

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.5213 of 2017

and

W.M.P.Nos.5538 & 5539 of 2017

M/s.Masters Club,
Rep. By its President,
K.P.Krishnasamy,
S/o.Ponnusamy Gounder
No.86/1, Kalaignar Nagar,
Thandampalayam,
Erode District.

... Petitioner

Vs

1.The Principal Secretary to Government,
Home and Prohibition and
Excise Department,
Fort St. George, Chennai - 600 009.

2.The Commissioner, (I/C) Prohibition and
Excise Department, Chepauk,
Chennai - 600 005.

3.The District Collector,
Erode District, Erode.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the order passed by the 2nd respondent in his proceedings Ma (Ma)B2(2)/4294/2013, dated 07.09.2016 and consequential impugned G.O. passed by the 1st respondent in G.O.(D).No.56 Home, Prohibition and Excise (VIII) Department, dated 23.02.2017 and quash the same and consequently directing the respondents to renew the petitioner's FL-2 license.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

ORDER

Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents. Since the pleadings are complete, with the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner is a registered Club under the provisions of the Tamil Nadu Societies Registration Act, 1975 bearing Registration No.9/2005 on the file of the Registrar of Societies, Erode. On an application made by them before the respondents 2 and 3, they were granted a bar license in Form FL-2 in the year 2010. It is not in dispute that the license has been periodically renewed and the present dispute has arisen on account of the fact that the application submitted by the petitioner for renewal of the license for the period from 2013-2014 to 2016-2017 has been rejected. The reason for rejection of the application for renewal is on the ground that while submitting the renewal application for the years 2013-2014 and 2014-2015, the petitioner had tampered with the Public Building License issued by the Tahsildar, Erode for the period from 01.04.2012 to 31.03.2015 as 01.04.2014 to 31.03.2019 and the fire service license issued by the Fire and Rescue Services Department, Erode. The President of the petitioner club appeared before the 3rd respondent/District Collector, Erode accepting the mistake which was committed by the Manager and while tendering apology, informed the Collector that the said Manager has been removed from the service of the Club and pleaded that the said mischief has occurred without the knowledge of the President and other office bearers of the petitioner. Though such a stand was taken before the 3rd respondent, it appears that the report submitted by the 3rd respondent to the 2nd respondent was not in favour of the petitioner. Therefore, the 2nd respondent rejected the petitioner's application for renewal of FL-2 license and consequently cancelled the license. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent.

3.What is interesting to note is that at that juncture, the District Collector made a fresh exercise to ascertain as to what is true state of affairs as the allegation against the petitioner Club was in respect of certain tampering which had occurred in the year 2013-2014. There appears to have been an inspection conducted of the building and the District Collector has been fully satisfied that the petitioner as on date has the requisite Public Building License and also the license issued by the Fire and Rescue Services Department, Erode. The District Collector has directed appropriate reports to be submitted by the Revenue Officials including the Tahsildar and based on the inspection done by him, has submitted a report to the 2nd respondent on 03.10.2016. The said report is fully in favour of the petitioner recommending that the order passed by the 2nd

respondent could be reconsidered. Based on such communication issued by the 3rd respondent dated 03.10.2016, the 2nd respondent, in turn, has addressed the 1st respondent stating that the views expressed by the Collector may be considered. The 1st respondent, while deciding the appeal petition filed by the petitioner, though in paragraph 4 of the impugned order, has noted about the report of the District Collector/ recommendations of the Commissioner of Prohibition and Excise, rejected the appeal petition on the ground that there is no specific rule/provision to reconsider the cancellation of FL-2 license under the Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. Unfortunately, the 1st respondent failed to consider the vital aspect that it was dealing with an appeal petition filed by the petitioner challenging an order cancelling the FL-2 license granted to the petitioner. Thus, on the date when the appeal petition is decided by the 1st respondent is well open to the Appellate Authority to consider all documents that may come to his notice after the filing of the appeal petition and with such material, the Appellate Authority is entitled to examine the correctness of the order passed by the lower authority.

4. Therefore, it is incorrect to state that there is no provision to reconsider the cancellation of FL-2 license. On the other hand, what the 1st respondent is expected to do is to examine the correctness of the order passed by the 2nd respondent cancelling the license in the light of the report submitted by the District Collector dated 03.10.2016 and the recommendation of the Commissioner of Prohibition and Excise dated 18.10.2016 and 02.12.2016. It was a fit case where the 1st respondent should have exercised his appellate powers and interfered with the order of cancellation. Thus, this Court is fully convinced that the reasons assigned for rejection of the petitioner's appeal petition is incorrect.

5. As noticed above, the District Collector, who is the competent authority, to satisfy with regard to suitability of the location for grant of FL-2 license, has duly certified that the mistake committed by the erstwhile Manager of the petitioner need not be put against the petitioner. This report found favour with the Head of the Department of the Prohibition and Excise Department. This is sufficient to hold that the authorities viz., the Licensing Authorities are fully convinced that the petitioner can be considered for grant of license and the mistake committed by the employee of the petitioner shall not be put against the petitioner, which may have an adverse impact on the petitioner.

6. Thus, for the above reasons, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondents 2 & 3 with a direction to renew the petitioner's FL-2 license after accepting the requisite fee and

pass appropriate orders within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

- 1.The Principal Secretary to Government,
Home and Prohibition and
Excise Department,
Fort St. George, Chennai - 600 009.
 - 2.The Commissioner, (I/C) Prohibition and
Excise Department, Chepauk,
Chennai - 600 005.
 - 3.The District Collector,
Erode District, Erode.
- +1cc to Mr.C.Prakasam, Advocate, SR.71886
+1cc to The Government Pleader, SR.71715.

CB(30/10/2017)

W.P.No.5213 of 2017

सत्यमेव जयते

WEB COPY