

**(2005) 03 MAD CK 0104**

**Madras High Court**

**Case No:** W.A. No. 3685 of 2003 and W.A.M.P. No. 6025 of 2003

A. Swaminathan

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

**Date of Decision:** March 24, 2005

**Acts Referred:**

- Tamil Nadu Liquor (Retail Vending) Rules, 1989 - Rule 13, 13(1), 13(4), 13(5), 13(6)

**Hon'ble Judges:** Markandey Katju, C.J; F.M. Ibrahim Kalifulla, J

**Bench:** Division Bench

**Advocate:** V.R. Rajasekaran, for L. Chandrakumar, for the Appellant; P.S. Sivashanmughasundaram, Spl. G.P., for the Respondent

**Final Decision:** Dismissed

### **Judgement**

F.M. Ibrahim Kalifulla, J.

Aggrieved against the order of the learned Single Judge, dated 9-4-2003 in W.P. No. 37667 of 2002, the Appellant has come forward with this Appeal.

2. In the Writ Petition, the Appellant prayed for a declaration that the drawal of lots conducted by the Respondents on 02-09-2002 for three shops notified for Thammampatti Town Panchayat for grant of privilege to sell liquor during the year 2002-2003 is unilateral, illegal and un-enforceable in law and for a consequential direction to the Respondents, to refund the privilege amount and security deposit along with application fee to the Appellant.

3. The brief facts which are required to be stated are, that by a Notification dated 08-07-2002 in G.O. Ms. No. 128 Prohibition and Excise Department, the first Respondent herein deleted Rule 14 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (hereinafter referred to as "the Rules"), providing for automatic renewal of licence for the subsequent two years on payment of enhanced privilege amount. The existing licensees of the year 2001-2002, challenged the said amendment.

4. In pursuance of deletion of Rule 14, the first Respondent invited applications on 10-07-2002 for grant of licence for retail vending of liquor during the year 2002-03. The Appellant applied for grant of licence for any one of the three shops notified for Thammampatti Town Panchayat by paying 50% of the privilege amount. The Notification dated 08-07-2002 was under challenge by the existing licensees by preferring Writ Petitions. Initially, on 16-07-2002, an order of interim stay was granted by this Court against the conduct of drawal of lots proposed to be held on 22-7-2002. The drawal of lots scheduled to be held on 22-07-2002 for the grant of licence for the excise year 2002-03, was postponed in view of the order of interim stay. The Division Bench of this Court passed orders on 24-07-2002 <sup>1</sup> holding that the existing licensees of the year 2001-02 were entitled for the renewal and that the amendment brought by the Notification dated 08-07-2002 will have only a prospective application, i.e. after 01-08-2004. The order of the Division Bench was challenged before the Hon"ble Supreme Court. Pending Special Leave Petition, the State Government granted renewal in favour of the existing licensees for a period of two weeks on 31-07-2002.

5. On 12-08-2002, the Appellant applied for refund of the privilege amount since the drawal of lots was not held as scheduled. On 26-08-2002, the Hon"ble Supreme Court dismissed the SLP affirming the judgment of the Division Bench dated 24-07-2002. According to the Appellant, again on 01-09-2002, he renewed his request dated 12-08-2002 for refund of the privilege amount in view of the judgment of the Hon"ble Supreme Court. However, the drawal of lots was re-scheduled to be held on 02-09-2002. The Appellant was selected in the said lot and he was also duly intimated of such selection on the same date. In the said intimation, he was directed to deposit the balance 50% of the privilege amount, security deposit and licence fee. He was also directed to fill in Form VI-A and submit the same before 09-09-2002. It is not in dispute that the Appellant paid the remaining 50% of the privilege amount on 02-09-2002. The Appellant also submitted Form VI-A along with the required affidavit and copy of the lease agreement on 06-09-2002.

6. Pursuant to the direction of the Hon"ble Supreme Court, dated 09-09-2002, the Division Bench of this Court, by its order dated 25-09-2002 <sup>2</sup> held that 4632 existing licensees who paid part of the privilege amount by 31-07-2002 or thereafter, were also entitled for the renewal. According to the Appellant, on 13-09-2002, he once again renewed his request for the refund of the privilege amount as the right of 4632 existing licensees who paid the proportionate privilege amount to get renewal was directed to be decided by the Division Bench by the Hon"ble Supreme Court in its order dated 09-09-2002. The Appellant's request was not considered, but on the other hand, he was issued with a temporary licence dated 03-10-2002, valid for the period between 03-10-2002 to 13-11-2002 and the same was offered to the Appellant on 04-10-2002, but he refused to receive the said licence. Apparently, the said licence seemed to have been issued pursuant to another order of the Hon"ble

Supreme Court dated 03-10-2002 in SLP (C: ) No. 19277 of 2002 against the judgment of the Division Bench dated 25-09-2002. wherein, a direction was issued to the Government that the existing licensees and fresh applicants should be granted licence for six weeks. It is claimed that on 04-10-2002, the Appellant once again applied for refund of the entire privilege amount on the ground that the licence was being issued both to the existing licensees as well as to the fresh applicants and therefore, it would be onerous.

