

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34214, 34215, 34328, 34347 to 34350, 34492 of 2015

Hotel Mount Heera

Represented by its partner J.M.Amanullah

...Petitioner in WP.34214/15

Green Coconut Resort

Represented by its Partner J.M.Amanullah

...Petitioner in WP.34215/15

Tvl.The Retreat

Rep. by its Director K.Prithivi Kumar

...Petitioner in WP.34347/15

Tvl.Hotel Kensington Pvt. Ltd

Rep. by its Director K.Prithvi Kumar

...Petitioner in WP.34348/15

Hotel Milestonnez India Pvt. Ltd

Rep. by its Director Rajamanickam

...Petitioner in WP.34349/15

Sri Kumaran Hotels

Rep. by its Proprietor Mr.P.Ponlingam

...Petitioner in WP.34350/15

Tvl. Drizzle

Rep. by its Proprietor S.Prakash

...Petitioner in WP.34492/15

The Pride Hotel

Rep. by its General Manager Jaideep Prasad

...Petitioner in WP.34328/15

Versus

1. The State of Tamil Nadu
Represented by the Secretary
Department of Prohibition and Excise
Secretariat Fort St. George Chennai-9.

2. The Collector
Kancheepuram District Kancheepuram.

3. The Commissioner
Prohibition & Excise Department
Ezhilagam Chepauk Chennai-5.

4. The Assistant Commissioner(Excise)
Kancheepuram.

5. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.
Gandhi Irwin Bridge Egmore Chennai-8.

...Respondents in WPs.34214, 34215,
34492 & 34328 of 2015

6. The Government of TamilNadu,
Rep.by its Secretary,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai 09.

7. The Commissioner of Prohibition and Excise,
Chepauk, Chennai 05.

8. The Assistant Commissioner (Excise)
Collector Office, Kancheepuram.

...Respondents in WPs.34347 to
34350 of 2015

W.P.No.34214 of 2015 : Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent Rc.No.P&E2(2)/5610/2015 dated 16.10.2015 and quash the same as illegal invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 24.4.2015 and the amount therefor was remitted on 6.4.2015 viz. payment of Rs.4,50,000/- Rs.10,000/- Rs.3,000/- and Rs.2,500/- remitted in the State Bank of India Mount Road Chennai in accordance with the order passed by this Court in W.P.No.31354 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981.

W.P.No.34215 of 2015 : To call for the records of the 3rd respondent Rc.No. P&E 2(2)/5150/2015 dated 16.10.2015 and quash the same as illegal, invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 10.4.2015 and the amount therefor was remitted on 9.4.2015 viz. payment of Rs.3,00,000/- Rs.2,500/- Rs.3,000/- and Rs.10,000/- remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P.No.31355 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981.

W.P.No.34492 of 2015 : To call for the records of the 3rd respondent Rc.No.P&E2(2)/5374/2015 dated 20.10.2015 and quash the same as illegal, invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 16.4.2015 and the amount therefor was remitted on 16.4.2015 viz. payment of Rs.6,00,000/- Rs.2,500/- Rs.3,000/- and Rs.10,000/- which was remitted in the State Bank of India, Mount Road, Chennai in

accordance with the order passed by this Honourable Court in W.P.No.30707 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981.

W.P.No.34347 of 2015 : Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 5050/2015 dated 16.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner.

W.P.No.34348 of 2015 : Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 5051/2015 dated 16.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner.

W.P.No.34349 of 2015 : Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 4603/2015 dated 20.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner.

W.P.No.34350 of 2015 : Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(1) 5787/2015 dated 20.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner.

W.P.34328 of 2015 : To call for the records of the 3rd respondent Rc. No.P&E2(2)/5157/2015 dated 14.10.2015 and quash the same as illegal, invalid and nonest in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted on 10.4.2015 and the amount therefor was remitted on 10.4.2015 viz. payment of Rs. 6,00,000/-, Rs.5,000/-, Rs.1,000/-, Rs.47,123/- and Rs.1 250/- remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P. No. 33776 of 2015 dt 16.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981.

For petitioner : Ms.Vasudha Thiagarajan

For respondents : Mr.P.V.Selvakumar,
Additional Government Pleader
for respondents 1 to 4

Mr.B.Nedunchezhiyan, for R-5

COMMON ORDER

The petitioners have challenged the order passed by the Commissioner of Prohibition and Excise, rejecting their application for renewal of FL3 license for the year 2015-16, on the ground that the petitioners have not shown sufficient cause for filing the renewal application belatedly.

