(2003) 01 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 19329 of 1996

Amaravathi Wines APPELLANT

Vs

The Assistant Commissioner of Excise and Barkat Begum RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 01 MAD CK 0068

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Veeramani, for V. Raghavachari, for the Appellant; D. Malarvizhi, G.A. for R1, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—Heard Mr. Veeramani, learned counsel appearing for the petitioner and the Government Advocate appearing for the

first respondent.

2. The petitioner has prayed for the issue of a writ of certiorari to call for the records on the file of the respondent No. 1 in proceedings No. Roc B

& C, 3/46989/99, dated 3.11.1999 and quash the same as illegal.

3. With the consent of counsel on either side the writ petition itself is taken up for final disposal.

4. AS seen from the impugned proceedings, the second respondent who is the owner of the premises, objected to the grant of license in favour of

the writ petitioner before the first respondent by sending a detailed representation. According to the second respondent the writ petitioner is not

entitled to secure any license for Retail Vending of Liquor in the tenancy premises as the writ petitioner has no right to locate or establish or run

IMFL shop. It is also the objection of the second respondent that she is the owner of the premises and she has not granted consent to M.

Arumugham in whose favour a license has been granted by the first respondent. On receipt of the request from the second respondent the first

respondent initiated action to cancel the license granted in favour of the writ petitioner M. Arumugham. The first respondent after affording

opportunity to the writ petitioner and considering the objection submitted by the second respondent cancelled the license, while concluding that the

second respondent has not given any valid lease or given consent for the writ petitioner to locate the IMFL Shop. The first respondent also

rendered a finding that the licensee Arumugham has not secured any valid lease or consent of the second respondent and the second respondent

has not signed the lease deed, which has been pressed into service by M. Arumugham. Further, the earlier lease dated 1.6.1992 bars the lessee

Balasubramaniam from subletting the premises or transferring the tenancy premises to some one else. In that view of the matter and in the light of

the requirement of the statutory rule the first respondent after affording opportunity to both the parties and after hearing both the parties called upon

the petitioner to shift the IMFL shop to an unobjectionable premises within one week. It is also made clear that if the petitioner fails to find an

alternate place, the license will have to close down the retail shop. In this respect the attention of this court was drawn to the statutory provisions of

the Tamil Nadu Indian Made Foreign Liquor (Retail Vending) Rules 1989 and in particular Rule 13(7).

5. In this respect, in S. Ganesan Vs. Assistant Commissioner Excise, Collectorate, Chennai and another, : R.JAYASIMHA BABU,J., speaking

for the Division Bench held that in terms of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules 1989, a licensee who is not the owner of

the building must either produce a lease agreement or he must be the owner of the building in which he intends to carry on business and the status

of a statutory tenant cannot be equated to a contractual tenant. The Division Bench also held that Rule 13(1) implies subsistence of contractual

tenancy i.e., lawful possession of premises, juridical position will not satisfy the requirement of law. The Division Bench held that a tenant who has

not secured permission to carry on IMFL cannot claim right to get licence under Rule 13(1) and such a consent is required not only at the time of grant of licence, but also at the time of renewal. If the tenant fails to secure consent, the authority is not entitled to licenship even if he continues in

occupation and the landlord has right to question the grant of licence for IMFL retail shop to tenant in cases where landlord has not given consent

in the lease deed to carry on such trade. The Division Bench after analysing the entire case law held thus:-

31. The requirement that there should be a lease agreement in favour of persons, who wish to carry on retail vend as retail licensee in a premises

of which they are not the owners is requirement, which is made known to every intending bidder, even before he takes part in an auction.

