(2003) 09 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No''s. 27007 and 27008 of 2003

G. Jayachandra and S. Basheer APPELLANT

Vs

State of Tamilnadu and Others RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 14

Citation : (2004) WritLR 211

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : A.P. Venkataraman, for the Appellant; R. Muthukumaraswamy, A.A.G. assisted by K. Mahendran, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The petitioners were granted privilege for retail vending in Indian Made Foreign Liquor under the provisions of the

Tamil Nadu Liquor (Retail Vending) Rules, 1989, hereinafter called ''the Rules'', for the excise year 2001-2002. Admittedly, the petitioners were

allowed to continue such retail vending for the excise year 2002-2003 as per the direction of the Apex Court and now they have made

applications for renewal of the licence for the 3rd year, viz., 2003-2004 which were rejected under the impugned orders on the basis that there is

no provision for renewing the licences of the petitioners as Rule 14 of the Rules which dealt with the renewal of licence had already been omitted.

2. The above writ petitions came up for admission on 26.9.2003. Since it was opposed on behalf of the State to grant interim order as prayed for

in the W.P.M.Ps., this Court inclined to hear the writ petitions themselves on merits to give quietus to the issue raised finally.

3. Before deciding the issue raised in this case, it is necessary to set out certain facts and earlier orders passed by this Court and the Apex Court at

the instance of the Government and the licensees like petitioners. The Government of Tamil Nadu decided to grant privilege of selling Indian Made

Foreign Liquor to 6,000 retail vending shops for the excise year 2001-2002, commenced on 18.1.2001 and expired on 31.7.2002. I am not

dealing with the various provisions of the Act and the relevant Rules as they are not necessary for the present purpose. Rule 14 of the Rules as it

stood before omission, dealt with renewal of licence. Under Sub-Rule 2A of Rule 13, the period of licence shall be for the period ending 31st May

of succeeding year unless otherwise specified in the licence issued in a particular case, provided that the said period shall not apply to the licences

renewed for the 2nd and 3rd year under Rule 14 of the Rules. Rule 14 of the Rules as it stood provided the procedure for applying for renewal in

Form 8.

4. Subsequently, the said Rule 14 of the Rules was omitted under G.O.Ms.No.129 Prohibition and Excise Department, dated 8.7.2002. The said

Government Order along with other two orders were challenged before this Court on the ground that the withdrawal of the said Rule 14 of the

Rules could be only prospectively and it cannot take away the rights of the licensees for the year 2001-2002 as they are entitled to run the business

for the entire block period of 2001-2004. The Division Bench of this Court in the decision in State of Tamil Nadu v. K.Vinayagamurthy 2002(3)

CTC 257 has held as follows:-

21. In G.O.Ms.No.128, a policy decision has been taken regarding the number of shops, re-categorisation of the shops for the purpose of levy of

privilege fee and the first deposit of the application amount of 50% of the privilege amount instead of one third. The last and most important is that

of the 7,000 shops directed to be disposed as per the procedure laid down in G.O.Ms.No.115, dated 22.6.2001. We may have to deal with this

G.O.128, dated 8.7.2002 in four parts as mentioned above. In so far as the first three parts are concerned, i.e., re-fixing the shops from 6,000 to

7,000 as compared to the previous year, re-categorisation of the shops bringing forth the peripheral areas within a radius of 5 Kms., adjoining the

Municipal Corporations and Municipalities for the purpose of levy of the privilege fee on par with the shops in Municipal Corporations and

