

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.04.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.22727 of 2014

and M.P.Nos.1 of 2014 and 1 of 2015

C.Muthupandian @ Muthupandi

... Petitioner

Versus

1. The Secretary to Government,
Government of Tamilnadu,
Home Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner of Police,
Chennai City,
Office of the Commissioner of Police,
Vepery, Chennai.
3. The Assistant Commissioner of Police,
Triplicane Range,
Chennai - 600 005.
4. The Inspector of Police,
D-2, Anna Salai, Chennai.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, to call for the records issued by the 2nd respondent bearing R.C.No.E3(1) 101/33915/2013 dated 21.07.2014 and quash the same and consequently, direct the 2nd respondent to issue Public Resort Licence as requested for in Application dated 03.01.2014.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Mr.V.Subbiah (for R1 to R4)
Special Government Pleader.

O R D E R

By consent, the main writ petition is taken up for final disposal.

2. The petitioner in the affidavit filed in support of this petition would state that he is carrying on business of Hotel industry since the year 2005 in the name and style of 'Hotel Platinum Stars' and in the said hotel, he intends to conduct Indian Cultural dances viz., Bharathnatiyam, Odissi, Manipuri, Punjabi - Bandhra, Dandiya and other classical cultural dances and for conducting the same the respondents insist to have Public Resort Licence. Originally, the previous owner of the hotel was having licence for the period between 2004 and 2005 and subsequently, it was not renewed and the petitioner, who had taken the hotel on lease is running the hotel ever since 2005.

3. The grievance expressed by the petitioner is that the 2nd respondent has insisted for Public Resort Licence for conducting Indian Cultural Dances to various Hotels and in this regard, he also submitted an application along with all pre-requisites required by the 2nd respondent, vide his representation/application dated 24.03.2011. since, the said application was not disposed of the petitioner has filed W.P.No.18528 of 2011, praying for issuance of a writ of mandamus and this Court vide order dated 10.08.2011, directed the concerned respondent to consider and dispose of the petitioner's representation dated 24.03.2011 for grant of Public Resort Licence in accordance with law and the petitioner has also produced a copy of the order before the 2nd respondent on 26.08.2011. The 2nd respondent on receipt of the same issued a show cause notice dated 15.09.2011 stating that the area in which the hotel is situated is a congested area and may turn as a place of gathering to criminals and it may lead to law and order problem, called upon the petitioner to offer his explanation as to why his request for renewal of Public Resort Licence for the year 2011, should not be rejected.

4. The petitioner has also submitted his detailed objections on 17.09.2011. The 2nd respondent has passed the order of rejection on 03.11.2011 and it was once again put to challenge in W.P.No.27094 of 2012 and it was dismissed. Subsequently, the

petitioner has shifted the hotel from No.137, Prakasam Salai, Broadway, Chennai - 108 to the present address at No.100, G.P.Road, 2nd Floor, Anna Salai, Chennai - 2 and gave a representation dated 25.02.2013 and another representation dated 26.03.2013 for issuance of new Public Resort Licence by complying with all formalities and since it has not been disposed of, the petitioner was constrained to file W.P.No.23072 of 2013 and it was dismissed and challenging the same he filed an appeal in W.A.No.379 of 2014 and it was allowed, by directing the 2nd respondent to consider the matter afresh in the light of the statutory provisions. The 2nd respondent sought certain clarifications and it was also complied with. However, no orders came to be passed and therefore, the petitioner filed Contempt Petition No.2074 of 2014 and after coming to know of the filing of the contempt petition, the 2nd respondent has issued the impugned rejection order.

5. The learned counsel for the petitioner has drawn the attention of this Court to the impugned order and would submit that since Rule 28(8) of the Rules made under Sections 36 and 39 of the Madras City Police Act is held as unconstitutional in the order dated 23.07.1984 made in W.P.Nos.2406 and 2407 of 1984, the reason for rejection on that ground is unsustainable. The attention of this Court was also drawn to the judgment in D.P.Anand Vs. Sate of Tamil Nadu rep. by the Secretary, Home Department, Chennai and another reported in 1997(2) MLJ 413, wherein it has been held that in the event of violation of conditions of licence or Act, it is open to the respondents to initiate appropriate action and hence, prays for interference.

6. Per Contra, Mr.V.Subbiah, learned Special Government Pleader, who accepts notice for the respondents, has drawn the attention of this Court to the impugned order as well as the counter affidavit filed by the Assistant Commissioner of Police, Central Crime Branch, Chennai Police, Egmore and would submit that based on the report of the Additional Commissioners of Police, Traffic, and law and order (South) tenable decision has been taken in accordance with law to reject the request made by the petitioner for grant of Public Resort licence for conducting Indian Cultural dances in the above said premises and the reasons assigned are perfectly in order and prays for dismissal of the writ petition.

7. This Court has carefully considered the rival submissions and legal positions, placed before this Court.

8. In D.P.Anand Vs. Sate of Tamil Nadu rep. by the Secretary, Home Department, Chennai and another reported in 1997(2) MLJ 413, the facts of the case would disclose that the order came to be passed refusing the licence for conducting Indian Cultural Dances in restaurant and it was held as follows:

"There are methods enumerated by the Madras City Police Act as well as the Indian Penal Code to curb the activities of persons including in immoral and indecent or obscene activities. They would be punished by the criminal court and the licensing authority by suspending or cancelling their licence or forfeiture of their security deposit. But in the absence of a provision for refusing to grant a licence when a person commits an offence with reference to decency, morality or obscenity or for the matter commits the offence again and again the court is helpless except to state that person has to be allowed to carry on the business, without detriment to his fundamental right, guaranteed under Article 19(1)(g) of the Constitution of India."

9. In the order dated 23.07.1984 made in W.P.Nos.2406 & 2407 of 1984, the writ petition was filed for a writ of declaration to declare sub Rule 8 of Rule 28 of the Rules made under Section 36 and 39 of the Madras City Police Act as ultra vires, unreasonable and unconstitutional and to quash the constitutional proceedings dated 29.02.1984. This Court after elaborately considering the rival submissions and the legal position, has held that as long as the rule remains an absolute one having no nexus to the guests to be entertained by the petitioner, the rule suffers from the constitutional infirmity, be it stands. In other words, it would amount to an unreasonable restriction on the fundamental right guaranteed to the petitioner under Article 19(1)(g) of the Constitution of India. Citing the said position, writ petition was allowed and constitutional proceedings were also quashed.

10. In the light of the above said order passed in W.P.Nos.2406 & 2407 of 1984, one of the stand taken by the respondents in the impugned order by complying sub Rule 8 of Rule 28 of the Rules made under Section 36 and 39 of the Madras City Police Act, cannot be sustained. In so far as the other reasons, that the parking of the vehicles will lead to traffic congestion, is concerned, it is always open to the jurisdictional traffic police to take appropriate action to ease the traffic congestion and this Court is not coming in the way to perform their statutory duties in public interest and safety.

11. In the light of the reasons assigned above, this Court is of the view that the impugned order, on the face of it is unsustainable and is liable to be quashed and in the result, the writ petition is partly allowed and the impugned order dated 21.07.2014, is set aside and the matter is once again remanded to the 2nd respondent for fresh consideration, in the light of the observations made in this writ petition and the said official shall pass orders afresh, in accordance with law, within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamilnadu,
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+3cc's to M/s.R.Rajesh Kumar, Advocate, S.R.No.20639
+1cc to the Government Pleader, S.R.No.20682

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CA(CO)
CA(17/04/2015)