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**(2011) 07 MAD CK 0142**  
**In the Madras High Court**  
**Case No : W.P (MD) No. 488 of 2006**

A. Manickam

APPELLANT

Vs

The Assistant Commissioner (Exercise)

RESPONDENT

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**Date of Decision :** 04-07-2011

**Acts Referred:**

Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 25, 32

**Citation :** (2011) 07 MAD CK 0142

**Hon'ble Judges :** Vinod K. Sharma, J

**Bench :** Single Bench

**Advocate :** S. Subbiah, for the Appellant; D. Muruganandham, Addl. Govt. Pleader, for the Respondent

**Final Decision :** Allowed

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## Judgement

Vinod K. Sharma, J.—The Petitioner by invoking the extraordinary, writ jurisdiction of this Court, has prayed for the issuance of a writ in

the nature of Certiorari to quash the order, dated 30.05.2005 vide which the claim petition for the refund of Rs. 1 Lakh has been ordered to be

deferred, on the following grounds:

(a) did not take the minimum take-off for few months

(b) In view of non-take, Petitioner is to pay some penalty under Rule 32 of the Rules

(c) There is a direction by the Division Bench of the Principal Seat of this Honourable Court permitting the Government to determine the rate of

penalty, and that the matter is under consideration of the Government.

(d) It was stated by the Respondent that, only after the decision by the Government, that, the Petitioner would be informed of the penalty amount

by the District Collector, and that portion of the penalty amount is to be adjusted from the security deposit, therefore it would not be possible to

refund the security Deposit Amount, and it is only after the receipt of the order of the Government that it will be possible to refund the security

amount or part thereof.

2. The Petitioner was granted license to run Indian made foreign liquor shop for retail liquor at the Koodakoil village, Thirumangalam Taluk,

Madurai District for the period 2002-2003. As per the rules, the Petitioner deposited a sum of Rs. 1 lakh as security with all other necessities. On

expiry of the period of licence, i.e., on 02.10.2003, the Petitioner asked for refund of the security amount by claiming that he had successfully run

the Vend for the period of licence by observing the terms and conditions of the licence. On the failure of the Respondent to refund the amount, the

Petitioner approached this Court by filing W.P. No. 2345 of 2005 which was disposed of by this Court by issuing direction to the Respondents to

consider the request of the Petitioner for refund the security deposit. It was made clear in the order of this Court that if there are No. arrears on

default on the part of Petitioner in terms of the conditions of the licence, the Respondent should return the security amount. In case, there are

arrears due from the Petitioner to the department, on account of the case of minimum take off, the Petitioner is to pay the amount to the

Government as per the Honourable Division Bench Judgment, as the question of minimum take off, the refund be ordered after adjusting the

amount due from the Petitioner towards arrears.

3. In spite of specific directing of this Court permitting the Respondent to fix the amount due from the Petitioner towards arrear, the Respondent

have till date not adjudicated the claim for imposed any penalty for failure to take off the minimum quantity faced under the license.

4. On the failure of the Respondent to comply with the order of this Court, the Petitioner filed a contempt petition in this Court. The Contempt

Petition was closed as No. period was fixed in the order passed by this Court.

5. The learned Counsel for the Petitioner challenges the impugned order, primarily on the ground that till date, the Petitioner has not been issued

any notice claiming compensation for the failure to achieve the target of minimum take off. In the absence of any order which it is not permissible to

the Respondent to withhold the security deposit.

6. The learned Additional Government Pleader contends, that in pursuance of the order passed by this Court, in the previous Writ Petition filed by

the Petitioner, it is always open to the State to fix the compensation for failure to achieve minimum take off, and it is only thereafter that amount

could be refunded to the Petitioner.

7. On consideration, I find force in the contentions raised by the learned Counsel for the Petitioner. It cannot be disputed, that his Court while

allowing the Writ Petition, the Division Bench of this Court had permitted the Respondents to fix the minimum take off compensation/amount

adjusted against the claim of security. However, the Respondent in spite of specific direction have not chosen to fix any compensation for minimum

take off, till date. It is not disputed that till date No. notice has been issued by the State for adjudication.

8. The Rule 25 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 reads as under:

25. Forfeiture of security deposit: The collector or the licensing authority may forfeit the security deposit either in part or in full for any violation of

the provisions of the Act or the rules or the conditions of the licence or failure to comply with the directions issued by the Government or the

Commissioner or the Collector or the licensing authority:

Provided that No. forfeiture of security deposit shall be made without providing a reasonable opportunity including personal hearing to the licensee

to show-cause against such forfeiture

Provided further that the licensee shall recoup the forfeited amount within 7 days from the date of receipt of the forfeiture order.

A reading of the rule shows that before ordering the forfeiture of security on part there off a reasoned order to be passed after giving personal

hearing. The exercise power under Rule 25 is quasi judicial power. Failure to initiate proceeding for last eight years now discloses the State to seek

any recovery either by way of compensation or penalty.

9. Even if the amount is to be claimed is by way of penalty minimum take off then for failure to achieve very penalty would envisage judicial

determination of the amount.

10. It is now too late in a day to permit the Respondent to adjudicate the question of penalty, as eight years have elapsed. There is admittedly

order of penalty or compensation for failure to achieve minimum take off. For the reasons stated there is No. justification whatsoever with the

State, to withhold the security amount. The impugned order is based on No. material thus, on the face of it, is arbitrary and not sustainable in law.

11. Consequently, the Writ Petition is allowed and the impugned order is set aside. A Writ in the nature of Mandamus to the Respondents is issued

to refund the security amount to the Petitioner, within fifteen days from the date of receipt of a certified copy of this order. No. costs.