
(2002) 09 MAD CK 0245

In the Madras High Court

Case No : Writ Petition No. 34090 of 2002 and W.P.M.P. No. 50671 of 2002

K. Ramanathan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Citation : (2003) WritLR 1

Hon'ble Judges : B. Subhashan Reddy, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Krishnamurthi, S.C. for V. Ayyathurai, in W.P.M.P. Nos. 52582 to 52584/2002, T.R. Rajagopalan, S.C. for K. Selvaraj in W.P.M.P. No. 50671/2002 in WP 34090/2002, K.M. Vijayan, S.C. for J. Pothiraj, in W.P. No. 25184/2002, P. Jayaraman, S.C. for V. Chinnasamy, in W.P. No. 26261 of 2002, M. Venkatachalapathy, SC for K. Kumaresh Babu, in W.P. No. 35975 to 35980 of 2002, AR. L. Sundaresan, in W.P.M.P. 54378/2002 in W.P. No. 28678 of 2002, Venkatasubramaniam, for S.V. Sanjeevi in W.P.M.P. No. 52319 of 2002, A. Sivaji, in W.P. No. 29676, M.M. Sundaresh, in W.P.M.P. No. 52650 of 2002, D. Selvaraj, in W.P.M.P. No. 53098/2002 and M. Muthappan, in W.P.M.P. No. 50801/2002, for the Appellant; N.R. Chandran, General assisted by K. Mahedran, Spl. G.P., for the Respondent

Judgement

1. This batch of writ petitions and miscellaneous petitions relate to licensing of the retail vending of IMFL governed by the Tamil Nadu Prohibition Act, 1937 and the Rules framed thereunder titled as Tamil Nadu Liquor (Retail Vending) Rules, 1989, as amended from time to time. During the excise year of 2001 a policy was evolved by the Government of Tamil Nadu to grant licences to vend IMFL in retail for a block period of 3 years with increase as determined in the 2nd and 3rd years over the privilege amount fixed for the initial period of one year. The said policy of block period was sought to be discontinued by the Government by re-categorisation of the places of licence for the purpose of levy of privilege fee and also increase in shops from 6000 to 7000 by issuance of G.O.Ms.Nos.128, 129 and 130 dated 8th July 2002. This led to filing of a batch of writ petitions of more than 4000 and they were all heard and disposed by a common Judgment

dated 24.07.2002 to the following effect:

"Para-22 : We dispose of all the writ petitions as mentioned infra:

(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 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."

2. The State Government had assailed this Judgment before the Supreme Court and S.L.Ps. were finally disposed of on 26.08.2002 upholding the above Judgment of this Court regarding the right of renewal of licences treating 2001 - 2004 as a block period. There had been no stay of operation of the Judgment of this Court pending disposal of the 5 S.L.Ps., which were filed against 5 of the existing licensees, who were parties to the above Judgment rendered by this Court.

3. This fresh litigation has cropped up because of the stand of the Government that among the writ petitioners only 286 have complied the condition of deposit of the privilege amount by 31.7.2002 and that the rest of the shops are liable to be given to fresh applicants by drawal of lots. The petitioners would maintain that they were ready and willing to perform their part of the obligation and in fact were permitted to perform their obligations only partially, as the State Government was waiting for the verdict of the Supreme Court with a strategy to discontinue the temporary licence in case they win the matter in the Supreme Court or to comply with the Judgment of this Court, in the event of their losing S.L.Ps. The State Government refutes this obligation stating that there was default on the part of the petitioners in compliance of the Judgment of this Court and that only 286 are entitled for renewal of licences and not the rest.

