

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30850 of 2014

and

M.P.No.1 of 2014

Khadhar Hussian,
S/o.Sithik Hussian

... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai - 600 003.

2. The Zonal Officer,
Zone IX, Corporation of Chennai,
No.1, Lake area 4th Cross Street,
Nungambakkam,
Chennai - 600 034.

3. The Health Officer,
Zone IX, Corporation of Chennai,
No.1, Lake area 4th Cross Street,
Nungambakkam,
Chennai - 600 034.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 20.11.2014 vide reference No.Z.O.IX/ZHO/HD/C.No.014785/2014 issued by the second respondent and quash the same.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.T.C.Gopalakrishnan

O R D E R

Heard Mr.R.Abdul Mubeen, learned counsel for petitioner and Mr.T.C.Gopalakrishnan, learned counsel for respondents and perused the materials placed on record including the copy of the original file maintained by the respondent Corporation.

2. Petitioner has filed this Writ Petition seeking to quash the order of the second respondent dated 20.11.2014.

3. Petitioner was running a fast food restaurant at Triplicane and by the impugned order, the petitioner's restaurant trade license was revoked. The petitioner contended that the impugned order has been passed in violation of principles of natural justice and the third respondent failed to inspect the restaurant subsequent to the notice dated 07.11.2014 and within one week, without even considering the letter dated 11.11.2014, another notice was issued on 18.11.2014 which itself shows that the respondents are acting in a biased manner. Further, it is submitted that revocation of license without affording adequate opportunity is unreasonable, arbitrary and in violation of natural justice.

4. Learned counsel for respondents Corporation has produced a copy of the entire original file from which it is seen that license was granted to the petitioner to run the fast food shop under the name and style of 'Ameerunnisa Fast Food'. The license was valid upto 31.03.2015. In terms of the condition of license, in case the business or trade is found to be a nuisance or otherwise objectionable, the Commissioner has right to revoke the license at any time. The notice was issued to the petitioner on 07.11.2014 stating that he has been carrying on the fast food restaurant contrary to the terms and conditions of license and called upon him to comply with the terms and conditions of the license. In the said notice five contraventions were pointed out viz., (1) the petitioner was running a platform shop which has to be removed (2) the petitioner was not provided safe drinking water to the people who come to the restaurant (3) the petitioner was letting out the drainage water from the restaurant into the street (4) the petitioner did not obtain 'No Objection Certificate' from the fire department and (5) there is no medical certificate obtained for the persons who are handling the food items in the restaurant. The petitioner was given time to comply with the defects. The petitioner submitted his explanation on 11.11.2014 denying all the allegations stating that he is not running a platform shop, that he is providing mineral water to its customers, that he is letting out waste water into the drainage of the building owner, that the petitioner is not required to obtain

fire license since he is using a stove and that he is willing to obtain the medical certificate for his employees. After the explanation was received, the respondent sent another notice on 18.11.2014 stating that the petitioner has not obtained the requisite certificate from the Health Officer. The petitioner submitted reply on 19.11.2014 reiterating the reply given by him on 11.11.2014 and enclosing a copy of the same. Pursuant thereto, the impugned order has been passed.

5. As pointed out above, five contraventions have been pointed out in the first notice issued. The petitioner has given a reply stating that four allegations out of five are not made out. So far as the food handlers medical certificate is concerned, the petitioner is willing to provide the same. Therefore, on receipt of reply of the petitioner, the authorities should have conducted an inspection to examine as to whether the petitioner has complied with all the requirements and where the statement made by him in his explanation was correct or not. Further, without doing so, straightaway the impugned order has been passed.

6. During the course of argument, learned counsel for respondents Corporation submitted that the petitioner is not running a restaurant and though it bears the name of a restaurant, he is running a political party office and the same was also sealed. Subsequently, on obtaining interim order, the petitioner was able to open the premise.

7. While entertaining the Writ Petition, this Court has passed an order of interim stay. Based on that, the petitioner is running the restaurant. Therefore, at this distance of time, the factual position would differ. Hence, a fresh inspection is required to be done and the impugned order should not be an impediment for conducting the same.

8. In the light of the above, this Court is of the view that setting aside of the impugned order would serve no purpose at this juncture. Accordingly, there will be a direction to the respondents to conduct fresh surprise inspection in the petitioner's premise, ascertain the full facts and examine as to whether the petitioner has complied with the statutory requirements. Pursuant to such inspection, the respondents shall issue a show cause notice to the petitioner and after receiving reply to the show cause notice, the respondents shall pass orders on merits and in accordance with law. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. Till then, status-quo which is prevailing as on date based on the interim order dated 26.11.2014, shall continue.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

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+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.16238
+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.15982

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W.P.No.30850 of 2014

KM(CO)
CA(01/04/2015)

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