

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.3376 of 2016
and
W.M.P.No.2857 of 2016

C.Thangaraj
Proprietor,
Natagi Restaurant,
No.142, Purasaiwakkam High Road,
Chennai-10. Petitioner

Vs.

The State, represented by
The Commissioner of Police,
Office of the Commissioner,
Egmore, Chennai-8. Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent herein to issue renewal of public resort license for the year-2016 & 2017 for conducting Indian Culture Dance Programme with live music at Hotel Golden Star, Nartagi Restaurant located at 142/10 Purasaiwalkam High Road, Kilpauk, Chennai within a reasonable period.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.P.Sanjay Gandhi,
Addl. Government Pleader

O R D E R

The petitioner has come forward with this Writ Petition seeking for a mandamus upon the respondent to issue renewal of public resort license for the year 2016 and 2017 for conducting Indian Cultural Dance Programme with live music at Hotel Golden Star, Nartagi Restaurant located at 142/10, Purasaiwalkam High Road, Kilpauk, Chennai within a reasonable period.

2. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondent.

3. According to the petitioner, he is running a public resort in the name of Nartagi Restaurant at Purasaiwakkam. He was also issued with a licence on 26.11.2010 from the year 2009 and 2010 and he has been conducting Indian cultural dance and music programmes strictly adhering to the conditions stipulated in the licence. The said licence was valid upto 31.12.2010.

4. It is the case of the petitioner, when he applied for renewal of public resort licence for a further period of one year from 1.1.2011 to 31.12.2011 by an application dated 23.12.2010, the respondent has not considered the application of the petitioner. Hence the petitioner filed a writ petition before this court in W.P.No.327 of 2011 and the said writ petition has been disposed of by this court by giving a direction to the respondent therein to consider the application of the petitioner herein dated 23.12.2010 on merits and in accordance with law, expeditiously, within four weeks and this court further observed in the said order that till the respondent passes such order, the running of the resort shall not be interfered with by the respondent, except in accordance with law. But subsequent to the disposal of the above Writ Petition, the respondent herein has not considered the application for renewal of the public resort license. Hence the petitioner herein filed a Writ Petition in W.P.No.2740 of 2015 before this Court. Subsequently, the respondent herein has instructed the petitioner that they will grant license subject to withdrawal of the above W.P.No.2740 of 2015 and on that basis, the petitioner herein has withdrawn the above writ petition on 22.7.2015.

5. It is the grievance of the petitioner that inspite of withdrawal of the above said writ petition, the respondent herein has not considered the petitioner's application for renewal of licence. The petitioner, again made a fresh application for renewal of public resort license for the year 2016 to 2017 along with all requisite documents and the respondent received the said application on 28.12.2015. Despite of receipt of application for renewal and the relevant documents, the respondent herein refused to grant licence. Hence, left with no other alternative, the petitioner has filed the present writ petition.

6. The respondent has filed a detailed counter strongly objecting the relief sought for in this writ petition stating that the petitioner's Nartagi Restaurant is functioning at

No.142, Purasawakkam High Road on a narrow lane without having proper parking facilities for its customer's vehicle such as two wheeler, three wheeler and four wheelers. Therefore, the customers who are visiting the petitioner's restaurant are parking their vehicles on the road side hindering the traffic movements and cause traffic nuisance in front of the petitioner's restaurant, due to which, the general public are put to much suffering in peak hours while passing the road.

7. Further, it was stated that on 27.12.2010 at 23.00 hours, the police, on receiving a specific information about the performance of obscene dance in the petitioner's premises, immediately rushed to the Nartagi restaurant and found that nine young ladies were performing obscene dances in front of the restaurant customers and in consequent of which, a case has been registered in Crime No.1101 of 2010 under section 294 (b) IPC against the petitioner and action was also taken against them.

8. It was further contended in the counter that on 18.8.2011, while the police party attached to G.5 Secretariat Colony Police Station were engaged in patrolling duty, the proprietor of Nartagi Restaurant, the petitioner herein, voluntarily picked up wordy altercation with the general public on Purasawakkam High Road, Medavakkam Tank Road and created public disturbances. Immediately, the police apprehended the said Thangaraj and a case was registered in G.5 Police Station in Crime No.1090 of 2011 under section 75 C.P.Act r/w.7(i)a CLA Act and he was produced before the Magistrate for judicial custody.

9. It is further stated in the counter that the owner of the Nartagi Restaurant obtained police license only for conducting Indian cultural Dances and Music Programmes in his restaurant premises, but he is engaging young ladies for performing obscene dances under the guise of performing Indian Cultural Dance and Music. Moreover, the premises is not having adequate space for performing such kind of dances and there is no sufficient ingress and egress points for the public to come out in a critical situation like natural calamities etc, and the safety of human life is in question in the premises. Hence it is not possible for the respondent to recommend to renew the licence for further period.

10. Today, when the matter is taken up for consideration, learned counsel for the petitioner submitted that by relying upon the judgment rendered by the learned Single Judge in W.P.No.327 of 2011 dated 20.1.2011 under the identical situation, this Court has directed the respondent police to

consider the application of the petitioner dated 23.12.2010, on merits and in accordance with law expeditiously, within four weeks. The said order was passed by relying upon the earlier judgment delivered by this Court in the case of D.P.Anand v. State of Tamilnadu and another, 1997 II MLJ 413, wherein, in paragraph 27, it was held as follows:-

"27. As we have already indicated, there are methods enumerated by the Madras City Police Act as well as the Indian Penal Code to curb the activities of such persons indulging in immoral and indecent or obscene activities. They could 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 that 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 rights guaranteed under Article 19(1)(g) of the Constitution of India. But at the same time, the authorities cannot remain as silent spectators. He could interfere and prevent the person by imposing the penalties mentioned above. The authority concerned has not been empowered to deprive the persons of the chance of carrying on the business. When the Legislatures themselves have not chosen to provide such a power, the court cannot confer such a power upon the said authority. The power of the court, however high it may be, is only to interpret the law and enforce it, not to embark upon enacting laws, even though to a limited extent it can suggest the authorities concerned to do so."

11. Learned counsel for the petitioner by relying upon the said judgment made in W.P.No.327 of 2011 submitted that a right is conferred under Article 19(1)(g) of the Constitution of India to carry on business to the citizen, but however, the same can be regulated by imposing various conditions to avoid obscene and immoral conducting of programmes.

12. Hence, this Court is of the opinion, by following the order passed in the W.P.No.327 of 2011 under identical circumstances, if there is any complaint about the conduct of the programme, it is for the respondent to regulate the same in the manner known to law. It is the duty of the respondent to consider the application of the petitioner and pass appropriate

orders on merits and in accordance with law.

13. Therefore, this Court directs the petitioner to give a representation afresh with all requisite documents before the respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.

14. With the above direction, this Writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msr

To

The Commissioner of Police,
Office of the Commissioner,
Egmore, Chennai-8.

+1 cc to M/s.R.Nalliyappan & K.Sudhakar, Advocate, sr.9908
+1 cc to Government Pleader, sr.9606

W.P.No.3376 of 2016
and
W.M.P.No.2857 of 2016

gj co
kra 02.03.2016

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