7. On 13-11-2002, the Hon"ble Supreme Court gave certain directions for the renewal of lease for the existing licensees and also for the fresh applicants in the following words:

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 25-09-2002 and in pursuance of the order of this Court dated 03-10-2002 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 25-09-2002 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 03-10-2002 will also be entitled to get the licence for the balance period of the Excise Year.

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.

8. On 26-11-2002, the Division Bench of this Court passed orders in W.P. Nos. 38646 and 38959 of 2002. The Division Bench, by taking note of the order of the Hon"ble Supreme Court dated 13-11-2002, wherein, the existing licensees as well as the new allottees were permitted to opt out on the ground that the continuance of the business would be onerous, directed the authorities to permit the Petitioners to opt of their bid and refund the privilege amount and security deposit as also the licence fee. The Division Bench also held that it is for the authorities to enquire as to whether the Petitioners had run the business or not and if those Petitioners had run the business for some time, then the proportionate amount alone can be refunded. A time limit was also fixed for passing such orders.

9. Mr. V.R. Rajasekaran, learned Counsel appearing for the Appellant, would contend that irrespective of the stipulations contained in Rule 13, in the light of the non-fulfillment of the obligations on the part of the State Government pursuant to the Notification dated 08-07-2002 and 10-07-2002 as well as the benefit granted by the Hon'ble Supreme Court in its order dated 13-11-2002 in S.L.P.(C) No. 19277 of 2002 which was followed by the Division Bench of this Court in its order dated 26-11-2002 in W.P. Nos. 38646 and 38959 of 2002, refund ought to have been ordered by the learned Judge as claimed in the Writ Petition.

10. As against the above stated submissions of the learned Counsel for the appellant, learned Special Government Pleader would contend that by virtue of application of Rule 13(9), the Respondents are entitled to forfeit the whole of the privilege amount deposited by the Appellant. As regards the order of the Hon'ble Supreme Court, the learned Special Government Pleader would contend that the benefit of option extended to the existing licensees as well as new allottees would not apply to the case of the Appellant inasmuch as none of the three fresh allottees including the Appellant made any attempt to run the shop and therefore, there was no question of the Appellant finding the continuance of the running of the shop to be onerous in order to hold that the benefit of the said order could be availed of by the Appellant.

11. Having heard the learned Counsel for the respective parties, the question for our consideration boils down to the narrow compass as to whether the Appellant can avail of the benefit made available to the existing licensees as well as fresh applicants to opt out as has been granted in the year dated 13-11-2002.

12. In the above extracted part of the order of the Hon'ble Supreme Court, after holding that all those existing licensees who had remitted the whole year licence fee earlier to the order of the Division Bench dated 25-09-2002 and those who had paid the proportionate licence fee in pursuance of the order of the Hon'ble Supreme Court dated 03-10-2002 and who were granted a temporary licence for six weeks by virtue of the order dated 03-10-2002 should be granted the licence for the balance period of the excise year. The later part of the extracted portion of the order, however, states that it will be open for any of the existing licensees as well as the fresh allottees to opt out if they find that in an area where the number of shops exceeded the number of notified shops on account of the adjustment required to be made.

14. Be that as it may, by the interim order dated 03-10-2002, the Hon'ble Supreme Court directed to permit those persons who had been successful in the fresh allotment as well as the earlier licensees who have already deposited the fees in question by 30-09-2002, to be granted the licence for a period of six weeks from that date. The period of said six weeks thus commenced from 03-10-2002 and expired on 13-11-2002. The Hon'ble Supreme Court directed the matter to be posted on 12-11-2002 and that is how the subsequent order dated 13-11-2002 came to be

issued. Therefore, the benefit of opting out could have been availed either by the existing licensees or by the fresh allottees if at all any one had commenced the business as per the above interim order to run the shop for a period of six weeks between 03-10-2002 and 13-11-2002 and who found the continuance of the business to be onerous.

