



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.14822 of 2010

and M.P. (MD)No.1 of 2010

WEB COPY

V.Sathyanathan

... Petitioner

versus

1. The District Collector,
Collectorate,
Tirunelveli District,
Tirunelveli.

2. The Divisional Prohibition Officer,
Collectorate,
Thoothukudi District,
Thoothukudi.

3. The Taluk Exercise Officer,
Tirunelveli Taluk,
Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to proceedings in Na.Ka.A.148/05 dated 03.12.2010 on the file of second respondent and quash the same as illegal and further direct the respondent not to take any steps for recovering the alleged arrears of Rs.70,452/- and further direct the respondent to return the amount deposited by the petitioner to the tune of Rs.39,435/- along with the interest.

For Petitioner	:	Mr.M.P.Senthil
For Respondents	:	Mr.N.Ramesh Arumugam, Government Advocate

ORDER

This writ petition is filed as against the notice dated 03.12.2010, in and by which, the second respondent demanded a sum of Rs.70,452/- as a loss caused by the petitioner.

2. The petitioner was a successful bidder of the Arrack shop No.14, situated at Oorudaiyan Kudiyiruppu Village, Tirunelveli District, for the Excise year 1984-1985. However, on certain objections, the first respondent/District Collector, Tirunelveli, directed the petitioner to choose an alternative place and also cancelled the licence granted to the petitioner. The order of cancellation was challenged in W.P.No.4894 of 1985 and this Court

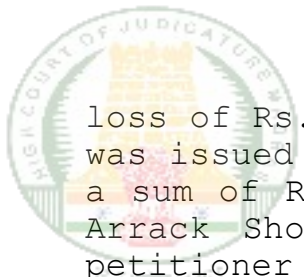


granted an order of interim stay on 04.05.1985 and subsequently, the writ petition was dismissed as infructuous on 08.02.1993. Thereafter, the third respondent issued a notice on 18.06.1988 calling upon the petitioner to pay a sum of Rs.70,452/- as a loss caused to the Government due to non-operation of arrack shop. The petitioner challenged the said notice in W.P.No.7210 of 1998 and this Court, by order dated 20.03.1998, allowed the writ petition with a direction to the first respondent to conduct a fresh enquiry by providing an opportunity to the petitioner. Thereafter, a notice was issued to the petitioner on 19.07.2000 requiring the petitioner to attend the enquiry on 04.08.2000. Pursuant to the said notice, the petitioner also attended the enquiry on that day and submitted a representation to the said notice. As an abundant caution, he also sent a reply, by registered post on 16.08.2000 to the respondents. The respondents did not take any steps on the reply given by the petitioner. However, the second respondent passed the impugned order on 03.12.2010, i.e. after ten years. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submits that the first respondent demanded a sum of Rs.70,452/- in arbitrary manner, without producing any calculation as to how the amount has been arrived at. Though the notice was issued in the year 2000, the final order was passed only in the year 2010, i.e. after 10 years. He further submits that the petitioner is no way responsible for the loss caused to the Government and it is the second respondent, who took a decision to shift the shop without providing an opportunity to the petitioner. Therefore, the petitioner cannot be held responsible for the loss if any.

4. The learned Government Advocate appearing for the respondents submits that the petitioner has taken the arrack shop No.14, situated at Oorudaiyan Kudiyiruppu Village, Tirunelveli District, for the exercise year 1984-1985 for Rs.9,860/-. The licence was granted to the petitioner on 05.12.1984. As per Rule 6 of the Tamil Nadu Toddy and Arrack Shop Rules 1981, the petitioner has to identify the shop, which is not objectionable to the public. However, he has preferred a site for running the shop in an objectionable place and complaints have also been received by the District Collector. Therefore, the first respondent/District Collector directed the petitioner to choose an unobjectionable site satisfying the conditions laid down in the Tamil Nadu Toddy and Arrack Shop Rules 1981. Since the petitioner failed to do so, the District Collector, by order dated 22.04.1985, cancelled the licence granted to the petitioner. Aggrieved over the same, the petitioner preferred a writ petition in W.P.No.4894 of 1985 and obtained an order of interim stay on 04.05.1985 and subsequently, the writ petition was dismissed as infructuous on 08.02.1993.