Municipalities and also requiring 50% of the privilege amount to be deposited along with the applications, the same are touching upon the fiscal

policy of the Government so as to augment more financial resources. They have got nexus with the object to be achieved i.e., public revenue. In

that context, it can be said that the policy, which has been evolved for the block period 2001 to 2004 in G.O.Ms. No.113, dated 22.6.2001 and

which is now changed year-wise, does not attract the doctrine of either promissory estoppel or legitimate expectation. We are unable to even term

it as arbitrary, either. But coming to the dispensing with the right of renewal of the petitioners, who are the existing licensees, the consideration

would be different. There is absolutely no nexus with the object of the excise policy for augmentation of more financial resources as the petitioners

are willing to get the renewal of their licences on payment of the prescribed privilege fee for this year and also having regard to the re-

categorisation of the shops attracting the payment of the excess licence fee as compared to the last year. When the petitioners are ready to pay the

amount as fixed by the Government, there is absolutely no reason as to why they should be excluded from the right of their renewal, which was

hitherto in the statute book. Taking away the right of renewal is one thing and to say that circumstances do not warrant for granting the renewal is

totally a different thing. It is not the case of the respondents that the petitioners did not make an offer for renewal. In fact such a situation did not

arise at all as no privilege amount has been fixed by any of the respondents as contemplated by clause (iii) of sub-Rule (1) of Rule 14 of the Rules.

Only to disable the petitioners from opting for renewal of their licences, the provision relating to renewal in Rule 14 is deleted and as already stated

above, this omission in so far as the block period of 2001 to 2004 is concerned, has got absolutely no nexus and by necessary corollary, attracts

the wrath of Article 14 of Indian Constitution being unreasonable and arbitrary. The said omission of Rule 14 can only be prospective in operation,

after the expiry of the block period, i.e., on or after 1.8.2004. ......

5. Leaving paragraph 22 of the said decision, anybody could come to the conclusion that the omission of Rule 14 of the Rules can only be

prospective in operation after the expiry of the block period, i.e., on or after

1.8.2004 and persons who are having licences for the excise year

2001-2002 are entitled to renew the licence for 2002-2003 and 2003-2004 on their remittance of the privilege amount on the basis of the amount

fixed in G.O.Ms.No.129, dated 8.7.2002. But in paragraph 22 which is the ultimate conclusion of the Division Bench of this Court, it is held as

follows:-

(i) The Government is at liberty to go ahead with the grant of privilege 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.

6. The State of Tamil Nadu filed Appeal before the Apex Court challenging the judgment of the Division Bench of this Court in SLP No.14735 of

2002 etc. The Apex Court confirmed the judgment of the Division Bench and also held 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 July 2002 as ordered by the High Court.

7. Subsequently some of the existing licensees like petitioners approached the Apex Court by filing Interlocutory Applications seeking directions

alleging that though they had offered to pay/deposit fees 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 had been accepted and so they should not be prevented from getting the benefit of the judgment

of the Division Bench of this Court (supra), for the purpose of getting the renewal of licence. The Apex Court in the order dated 9.9.2002 while

disposing of the said Applications directed the petitioners therein to move the High Court for appropriate directions. On the basis of the said

direction, the licensees approached the High Court again. The Division Bench of this court by the order dated 25.9.2002 has held that it is the

State Government which had prevented the 4652 applicants from remitting the whole of the licence fee and privilege amount and as such they are

obliged to receive the balance privilege amount after giving credit to the rental period of 45 days and also the rentals from the existing licensees

which had been deposited for a period of three months pursuant to the order of the learned single Judge dated 16.7.2002. Ultimately, the Division

Bench of this Court has held that if such amount is paid by 30th September 2002 up to 4.45 p.m., they shall be entitled to renewal of the licence in

question.

8. Challenging the said order of the Division Bench of this Court, the Government filed Appeal in SLP No. 19277/2002. The Apex Court in the

order dated 13.11.2002 has held as follows:-

having examined the rival contentions as well as the judgment of the Madras High Court and the judgment of this Court particularly clause (iii)

which we have already quoted, we are of the opinion that notwithstanding setting aside the policy decision of the Government, the benefit appears

to have been conferred on those who had either remitted or paid the entire licence fee for the whole year by 31st of July, 2002. It is true, as

contended by counsel appearing for the existing licensees, that the several Government Orders stood on the way of the existing licensees to deposit

the full year''s licence fee by 31st of July, 2002 and, in fact, the positive direction was to renew their licences for a period of 15 days on receiving

from them the proportionate licence fee. But, if this difficulty would have been pointed out to us while we delivered the judgment, we could have

possibly directed conferring the benefit by giving a specified time by which the licence fee for the year in question to be deposited. 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.