Condition 5(c) in Form No. I makes that amply clear. After his bid is accepted before he can receive the licence, he must produce the lease

agreement, that is the requirement of rule 13(1). If after becoming a licensee, he wishes to shift the location of the shop, then again, he must

produce the lease agreement regarding the premises to which he intends to shift. That is the requirement under Rule 17. For renewal of the licence

after the initial period of one year, the licensee must apply for renewal under Rule 14 and satisfy the conditions set out in Form No. VIII, more

particularly condition No. 8, which required that the licensee continues to be in possession of the premises for a further period of one year. The

specification of the period is a requirement which can be complied with only if the licensee is a contractual tenant, and not otherwise, as the

statutory tenant cannot claim to be a tenant for any specific period. If may well be possible that a statutory tenant remains in the same premises for

decades together. It is also possible that a statutory tenant suffers ejectment within a short period after becoming a statutory tenant. As to whether

he is ejected or not depends inter alia, upon the landlord, the requirement of the landlord, the eligibility of the landlord to seek eviction in terms of

the provisions of the Rent Control Act, the willingness of the landlord to resort to eviction proceedings under the Act and his prosecuting the same

diligently till such time as he obtains possession of the premises from the statutory tenant.

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33. The consent of the owner for running the specific business in the premises is only an incident of the requirement that the tenant be a contractual

tenant. A person cannot be a contractual tenant without the consent of the landlord. The consent of the landlord has to be there, either expressly,

or impliedly for the business which the tenant proposes to carry on in the premies. In cases where the landlord has refused permission, or has

opposed the grant of any licence to the tenant for running a liquor shop there, or the landlord is unwilling to consent to the user of his premises for

such purpose, then notwithstanding the existence of a lease agreement, which merely permits the user of the premises for a purpose other than the

running of a liquor shop, such a tenant cannot claim the right to receive a licence under Rule 13(1) of the Tamil Nadu Liquor (Retail Vending)

Rules.

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36. The result of the foregoing discussion is that Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 framed by the State in exerise

of powers conferred on it by Sections 17-C, 17-D, 17-E, 18-B, 18-C 20,21 and 54 of the Tamil Nadu Prohibition Act, 1937 is perfectly valid.

The rule mandates that the person who wishes to obtain a licence for exercising the privilege of retail vend of Indian Made Foreign Liquor should

be the owner of the premises in which that business is to be carried on or should be a contractual tenant thereof for the duration of the period of

the licence. The requirement that he be a contractual tenant would also apply to the place, which he may wish to shift after having obtained the

licence. The requirement that he be a contractual tenant would also apply to the period for which he may seek renewal as a licence. The rule

framed by the Sate is in the realm of policy which the State is entitled to frame with regard to the conditions subject to which persons would be

allowed to enjoy the privileges of carrying on business in liquor a commodity which is recognised as being inherently pernicious, and whose

consumption is required to be reduced and not to be increased. The policy framed by the State is in no way arbitrary, nor is it mala fide. The fact

that the State could have framed a policy in a different way so as to permit statutory tenants also to enjoy the privileges does not render the policy

already framed in any way defective. The choice in this matter is entirely for the state to make, and it is not for the court to mandate that the

statutory tenants be given the right to carry on the business of retail vend in foreign liquor. The consent of the owner of the premises for carrying on

such a business is essential. Absent such consent, the authority is not entitled to grant a license to the tenant, even if he be a contractual tenant. The

landlords, therefore have the right to question, the grant of licenses for the privileges of retail vend of Indian Made Foreign Liquor to their tenants in

case where the landlords have not given their consent in the lease deeds, and they are unwilling to grant such consent for the carrying on of such

business in their premises. A tenant does not have a fundamental right to carry on any business of his choice in the premises belonging to another.

6. In the circumstances, the only contention advanced by the learned counsel for the petitioner has to necessarily fail as held by the Division Bench

which is binding on this court. That apart, it is reported by the learned Government Advocate that license has not been renewed in favour of the

writ petitioner-licensee and that no IMFL shop is being run in the premises owned by the second respondent.

7. In the circumstances, while following the judgment of the Division Bench as well as in the light of the instruction of the learned Government

Advocate, the writ petition is dismissed, but without costs.