5. The learned Government Advocate further submits that in the conduct of the petitioner, the Department suffered a



loss of Rs.70,452/- in respect of Shop No.14 and therefore, a notice was issued to the petitioner on 18.06.1988 with a direction to remit a sum of Rs.70,452/- being the notional loss of excise arrears for Arrack Shop No.14. The said notice was also challenged by the petitioner in W.P.No.7210 of 1988 and that writ petition was allowed with a direction to the first respondent to conduct a fresh enquiry by providing an opportunity to the petitioner. Pursuant to the said order, a notice was issued to the petitioner on 19.07.2000 and he also appeared for the enquiry. Thereafter, he shifted his residence from Tirunelveli to Thoothukudi and he could not be traced for some time. Hence, the second respondent issued the impugned notice on 03.12.2010, which is the subject matter of the writ petition.

6. According to the learned Government Advocate, all reasonable opportunities were provided to the petitioner, however, he failed to avail the same. The learned Government Advocate also refers to G.O.Ms.No.81, Prohibition and Excise (II) Department, dated 05.04.2004 and submits that the notional loss of excise arrears of Rs.70,452/- has to be collected with 12% interest.

7. This Court considered the rival submissions made.

8. The petitioner, who took an Arrack Shop in an auction for the Excise year 1984-85, failed to find out a suitable place, satisfying the condition as laid down in the Tamil Nadu Toddy and Arrack Shop Rules 1981. Therefore, the first respondent/the District Collector, Tirunelveli, issued a notice and also cancelled the licence, which was challenged by the petitioner in W.P.No.4894 of 1985 before this Court, wherein, an order of interim stay was granted and subsequently, the writ petition was dismissed as infructuous on 08.02.1993. In view of the conduct of the petitioner, the respondents could not operate the shop No.14 and also suffered a loss of Rs.70,452/-. Therefore, the respondents issued a notice on 18.06.1988 demanding the petitioner to deposit a sum of Rs.70,452/-, which was also challenged by the petitioner in W.P.No.7210 of 1988. This Court, by order dated 20.03.1998, allowed the writ petition, with a direction to the first respondent to conduct a fresh enquiry by providing an opportunity to the petitioner. Pursuant to the said order, a notice was issued on 19.07.2000 requiring the petitioner to attend the enquiry. The petitioner also appeared for enquiry before the respondents. Thereafter, according to the respondents, the petitioner shifted his residence from Tirunelveli to Tuticorin District and he could not be traced for some time and after that only, the impugned notice was issued on 03.12.2010.

9. The fact remains that this Court, by order dated 20.03.1998, remitted the matter to conduct a fresh enquiry by providing an opportunity to the petitioner. Thereafter, a notice was issued on 19.07.2000 and the impugned order was passed in the year 2010. Though the respondents claim that as the whereabouts of the petitioner could not be found, the impugned order was issued



after ten years from the show cause notice. The impugned order is challenged in this writ petition and the same is also pending for the past 10 years.

10. To give a quietus to the issue, the writ petition is dismissed with a direction to the petitioner to appear before the respondents within 10 days from the date of receipt of a copy of this order and the respondents shall furnish him the details of the calculation, if any, in arriving the amount and provide him one more opportunity to dispute the quantum. Thereafter, the respondents shall pass final orders as to the amount due to be collected from the petitioner. It is made clear that this opportunity is provided to the petitioner only on the delay in passing the final orders after 10 years on the quantum and not on his liability. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

ogy

To

1. The District Collector,
Collectorate,
Tirunelveli District,
Tirunelveli.
2. The Divisional Prohibition Officer,
Collectorate,
Thoothukudi District,
Thoothukudi.
3. The Taluk Exercise Officer,
Tirunelveli Taluk,
Tirunelveli District.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-19994[F] dated 21/04/2022)

+1 CC to M/s.SPL.GP. (SR-20439[F] dated 22/04/2022)

W.P. (MD)No.14822 of 2010

20.04.2022

SB (CO)

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