compensation of the first time and 30% of the value of the deficit of the minimum off take for the second time.

5. There should not be any objection on the part of the Government in consider this aspects as the Government after feeling the hardships faced by the retail vendors has reduced the payment of the value of the deficit for the minimum off take. Such beneficial provision has to be extended to such of those retail vendors who have failed to lift the minimum off take. However, for fact finding as to whether it is the violation for the first time or the second time and to state their difficulties an opportunity is necessary.

6. In the above circumstances, the Writ Appeal and the Writ Petition are disposed by keeping the point of constitutionality of Rule 30 of the above Rules open and directing the Government to consider the cases of the Petitioners by issuance of a Government Order clarifying which of the retailers of Indian Made Foreign Liquor, who have obtained licenses for the excise year 2001-02 should be liable to pay 20% of the value of the deficit in the minimum off take for the first violation or 30% of the value of the deficit in the minimum off take for the second violation. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment. Until this exercise is made by the Government no coercive steps shall be taken against the Petitioners for payment of the value of the deficit in the minimum off take. It is made clear that Audi Alterum Partem Rule has to be followed for fixing the amount even after the Government complies with this direction as different authorities have to deal with the matter with different retailers spread all over the State of Tamilnadu. Consequently, the connected WAMP and W.M.Ps are closed."

In furtherance to the aforesaid decision of this Court, the Government of Tamil Nadu had issued G.O.Ms. No. 19, Home, Prohibition and Excise (VI) Department, 27.02.2007 in which the quantum of penalty payable to the Government at 20% and 30% of the value of deficit for the first and second violations respectively was worked out and the following directions have been issued:-

(i) in respect of shops for which the penalty amount payable is less than one lakh rupees, the penalty amount shall be ordered to be forfeited from the security deposit and the balance amount available after forfeiture shall be refunded and that; and

(ii) in respect of shops for which the penalty amount (compensation) payable is more than one lakh rupees, the entire security deposit of one lakh rupees shall be ordered to be forfeited and in respect of the balance amount of penalty yet to be recovered the ex-licensees shall be directed to pay the amount and in case they fall to pay the amount, action shall be taken to recover the same by invoking the provisions of Revenue Recovery Act.

3. It is the case of the Petitioner that despite the specific requirement in the Order dated 04.11.2003 in W.A. No. 417 of 2002 passed by the Division Bench of this Court that an opportunity of personal hearing should be afforded to the IMFL Retail Vendor for ascertaining as to whether it was the failure for the first time or the second time and to state their difficulties, the Third Respondent by the Order in Na. Ka. No. 60133/2007/(82) KA1, dated 11.10.2007 and Na. Ka. No. 62077/2007/(168) KA.1 dated 29.10.2007 and the Fourth Respondent in the Memo dated 03.01.2014 has levied penalty on the Petitioner without ascertaining as to whether there was failure to lift minimum off-take of liquor and if so, what would be the extent of liability to be mulcted in terms of governing circular. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging those orders.

4. Though the Third Respondent has filed Counter-Affidavit, there is nothing to show that the aforesaid exercise required by the Division Bench of this Court, had been carried out in this case. In view of the same, it is not possible to sustain the impugned orders, which are set aside and the matter is remitted to the concerned authority to decide the matter afresh on merits and in accordance with law following the requirements in the Division Bench of this Court in W.A. No. 417 of 2002 dated 04.11.2003 and in G.O. Ms. No. 19, Home, Prohibition and Excise (VI) Department, 27.02.2007 issued in that regard. It is incumbent upon the concerned authority to issue notice calling for explanation and afford full opportunity of personal hearing to the Petitioner, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner, under written acknowledgment.

Accordingly, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

msm/dm

To

1. The Secretary,
   The Government of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai - 600 009.

2. The District Collector,
   Salem District,
   Salem.

3. The Assistant Commissioner (Excise)
   Salem,
   Salem District.

4. The Divisional Excise Officer,
   Divisional Excise Office,
   60, Bretts Road,
   Mulluvadi Gate,
   Salem - 1.

+1cc to M/s.P.Mani, Advocate, SR.No.35152

W.P. No. 17983 of 2014

VSN II (CO)
KKV/03/12/2020