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(2005) 01 MAD CK 0013

In the Madras High Court

Case No : W.A. No. 3024 of 2003

The Collector APPELLANT

Vs

N. Murugan RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 13(1), 13(2), 13(4), 13(5)

Citation : (2005) 1 LW 436 : (2005) 1 MLJ 405

Hon'ble Judges : Markandey Katju, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : K. Mahendran, Special Govt. Pleader, for the Appellant; Nalini Chidambaram, for S. Silambanan, for the Respondent

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned judgment dated 5.8.2003. Heard the learned counsel for the

parties.

2. The facts of the case are that on 10.7.2002, the Collector invited applications for grant of privilege of retail vending of Indian Made Foreign

Liquor under the Tamil Nadu Liquor (Retail Vending) Rules, 1989. The respondent/ writ petitioner applied under Rule 13(1) on 18.7.2002 and

remitted 50% of the privilege amount. It is alleged that the dates for drawal of lots were fixed on 22.7.2002 and 23.7.2002, but the draw was not

held on the said dates. The writ petitioner intimated to the authorities on 23.7.2002 and subsequently also on 29.7.2002 that he was withdrawing

the application. However, the order dated 4.9.2002 was passed forfeiting the amount deposited by the petitioner.

3. The writ petition was filed, which has been allowed by the learned single Judge. Hence, this appeal.

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4. Rule 13(2) of the Rules states,

when the number of eligible application does not exceed the number of shops notified for an area, all applicants shall be selected for grant of

privilege.

5. A careful perusal of the language used in this Rule shows that there must be a separate order by the authority concerned stating that the

applicant has been selected, otherwise the language of Rule 13(2) would have been that the applicant ""shall be deemed to be selected for grant of

privilege"". The fact that the language is not such means that there is no deeming clause and there must be an actual order stating that the applicant

has been selected. This interpretation is further clear from Rule 13(4), which states that ""the selected applicant shall be intimated in writing about his

selection"".

6. It is admitted that the writ petitioner was never intimated in writing about his selection. Hence, in our opinion, Rule 13(5) will have no

application, as that sub-rule only applies to a selected applicant. Since the writ petitioner was not a selected applicant, Rule 13(5) has no

application.

7. Hence, there is no infirmity in the judgment of the learned single Judge. This appeal is dismissed. The amount in question will be refunded with

interest at 10% per annum from the date it became due till the date of payment. The amount shall be paid to the writ petitioner within a period of

two months from the date of receipt of a copy of this order by the authority concerned. No costs.

8. We may mention that we are awarding interest because interest is the normal accretion on capital, and is not a penalty or punishment.

9. Money doubles every six years. For instance, if ''A'' had to pay ''B'' a sum of Rs. 100/= in the year 1992, and he pays that amount only in the

year 2004, the result will be that in fact ''A'' has pocketed Rs. 300/=. This is because Rs. 100/= in the year 1992 becomes Rs. 200/= in the year

1998 (because of compound interest) and that amount will become Rs. 400/= in the year 2004. Hence, if ''A'' was legally bound to pay ''B'' a sum

of Rs. 100/= in the year 1992, but he pays Rs. 100/= to ''B'' only in the year 2004, the consequence is that in fact by the year 2004 Rs. 100/= has

become Rs. 400/=. Had ''A'' paid ''B'' the amount of Rs. 100/= in the year 1992,

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when he was legally bound to have paid it, ''B'' would have

invested that amount somewhere and earned interest thereon. If, on the other hand, ''A'' keeps that money with himself, he is earning interest

thereon. Hence, equity demands that ''A'' must return that amount to ''B'' with interest vide South Eastern Coal fields Ltd. v. State of M.P. JT 2003

(Supp.2) SC 443. Hence, ordinarily the Court must always award interest whenever there is a delay in paying certain amount (unless prohibited by

the Statute or Contract) because, otherwise, it would be doing injustice to the person who was entitled to receive the amount at a certain time,

merely because the person who was legally bound to have paid it then has somehow managed to evade making payment for a long time, and thus

pocketed the interest. It is for this reason that we have directed payment of interest.

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