(2003) 02 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No''s. 43357, 43358, 43402, 43410 to 43416, 43440 to 43443, 43472, 43473, 43500, 43501 to 43504, 43505 to 43509, 43510 to 43514, 43515 to 43519, 43520 to 43529, 43530 to 43537, 43538 to 43547, 43549 to 43556, 43730, 43731, 43835 to 43837, 43

C. Prabhu APPELLANT

Vs

The Asst. Commissioner, Excise RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 02 MAD CK 0022

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : K. Selvaraj, in W.P. Nos. 43472, 43473, 43842 to 43854, 44109, 44311, 44258, 44259, 44840, 45344, 43356, 46357, 43402 of 2002, Ar.L. Sundaresan, in W.P. Nos. 43500, 43501, 43505, 43510, 43515, 43520, 43530 to 43537, 43538, 43867 to 43877, 44351 and 44969 of 2002, R. Saravanakumar, in W.P. Nos. 44773 to 44805 of 2002, R. Thirugnanam, in W.P. Nos. 43730, 43440 of 2002, Palani Selvaraj, in W.P. Nos. 44067, 44068, 45090 to 45092 of 2002, K. Sakthivel, in W.P. Nos. 43549, 43861, 44197 to 44200 of 2002, V. Sanjeevi, in W.P. Nos. 44145/02 and V.P. Sengottuvel, in W.P. No. 44557/02, for the Appellant; R. Muthukumaraswamy, A.A.G., assisted by K. Mahendran, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The petitioners have filed the above writ petitions seeking to issue a writ of mandamus, to direct the respondents to

renew the licence for retail vending of IMFL and for retail vending of liquor in the Bar, for the excise year 2002-2003 without insisting the

petitioners for the payment of additional security of Rs.1,00,000/- or Rs.50,000/- as the case may be.

2. Before dealing with the issue raised in these writ petitions, certain facts are necessary to understand the issue raised therein.

3. For the excise year 2001-2002, the Government of Tamil Nadu decided to grant privilege of selling by retail Indian Made Foreign Liquor to

6000 retail vending shops. The said number of shops was determined by the Government exercising powers under Rule 4 of the Tamil Nadu

Liquor (Retail Vending) Rules, 1989, hereinafter called ''the Rules 1989''. After following the procedures contemplated under the Rules 1989, the

Government of Tamil Nadu granted licence for 5512 retail vending shops. Subsequently, the Government called for applications for granting more

licences to 123 shops in the newly notified area and 133 shops in the existing notified area. After the period of licence came to an end on

31.7.2002, the Government deleted Rule 14 of the Rules 1989 under which the licensee was given right to renew the licence for the second year.

Challenging the said deletion of Rule 14 of the Rules 1989, 3505 licensees filed writ petitions. The Division Bench of this Court in the decision in

State of Tamil Nadu v. K. Vinayagamurthy, 2002(3) CTC 257, disposed of the writ petitions holding as follows:-

(i) The Government is at liberty to go ahead with the grant of privileges of retail vending of Indian Made Foreign Liquor to the extent of 7,000

shops as decided.

(ii) But the Government shall adhere to the places of retail vending which have been licenced for the excise year 2001-2002 and held by the

petitioners and renew the licence of the petitioners for the excise year 2002-2003 on the petitioners'' remittance of the privilege amount on the

basis of the amount fixed in G.O.Ms. No. 129, dated 8.7.2002 and also taking into account the re-categorisation of the shops for the purpose of

levy of the privilege amount.

(iii) The above facility of renewal to the petitioners shall be made available if the petitioners remit the requisite amounts on or before 31st of July,

2002.

(iv) For any reason, there is a delay in renewal, the petitioners shall be entitled to vend the Indian Made Foreign Liquor in retail on payment of the

proportionate privilege amount till the grant of licence.

(v) The Government, the Commissioner and all the District Collectors shall be entitled to re-locate the shops out of 7,000, at the places they feel

expedient, but only after safeguarding the shops which are being run by the petitioners.

