

(2002) 11 SC CK 0004
In the Supreme Court Of India
Case No : Civil Appeal No. 7404 of 2002

State of Tamil Nadu and Others

APPELLANT

Vs

K. Ramanathan

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2002) 10 JT 534

Hon'ble Judges : G. B. Pattanaik, C.J;S. B. Sinha, J;K. G. Balakrishnan, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Civil Appeal arising out of SLP (C) No. 19277/02

1. Impleadment allowed.

2. Leave granted.

3. This appeal by state of Tamil Nadu is directed against the impugned judgment dated 25th of September, 2002 of the High Court of Madras. On the change of licensing system of retail vending of Indian Made Foreign Liquor (IMFL), writ petitions were filed in the High Court of Madras, 1500 in all by the existing licence-holders, assailing the legality of the change of the policy and bringing out the system of grant of exclusive privilege by a fresh lot. The High Court of Madras came to the conclusion that the revised excise policy is unreasonable and arbitrary and has no nexus with the object of augmentation of the excise revenue. The High Court finally disposed of the writ petitions with certain directions and at present, we are concerned with the direction contained in Clause (iii) to the effect "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."

4. Against the aforesaid judgment of the Madras High Court, the state came up in appeal to this Court and the batch of special leave petitions was disposed of by

us vide judgment dated 26th of August, 2002. While upholding the judgment of the Madras High Court with some modification in respect of some of the directions, it was also stated - "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 the 31st of July, 2002, as ordered by the High Court itself."

5. Subsequent to the judgment of this Court, some of the existing licensees filed interlocutory applications alleging therein that, in fact, though they had offered to pay/deposit fees for the entire year by 31st of July, 2002, but the same was not accepted and only a part of the privileged fee for the period for which the licence was being extended, had been accepted and, therefore, they should not be debarred from getting the benefit of the judgment of the Madras High Court, as upheld by this Court. Those applications stood disposed of by the order of this Court dated 9th of September, 2002 wherein this Court directed that the matter, if moved before the High Court, can be gone into by the High Court and appropriate directions can be issued. Pursuant to this observation of this Court, when the existing licensees approached the High Court, the High Court by the impugned judgment dated 25th September, 2002, came to hold that it is the state government which had prevented 4632 applicants from remitting the whole of the licence fee and privileged amount and, as such, is obliged to receive the balance of the privileged amount after giving credit to the rental period for 45 days, as also the rentals from the existing licensees which has been deposited for a period of three months pursuant to the order of the learned single judge dated 16th of July, 2002. Ultimately, the court directed that these 4632 applicants who had filed applications with fee thereon and paid proportionate privileged amount and proportionate licence fee by the closing date, i e., 31st of July, 2002, shall be entitled to remit the balance amount after making the adjustment as mentioned above by the 30th of September, 2002 up to 5.45 p.m. and on compliance of the said condition they shall be entitled to the renewal of the licences in question.

6. Mr. K. K. Venugopal, learned senior counsel appearing for the state of Tamil Nadu, contended with vehemence that the High Court instead of complying with the directions of this Court, evolved a theory to find out as to who were the applicants who were ready to pay the privileged amount by 31st of July, 2002 and thereby exceeded the jurisdiction vested in it pursuant to the observations of this Court in its order dated 9th of September, 2002 and thereafter, on examining the different contentions as well as the different government orders issued from time to time between 24th of July, 2002 and 31st of July, 2002, directed that all these applicants 4632 in number, would be entitled to get renewal of their licences on payment of licence fee by 30th of September, 2002.

7. Mr. H. N. Salve, Mr. Arun Jaitley, Mr. P. Chidambaram, Mr. P. S. Mishra and a large number of counsel appearing for the licensees, on the other hand, contended that the very excise policy having been set aside and the benefit of the order having been extended to the existing licensees, it would be wholly

inequitable to deny the relief to all the existing licensees merely literally interpreting the order of this Court that only those who had remitted the amount by 31st of July, 2002 would be entitled to the benefit in question. It was further contended by placing before us the different government orders issued between 24th of July and 31st of July, 2002, that it was impossible on the part of any licensee to remit and deposit the fee for the entire year and it merely permitted acceptance of the fees for a period of 15 days in accordance with the instructions to be indicated and therefore there is no error in the ultimate conclusion in the impugned judgment that it is the state government who prevented the existing licensees from making the deposit by 31st July, 2002 and; consequently, the order impugned being an equitable order and in accordance with the spirit of the judgment, need not be interfered with.

8. 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 was 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.

9. Mr. Venugopal, appearing for the state of Tamil Nadu, submitted that pursuant to the directions of the High Court dated 25.9.2002, 1346 applications had been received but only 851 persons took the grant for six weeks in accordance with the order of the Supreme Court dated 3.10.2002 on the basis of the statement of the counsel for the state of Tamil Nadu and balance 495 dropped out. He also stated that from amongst the existing licensees 256 persons participated in fresh lot and therefore question of consideration of their case does not arise.

10. Mr. Venugopal, on behalf of the state, submitted that the state government would be willing to grant the licences for the whole year in favour of those who had either remitted the licence fee by 31st of July, 2002 or those who have been granted licences for a short term period on payment of the licence fee on the basis of the payment of the fee for the short term period by 30th of September, 2002, pursuant to the order of this Court dated 3rd October, 2002.

11. Needless to mention, if somebody has paid more by 30th of September, 2002, he would not be denied of this benefit. This offer on behalf of the state

government appears to us to be wholly equitable and reasonable and notwithstanding our observations made with regard to the judgment of this Court, we therefore modify the impugned order of the Madras High Court by holding that:-

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 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.

12. 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.

Civil Appeals arising out of SLP (C) Nos. 19434-19439/2002

13. Leave granted.

14. These appeals stand disposed of in view of our order aforesaid in the civil appeal arising out of SLP (C) No. 19277/ 02.

[SLP (C) CC 8750/2002]

[SLP (G) CC 8728/2002]

[SLP (C) CC 8735/2002]

15. Permission is granted to file the S.LPs.

16. Leave granted.

17. In view of our order in the civil appeal arising out of the SLP (C) No. 19277/ 2002, these appeals stand disposed of.