14. When we examined the relief granted by the Hon'ble Supreme Court in its order dated 13-11-2002 which has been subsequently followed by the Division Bench of this Court in its order dated 26-11-2002, it will have to be held that once the existing licensees and the fresh allottees express to opt out of their bid on the ground that the continuance of the business will be onerous, the Respondents are bound to refund the privilege amount de hors the other stipulations contained in Rule 13.

15. But the question is whether the said benefit can be permitted to be availed by the Appellant?

16. We say so because even before passing of the orders of the Hon'ble Supreme Court dated 03-10-2002, wherein, the Hon'ble Supreme Court directed the State Government to grant licence for the existing licensees as well as the fresh applicants for a period of six weeks, the Appellant preferred the Writ Petition in W.P. No. 37667 of 2002 on 27-09-2002, in which, he claimed that the lot held on 02-09-2002 in respect of the shop allotted to him for Thammappatti Town Panchayat was not legal and therefore, he is entitled for the refund. In such circumstances, we have to examine as to whether the Appellant's claim for refund can be tested in the anvil of the order of the Hon'ble Supreme Court dated 13-11-2002 as well as the order of the Division Bench dated 26-11-2002.

17. When we retrace the facts relating to the Appellant's application and other particulars, we find that the Appellant applied for the grant of licence immediately after 10-07-2002 by depositing 50% of the privilege amount. When the drawal of lots were not held on 27-02-2002 because of the intervention of Court orders, the Appellant wanted to refund of the whole of the privilege amount by making an application on 12-08-2002. Though he is stated to have renewed the said request on 01-09-2002, when the lots were held on 02-09-2002, the Appellant participated and after intimation of the lot held in his favour, in respect of one of the shops, he also paid balance of 50% of the privilege amount on the same day, namely, 02-09-2002. Subsequently, he filed Form VI-A along with the other relevant documents by 06-09-2002. He, however, claims that once again on 13-09-2002, he asked for refund of the privilege amount as he apprehended that the existing licensees were likely to get their licence renewed. However, on 03-10-2002, licence was issued as per the directions of the Hon'ble Supreme Court for a period of six weeks, between 03-10-2002 and 13-11-2002. In the mean time, on 27-09-2002, the Appellant filed the present Writ Petition.

18. The order of the Hon"ble Supreme Court dated 13-11-2002, has specifically stated that it would be open for the existing licensees as well as the new allottees to opt out if they find that the continuation of the privilege to be onerous. The said option was made available by the Hon"ble Supreme Court while directing the State Government to renew the licence for the balance period of excise year. Therefore, the option was granted by the Hon"ble Supreme Court in respect of those applicants who availed the temporary licence for a period of six weeks between 03-10-2002 and 13-11-2002 and who after running the shop, found that the continuance would be onerous. As far as the Appellant was concerned, even before the interim direction for the continuance of six weeks licence was ordered by the Hon"ble Supreme Court on 03-10-2002, he participated in the lot on his own and also paid the remaining 50% of the privilege amount. But for reasons best known to him, he refused to receive the licence issued on 3-10-2002 and thereby he did not even try to run the shop allotted to him as a trial measure.

19. In the above said circumstances, we are of the considered opinion that the Appellant"s claim for refund should be tested strictly in accordance with the provisions contained in Rule 13 and his claim cannot be considered in the light of the benefit granted by the Hon"ble Supreme Court in its order dated 13-11-2002.

20. As far as Rule 13 was concerned, under Sub-rule (1), any person interested in getting the privilege for retail vending, should make an application in Form VI along with a Demand Draft for 50% of the privilege amount plus a Demand Draft for Rs. 500/- towards application fee. Under Sub-rule (4), when the selected applicant is intimated in writing about his selection, he should remit the remaining 50% of the privilege amount along with the licence fee of Rs. 5000/- on the very same date either in cash or by way of Demand Draft. Under Sub-rule (5), if the balance 50% of amount is not remitted as directed under Sub-rule (4), whatever privilege amount originally paid under Sub-rule (1) can be forfeited by the Government and the shops can be re-notified. Under Sub-rule (6), the initial 50% of the privilege amount can be returned if the applicant was not selected for the grant of privilege. Under Sub-rule (7), after the payment of the remaining 50% of the privilege amount as per Sub-rule (4), the applicant should select a suitable building confirming to Rule 18, within the notified area and should apply in Form VI-A within seven days of such intimation. An affidavit should also be filed sworn to before a Notary Public along with the lease deed ensuring the availability of the premises for the period of the licence. Thereafter, under Sub-rule (8), if all the formalities under Sub-rule (7) had been complied with, the licence should be issued in Form VII by the Authority concerned within three days from the date of receipt of such application.

