IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.10355, 13590 and 13591 of 2021
and
W.M.P.No.366 of 2022

W.P.No.10355 of 2021:-

Mr.N.Devendra Gupta,
Managing Partner,
Tvl.Hotel Picnic Plaza,
Old No.2, New No.3, R.K.Mutt Road,
Mylapore,
Chennai – 600 004. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by 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,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai – 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in Proc.No.P&E 2(4)/1528/2021-1 dated 15.04.2021 on the file of the 2nd respondent and quashing the same and further directing the respondents to refund the proportional license and privilege fees pertaining to the petitioner's bars bearing License No.F.L.3.No.6/90-91 and 12/2008-09 (Additional Bar) in respect of the lockdown period of 171 days in accordance with Rule 24A of the Tamil Nadu Liquor (License and Permit) Rules, 1981 and the order of this Court dated 31.03.2021 in W.P.Nos.4609 and 4614 of 2021.

For Petitioner : Mr.A.Suresh

For Respondents : Mr.V.Arun
Additional Advocate General asst by
Mr.S.Ravichandran
Additional Government Pleader

W.P.No.13590 of 2021:-

Super and Super Recreation Club,
Represented by its Secretary Mr.Z.Dilip Rogger,
No.17, Thiruvalluvar Nagar,
5th Avenue, Besant Nagar,
Chennai – 600 090. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by 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,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai – 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to refund the license and privilege fees paid in respect of License No.F.L.2.No.08/2016-17 for Excise year 2019-2020 and 2020-2021, corresponding to the period of lockdown of 171 days when no business operation was permitted, in accordance with Rule 24A of the Tamil Nadu Liquor (License and Permit) Rules, 1981.

For Petitioner : Mr.A.Suresh

For Respondents : Mr.V.Arun
Additional Advocate General asst by
Mr.S.Ravichandran
Additional Government Pleader

W.P.No.13591 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

Vs.

1.The State of Tamil Nadu,
Represented by 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,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai – 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in Proc.No.P&E 2(4)/1528/2021-2 dated 15.04.2021 on the file of the 2nd respondent and quashing the same and further directing the respondents to refund the proportional license and privilege fees pertaining to the petitioner's bar bearing License No.F.L.2.No.5/2018-19 in respect of the lockdown period of 171 days in accordance with Rule 24A of the Tamil Nadu Liquor (License and Permit) Rules, 1981 and the order of this Court dated 31.03.2021 in W.P.No.4619 of 2021.

For Petitioner : Mr.A.Suresh

For Respondents : Mr.V.Arun
Additional Advocate General asst by
Mr.S.Ravichandran
Additional Government Pleader

COMMON ORDER

In W.P.Nos.10355 and 13591 of 2021, the petitioner has challenged the impugned order dated 15.04.2021 passed by the second respondent/ Commissioner of Prohibition and Excise. W.P.No.13590 of 2021 has been filed for a mandamus to direct the respondent to refund the license and privilege fees paid in respect of License No.F.L.2.No.08/2016-17 for Excise year 2019-2020 and 2020-2021, in accordance with Rule 24A of the Tamil Nadu Liquor (License and Permit) Rules, 1981 corresponding to the period of 171 days due to lockdown when respondents were not permitted to operate the Hotel.

2. The petitioners in W.P.No.10355 and 13591 of 2021, had approached this Court in W.P.Nos.4609 and 4614 of 2021. The said writ petitions were disposed by a learned Single Judge of this Court by a common order dated 31.03.2021 along with W.P.Nos.6353 and 6339 of 2021 with the following observations:

> "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 license 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 licencee 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 loc-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."

3.Pursuant to the aforesaid order, the second respondent has passed the impugned orders both dated 15.04.2021. Both the impugned orders read almost identically. For the purpose of clarity, a reference is made to Para 10 from the respective impugned order. They read as under:-

"10.Now in the COVID-19 lockdown closure period (i.e. 17.03.2020 to 31.08.2020) all the FL2 and FL3 licensees are continuing to have possession of liquor. An audit objection has also been raised regarding the refund granted to the FL2 and FL3 licensees who were having possession of liquor when bars have been closed as per Hon'ble Supreme Court order."

4. The specific case of the petitioner is that the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, particularly Rule 24A contemplates refund of license fee for the period when a licensee has not transacted any business under licence granted.

