



W.P.(MD).No.28159 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.28159 of 2022

Star Health Club,
represented by its Secretary,
R.Chitti Babu,
No.5/72-1, Ezhanthayadi,
Kaniyankuzham, Vettoornimadam Post,
Kanyakumari District

... Petitioner

Vs.

- 1.The Commissioner,
Prohibition of Excise Department,
3rd Floor, Ezhilagam,
Chepauk, Chennai-600 005.
- 2.The District Collector,
Collectorate Campus,
Kanyakumari, Kanyakumari District.
- 3.The Assistant Commissioner (Excise),
Kanyakumari District.

- 4.The Superintendent of Police,
Kanyakumari District at Nagaercoil.

... Respondents

***(R3 and R4 are suo moto impleaded, vide
Court order, dated 23.02.2023, in WP(MD)
No.28159 of 2022)***



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct 1st respondent to issue FL2 License under Tamil Nadu Liquor (License and Permit) Rules 1981 on the application dated 14.12.2018 and by considering the petitioner's representation dated 09.11.2022 within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmal Khan for M/s.Ajmal Associates
For R1 to 3	: Mr.V.Veera Kathiravan Additional Advocate General assisted by Mr.C.Baskaran Government Advocate
For R4	: Mr.K.Sanjai Gandhi Government Advocate (Criminal side)

ORDER

This writ petition is filed for writ of Mandamus, to direct 1st respondent to issue FL2 License under Tamil Nadu Liquor (License and Permit) Rules 1981 on the application dated 14.12.2018 and by considering the petitioner's representation dated 09.11.2022 within the period that may be stipulated by this Court.



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2. The Honorary Secretary of the petitioner Club had applied for FL2 License on 14.12.2018 Form FA 1-2 along with the fees as stated under Rule 17(b)(II) of the Tamil Nadu Liquor (License and Permit) Rules, 1981. The said rule states that the privilege and the license in Form FL2 shall be issued by the Commissioner on payment of annual privilege fee of Rs.4,00,000/-, a license fee of Rs.5,000/- and an application fee of Rs,1,000/- on an application. The licensee shall obtain his supplies of liquor from a whole sale depot license holder in the State or from such other sources as the Commissioner may appoint or approve, subject to such conditions as may imposed in that behalf. The licensee shall pay club fees as laid down in rule 34(4) and the conditions of license. The licensee shall maintain accounts of transactions in Form F.Ac.2 and such other registers or accounts that may be prescribed by the licensing authority from time to time. The further contention of the petitioner is that all these payments are made, in spite of the same, the petitioner is trying to get license from 2018 onwards but the respondents are not granting the license and are making the petitioner to run from pillar to post.



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3. The respondents had relied on the order of the Hon'ble Division Bench of this Court in W.P.(MD)Nos.23753 of 2016 and batch, dated 12.12.2017, wherein the Hon'ble Division Bench of this Court has restrained for granting of license if there is any violation of building rules and other rules as well.

4. The petitioner contended that they have already obtained the building permission / approval from the President of the Village Panchayat, Kaniyakuzham Panchayat. But the learned Additional Advocate General appearing for the respondents 1 to 3 submitted that the President of Kaniyakuzham Panchayat recently submitted a communication stating that the said approval is a forged one.

5. However, this contention of the learned Additional Advocate General was vehemently refused by the learned Senior Counsel appearing for the petitioner stating that this letter was submitted on 20.07.2023 only in order to sabotage the petitioner's claim to grant license. All these years, the President



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has never ever raised this issue. Therefore, the learned Senior Counsel appearing for the petitioner vehemently opposed such stand of the respondents.

6. This Court is not inclined to go into the merits of the issue whether the plan was obtained by the petitioner from the President of Kaniyakuzham Panchayat. The said issue shall be considered by the Commissioner which is pending for enquiry. The petitioner is at liberty to submit his objections for the issue of approval granted by the President of Kaniyakuzham Panchayat. The District Collector has given a recommendation to the Commissioner on 05.07.2023 raising various discrepancies for not granting license and the said copy is already served to the petitioner. The petitioner is at liberty to submit his objections for the report of the District Collector as well.

7. The petitioner is directed to submit the objections within a period of two weeks from the date of receipt of a copy of this order. The Commissioner shall grant personal hearing to the petitioner and thereafter, pass



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an order within a period of two weeks therefrom.

8. Pending writ petition the President of Kaniyakuzham Panchayat has come out with a communication, dated 20.07.2023, stating that the plan approval is fake. Immediately the petitioner has submitted an application before the President of Kaniyakuzham Panchayat for revised plan. The President of Kaniyakuzham Panchayat shall consider the revised plan as per law and pass orders within a period of two weeks from the date of receipt of a copy of this order.

9. With the above said directions, the writ petition is disposed of.

No costs.

08.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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