

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Appeal No.2900 of 2003

A.Ravikumar Appellant/Petitioner

vs.

1. The Commissioner,
Prohibition & Excise Department,
Chetput, Chennai 600 005.
 2. The District Collector,
Salem District.
 3. The Assistant Commissioner (Excise),
Salem District.
- Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 09.04.2003 made in writ petition No.5634 of 2003 Certiorarified Mandamus to call for the records pertaining to the orders passed by the 1st respondent in his proceedings in ROC P & E IX (2)/41723/2002 dated 23.01.2003 confirming to the orders passed by the 2nd and 3rd respondents in their proceedings in ROC.64601/2001 AB dated 08.10.2001 ROC.30883/01 AB1 dated 12.07.2001 respectively and quash the same consequently direct the respondents to refund 1/3rd of the privilege amount of Rs.4,66,700/- with interest at 24% per annum from 12.07.2001 till the date of realisation.

For Appellant : Mr.R.Swaminathan
For Respondents : Mr.P.Subramanian,
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The appellant applied for grant of IMFL retail vending licence in Division No.28 of Salem Corporation on 09.07.2001 complying with all the statutory requirements as per the notification dated 01.07.2001 issued by the Collector of Salem. The drawal of the lot was conducted on

12.07.200. Only two applications were received for the said division thought three shops were notified. The appellant was one among the two. Since the eligible applicants were less than the number of shops notified in that area, the appellant was selected as successful bidder, but had failed to remit 2/3rd of the amount of privilege fee on the same day, i.e., on 12.07.2001. Hence, the Assistant Commissioner (Excise) Salem Division by his proceedings dated 12.07.2001 ordered for forfeiture of the sum of Rs.4,66,700/- deposited by the petitioner at the time of filing the application under the Tamil Nadu Liquor (Retail Vending) Rules, 1989. Against that order, the appellant filed a revision before the Collector and further revision before the Commissioner of Prohibition and Excise. Both the Collector and the Commissioner of Prohibition and Excise confirmed the order of the original authority.

2. Being aggrieved by the order, the petitioner filed writ petition No.5634 of 2003 before this Court seeking for the relief of issuance of writ of certiorarified mandamus to call for the records pertaining to the order passed by the respondents in their respective proceedings forfeiting the amount and quash the same and direct the respondents to refund the 1/3rd of the privilege amount of Rs.4,66,700/- with interest at 24% per annum from 12.07.2001 till the date it was realised. The learned single Judge non suited the petitioner by dismissing the writ petition. The correctness of the said order is canvassed in this appeal before this Court.

3. Heard the learned counsel on either side and perused the materials available on record.

4. Learned counsel for the appellant submitted that as per Rule 13 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, where the number of applications received for a notified area is less than the number of shops in that area or where no application is received for a notified area, such shops in that area shall be re-notified for grant of privilege by the Collector. In this case, though three shops were notified only two applications were received. In such circumstances of the case, as per sub rule 3 of Rule 13, the application received for two shops have to be rejected and all the three shops must have been re-notified. The very same contention has been raised before the learned single Judge and was rejected by the learned single Judge.

5. In order to appreciate the contention of the learned counsel for the petitioner, we are of the view that the relevant provision can be extracted :

13. Application for the grant of privilege and licence:

(1)

(2) 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. When

the number of applications in respect of the shops in a notified area is more than the number of shops in that area, the selection of applicant for grant of privilege shall be decided by drawal of lot by the licensing authority in the presence of the Collector and the applicants who prefer to be present.

(3) Where the number of applications received for a notified area is less than the number of shops in that area or where no application is received for a notified area, such shops in that area shall be re-notified for grant of privilege by the Collector.

6. On a conjoint reading of sub rules (2) and (3), it is amply clear that when the number of eligible applications do not exceed the number of shops notified for an area, all the applications shall be selected for the grant of privilege. When the number of applications in respect of the shops in a notified area is more than the number of shops in the area the selection of the application for grant of privilege shall be decided by drawal of lot by the licensing authority in the presence of the Collector or District Revenue Officer authorised by the Collector and the applicants who prefer to be present.

7. As per the provisions of the Act, it is clear that when the number of applications for the shops does not exceed the available number of shops, a drawal has to be made and the applicants have to be granted the privilege for the shops. There is no choice for the authorities to reject the applications if the applications are otherwise in accordance with the requirements of the section as would be the position if the applications received by the respondents are less than the shops notified in that area as has been stated in sub-rule (3) to the effect that where the number of applications received for a notified area is less than the number of shops in that area or where no application is received for a notified area such shops in that area shall be re-notified for grant of privilege by the Collector.

8. Here, the word 'such' before the shops assumes significance. Because if three shops are available in the notified area and the applications has been received only for two shops as per sub rules (2) and (3), shops have to be given to the applicants who made the application for the shops. In respect of the remaining shops only rectification has to be made. In the alternate, if no application is received for all the shops, here again, a re-notification has to be made. If the argument of the learned counsel for the appellant is accepted, the first limb of sub clause (2) cannot be given effect to, as stated in the Rules. Likewise, if the argument of the learned counsel that if the number of applications for a notified area is less than the

number of shops in that area, those lesser number of applications have to be rejected and all the shops should be re notified, cannot also be accepted for the very same reasons stated above. Hence, we are not able to countenance the argument of the learned counsel for the appellant. The appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Commissioner,
Prohibition & Excise Department,
Chetput, Chennai 600 005.
2. The District Collector,
Salem District.
3. The Assistant Commissioner (Excise),
Salem District.

1 cc To Mr.Sathish Rajan, Advocate, SR.65651.
1 cc To The Government Pleader, SR.65822.

W.A. No.2900 of 2003

ASM(CO)
RVL 26.11.2007

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