21. It is true that the period of three days was not duly followed by the authorities, but it will have to be noted that the issuance of licence was then directed by this Court in its order dated 25-09-2002 which was also confirmed by the Hon"ble Supreme Court on 03-10-2002 in which order, the Hon"ble Supreme Court directed

the State Government to issue a temporary licence for a period of six weeks. The direction of the Hon"ble Supreme Court was duly carried out even in the case of the Appellant by issuing temporary licence on 03-10-2002 for the period up to 13-11-2002. As stated earlier, it was the Petitioner who refused to receive the said licence when offered to him on that date.

22. In the above stated back ground, we are unable to see any lapses on the part of the Respondents in the matter of issuance of licence in favour of the Appellant as directed by the Hon"ble Supreme Court on 03-10-2002. Under the Rules, in particular Rule 13, once the Appellant paid the balance of 50% of the privilege amount after the intimation about his selection in the lot, thereafter, it was not open for him to seek for refund of the privilege amount. The only provision which provided for refund of the privilege amount, was Rule 13(6) which would be available only in the event of an applicant not being selected in the lot and that too in respect of the initial deposit of 50%. Therefore, in the case on hand, when the Appellant paid the initial 50% of the privilege amount as per Rule 13(1), in July, 2002 and also paid the remaining 50% on 02-09-2002 after he was duly intimated about his selection, there was no scope for the Appellant to claim for refund on any grounds. Therefore, his Writ Petition filed 27-09-2002 for refund of the claim was not supported by any provision of law.

23. One other contention of the Appellant is that the drawal of lot on 02-09-2002 was not valid in law. On the other hand, from the materials placed before this Court, we find that the Appellant participated in the lot and when he was informed about his selection, he also willingly deposited 50% of the privilege amount. In such circumstances, it was too late in the day for the Appellant to contend that irrespective of absence of any statutory right available to him, he should still be refunded the whole of the privilege amount. If the Appellant had not availed the licence granted on 03-10-2002 for the period up to 13-11-2002, he was to be solely blamed and that that will not entitle the Appellant to claim for refund.

24. The contention of the Appellant that the Respondents failed to issue Form VII, within three days as stipulated under Rule 13(8) cannot also be accepted inasmuch as, by order dated 09-09-2002, the Hon"ble Supreme Court directed the Division Bench of this Court to decide as to how the issuance of the licence should be made by the Respondents. Thereafter, the Division Bench of this Court passed orders only on 25-09-2002 which was considered by the Hon"ble Supreme Court and by order dated 03-10-2002, the Respondents were directed to issue a temporary licence for a period of six weeks. It is relevant to note that after the lot was held in favour of the Appellant on 02-09-2002, the compliance of other requirements by the Appellant was admittedly carried out only by 09-09-2002. On that date only the, Hon"ble Supreme Court directed the Division Bench of this Court to take a decision which was made by the Division Bench on 25-09-2002. The order of the Division Bench was affirmed by the Hon"ble Supreme Court only on 03-10-2002. Therefore, the period

between 02-09-2002 and 03-10-2002 was covered by the orders of this Court as well as that of the Hon"ble Supreme Court. In such circumstances, the issuance of Form VII to the Appellant was properly made by the Respondents on 03-10-2002 covering the period up to 13-11-2002. Therefore, we do not find any illegality in the action of the Respondents in the issuance of the licence to the Appellant on 03-10-2002. The non-utilisation of the same by the Appellant was the Appellant"s own folly, for which, the Respondents cannot in anyway be blamed.

25. As found by us earlier, the option made available to the licensees both existing as well as fresh in the order of the Hon"ble Supreme Court dated 13-11-2002 was not available to the Appellant which would have been available only where the continuation of the running of the shops after 13-11-2002 was felt to be onerous by such of those licensees who ran the shops between 03-10-2002 and 13-11-2002.

26. Therefore, looked at from any angle, we do not find any justification in the claim of the Appellant made in the Writ Petition and consequently, the order of the learned Judge in dismissing the Appellant"s Writ Petition was fully justified and we do not find any scope to interfere with the same.

In the result, the Writ Appeal fails and the same is dismissed. However, we shall make no order as to costs. Consequently, W.A.M.P. is closed.

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1. See: [The Secretary to Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai and The Licensing Authority, The Asst. Commissioner \(Excise\), Virudhunagar District, Virudhunagar Vs. K. Vinayagamurthy,](#)

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2. See: [K. Ramanathan Vs. The State of Tamil Nadu,](#).