4. When the matters came up first before us, the Government took a stand that as the Supreme Court disposed of the S.L.Ps., this Court was not having jurisdiction to adjudicate on the issue. But, on behalf of the petitioners it was

submitted that the matter was moved before the Supreme Court and on the adjourned date the order dated 9.9.2002 passed by the Supreme Court was produced before us and the same reads as follows:

" The High Court, in the Judgment under challenge before us, made it crystal clear that the facility of renewal to the petitioners shall be made available, if the petitioners remit the requisite amounts on or before 31st July, 2002 and the said direction has been repeated by us in our Judgment. It is not possible for us to examine the assertions made by these applicants that they have submitted the fees for the whole year though only part of the fees was accepted. This matter, which if proved, before the High Court, can be gone into by the High Court and appropriate directions can be issued. Thus, we see no justification for this Court to extend the time or modify our order."

5. Among the petitioners, there are two types of claims relating to mode of compliance of the conditions of deposit of the privilege amount by 31.07.2002. Some say that they were ready to pay the money but the appropriate authorities did not issue the challan on the ground that there was no such instructions from the Government to receive the full privilege, some have shown the Demand Drafts on the ground that they were ready with the Demand Drafts but their plea was not entertained by the authorities for the same reason mentioned above. But, the common ground taken by all the petitioners is that the Government itself was unwilling to receive the amounts in full awaiting the Judgment of the Supreme Court and to proceed further basing upon the verdict of the Apex Court. From reading the order of the Apex Court, it is clear that we are enjoined to decide as to whether the petitioners were ready to pay the privilege amount by 31.7.2002, but the Government was not prepared to receive the same in full. The renewal of licence or otherwise depends upon the said decision. As the matter relates to more than 4,000 cases, it is practically impossible to make case-wise enquiry to decide on the different contentions raised by the petitioners. But we made enquiry to the extent possible and even getting information by posing interrogatories, upon which affidavits have been filed answering interrogatories and also material papers. We scanned through the same. Out of 6,000 shops notified for the excise year 2001 - 2002, only 5,512 shops could be sold out by drawal of lots. Out of the same, 1,830 persons have availed of the order dated 16th July 2002 of the learned single Judge by remitting three months rental for the excise year 2002 - 2003. Pursuant to the instructions of the Commissioner dated 25.7.2002, 286 applications were made. 4,632 applications were made pursuant to G.O. Ms.No.176, dated 30.7.2002 and consequent instructions of the Commissioner on 30.7.2002. It is pertinent to mention that this number of 4,632 includes 1,830 who had remitted three months rental as mentioned above.

6. The argument on behalf of the petitioners was led by Mr.R.Krishnamurthi, learned senior counsel. M/s.T.R. Rajagopalan and K.M. Vijayan, learned senior counsel appearing for some of the petitioners, as also other learned counsel made their submissions. Mr. N.R. Chandran, learned Advocate General, appeared

for the State. M/s. P. Jayaraman and M. Venkatachalapathy, the learned senior counsel appeared for some of the drawees of the lots on 2nd and 9th September 2002 and supported the arguments of the learned Advocate General.

7. While the learned Advocate General submits that there had been compliance of the Condition No.3 by only 286 of the writ petitioners, the argument of the learned counsel for the petitioners is otherwise. The learned Advocate General heavily relies upon the instructions of the Commissioner of Prohibition and Excise contained in Roc. P&E IX(1)/16131/2002-15, dated 25.7.2002 so as to project the point that the Government had never intended to stall the attempt of the petitioners to pay the privilege amount seeking renewal in accordance with the judgment of this Court. The said executive instructions were issued by the Commissioner of Prohibition and Excise to all the District Collectors with a further direction to give necessary instructions to the concerned Deputy/Assistant Commissioners of Excise. We feel it apt to extract the same.

"Office of the Commissioner of Prohibition and Excise, Chepauk, Chennai - 5.

