(2011) 02 MAD CK 0041

In the Madras High Court

Case No : WP. (MD) No. 2949 of 2008 and M.P. (MD) No. 1 of 2008

V. Arumugam Pillai — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Contract Act, 1872 — Section 72
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 13A, 13B, 3(1), 30(2)

Citation : (2011) 02 MAD CK 0041

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : Aravind Subramanian, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Judgement

M. Venugopal, J.—The Petitioner has filed the present Writ Petition seeking the relief of Writ of Mandamus to direct the Respondents to

refund a sum of Rs. 71,633/-(Rupees seventy one thousand six hundred and thirty three only) deducted as fine amount, which is in violation of the

Provisions of Tamil Nadu Liquor Vending Rules 1989 relating to the Petitioner, along with the interest at the rate of 24% per annum from

28.11.2007 to till the date of payment.

2. The Petitioner has been issued with licence No. 80/KLT/2001-2003(valid from 24.12.2001 to 30.7.2002) on deposit of a sum of Rs.

6,00,000/-(Rupees six lakhs only) which comprises privilege amount, licence fee and a Security Deposit of Rs. 5,00,000/-(Rupees five lakhs only)

towards privilege fee, Rs. 5,000/-(Rupees five thousand only) and Rs. 1,00,000/-(Rupees one lakh only) towards Security Deposit. The Security

Deposit is paid to ensure off-take of liquor.

3. The learned Counsel for the Petitioner submits that licence has been issued after separate undertaking given by the Petitioner that he shall abide

by Rule 30(2) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, to lift the off-take fixed by the Licensing Authority.

4. Advancing his arguments, it is the contention of the learned Counsel for the Petitioner as per Clause 11 of the Terms and Conditions of the

License, ""the Licencee shall lift the off-take determined by the Licensing Authority every month. In case of failure, to life the minimum off-take

consecutively for two months the license is to pay a month penalty in proportion to the loss of the Revenue due to the non lifting of the stock"".

5. The learned Counsel for the Petitioner projects a plea that the Petitioner deposited the privilege amount on the assumption that the said amount

confers licence for a period of twelve months. But the licence has been issued only for a period of seven months.

6. The learned Counsel for the Petitioner submits that the Respondents made a excess collection of Rs. 2,00,616/-(Rupees two lakhs six hundred

and sixteen only) for the period of 1.8.2001 to 24.12.2002. The learned Counsel for the Petitioner brings it to the notice of this Court that the

Petitioner earlier filed a Writ Petition No. 8269 of 2003 and this Court, on 18.3.2003, has directed the First Respondent/The State of Tamil Nadu

represented by the Commissioner of Prohibition and Excise, Chennai-5, to refund the amount within a period of six weeks from the date of receipt

of communication of copy of the order and resultantly, allowed the Writ Petition without costs. As against the said order, dated 18.3.2003, in

W.P. No. 8369 of 2003, Writ Appeal No. 3714 of 2004 has been preferred by the Third Respondent/The Assistant Commissioner (Excise),

Collectorate, Karur, and the same has been dismissed.

7. The learned Counsel for the Petitioner invites the attention of this Court to the fact that W.A. No. 3714 of 2004 filed by the Third

Respondent/The Assistant Commissioner(Excise), Collectorate, Karur, has been disposed of by this Court with a direction to refund the amount of

Rs. 7,00,616/-(Rupees Seven Lakhs Six Hundred and Sixteen only), which has already been ordered to be paid.

8. The Petitioner has filed the Contempt Petition No. 720 of 2007 in W.P. No. 8369 of 2003 because of the fact that the Respondents have not

refunded the privilege amount of Rs. 2,00,616/-(Rupees Two Lakhs Six Hundred and Sixteen only) and the Third Respondent/The Assistant

Commissioner(Excise), Collectorate, Karur, on 10.9.2007, has refunded the privilege amount of Rs. 2,00,616/-(Rupees Two Lakhs Six Hundred

and Sixteen only) to the Petitioner.

