



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :30.06.2016
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.7204 and 11395 of 2016
and

WMP(MD)Nos.6094 and 8719 of 2016

Manamagil Mandram,
Rep. By its Treasurer,
No.67/1, 68, Kumuli Main Road,
Palanichettipatty Post,
Theni District.

.. Petitioner in both WPs.

vs.

1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner(Excise),
Theni,
Theni District.

.. Respondents in both WPs.

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned show-cause notice issued by the first respondent in P&E 2(1)/4550/2016, dated 06.04.2016 and the consequential impugned order passed by the first respondent in R.C.No.P & E2(1)/4550/2016, dated 18.04.2016 and quash the same and consequently direct the first respondent to renew the petitioner's F.L.2 Licence No.05/11-12 for the period 2016-2017.

For Petitioner :Mr.K.Gokul for
M/s.T.Bashyam

For Respondents : Mr.M.Murugan,
Government Advocate

COMMON ORDER

The petitioner Manamagil Mandram, who is a registered non-profit, non-proprietary members club, was issued with F.L.2 licence No.05/11-12 by the Commissioner of Prohibition and Excise, Chennai on 29.02.2012. Subsequently, it was renewed from 01.04.2015 to 31.03.2016. As per Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, a licence holder desiring to renew the licence, shall make an application in the prescribed Form, at least one month before the date of expiry of the licence. The petitioner's F.L.2 licence expires on 31.03.2016 and hence, as per Rule 21, the petitioner should have made an application seeking renewal on 29.02.2016 ie., one month prior to the date of expiry of licence, but, due to his illness, he has made an application for renewal only on 02.04.2016. Therefore, a show-cause notice issued by the first respondent on 06.04.2016 calling upon the petitioner to explain as to why his application seeking renewal should not be refused. Challenging the said show-cause notice, the petitioner



filed W.P(MD)No.7204 of 2016. and subsequently, the petitioner has also submitted his explanation on 11.04.2016 citing sufficient reason that he has suffered ailment and hence, he could not make application for renewal before one month prior to the date of expiry of licence. But, his explanation was not accepted and subsequently, the impugned order, dated 18.04.2016 has been passed. Challenging the same, W.P(MD) No.11395 of 2016 has been filed.

2. The learned counsel appearing for the petitioner had drawn the notice of this Court to the medical certificate, 10.03.2016 and submitted that from 11.03.2016, the petitioner has been taking continuous treatment, in view of his sudden illness and prior to that date also, he was not doing well and as a result, he had inadvertently omitted to make an application as per Rule 21. However, the Rule is very clear that on furnishing sufficient cause, the first respondent is empowered to consider the request for renewal of F.L.2 licence. But, without considering the same, the impugned order, dated 18.04.2016, has been passed. As a result, the petitioner has been put to grave prejudice. If F.L.2 licence is not renewed, members of the club would be unnecessarily put to huge inconvenience.

3. The learned counsel for the petitioner would further submit that in similar circumstances this Court vide order, dated 16.10.2016, by setting aside the impugned order, allowed the Writ Petition(MD)No.18941 of 2015, with cost of Rs.10,000/- payable in favour of the Secretary, Gandhi Museum, Madurai, with a further direction to the first respondent to consider the petitioner's application for renewal of F.L.2 licence and pass appropriate orders. Therefore, when similar order has been passed, in the present case also, the petitioner has given sufficient reasons to condone the delay and thereupon to renew the F.L.2 licence, the impugned order is liable to be set aside.

4. Opposing the above prayer, the learned Government Advocate appearing for the respondents would submit that originally, F.L.2 licence was granted to the petitioner on 29.02.2012. Since then, he has been renewing every year. But the petitioner was very well aware of the fact that he should make an application one month before the date of expiry of licence. On the ground that the petitioner failed to make an application as per Rule 21, which mandates the submission of renewal application one month prior to the date of expiry, he cannot come to challenge the impugned order.

5. Heard the submissions made on either side and perused the materials available on record.

6. In the impugned order, it has been stated that the licence of the petitioner expired on 31.03.2016 and the petitioner failed to make his application one month prior to that, namely, on 29.02.2016, but, belatedly made application on 02.04.2016 and hence, a show-cause notice was issued calling upon him to explain as to why the application seeking renewal should not be refused, for which, the petitioner submitted his explanation on 11.04.2016 mentioning that he has suffered illness only from 11.03.2016, but produced medical certificates. Even if it is taken on record, this Court is not able to find any error in the impugned



order, because the authority has rightly reached the conclusion that on the date of expiry of the date for renewal, namely, on 29.02.2016, the petitioner was not suffering from any illness, because the medical certificates produced by the petitioners indicated that he suffered illness only from 11.03.2016.

7. However, it is contended by the learned counsel appearing for the petitioner that the petitioner was not doing well one month prior to the date of expiry, as a result, inadvertently, he had omitted to make an application.

8. In view of closure of the petitioner's club many of the members, who are all senior citizens, are finding it very difficult to while away their tail end of their life, as it was sealed by the respondents. Further, today the elderly people, are not safe even in the public parks to take a walk either in the morning or in the evening as they are vulnerable to many attacks. Therefore, if the petitioner's club, which is a non-profit and non-proprietary club, which is more safe and secure place, is allowed to be opened, the members of the petitioner's club, more particularly, the senior citizens and their family members would be able to have a safe entertainment and secure life.

9. Considering the fact that from the date of the impugned order, the petitioner's club is sealed, as a result, the members are not able to get an entry, keeping in mind that the closure of the petitioner's club, was not occasioned due to any bad cause and only due to delay in making renewal application, this Court is inclined to allow the Writ Petition by setting aside the impugned order, inasmuch as the closure of the petitioner's club will not cause any benefit to the respondents.

10. In the result,

W.P(MD)No.11395 of 2015 is allowed and the impugned order, dated 18.04.2016 passed by the first respondent is set aside. However, since there is a delay on the part of the petitioner in submitting the application for renewal of licence, he is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) towards Costs, in favour of M/s.Anbagam, Institution for Mentally Handicapped Children, DRO Colony, Madurai-7, within a period of one week and produce the receipt to the first respondent for renewal of licence. On production of such receipt by the petitioner, the first respondent is directed to consider the petitioner's application for renewal of F.L.2 licence and pass appropriate orders on merits and in accordance with law, within a period of two weeks thereafter.

(ii) W.P(MD)No. 7204 of 2016 is dismissed as infructuous, as the impugned rejection order itself, has been set aside by this Court in W.P (MD)No.11395 of 2016 as stated above. No Costs.

(iii) Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(P&A)



To

1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner(Excise),
Theni,
Theni District.

Copy to:

The Officer incharge,
M/s.Anbagam, Institution for Mentally Handicapped Children,
DRO Colony, Madurai-7.

+1cc to M/S.T.Bashyam, Advocate in SR.No.34286

+1cc to Special Government Pleader in SR.No.34368

W.P(MD)Nos.7204 and 11395 of 2016
30.06.2016

pm

PA/NGM-MP/SAR II/04.07.2016/4P/6C