To ALL COLLECTORS

Roc.No.P&E.IX(1)16131/2002-15 Date: 25.7.2002

In continuation of the instructions issued in regard to grant of privilege for retail vending of IMFL for the year 2002-2003, it is informed that in its order in Writ Appeal No.2209/2002, dated 24.7.2002, the High Court, Madras, has issued certain orders/directions:

2. In view of the above orders/directions of the High Court, Madras, the applications for renewal of IMFL retail vending licences for the year 2002-2003 have to be accepted from the Writ Petitioners with the revised privilege amount fixed in G.O.Ms.No.129, P&E(VI), dated 8.7.2002, taking into account the re-categorisation of shops for purpose of revised privilege amount.

3. Therefore, renewal applications from the Writ Petitioners with the copy of the High Court's order along with the Demand Draft for the revised privilege amount for one year as fixed in G.O.No.129, P&E(VI), dt.8.7.2002 may be accepted till 5.45 p.m. on 31.7.2002.

4. The list of Writ Petitioners, whose licences are entitled for renewal, is sent to you through E-Mail. It contains names of 3,505 licensees. Entertain renewal applications from those petitioners relevant for your District from the list.

5. As regards receipt of applications for lot, there is no change in the instructions issued earlier in this office Fax Message Dated 17.7.2002.

6. Instructions regarding scrutiny of applications, drawal of lot etc. will be issued separately.

7. The Deputy / Assistant Commissioners (Excise) may be instructed to await further instructions from this office for proceeding further after receipt of

applications both for renewal and for fresh allotment.

COMMISSIONER (P & E)"

According to the learned Advocate General, only 286 petitioners responded to the said instructions and only such persons are entitled for renewal of licence and not others.

8. The learned counsel for the petitioners mainly rely upon G.O. Ms.No.176 P & E (VI) Department, dated 30.7.2002 issued by the Government and the consequential instructions issued by the Commissioner of Prohibition and Excise in Roc. P&E IX (1)/16131/2002-18, dated 30.7.2002. These two proceedings also need extraction and they are as below.

"PROHIBITION AND EXCISE (VI) DEPARTMENT

G.O. (Ms.) No.176 Dated: 30.7.2002.

Read:

1. G.O. (Ms.) No.115, Prohibition and Excise Department, dated 22.6.2001.
2. G.O. (Ms.) No.128, Prohibition and Excise Department, dated 8.7.2002
3. G.O. (Ms.) No.129, Prohibition and Excise Department, dated 8.7.2002.
4. G.O. (Ms.) No.130, Prohibition and Excise Department, dated 8.7.2002.

ORDER:

1. In the Government Order second read above, orders were issued providing for the grant of licences for 7000 Indian Made Foreign Liquor retail vending shops for the excise year 2002-2003 following the procedure prescribed in Government Order first read above by lot system. Some of the existing licensees filed batch of writ petitions before the High Court of Madras questioning the deletion of the renewal clause. The High Court disposed of the batch of writ petitions with directions to renew the licences of the writ petitioners subject to their remitting the enhanced privilege amount on or before 31.7.2002.

2. The State Government have filed SLP before the Supreme Court of India challenging the orders of the High Court. The said petition is to be heard on 9.8.2002. Meanwhile, based on the statement made on behalf of the State Government before the Supreme Court, the Government have decided to extend the period of the existing licences for 15 days beyond 31.7.2002 in favour of licensees who desire such extension on their paying proportionate privilege amount and other fees. The Government therefore, direct that the licences of willing licensees be extended for a period of 15 days beyond 31.7.2002.

3. In the circumstances, the Commissioner of Prohibition and Excise is requested to issue directions to the various licensing authorities to extend the licences of all licensees who desire such extension for 15 days namely upto 15.8.2002 subject

to payment of the proportionate privilege amount and proportionate licence fee for 15 days besides the necessary application fee.

(BY ORDER OF THE GOVERNOR) R. BALAKRISHNAN SECRETARY TO GOVERNMENT

To The Commissioner of Prohibition and Excise, Chennai- 5."

"OFFICE OF THE COMMISSIONER OF PROHIBITION AND EXCISE CHEPAUK, CHENNAI - 5.

