

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.4609, 4614, 4619, 6353 & 6339 of 2021
and

WMP. Nos.5257, 5247 & 5253 of 2021

Mr.N.Devendra Gupta

...Petitioner in W.P. Nos.4609 & 4614 of 2021

Vadipatti Raja Hockey Academy
Represented by its President,
Mr.P.R.Muthuram,
32/117, C-10, W Block,
3rd Avenue, Anna Nagar,
Chennai - 600 040.

...Petitioner in W.P. No.4619 of 2021

M/s. SS Hotels,
Represented by its Partner,
P.Vignesh Prabhu,
No.232, Kumaran Road,
Tirupur - 641 601.

...Petitioner in W.P. No.6353 of 2021

M/s.The North Club,
Represented by its Secretary,
D.Shamugavadivel,
No.1/297, Kandakampalayam Pirivu,
P.N.Road, Chettypalayam Village,
Tirupur - 641 666.

...Petitioner in W.P. No.6339 of 2021

Vs.

1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

... 1st Respondent in W.P. No.4609, 4614 & 4619 of 2021

2.The Commissioner of Prohibition and Excise,
Government of Tamil Nadu,
Ezhilaam, Kamarajar Salai,
Chepauk, Chennai - 600 005.

... 2nd Respondent in W.P. No.4609, 4614 &
4619 of 2021
... Respondent in W.P. Nos.6353 & 6339 of 2021

Prayer in W.P. Nos.4609, 4614 & 4619 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Mandamus, to direct the respondents to revise the quantum of license and privilege fees pertaining to the bar bearing License No.F.L.3 No.6/90-91, F.L.3 No.12/2008-09 (Additional bar), F.L.2.No.05/2018-19 payable by the Petitioner towards Excise Year 2021-22 by adjusting the fees paid corresponding to the period of lockdown towards the same payable for the renewal of license for the Excise year 2021-22 and; in the alternative, direct the respondents to extend the existing license period by 171 days being the number of days during which no business operation was permitted due to lockdown.

Prayer in W.P. Nos.6353 & 6339 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Mandamus, to direct the respondent to consider the period from 16.03.2020 to 03.09.2020 as non-transaction business tenure as per Section 24A of the Tamil Nadu Liquor (License and Permit) Rules, 1981 and consequentially direct the respondent to adjust the refundable proportionate license fee and privilege fee for the period 16.03.2020 to 03.09.2020 towards the payable license fee and privilege fee for the year 2021-2022.

For Petitioner : Mr.A.Suresh in W.P. Nos.4609,
4614 & 4619 of 2021
Mr.M.Guruprasad,
in W.P. Nos.6353 & 6339 of 2021

For Respondents:Mr.R.P.Prathap Singh,
Government Advocate in the above WPs

COMMON ORDER

These writ petitions seek a Mandamus directing the respondents/the State of Tamil Nadu (R1) and the Commissioner of Prohibition and Excise (R2) to revise the quantum of licence and privilege fee pertaining to the respective F.L.2 & 3 licences remitted in respect of Excise Year 2021-22 by refunding the fee paid.

2. In some cases, the petitioners pray for an adjustment of fee towards the renewal amounts payable for the subsequent Excise Years or in the alternative, a direction for extension of the existing licence period for the amount during which the country was under lock-down on account of on-going COVID-19 pandemic and since no business could be carried out by them, at that time.

3. When the matters had come up on earlier occasions, I had directed that, notwithstanding the pendency of the writ petitions, the Commissioner of Prohibition and Excise was at liberty to consider the representations, hear the petitioners and pass orders. Today it is brought to my notice that enquiry was initiated, the petitioners have been heard and orders are awaited.

4. My attention is drawn to Rule 24(A) of the Tamil Nadu Liquor (License and Permit) Rules, 1981 which reads as follows:

'24(A) Refund of licence fee in certain cases:--

A licensee, who has not transacted any business under the licence, shall apply to the licensing authority for refund of the licence fee along with the licence granted to him. On receipt of the application, the licensing authority may refund the licence fee, if he is satisfied that the licensee has not transacted any business under licence granted to him.

Provided that if any licence has not transacted any business for any part of the year, the proportionate licence fee and privilege fee shall be refunded'

5. A perusal of Rule 24(A) indicates that if a licensee has not transacted business under its license, it is eligible for a refund of licence and privilege fee proportionate to the period when the business was not transacted, upon the licensing authority satisfying himself that the licensee had, indeed, not transacted business during that period. Thus, it is for the Commissioner to satisfy himself that the establishments of the petitioners had not transacted business for the period of lock-down on account of the on-going COVID-19 pandemic, and if this averment is found to be correct, refund the licence and privilege fee in terms of Rule 24A. Mr.Prathap Singh, fairly concurs with this direction. Let this exercise be done within a period of two (2) weeks from today.

6. However, in cases where an adjustment of licence and privilege fee are sought, he points out that Rule 24A does not contemplate such adjustment. Thus, let this request be pursued by the respective petitioners before R2, to be decided by him in accordance with law.

7. These writ petitions are disposed with the aforesaid directions and connected Miscellaneous Petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rkp

To

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

2.The Commissioner of Prohibition and Excise,
Government of Tamil Nadu,
Ezhilaam, Kamarajar Salai,
Chepauk, Chennai - 600 005.

+2 Ccs to Mr.M.Guruprasad, Advocate sr 21572 & 21573.

+1 Cc to The Government Pleader sr 21408, 21414, 21415.

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and
WMP. Nos.5257, 5247 & 5253 of 2021

BR(CO)
SP(01/04/2021)

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