(2008) 10 MAD CK 0100

In the Madras High Court

Case No : Writ Petition No. 4928 of 2006, W.P.M.P. No. 5307 of 2006 and W.V.M.P. No. 1117 of 2006

C. Viswanathan APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:
Madras Prohibition Act, 1937 — Section 18(1)

Citation : (2009) 1 LW 368

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M.M. Sundaresh, for the Appellant; L.S.M. Hasan Fizal, Government Advocate, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides, the writ petition is taken up for final disposal.

2. The prayer in the writ petition is to quash the G.O.Ms. No. 81 Prohibition and Excise Department, dated 5.4.2004 and the consequential order passed by the second respondent dated 28.11.2005.

3. The case of the petitioner is that he was the successful bidder of the arrack shop No. 5 of Erode for the year 1981-82. However, due to the civil proceedings, he was not able to run the shop even for a single day, pursuant to which the notional loss was arrived at and the petitioner was fastened with the liability of Rs. 3,59,784/-. According to the petitioner, he has paid the said amount in installments from 1988 to 1994 and settled the entire dues. However, the second respondent by proceeding dated 23.2.1995 directed the petitioner to pay a sum of Rs. 1,34,556.20 as penal interest of 5% for the belated payment of the notional loss. The petitioner filed W.P. No. 147 of 1997 and challenged the said order and this Court on 17.10.2001 set aside the said order and the matter was remanded on condition that the petitioner shall pay a sum of Rs. 25,000/-. Petitioner submitted representation/objections pursuant to the remand. However,

on 18.1.2002, again the penal interest was ordered to be paid. Petitioner accepted the said order by making the payment in installments. On 20.2.2004, the Taluk Excise Officer sent a letter and directed the petitioner to pay the arrears of interest of Rs. 34,056/- which was also paid by 15.6.2005. The second respondent by letter dated 28.11.2005 demanded a further sum of Rs. 1,95,064/- on the ground that the petitioner had to pay additional interest of 7% in addition to 5% penal interest already paid for the belated payment of notional loss in accordance with G.O.Ms. No. 81 dated 5.4.2004. The said order was also passed without any notice to the petitioner. Aggrieved by the same, the petitioner challenged the said Government Order as well as the consequential demand in this writ petition by contending that the demand of 12% interest instead of 5% from the petitioner even though he has paid the entire amount at the rate of 5% interest is unreasonable and the G.O.Ms. No. 81 dated 5.4.2004 cannot be applied after the payment of entire arrears, as early as on 15.6.2005.

4. On 14.3.2006, this Court granted interim stay and hence the petitioner has not paid any amount as demanded in the impugned demand notice dated 28.11.2005.

5. The second respondent filed counter affidavit stating that as per G.O.Ms. No. 968 Home (Prohibition and Excise-II) Department, dated 28.8.1989, penalty at the rate of 5% was ordered to be collected for the belated payment of notional loss caused and accordingly penalty for the financial year from 1983-84 to 1993-94 was worked out as Rs. 1,39,331/- which was re-calculated for the Fasli year as Rs. 1,34,556/- and notice was issued to remit the said amount by proceeding dated 6.12.1994. Petitioner challenged the said order and obtained stay. While disposing of the writ petition, a sum of Rs. 25,000/- was ordered to be deposited, which was remitted on 12.12.2001. Subsequently, the petitioner remitted 5% penalty amount in monthly installments till 15.6.2005. The necessity to make a further demand arose due to issuance of G.O.Ms. No. 81 Prohibition and Excise Department, dated 5.4.2004 wherein the Government ordered to collect 12% interest from 12.5.1981 for the belated payments of notional loss. Since the petitioner had already remitted 5% interest, remaining 7% interest for the belated payment was calculated at Rs. 1,95,064/- and orders have been issued on 28.11.2005 directing the petitioner to pay the amount. It is further stated that the second respondent is bound to implement the said Government order and therefore the demand notice was issued.

6. The learned Counsel for the petitioner submitted that the impugned Government Order giving retrospective effect from 12.5.1981 is unreasonable, particularly when 5% interest was demanded and collected from the petitioner except for a sum of Rs. 34,064/-, due as on the date of issue of the impugned Government Order. The learned Counsel therefore submitted that the respondents are estopped from collecting 12% interest insofar as the petitioner is concerned as 5% interest is already calculated and the petitioner agreed to pay the same, particularly when the entire notional loss has already been paid

and 5% interest was calculated for the belated payments which was also paid even before the consequential order dated 28.11.2005.