9. According to the learned Counsel for the Petitioner, the Third Respondent/The Assistant Commissioner(Excise), Collectorate, Karur, has

refunded only the privilege amount of Rs. 2,00,616/-(Rupees two lakhs six hundred and sixteen only). But, as regards the Security Deposit, the the

Third Respondent/The Assistant Commissioner(Excise), Collectorate, Karur, has deducted a sum of Rs. 31,341/-(Rupees Thirty One Thousand

Three Hundred and Forty One only) for the year 2001-2002 and Rs. 40,292/-(Rupees Forty Thousand Two Hundred and Ninety Two only) for

the year 2002-2003 aggregating to a sum of Rs. 71,633/-(Rupees Seventy One Thousand Six Hundred and Thirty Three only) as a fine amount

for not lifting the minimum off-take determined by the licensing authority.

10. That apart, it is the contention of the learned Counsel for the Petitioner that the Third Respondent/The Assistant Commissioner (Excise),

Collectorate, Karur, has given the Petitioner a ""No Due Certificate"" mentioning that the Petitioner does not owe any amount due to the

Respondents in respect of the period from 3.10.2002 to 15.9.2003. Even after producing the ""No Due Certificate"", the Respondents have

arbitrarily deducted the fine amount of Rs. 71,633/ (Rupees Seventy One Thousand Six Hundred and Thirty Three only).

11. At this stage, it is very useful for this Court to refer Rules 13-A and 13-B of Tamil Nadu Liquor (Retail Vending) Rules, 1989 under the

captions ""Grant of licence to grantee by nomination"" ""Security Deposit"" which are extracted as follows:

13-A. Upon the nomination under the first proviso to Sub-rule (1) of Rule 3 for the grant of privilege, the nominee shall furnish a certificate in Form

III and remit-

(a) an application fee of Rs. 5000(Rupees Five Hundred only)

(b) the sum or fee or both fixed by the Commissioner

(c) the licence fee of Rs. 5,000/-(Rupees Five Thousand only) and

(d) a security deposit of Rs,1,00,000/-(Rupees One Lakh only) and obtain a licence in Form VII which shall be valid for a period of one years

13-B. Every licensee shall make a deposit of rupees one lakh as security for due observance of the terms and conditions of the lice.

12. In this connection, it is useful for this Court to 30(2) of Tamil Nadu Liquor (Retail Vending) Rules 1989 which speaks granting of licence and

the same enjoins as follows:

The licensee should lift the minimum off-take of liquor fixed for the shop by the licensing authority based on the guidelines issued by the

Government. In case the licensee fails to lift the minimum off-take so fixed consecutively for two months, the licensee is liable to pay a penalty,

which shall be in proportion to the loss of revenue to the Government due to such non-lifting. If the licensee fails to lift such minimum off-take for

another two months consecutively, the licence shall be liable to be cancelled and the shop shall be re-notified for grant of privilege.

Provided that the licensing authority shall given the licensee a reasonable opportunity of being heard imposing such penalty.

A condition prescribing the minimum off-take target was also incorporated in the retail vending licence as below:

The licensee shall lift the minimum off-take of liquor fixed for the shop by the licensing authority. In case of failure to life the minimum off-take so

fixed consecutively for two months, the licensee shall be liable to pay a penalty, which shall be in proportion to the loss of revenue to the

Government due to such non-lifting. If the licensee fails to lift such minimum off-take for another two months consecutively, the licence shall be

liable to be cancelled.

While giving effect to the Excise Policy formulated for the year 2003-2004, the policy subsequently withdrawn consequent on the take over of

retail vending of MFL of TASMAC with effect from 29.11.2003) amendments were made to the erstwhile Tamil Nadu Liquor (Retail Vending)

Rules 1989, among other things, substituting the sub Rule(2) of 30 and inserting definition to the terms ""Minimum Off-take"" ""Privilege Amount

Privilege Fee"" and ""Value of minimum off-take"". The relevant portion of the amendment is extracted below:

(2) The licensee shall lift the minimum off-take for the shops as fixed by the

licensing authority for each month based on the guidelines issued by the

Government. In case, the licensee fails to lift the minimum off-take fixed for any month during the period of license, the licensee is liable to pay

compensation to the Government @ 20% of the value of the deficit in the minimum off-take. Provided that if the licensee fails to life the minimum

off-take for the second time during the period of licence, the compensation payable shall be 30% of the value of the deficit in the off-take for that

particular month.