5. If any licencee has not transacted business for any part of the year, the proportionate licence fee and privilege fee is to be refunded back. Instead of the respondent has referred the objections raised by the office of the Accountant General, Chennai and has passed the impugned order. It is submitted that the order has been passed contrary to the proviso to Rule 24A of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

6.Mr.V.Arun, learned Additional Advocate General assisted by Mr.S.Ravichandran, learned Additional Government Pleader further submits that question of refund or remission would not arise. It is submitted that the petitioners applied for the licence knowing fully, there were risk associated with the business and therefore the impugned order does not warrant interference with.

7. The learned Additional Advocate General assisted by the learned Additional Government Pleader for the second respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Panna Lal and Others*** Vs. ***State of Rajasthan and Others*** reported in (1975) 2 SCC 633 and ***State of Orissa and Others*** Vs. ***Narain Prasad and Others*** reported in (1996) 5 SCC 740.

8. It is submitted that the lockdown was imposed under the provisions of the National Disaster Management Act on account of the outbreak of Corona Virus (Covid-19) pandemic. Therefore, all the sports stadiums, clubs, bars, recreation clubs, etc., were ordered to be closed from 17.03.2020. It is therefore submitted that the petitioner ought to have applied for a refund of the license fee along with the licensee granted under Rule 17(a) of the aforesaid Rule after surrendering the copy of the licenses, as is contemplated in Rule 24A of the aforesaid Rule. Therefore, the question of granting refund does not arise.

9. That apart, it is submitted that during the period in dispute when the country was under lockdown, the respective petitioners' were possessing

liquor and therefore question of refunding the amount paid by them towards the licence fee and/or towards the previlage fee does not arise.

10. The learned Additional Government Pleader for the second respondent further submits that the petitioners have mis-interpreted Government Order G.O.Ms.No.788, Prohibition and Excise (VIII) Department, dated 10.11.1982. It is submitted that Rule 24(A) of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 does not permit refund under the circumstances.

11. It is submitted that the respective petitioners have wrongly claimed refund of licence fee paid as only those persons who surrendered their licence and who were unwilling to continue the business alone were eligible for refund as per Government Order. It is submitted that refund due to closure on account of COVID disaster is not eligible for refund. It is further submitted that since it is a forced situation due to COVID disaster, the Government permitted the FL2 (Clubs) and FL3 (Hotels) licensees and the petitioner to resume their business and the petitioners also continued to do the business from 04.09.2020. He further submits that the petitioner have

also paid the Licence renewal fee for the year 2022-2023 are continuing to run their business.

12. It is submitted that in absence of valid challenge to G.O.Ms.No.788, Prohibition and Excise (VIII) Department, dated 10.11.1982, Rule 24(A) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 under which the aforesaid license fee and previlage fee was collected from the petitioner, refund cannot be granted.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Advocate General assisted by learned Additional Government Pleader.

14. Admittedly, there is no dispute that the country was under lockdown on account of the precautionary measures taken both by the Union Government and the State Government due to the outbreak of Corona Virus (Covid -19) pandemic. Lockdown was imposed by the Union Government under the provisions of the National Disaster Management Act. The State Government implemented the Lock down had issued notification whereby all

bars, clubs, hotels etc., were also asked to be shut down during the period of lockdown.

15. Rule 24A of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 reads as under:-

> *"A licensee who has not transacted any business under the license 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.*

16. There are two parts from the aforesaid provisions. The first part deals with a situation, where a licensee who has not transacted any business under the licence may apply to the licensing authority for refund of the licence fee. 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.

17. The proviso to Rule 24A of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 deals with a situation where the licencee has not transacted any business for any part of the year. The case of the respective petitions are covered by the proviso to Rule 24A of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. Therefore, the respondent as the licensing authority was required to refund the proportionate licence fee and privilege fee for the proportionate period when the petitioner had not transacted due to lockdown imposed.

18. The petitioners are therefore entitled to refund of the proportionate licence fee and privilege fee in accordance with proviso to Rule 24A of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

19. Considering the above, the petitioners are entitled to refund of the licence fee and privilege fee or in the alternative entitled for a set off and/or adjustment of the aforesaid amount for the succeeding licence period, if the licence were renewed. Therefore, the second respondent shall adjust the proportionate amount for the period when there was lock down which incapacitated the respective petitioners from carrying the liquor business

against ensuing renewal of the licencess or in the alternative refund the proportionate amount to the respective petitioners.

20.These writ petitions stands allowed with the above observation. No costs. Consequently, connected writ miscellaneous petition is closed.

25.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
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To

1.The State of Tamil Nadu,
Represented by 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,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai – 600 005.

C.SARAVANAN, J.

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W.P.Nos.10355, 13590 and 13591 of 2021
and
W.M.P.No.366 of 2022

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