7. The learned Government Advocate submitted that the Government order is applicable to all the defaulters and the Government having vested with the power to enhance the interest rate, it has got every power to issue the Government Order retrospectively and the second respondent is also justified in issuing the impugned demand notice based on the Government Order.

8. I have considered the rival submissions of the learned Counsel for the petitioner as well as the learned Government Advocate.

9. Admittedly the entire principal amount of notional loss was already paid by the petitioner prior to 23.2.1995. For the belated payment, the second respondent demanded penal interest at the rate of 5% per annum and demanded a sum of Rs. 1,34,556.20 as per G.O.Ms. No. 968 Home (Prohibition & Excise) Department, dated 28.8.1989. The said interest calculated is also paid by the petitioner by installments and as on 5.4.2004, the actual amount due from the petitioner was only Rs. 34,056/- as per the demand notice issued by the Taluk Excise Officer. That amount was also paid by the petitioner by 15.6.2005. The present demand is made on the basis of G.O.Ms. No. 81 Prohibition & Excise Department, dated 5.4.2004, which reads as follows:

GOVERNMENT OF TAMIL NADU Abstract

Prohibition and Excise - Tamil Nadu Prohibition Act, 1937 - Rate of Interest to be levied on belated payment of any amount due to Government - Specification of - Notification u/s 18(1) of Tamil Nadu Prohibition Act, 1937 - Orders Issued.

--- Prohibition and Excise (II) Department G.O.Ms. No. 81 Dated: 05.04.2004 Read :

From the Commissioner of Prohibition and Excise, Chennai, letter P&E III(3)3176/2001, dated 14.11.2002, 2.5.2003 and 19.1.2004.

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:

NOTIFICATION

Under Sub-section (i) of Section 18(1) of the Tamil Nadu Prohibition Act, 1937, (Tamil Nadu Act X of 1937) the Governor of Tamil Nadu hereby specifies the rate of interest to be recovered on the amount due to the State Government under the provisions of said Act or the rules made hereunder as twelve percent.

2. The notification hereby made shall be deemed to have come into force on the 12th May, 1981.

R. Balakrishnan Secretary to Government

From the perusal of the Government order it is evident that the rate of interest to be recovered on the amount due to the State Government under the provisions of the Tamil Nadu Prohibition Act, 1937, or the rules made thereunder is 12% and the said order is deemed to have come into force on 12.5.1981. On the date of issuance of the Government Order i.e., on 5.4.2004, the actual amount due to the State Government from the petitioner was only a sum of Rs. 34,056/- and all other dues including the balance interest was already paid. Therefore even according to the Government Order, 12% interest can be claimed for the actual due of Rs. 34,056/- and not for the amounts already paid.

10. The words "amount due" is to be strictly construed since higher rate is ordered to be charged towards penal interest for the amount due. Hence the second respondent is not justified in demanding 12% interest for the whole amount, which the petitioner has already paid, except the sum of Rs. 34,056/-. From the letter of the Taluk Excise Officer dated 20.2.2004, it is evident that the arrears of interest payable by the petitioner as on the said date was only Rs. 34,056/-. Thus it is manifest that the petitioner was in due of a sum of Rs. 34,056/- only prior to the date of issuance of G.O.Ms. No. 81 dated 5.4.2004 and the second respondent can demand 12% interest for the said amount only and not for the entire notional loss amount as well as the remaining interest already paid. The said due of Rs. 34,056/- was also been paid on 15.6.2005. Hence the second respondent can demand 12% interest for Rs. 34,056/- from 20.2.2004 to 15.6.2005.

11. Viewing the issue in such a manner, the second respondents demand notice dated 28.11.2005 cannot be sustained and the same is set aside. It is open to the second respondent to demand interest of 12% per annum for the sum of Rs. 34,056/- from 20.2.2004 to 15.6.2005. In view of the above decision arrived at in the facts of the case, the validity of G.O.Ms. No. 81 Prohibition and Excise Department, dated 5.4.2004 need not be decided in this writ petition and the said issue is left open.

The writ petition is disposed of on the above terms. No costs. Connected miscellaneous petitions are closed.