(Emphasis is mine)

9. Having held so, on the concession made by Mr. Venugopal, Learned Senior Counsel on behalf of the State, the Apex Court modified the order

of the Division Bench of this Court to the following extent:-

All the existing licensees (the previous licensees) for the block period who had remitted the whole year''s licence fee by31st 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 2002-203 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 licensees 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.

10. On the basis of the above said facts and the orders of the Courts, we have to now decide about the issue raised in this writ petition. Mr. A.P.

Venkataraman ,learned counsel for the petitioners submitted that since the petitioners were given liberty to pay the amount for the excise year

2002-2003 for the purpose of renewing the licence and in fact the licences were renewed and so they are also entitled to get the license for the

excise year 2003-2004 (a portion of a block period) renewed in view of the judgment of the Division Bench of this Court. In effect, learned

counsel submitted that they are having every right to get their licences renewed for the excise year 2003-2004 as their licences had already been

renewed for the excise year 2002-2003.

11. Learned Additional Advocate General, in turn, submitted that the licensees who have not deposited the requisite amount on or before 31st July

2002 as held by the Division Bench of this Court in the decision in 2002 (3) CTC 257 (supra) are not entitled to claim any right to continue the

business by way of renewal for excise year 2003-2004, a portion of the block period, merely because the Apex Court permitted them to pay the

amount and continue the business for the excise year 2002-2003.

12. There cannot be any dispute that the Division Bench of this Court in the decision in 2002 (3) CTC 257 (supra) found that omission of Rule 14

could be only prospectively and the existing licensees are entitled to get benefit and to run the business for the entire block period, namely, from

2001-2004. But ultimately it held that such a facility of renewal shall be made applicable to such licensees who remitted the requisite amount on or

before 31st July 2002.

13. Learned counsel for the petitioners submitted that the Division Bench of this Court categorically found that the omission of Rule 14 of the Rules

in so far as the entire block period of 2001-2004 is concerned, is unreasonable and arbitrary and the said omission of Rule 14 of the Rules could

only be prospective in operation after the expiry of the block period, i.e., on or after 1.8.2004. On that basis, learned counsel further submitted

that in view of the said observation made by the Division Bench of this Court, the petitioners are at liberty to renew the licence for the said period.

But, as stated already, if the Division Bench stopped with the said observation, there could not be any difficulty to accept the case of the

petitioners. But to enjoy such right only, they come under the category contemplated in clause (iii) of paragraph 22 of the said judgment, as stated

above. In view of the said qualification prescribed, all the licensees cannot now come forward with the plea that even if they do not come under

clause (iii) as mentioned in paragraph 22 of the said judgment, they are entitled to exercise their right of renewal of licence for the excise year

2003-2004. So on the basis of the judgment in 2002 (3) CTC 257 (supra) the petitioners cannot claim any right as they have not paid the amount

on or before 31st July 2002.

14. Learned counsel for the petitioners further submitted that in view of the judgment of the Division Bench of this Court permitting the petitioners

to pay the amount on the basis that the authorities have not received the amount though the licensees were willing to pay the same, it has to be

taken that the petitioners have fulfilled the said conditions. But, on Appeal by the State against the said Division Bench judgment, the Apex Court

has held that it is difficult for the Court to interpret the earlier order, in which the above said qualification prescribed in clause (iii) of paragraph 22

has been confirmed, to mean that the benefit given under clause (iii) 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 in the said judgment. Having held so, taking into consideration the concession made by

Mr. Venugopal, learned Senior counsel, on behalf of the State, to the effect that the State Government would be willing to grant the licence for the

whole excise year 2002-2003 in favour of those who had remitted the licence fee by 31st July, 2002 and those who have been granted licences

for the short term period on payment of the licence fee for the short term period by 31st September 2002, the Apex Court gave liberty to the

existing licensees who had remitted the whole year''s licence fee by 31st July 2002 as well as all of them who were granted licence for a period of

six weeks subsequent to the interim order of this Court dated 25.9.2002 and subsequent to the order 3.10.2002, to the effect that on payment of

the licence fee, they should be granted licence for the balance period of the excise year 2002-2003.