4. We are now concerned with only about clause (iii) of paragraph 22 of the above said judgment. According to the said clause, though the

Division Bench has upheld the deletion of Rule 14 of the Rules 1989, held that the petitioners who remit the requisite amount on or before 31st July

2002 are entitled for renewal of the licence. So, the effect is, deletion of Rule 14 of the Rules was struck down in so far as it relates to the writ

petitioners subject to remittance of requisite amounts on or before 31st July 2002. The Government challenged the said judgment of the Division

Bench before the Apex Court. On 30.7.2002, on behalf of the Government, the matter was mentioned before the Apex Court for orders. Though

no interim order was granted, the same was posted on 9.8.2002 for hearing. But, meanwhile, the licence period granted for the excise year 2001-

2002 came to an end on 31.7.2002. In view of the pendency of the SLP before the Apex Court, the Government extended the period of licence

for two weeks for 4,632 licensees. Similarly, three extensions were granted on payment of proportionate privilege amount. On 26.8.2002, the

Special Leave Petitions were taken up and the Apex Court has held as follows:-

We are, therefore, not persuaded to interfere with the conclusion of the High Court, so far as it deals with the dispensing with the right of renewal

of the existing licensees under the present set of G.O. Ms. Which fell before the High Court for consideration. Necessarily, therefore, the

appropriate excise authority will have to decide the case of the applicants for renewal of the licences in accordance with the Rules as well as the

other conditions of the licences. Mr. Chidambaram very fairly stated that none of the respondents have any grievances to be governed by the rules

and conditions of licence including the conditions providing for a minimum off-take. But the manner in which the High Court has issued the

directions, appears to us not to be in conformity with the rules for issuance of a mandamus. Once the court comes to the conclusion that certain

provisions of the Act or the Rules of the Government order is arbitrary, then the Court would strike down the same, leaving the matter for the

appropriate authority under the statute to deal with the cases of the applicants.

In that view of the matter, the directions contained in Clause (ii),

Clause (iii) and Clause (iv) require modulation. We therefore substitute the aforesaid clauses of the impugned judgment by the following directions:

The competent authority/the State Government shall consider the application for renewal of the licence in accordance with law and would be

entitled to include all conditions in the licence, including the condition of minimum off-take. Needless to mention that the licensees of the privileges

would be bound by the enhancement of the privilege amount as well as the re-categorisation of the shops contained in the three G.O. Ms., referred

to earlier. It is also made clear that the facility of the renewal would be available to those of the existing licensees, who had remitted the requisite

amount on or before 31st of July2002 as ordered by the High Court itself. We also further direct that the privilege fee already paid by these

licensees for the Excise Year 2002-2003 shall be duly adjusted. Clauses (i)and (v) of the directions contained in the impugned judgment shall

remain as it is.

From the above directions, it is clear that the facility of renewal was available only to the licensees who had remitted the requisite amounts on or

before 31st July 2002 as ordered by the Division Bench. Meanwhile, the Government decided to grant privilege for 7,000 shops for the excise

year 2002-2003. Only 286 persons submitted their applications and paid privilege amount on or before 31.7.2002 as directed by the Division

Bench and confirmed by the Apex Court. Excluding the said shops, lots were conducted with reference to the other shops on 2.9.2002 and

9.9.2002.

5. Meanwhile, some of the existing licensees approached the Apex Court by filing Interlocutory Applications seeking certain directions alleging that

though they had offered to pay/deposit fees for the entire year by 31st July 2002, the same was not accepted and only part of the privilege fee for

the period for which the licence was being extended has been accepted and so they should not be prevented from getting the benefit of the

judgment of the Division Bench of this Court. On 9.9.2002 the Apex Court while disposing of the said Applications directed to move before the

Division Bench so as to enable the said Division Bench to issue appropriate direction regarding the same. Thereafter, a batch of writ petitions were filed and in the order dated 25.9.2002, the Division Bench disposed of the writ petitions holding as follows:-

1. that the 4,632 applicants, who had filed applications with fee thereon and paid proportionate privilege amount and proportionate licence fee by

the closing date of 31.7.2002 shall be entitled to remit the balance amount after making the adjustments as mentioned above by 30.9.2002 up to

5.45 p.m.);

2. in order to avoid controversy, we direct the above applicants to remit the amount by demand draft;

3. on compliance of the above condition, the said applicants shall be entitled for the renewal of licenses ;

4. on failure to do so, the Government shall be at liberty to deal with the defaulting shops, as it deems fit; and

5. it is needless to mention that other shops not covered by the above clauses shall be dealt with by the Government as it deems fit.