Roc.No.P & E IX (1) 16131/2002-18 dated 30-7-2002

TO ALL COLLECTORS

The Government in G.O. Ms.No.176 P & E (VI) Dept. dated 30-7-2002 (copy sent to you by E-mail separately) have decided to extend the existing IMFL retail vending licences for fifteen days beyond 31.7.2002 in favour of licensees who desire such extension on payment of proportionate privilege amount and other fees and directed that the licences of willing licensees be extended for a period of fifteen (15) days beyond 31.7.2002. Therefore, the IMFL retail vending licences of the willing licensees may be extended for a period of 15 days upto 15.8.2002.

In this connection, the procedure laid down below should be followed:

- 1.Application in the Form appended to this fax message has to be accepted.
- 2.Application fee of Rs.500/- may be collected in full
- 3.Proportionate privilege amount for 15 days at the revised rate fixed in G.O.Ms.No.129 P & E (VI) Department, dated 8.7.2002 shall be collected.
- 4.Proportionate licence fee for fifteen days (15 days) shall be collected.

As the period of licence for the year 2001 - 2002 expires on 31.7.2002 expeditious action should be taken for the extension of time in respect of the licences of the willing licensees. All those willing licensees who apply and remit the proportionate privilege amount and licence fee should be granted extension for 15 days without fail.

The Deputy / Assistant Commissioner (Excise) may be suitably instructed.

COMMISSIONER (P & E)"

9. The plea of the petitioners and the counter plea of the Government rest on the analysis of the above three proceedings. While it is clear from the proceedings dated 25.7.2002 that the judgment of this Court, rendered a day earlier, was directed to be followed by accepting the applications and also the remittance of the privilege amount but only on accompaniment of the certified copy and the demand draft, the effect of the same has to be read along with the later proceedings dated 30.7.2002, one Governmental and the other, which is consequential, by the Commissioner of Prohibition. The reason is obvious. By the

time the proceedings dated 25.7.2002 was issued by the Commissioner, there was no definite decision taken by the Government to file appeals before the Supreme Court. That is the reason why the Commissioner had only authorized the concerned Licensing Authorities to receive the applications with requisite amounts payable but not to process the same or take a decision. That is ex facie clear from clauses 6 and 7 of the instructions of the Commissioner dated 25.7.2002. Then the Government has taken a decision to move the Supreme Court and the matter was mentioned before the Supreme Court on 30.7.2002 but no stay was granted and it was posted to 9.8.2002. Then the Government, suo motu by G.O. Ms. No.176, dated 30.7.2002, has directed the Commissioner of Prohibition and Excise to instruct the Licensing Authorities to extend the existing licenses for a period of 15 days i.e. upto 15.8.2002, subject to licensees, desiring extension, paying the proportionate privilege amount and proportionate licence fee for 15 days besides the necessary application fee. In compliance of the same, the Commissioner has issued the necessary instructions dated 30.7.2002 to all the District Collectors to in turn issue instructions to the Licensing Authorities to take expeditious action for extension of time in respect of the willing existing licensees, who apply and remit the proportionate privilege amount and licence fee by 31.7.2002. Pursuant to the same, several existing licensees have sought for the renewal of licenses with requisite applications with fees, proportionate privilege fee and licence fee for the period of 15 days. On being satisfied about the compliance of the conditions, such a number of existing licensees (4,632) were granted with extension of the licence for a period of 15 days, then for a further period of 15 days from 16.8.2002 to 31.8.2002 by G.O. Ms.No.180, dated 12.8.2002 and again, as a third extension of 15 days, from 1.9.2002 to 15.9.2002 by G.O. Ms.No.189, dated 29.8.2002.

