



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2020**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8157 of 2020

and

W.M.P.(MD) No.7563 and 7564 of 2020

(Through Video conferencing)

V.Ashok Kumar

...Petitioner

-Vs-

The District Manager,
TASMAC
Karur District.

...Respondent

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in his proceedings NA.KA.C.V./011/2018 dated 30.06.2020 and quash the same as unconstitutional.

For Petitioner : Mr.J.Sivaram

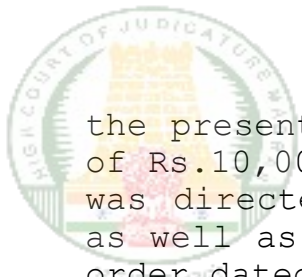
For Respondent : Mr.H.Arumugam, standing counsel.

ORDER

The prayer sought for herein is for a writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in his proceedings NA.KA.C.V./011/2018 dated 30.06.2020 and quash the same.

2.Heard Mr.J.Sivaram, learned counsel appearing for the petitioner and Mr.H.Arumugam, learned standing counsel appearing for the respondent TASMAC.

3.The petitioner is working as Salesman in TASMAC No.4956 at Karur District, where, a sudden inspection was taken place by the respondent TASMAC management on 16.06.2020 and according to them, they found that, one of the IMFL liquor bottle viz., Stallion Rum 375 ml has been sold 10 rupees extra out of the MRP rate and on this allegation, when the petitioner was asked his explanation, he has allegedly admitted the guilt. According to the respondents, based on the said alleged admission on the part of the petitioner, formal show cause notice was issued on 20.06.2020 giving 7 days time to give further written explanation. However, the petitioner has not responded to the said show cause notice within 7 days. Therefore,



the present impugned order was passed on 30.06.2020, whereby, a sum of Rs.10,000/- being fine having been imposed against the petitioner was directed to be recovered from the petitioner with 18% interest as well as GST amount payable in this regard. Challenging the said order dated 30.06.2020, the present writ petition has been filed.

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4. In this context, it is the submission of the learned counsel appearing for the petitioner that, though the petitioner has given a reply to the show cause notice dated 27.06.2020 denying the charge made against him as there was no such sale of Stallion Rum 375 ml on 16.06.2020 at the TASMAC shop, where he worked, the said charge has been made against him and he was compelled to sign in the charge and therefore, he had no option except to sign it. However, he denied the said charge.

5. He would further submit that, though a representation having been made on 27.06.2020, the same has not been considered and in the impugned order, it has been recorded as if the petitioner has not given any explanation and accordingly, the impugned order now has been passed, without considering the reply given by the petitioner. Therefore, the said order is liable to be interfered with.

6. I have heard the learned standing counsel appearing for the TASMAC, who would submit that, even though the petitioner has admitted his guilt, based on that, straightaway order could have been passed, in order to give opportunity to the petitioner, the respondent has given show cause notice on 20.06.2020 giving 7 days time to the petitioner to respond. However, the petitioner has not responded within 7 days time, which ends on 27.06.2020. The present reply dated 27.06.2020 filed in the typed set of papers has not been given to the respondent's office on or before 27.06.2020 instead on 30.06.2020, the said reply was given at the Tapal section, before which, since the impugned order on the same day was passed, the said reply could not be taken into account. Therefore, in that case, the respondent cannot be blamed for non consideration of his reply since the same has not been filed in time.

7. I have heard the submissions made by both sides and perused the materials placed before this Court.

8. Admittedly, the petitioner has given reply dated 27.06.2020, but the same according the respondent has not been filed on 27.06.2020 at the respondent's office, instead, it was given in the tapal section only on 30.06.2020. Therefore, there can be a delay of 3 days on the part of the petitioner to reach the reply to the respondent office. But, in the meanwhile, on the same day, since the respondent passed the impugned order, the said reply could not be considered. Anyhow, in order to give fair opportunity to the petitioner before passing the final order, this Court feels that, the said reply given by the petitioner can be taken into account and



after having considered the same, final order can be passed by the respondent.

9. In that view of the matter, this Court inclined to quash the impugned order. Accordingly, the impugned order is quashed. The matter is remitted back to the respondent TASMAL, who shall take into account the reply given by the petitioner dated 27.06.2020 and submitted with tapal section of the respondent office on 30.06.2020 and after considering the same, a revised final order can be passed on merits and in accordance with law, within a period of two weeks thereafter.

10. With this direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

Arul

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Order made in

W.P. (MD) No. 8157 of 2020

28.07.2020

AP(13/08/2020) 3P 1C