Even against the order of the Division Bench, the Government filed further Appeal to the Apex Court. The Apex Court, in the order dated

13.11.2002 came to the conclusion that ""but, at this stage, it is difficult for us to interpret our order to mean that the benefit would be extended to

all those who were ready to deposit the fee but could not do so on account of several contingencies as indicated above."" From the above said

observation, it is clear that the Apex Court was of the opinion that the benefit given by the Division Bench in the judgment reported in 2002(3)

CTC 257 (supra) get extended only to persons who remitted requisite amounts on or before 31st July 2002. The Apex Court on the basis of

certain concessions made on behalf of the State of Tamil Nadu, modified the order of the Division Bench dated 25.9.2002 as follows:-

All the existing licensees (the previous licensees) for the block period who had remitted the whole year''s licence fee by 31st of July, 2002, as well

as all of them who were granted licence for a period of six weeks subsequent to the impugned order of the High Court dated 25.9.2002 and in

pursuance of the order of this Court dated 3.10.2002 on payment of the proportionate licence fee will be granted licence for the balance period of

the Excise Year 2002-2003 culminating on 15th September, 2003. By way of clarification, we hold that those of licensees who dropped out, even though applied for pursuant to the High Court''s order dated 25.9.2002 as well as those of the licenses who had participated in the fresh lot in

accordance with the new Excise Policy will not be entitled to get advantage of this order. It is further clarified that all those licensees who might

have deposited the whole year''s fee though were granted licence for a period of six weeks pursuant to the order dated 3.10.2002 will also be

entitled to get the licence for the balance period of the Excise Year.

We would also observe that it will be open for any of the existing licensees as well as the new allottees on the basis of the draw of lots to opt out if

they find the continuance of the privilege to be onerous in any area where the number of shops exceeds the number of notified shops on account of

adjustment required to be made. The appeal stands disposed of on aforesaid terms.

6. After all these proceedings before this Court and the Apex Court were over, now the petitioners have come forward with the present writ

petitions with a new grievance that the Government is insisting fresh security deposit as contemplated under Rule 13-B of the Rules 1989 and Rule

4(2)(c) of the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 2002, hereinafter called the Rules 2002.

7. I heard Mr. K. Selvaraj, Mr. AR.L. Sundaresan, Mr. R. Saravanakumar, Mr. R. Thirugnanam, Mr. Palani Selvaraj, Mr. K. Sakthivel, Mr. V.

Sanjeevi and Mr. V.P. Sengottuvel learned counsel appearing for the respective petitioners and Mr. R. Muthukumaraswamy, learned Additional

Advocate General appearing for the Government.

8. In these writ petitions, the petitioners were granted either licence for retail vending of Indian Made Foreign Liquor and the licence for retail

vending of liquor in the Bar during the Excise Year 2001-2002. The Government took a policy decision to adopt for licensing of the IMFL vending

shops for the block period 2001-2004, which is set out in G.O.Ms. No. 113 Prohibition and Excise Department, dated 22.6.2001. But for the

subsequent Government Order in G.O.Ms. No. 130, Prohibition and Excise (VI) Department, dated 8.7.2002, omitting Rule 14 of the Rules

1989 from the Rules, the existing licensees are entitled for renewal. So they have challenged the said Government Order and the Division Bench of

this Court extended the said benefits given under Rule 14 of the Rules 1989 to the petitioners, who are the existing licensees, if they remitted

amounts on or before 31.7.2002, which was also confirmed by the Apex Court as stated above. But in the subsequent judgment of the Apex

Court dated 13.11.2002, it is stated that in view of the offer made on behalf of the State Government, the existing licensees who remitted the

whole year licence fee by 31.7.2002 as well as all of them who were granted licence for the period of six weeks subsequent to the impugned order

of the Division Bench dated 25.9.2002 on payment of proportionate licence fee are entitled to get licence for the balance period of Excise Year

2002-2003. Some of the existing licensees made applications and participated in the lots held on 2.9.2002 and 9.9.2002. Though 1346 licensees

made applications on or before 30.9.2002, only 851 licensees enjoyed the said benefit. Out of 851 licensees, 256 licensees participated in the lots

held on 2.9.2002 and 9.9.2002 and got licence. So, from the above, it is clear that only 595 existing licensees are entitled to get the benefit of the

order of the Apex Court for renewal of licence.

9. No argument was advanced before this Court either by the learned counsel appearing for the respective petitioners or by the learned Addl.