10. Among the applicants, there are two types, i.e. the fresh one, who had applied pursuant to the impugned G.O. Ms. Nos.128, 129 and 130, dated 8.7.2002, and the other is among the existing licensees. 1,830 applications which have been received pursuant to the order of the learned single Judge dated 16.7.2002 have not been processed at all and they were just kept pending obviously awaiting the outcome of judgment of the Division Bench. Even with regard to 286 applicants, who are said to have remitted the entire amount pursuant to the instructions of the Commissioner dated 25.7.2002, no orders were passed on their applications until 2.9.2002. It is understandable as to why the Government did not pass orders on those 286 applicants by 31.7.2002 if really the Government was of the view that only 286 applicants deserved consideration in the light of the judgment of the Division Bench of this Court dated 24.7.2002. Even while keeping the said 286 applications pending, the Licensing Authorities had received the applications with fees payable thereon as also the proportionate privilege fee and licence fee for 15 days upto the closing time of 31.7.2002 and granted extension to 4,632 applicants among the existing licensees. This shows the clear intention of the Government that it did not want to renew the licences for the full excise period 2002 - 2003 because of the

pendency of the matter before the Supreme Court and it wanted to act suitably only after hearing the verdict of the Supreme Court. In fact, the same is quite evident from the recitals of G.O. Ms.No.189, dated 29.8.2002.

"PROHIBITION AND EXCISE (VI) DEPARTMENT

G.O. (Ms.) No.189 Dated: 29.8.2002.

Read:

1. G.O. (Ms.) No.115, Prohibition and Excise Department, dated 22.6.2001.
2. G.O. (Ms.) No.128, Prohibition and Excise Department, dated 8.7.2002
3. G.O. (Ms.) No.129, Prohibition and Excise Department, dated 8.7.2002.
4. G.O. (Ms.) No.130, Prohibition and Excise Department, dated 8.7.2002.
5. G.O. (Ms.) No.176, Prohibition and Excise Department, dated 30.7.2002.
6. G.O. (Ms.) No.180, Prohibition and Excise Department, dated 12.8.2002.

Read also:

From the Supreme Court of India final judgment dated 26.8.2002 in SLP No.14735 of 2002.

ORDER:

1. The Supreme Court of India in its judgment dated 26.8.2002, seventh read above has dismissed the Special Leave Petition. Pending implementation of the judgment of the Supreme Court of India, the Government have decided that the licences of willing licensees whose licences have extended for two spells, namely, from 1.8.2002 to 15.8.2002 and from 16.8.2002 and 31.8.2002 may be extended for a further period from 1.9.2002 to 15.9.2002.
2. Accordingly the Government direct the Commissioner of Prohibition and Excise to issue directions to the various licensing authorities to extend the licences of all licensees who desire such extension for a further period of 15 days from 1.9.2002 to 15.9.2002, subject to the payment of the proportionate privilege amount and proportionate licence fee for the period so extended.

BY ORDER OF THE GOVERNOR R. BALAKRISHNAN SECRETARY TO GOVERNMENT"

11. In view of the above discussion, the irresistible conclusion is that the Government was not willing to renew the licences of the existing licencees until the decision is given by the Supreme Court. By giving extensions in three spells of 15 days each in G.O. Ms.Nos.176, 180 and 189, dated 30.7.2002, 12.8.2002 and 29.8.2002 respectively, the Government made it clear that it was resorting to clause 4 of the judgment of the Division Bench dated 24.7.2002. The Government cannot be permitted to say that it can resort to have the relief in clause 4 mentioned above annulling the right of the petitioners, in fact a

substantive one, granted in clause 3 of the judgment of this Court dated 24.7.2002. It is the Government which had prevented 4,632 applicants from remitting the whole of the licence fee and privilege amount and as such is obliged to receive the balance of the privilege amount after giving credit to the rental paid for 45 days as also the rentals from the existing licensees which have been deposited for a period of 3 months pursuant to the order of the learned single Judge dated 16.7.2002 because we are told at the Bar that the Government had refunded the said three months rental only to some of the applicants and not to all.

In result, we hold

- 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 (upto 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 licences;
- 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.

All the W.Ps. and W.P.M.Ps. are disposed of accordingly.