15. Learned counsel for the petitioners tried to submit that that since the Apex Court has permitted to pay the amount irrespective of the period

mentioned in clause (iii)of paragraph 22 of the Division Bench judgment of this Court (supra) and got the renewal of the licence for the excise year

2002-2003, the petitioners have to be treated on bar with those licensees who come under the said clause (iii) of paragraph 22 of the Division

Bench judgment to renew the licence for the excise year 2003-2004. I am not able to accept the said submission of the leaned counsel. As stated

already, as per the judgment of the Division Bench of this Court reported in 2002(3)CTC 257 (supra), irrespective of the omission of Rule 14 of

the Rules, the right of renewal is given to a particular category, namely, to the licensees who remitted the requisite amount on or before 31st July

2002. The Apex Court has confirmed the said judgment of the Division Bench of this court even in the subsequent judgment of the Apex Court in

S.L.P.No.19277 of 2002 etc., dated 13.11.2002. The Apex Court specifically expressed the difficulty in interpreting the earlier order of the Apex

Court reported in Secretary to Govt., of Tamil Nadu v. K.Vinayagamurthy 2002 (3) CTC 696 to mean that the benefit mentioned in the said

clause would be extended to all those who were ready to deposit the fee but could not do so on account of several contingencies mentioned

therein. So, from the said judgment delivered by the Apex Court, it is very clear that the right of renewal of the licence for the block period could

be given only to the licensees who could come under clause (iii) of paragraph 22 of the Division Bench judgment of this Court. The Apex Court

has directed the State of Tamil Nadu to issue licence for the balance period of the excise year 2002-2003 only on the basis of the concession

made by the State through their counsel. The said concession is only to grant licence for that excise year but not to renew the licence. Though the

Apex Court has given permission to the licensees to pay the amount even beyond the period mentioned in the said clause (iii) of paragraph 22 of

the said Division Bench judgment of this Court, it is only for the purpose of getting the licence for the excise year 2002-2003. Nowhere it is stated

that the licensees are entitled to get renewal of licence for the excise year 2002-2003. When such a right of renewal is not given to the said

licensees like the petitioners and they had been permitted only to continue the business for the excise year 2002-2003 by granting licence, they

cannot now claim any right of renewal of the licence contrary to the judgment of the Division Bench of this Court which was not only confirmed by

the Apex Court but also denied to extend the same to the licensees who did not come under the clause (iii) of paragraph 22 of the Division Bench

judgment.

16. The Apex Court held that such modification is notwithstanding the observations made with regard to the earlier judgment delivered by the

Apex Court. The said observation only indicates that though the Apex Court has come to the conclusion that the petitioners stood before the Apex

Court are not entitled to get the benefit of the earlier judgment delivered by the Division Bench of this Court reported in 2002 (3) CTC 257

(supra), as stated above, in view of the concession made on behalf of the State of Tamil Nadu, the Apex Court has directed the State of Tamil

Nadu to grant licence for the excise year 2002-2003 to those who have paid the amount as directed. The licences granted for the excise year

2002-2003 to the petitioners were not by way of renewal but they were fresh grant.

17. From the above discussion, it is clear that the licensees who have not paid the privilege amount on or before 31st July 2002 as contemplated in

the Division Bench judgment reported in 2002 (3) CTC 257 (supra) are not entitled to enforce the benefit of the renewal for the entire block

period given under the said judgment and thereby the licensees like the petitioners cannot claim any renewal for the excise year 2003-2004, though

they had been permitted to continue the business for 2002-2003 on the basis of the concession made on behalf of the State of Tamil Nadu before

the Apex Court.

18. For all the foregoing reasons, I do not find any merits in these writ petitions. Accordingly, they are dismissed. W.P.M.P. Nos. 32957 and

32958 of 2003 are closed.