13. The pith and substance of the contention of the learned Counsel for the Petitioner is that as per Rule 30(2) of Tamil Nadu liquor (Retail

Vending) Rules 1989, the licensing authority is bound to given the licensee a reasonable opportunity of being heard before imposing the penalty

and in the instant case, no opportunity has been granted to the Petitioner, which has in negation of the principles of natural justice.

14. In short, it is the contention of the learned Counsel for the Petitioner that the Third Respondent/The Assistant Commissioner (Excise),

Collectorate, Karur, has deducted a sum of Rs. 31,341/-(Rupees Thirty One Thousand Three Hundred and Forty One only) for the year 2001-

2002 and Rs. 40,292/-(Rupees Forty Thousand Two Hundred and Ninety Two only) for the year 2002-2003 aggregating in all, a sum of Rs.

71,633/-(Rupees Seventy One Thousand Six Hundred and Thirty Three only) as a fine amount by not issuing a notice to the Petitioner.

15. A close reading of the counter filed by the Second Respondent/District Collector, Karur, goes to show that the Government is conspicuously

silent as to the affording of opportunity to the Petitioner.

16. It is an axiomatic principle in law that when a particular thing is to be done in a certain way, then it has to be performed only in that way and it

cannot be performed in any other manner.

17. It is to be borne in mind that Section 72 of the Indian Contract Act, 1872 which speaks of that ""liability of person to whom money is paid, or

thing delivered by mistake or under coercion"". According to the Petitioner, there has been a illegal deduction of a sum of Rs. 71,633/-(Rupees

Seventy One Thousand Six Hundred and Thirty Three only) by the Third Respondent/The Assistant Commissioner(Excise), Collectorate, Karur,

and that he is not liable to deduct the said amount as per law.

18. A perusal of the acknowledgment receipt of the Petitioner shows that he has been paid the balance Security Deposit of Rs. 28,367/-(Rupees

Twenty Eight Thousand Three Hundred and Sixty Seven only) by means of Government cheque No. 892321, dated 21.11.2007 and a sum of Rs.

31,341/-(Rupees thrity one thousand three hundred and forty one only) and a further sum of Rs. 40,292/-(Rupees Forty Thousand Two Hundred

and Ninety Two only) by means of penalty for the period of 2001-2002 and 2002-2003 aggregating in all, a sum of Rs. 71,633/-(Rupees Seventy

One Thousand Six Hundred and Thirty Three only) has been deducted.

19. Before deducting any amount, which is due to the authorities concerned then in the instant case, the Third Respondent/The Assistant

Commissioner(Excise), Collectorate, Karur, has not provided a reasonable opportunity of hearing the Petitioner in regard to the imposition of

penalty or its amount of deduction, The very deduction of Rs. 71,633/-(Rupees Seventy One Thousand Six Hundred and Thirty Three only) in all

from the Petitioner as referred to supra, is not a valid and justifiable one in the eye of law, as opined by this Court.

20. Therefore, this Court on the basis of Fair Play, Equity, Good Conscience and even as a matter of Prudence and also quite in the fitness of

things directs the Third Respondent/The Assistant Commissioner(Excise), Collectorate, Karur, to issue a notice in regard to the proposed levy of

penalty upon the Petitioner. Further, the Third Respondent is required to provide a reasonable opportunity to the Petitioner to file his objections

and upon receipt of objections, the third Respondent is directed to pass dispassionate fresh order uninfluenced by any of the observations made by

this Court in this Writ Petition.

21. Accordingly, the Writ Petition is disposed of. In any event, the third Respondent is directed to pass a fresh order within a period of one month

from the date of receipt of copy of this order. It is made clear that a sum of Rs. 71,633/-(Rupees Seventy One Thousand Six Hundred and Thirty

Three only) already deducted by the third Respondent is subject to the result of the fresh order being passed by the third Respondent in the

manner known to law and in accordance with law. Consequently, connected M.P. is closed.