



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.5576 of 2020

in

W.M.P. (MD) Nos.4886 and 4889 of 2020

WEB COPY

D.Radhan

... Petitioner

/vs./

1.The Senior Regional Manager

Tamilnadu State Marketing Corporation Limited,
Tiruchirappalli.

2.The Deputy Collector/District Manager

Tamil Nadu State Marketing Corporation Limited,
karur, Karur District.

3.The Superintendent of Police,
Karur District, Karur.

4.The Inspector of Police,
Prohibition and Enforcement Wing,
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the order passed by the 2nd respondent in Na.Ka.No.CV3/0625/2019 dated 31.01.2020, quash the same.

For Petitioner : Mr.A.Rahul

For R1 & R2 : Mr.H.Arumugam

Standing Counsel

For R3 & R4 : Mr.M.Prakash

Additional Government Pleader

ORDER

The petitioner has challenged the impugned order dated 31.01.2020, by which the petitioner's Bar license has been cancelled on account of the failure of the petitioner in payment of the license fee for the period up to 31.01.2020 and the license fee payable by the petitioner for the month of January 2020 was adjusted in the petitioner's security of the deposit and the balance amount of security deposit was forfeited.

2.It is the specific case of the petitioner that adjacent to the license premises, illegal Bars have been operated, which obviously impacted the revenue of the petitioner inasmuch as the



petitioner was neither able to sell the liquor items nor to collect bottles and therefore, the petitioner requested the respondents to take action to remove the illegal Bars, which were operating surrounding the TASMAL Bar, to which the petitioner was licensed.

3. It is submitted that but for the illegal Bars that were allowed to be operated, the petitioner would have remitted the license fee. It is further submitted that there is no justification in appropriating the security deposit paid by the petitioner during the grant of license.

4. The learned counsel for the petitioner submits that the license was for a period of 2 years from 16.11.2019 to 30.09.2021 and that on account of the present pandemic of COVID-19, the license period was extended up to December, 2021. It is therefore submitted that the respondents may be directed to refund the security deposit, which has been appropriated without considering the facts and circumstances of the case.

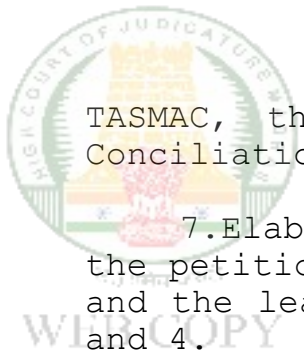
5. The learned counsel for the official respondents submits that the issue is covered on the petitioner in terms of an order dated 31.01.2020 in W.P.Nos.10821 of 2015 etc. batch. A specific reference was made to paragraph 9, 10 and 11, which reads as under:

"9. Since the dispute between the respective petitioners and the 2 nd/3 rd respondents are purely a commercial dispute which can be resolved in an arbitration proceeding in terms of the arbitration clause, I am of the view that these present writ petitions are liable to be dismissed as the petitioners have an alternate remedy which is more efficacious. The respective petitioners should therefore invoke the arbitration clause as per the respective agreement and proceed to resolve the dispute with the 2 nd respondent.

10. Therefore, these writ petitions are liable to be dismissed. Since the petitioners had obtained an interim relief which was in operation all along during the pendency of these writ petitions, same shall continue for a period of another 6 months from the date of receipt of copy of this order.

11. Petitioner may file appropriate application under Section 179 of the Arbitration and Conciliation Act, 1996 to continue the same under the provisions of the aforesaid Act if desired. These writ petitions thus stand dismissed with the above observations. Consequently, connected miscellaneous petitions are closed. No cost."

6. The learned counsel for the official respondents also drew attention to the condition No.55 of the tender document, which states that if there is any dispute between the petitioner and the



TASMAC, the matter can be resolved as per the Arbitration and Conciliation Act, 1996.

7.Elaborate arguments were advanced by the learned counsel for the petitioner, learned Standing Counsel for the respondents 1 and 2 and the learned Additional Government Pleader for the respondents 3 and 4.

8.It is submitted by the learned Standing Counsel for the respondents 1 and 2 that the dispute was to be reconciled/resolved under the Arbitration and Conciliation Act, 1996 in terms of Clause 55 of the aforesaid tender application.

9.The learned counsel for the petitioner would submit that the impugned order cancelling the licence of the petitioner and appropriating the security deposit as advanced by the petitioner is without following the principles of natural justice.

10.Considering the fact that the impugned order has been passed without giving an adequate notice to the petitioner to show cause as to why the amount paid by the petitioner should also not be adjusted/forfeited, I am inclined to set aside the impugned order dated 31.01.2020 and remit the case back to the 2nd respondent to pass appropriate orders on merits and in accordance with law afresh, by considering the representation, if any, of the petitioner, within a period of 45 days from the date of receipt of a copy of this order. In case, the petitioner has not given any representation, the petitioner is at liberty to give a fresh representation within a period of 15 days from the date of receipt of a copy of this order. It is needless to state that before passing such orders, the petitioner shall also be heard by the 2nd respondent.

11.The writ petition stands disposed of, in terms of the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Senior Regional Manager
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karur, Karur District.
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Karur District, Karur.
 - 4.The Inspector of Police,
Prohibition and Enforcement Wing,
Karur District.
- +1 CC to M/s.H. ARUMUGAM, Advocate (SR-16571[F] dated 05/04/2022)
- +1 CC to M/s.SPL GP (SR-16364[F] dated 04/04/2022)
- +1 CC to M/s.A.RAHUL, Advocate (SR-16236[F] dated 01/04/2022)

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RD(18.04.2022) 4P 8C