Advocate General regarding the petitioners'' entitlement of the licence on the basis of the order of the Court for the excise year 2002-2003. They

expressed their difficulty only with respect to the demand made under Rule 13-B of the Rules 1989 to make a deposit of Rs.1,00,000/- and under

Rule 4 of the Rules 2002 to make a deposit of Rs.50,000/- as security though their amount of R.1,00,000/- or Rs.50,000/- deposited as security

while granting licence for the Excise Year 2001-2002 are with the Government. So, I need not go into the question whether the petitioners are

entitled for renewal of their licence or not. Since the issue raised is only with respect to the correctness of the demand made by the Government

regarding security deposit, I am dealing with only with respect to the correctness of the said demand.

10. Rule 13(i) of the Rules 1989 contemplates making an application in Form VI by a person interested in getting the privilege for retail vending of

Indian Made Foreign Liquor. Along with the application, they have to enclose a Demand Draft for an amount equivalent to one third of the

privilege amount fixed for the shop, and another Demand Draft for Rs.500/-

towards application fee. If the applicant is selected, on intimation, he should remit the remaining two third of the privilege amount and the licence fee of Rs.5,000/- on the day of intimation. The said selected applicant has to make an application in Form VI-A to the licensing authority within seven days from the date of receipt of such intimation. There is no provision creating an obligation on the applicant to make a deposit of Rs.1,00,000/- as security. The details regarding remittance of security deposit has to be mentioned. Only under Rule 13-B of the Rules 1989 such a security deposit of Rs.1,00,000/- is contemplated. Similarly, under Rule 4 of the Rules 2002 requires security deposit of Rs.50,000/-. Since the Government asked the petitioners to furnish security for both retail vending and for running a Bar in spite of the fact that such security deposits made by the petitioners while getting licence for the excise year 2001-2002 are with the Government, now the Government cannot insist further deposit. Even if the Government is to issue licence or renew the licence (as I am not going to enter into the said dispute which is not raised in these writ petitions), the amounts deposited by the petitioners are lying with the Government.

11. Learned Additional Advocate General submitted that in view of certain proceedings taken against certain licensees with reference to violation of the conditions, the licensees have to deposit the security deposit afresh. But, it is not in dispute that only against some of the licensees such proceedings have been taken and they have challenged those proceedings by filing writ petitions and the same are pending. Apart from that, it is admitted that no proceedings have been taken against any one of the petitioners under Rule 25 of the Rules 1989, which reads as follows:-

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"".

Rule 12 of the Rules, 2002 reads as follows:-

Forfeiture of security deposit:- The Collector or the licensing authority may forfeit the security deposit either in part of in full for any violation of the

provisions of the Act or rules or conditions of the licence or failure to comply with the directions, if any, 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 to the licensee, including personal hearing,

if so desired by the licensee to show cause against such forfeiture;

Provided further that the licensee shall replenish the amount so forfeited within seven days from the date of receipt of the order forfeiting the

security deposit.

From the above said Rules, it is clear that the Collector or the licensing authority is having power to forfeit the security deposit in part or in full for

violation of the Government Order or the Rules or the conditions of the licence. But, before doing so, the petitioners must be put on notice. Even if

such order is passed, to forfeit the security deposit, the licensees are having obligation to recoup the forfeited amount within seven days from the

date of forfeiture of the amount. In view of the procedure as contemplated under the Rules, the interest of the State is very well safeguarded. The

security deposit amounts made by the petitioners are with the Government and even if any order is passed, as submitted by the learned Additional

Advocate General, the licensees are liable to recoup the forfeited amount, to keep the security deposit of Rs.1,00,000/- and Rs.50,000/- in tact. A

security, generally speaking, is anything that makes the money more assured in its payment or more readily recoverable. When sufficient safeguards

are made under the Rules, under the guise of proceedings taken by the authorities against some of the petitioners on certain alleged violations, the

State cannot insist the petitioners to deposit the amount as security again. As stated already, the authorities have not taken any steps under the Rule

25 of the Rules 1989 or under the Rule 12 of the Rules 2002, against the petitioners.

12. In these circumstances, there is no justification on the part of the State Government to ask the petitioners to comply with Rule 13-B of the

Rules 1989 and Rule 4 of the Rules 2002 again. So, the State Government is directed to consider the petitioners'' claim for licence for the excise

year 2002-2003 on the basis of the Rules and also on the basis of the orders of this Court and the Supreme Court referred to above, without

insisting further amount towards security.

13.With the above observation, these writ petitions are allowed. No costs. Connected W.P.M.Ps., are closed.

