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(2007) 10 MAD CK 0080

In the Madras High Court

Case No : Writ Appeal No. 2900 of 2003

A. Ravikumar APPELLANT

Vs

The Commissioner, Prohibition and Excise Department, The District Collector and The Assistant Commissioner (Excise) RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 13, 13(2), 13(3)

Citation : (2007) 10 MAD CK 0080

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Swaminathan, for the Appellant; P. Subramanian, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appellant applied for grant of IMFL retail vending licence in Division No. 28 of Salem Corporation on

09.07.2001 complying with all the statutory requirements as per the notification dated 01.07.2001 issued by the Collector of Salem. The drawal of

the lot was conducted on 12.07.200. Only two applications were received for the said division thought three shops were notified. The appellant

was one among the two. Since the eligible applicants were less than the number of shops notified in that area, the appellant was selected as

successful bidder, but had failed to remit 2/3rd of the amount of privilege fee on the same day, i.e., on 12.07.2001. Hence, the Assistant

Commissioner (Excise) Salem Division by his proceedings dated 12.07.2001 ordered for forfeiture of the sum of Rs. 4,66,700/- deposited by the

petitioner at the time of filing the application under the Tamil Nadu Liquor (Retail

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Vending) Rules, 1989. Against that order, the appellant filed a

revision before the Collector and further revision before the Commissioner of Prohibition and Excise. Both the Collector and the Commissioner of

Prohibition and Excise confirmed the order of the original authority.

2. Being aggrieved by the order, the petitioner filed writ petition No.5634 of 2003 before this Court seeking for the relief of issuance of writ of

certiorarified mandamus to call for the records pertaining to the order passed by the respondents in their respective proceedings forfeiting the

amount and quash the same and direct the respondents to refund the 1/3rd of the privilege amount of Rs. 4,66,700/- with interest at 24% per

annum from 12.07.2001 till the date it was realised. The learned single Judge non suited the petitioner by dismissing the writ petition. The

correctness of the said order is canvassed in this appeal before this Court.

3. Heard the learned Counsel on either side and perused the materials available on record.

4. Learned Counsel for the appellant submitted that as per Rule 13 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, where the number of

applications received for a notified area is less than the number of shops in that area or where no application is received for a notified area, such

shops in that area shall be re-notified for grant of privilege by the Collector. In this case, though three shops were notified only two applications

were received. In such circumstances of the case, as per Sub-rule 3 of Rule 13, the application received for two shops have to be rejected and all

the three shops must have been re-notified. The very same contention has been raised before the learned single Judge and was rejected by the

learned single Judge.

5. In order to appreciate the contention of the learned Counsel for the petitioner, we are of the view that the relevant provision can be extracted:

13. Application for the grant of privilege and licence:

(1) ...

(2) When the number of eligible application does not exceed the number of shops notified for an area, all applicants shall be selected for grant of

privilege. When the number of applications in respect of the shops in a notified area is more than the number of shops in that area, the selection of

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applicant for grant of privilege shall be decided by drawal of lot by the licensing authority in the presence of the Collector and the applicants who

prefer to be present.

(3) Where the number of applications received for a notified area is less than the number of shops in that area or where no application is received

for a notified area, such shops in that area shall be re-notified for grant of privilege by the Collector.

6. On a conjoint reading of Sub-rules (2) and (3), it is amply clear that when the number of eligible applications do not exceed the number of shops

notified for an area, all the applications shall be selected for the grant of privilege. When the number of applications in respect of the shops in a

notified area is more than the number of shops in the area the selection of the application for grant of privilege shall be decided by drawal of lot by

the licensing authority in the presence of the Collector or District Revenue Officer authorised by the Collector and the applicants who prefer to be

present.

7. As per the provisions of the rule, it is clear that when the number of applications for the shops does not exceed the available number of shops, a

drawal has to be made and the applicants have to be granted the privilege for the shops. There is no choice for the authorities to reject the

applications if the applications are otherwise in accordance with the requirements of the section as would be the position if the applications

received by the respondents are less than the shops notified in that area as has been stated in Sub-rule (3) to the effect that where the number of

applications received for a notified area is less than the number of shops in that area or where no application is received for a notified area such

shops in that area shall be renotified for grant of privilege by the Collector.

8. Here, the word ''such'' before the shops assumes significance. Because if three shops are available in the notified area and the applications has

been received only for two shops as per Sub-rules (2) and (3), shops have to be given to the applicants who made the application for the shops. In

respect of the remaining shops only rectification has to be made. In the alternate, if no application is received for all the shops, here again, a re-

notification has to be made. If the argument of the learned Counsel for the appellant is accepted, the first limb of Sub-clause (2) cannot be given

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effect to, as stated in the Rules. Likewise, if the argument of the learned Counsel that if the number of applications for a notified area is less than the

number of shops in that area, those lesser number of applications have to be rejected and all the shops should be re notified, cannot also be

accepted for the very same reasons stated above. Hence, we are not able to countenance the argument of the learned Counsel for the appellant.

The appeal is dismissed. No costs.

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