2. The petitioners have earlier approached this Court by filing Writ Petitions praying for a Writ of Certiorari Mandamus, calling for the records pertaining to the proceedings of the third respondent rejecting the renewal of licence to run the Bar and quash the same and consequently, direct the third respondent therein to renew the licence of the petitioners on merits and in accordance with the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

3. In most of the cases, the petitioners have been granted license about 15 to 16 years ago and they have been periodically renewed. The Court after hearing the parties disposed of the matter by order dated 12.10.2015. This Court has held in paragraphs 4 and 5 as under.

"4. According to the learned counsel for the petitioner, they had in fact explained the actual delay, which is not huge in number, but the authority simply pointing out that there is no specific rule or provision to consider the belated submission of application for renewal, rejected the same. There is no outer time limit specifically for condoning the delay. Further, Rule 21 of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 also proceeds to the effect that the licensing authority may admit such renewal application, even if it is belated, provided there are good and sufficient reasons for the delay. When such being the position, according to the Rule 21, the simple rejection that there is no specific rule or provision to consider the belated submission of application, cannot be accepted.

5. For the reasons stated above, the impugned order in R.C.No.P&E2(2)/5610/2015, dated 21.09.2015, is set aside and the matter is remitted back to the authority for passing appropriate orders on consideration of explanation for the delay submitted by the petitioner after affording opportunity to him. Necessary orders be passed on or before 20.10.2015, failing which, supplies to the shop of the petitioner be resumed forthwith pending disposal of the application.

4. From the above direction issued by this Court, it is clear that the Court has taken into consideration Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, and pointed out that there is no outer time limit specifically mentioned to condone the delay. Therefore, the broad principles of Section 5 of the Limitation Act should have been applied by the Licensing Authority when there is a belated application. In all these

cases, delay is very meagre and it ranges from 7 to 8 days and it is seen that in no case, the delay is more than 8 days. Therefore, the authority could not have rejected the application holding that the petitioners have not explained the delay. Each of the petitioners have explained the delay and made submissions. In fact, in W.P.No.34214 of 2015, the Managing Director of the hotel has filed a representation saying that he was out of the country, and he was in Haj Pilgrimage. Similarly, other petitioners have also given valid reasons for the delay. That apart, the petitioners have also remitted the requisite fine for the delay period.

5. At this stage, it has to be pointed out that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. No person is going to benefit by belatedly filing application for grant or renewal of license. Only in cases where the delay is on account of malafide reasons, and when delay has not been explained satisfactorily, the authorities would be justifying in holding that the delay cannot be condoned. However, in the instant cases, no such observation or averment has been made in the impugned orders. That apart, the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, has not fixed any outer time limit as found in other tax statutes like Tamil Nadu Value Added Tax, Customs Act or Central Excise Act. Therefore the authority viz., the Commissioner of Prohibition and Excise is empowered to condone the delay by examining the facts.

6. I have carefully examined the facts of each case and found that in no case there is any mala fide intention on the part of the petitioner to belatedly file the application and all of them have been granted license more than ten years ago and it has been periodically renewed. It is also brought to my notice that application fee for renewal of license has been paid well within the stipulated time and there is no delay. Therefore, this Court is of the view that renewal application has to be considered on merits and should not be rejected on the ground of delay.

7. In the result, all the Writ Petitions are allowed and the delay in filing the application for renewal is condoned. The third respondent is directed to consider the petitioners' application for renewal of FL3 License, in accordance with law, and pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.Nos.1 to 3 of 2015 are closed.

Sd/-
Assistant Registrar(CCC)

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To

1. The Secretary
State of Tamil Nadu
Department of Prohibition and Excise
Secretariat Fort St. George Chennai-9.

2. The Collector
Kancheepuram District Kancheepuram.

3. The Commissioner
Prohibition & Excise Department
Ezhilagam Chepauk Chennai-5.

4. The Assistant Commissioner(Excise)
Kancheepuram.

5. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.
Gandhi Irwin Bridge Egmore Chennai-8.

6. The Assistant Commissioner (Excise)
Collector Office, Kancheepuram.

+4cc's to Mr.P.R.Balasubramanian, Advocate,
S.R.Nos.31319 to 31322

+3cc's to Mr.R.Thiagarajan, Advocate, S.R.No.31518, 31520 & 31521

+1cc to the Government Pleader, S.R.No.31565

W.P.Nos.34214, 34215, 34328,
34347 to 34350, 34492 of 2015

SNS (CO)
CA(27/06/2016)

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