

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.1501 of 2017
and
CMP No.19799 of 2017

1. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Prohibition and Excise,
Secretariat, Fort St. George,
Chennai - 600 009
2. The District Collector,
Kancheepuram District.
3. The Commissioner,
Prohibition and Excise Department,
Ezhilagam, Chempauk,
Chennai - 600 005.
4. The Assistant Commissioner (Excise),
Kancheepuram. ... Appellants/Respondents 1 to 4

versus

1. Tvl. Hotel Lions India Pvt. Ltd.,
No.205, Mudichur High Road,
Tambaram, Kancheepuram District.
2. The Managing Director,
Tamilnadu State Marketing Corporation Ltd.,
Gandhi Irwin Bridge,
Egmore, Chennai - 600 008. ... Respondents

Writ Appeal filed against the order dated 22.11.2016 in W.P.No.40943 of 2016.Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus To call for the records of the impugned order in R.C. No.P & E 2 (2)/ 4950/ 2016 dated 20.10.2016 passed by the 3rd respondent

and quash the same and thereby direct the 3rd respondent to renew the licence of the petitioner.

For Appellants : Mr.M.Elumalai
Government Advocate

For Respondent : Mrs.Maduri Dondi Reddy

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

FL.3 Licence granted to Tvl.Hotel Lions India Private Ltd., Kancheepuram, has been cancelled vide proceedings of the Commissioner of Prohibition and Excise Department, Chennai in R.C.No.P&E 2(2)/4950/2016 dated 20.10.2016, as hereunder.

PROCEEDINGS OF THE COMMISSIONER OF PROHIBITION AND EXCISE (I/C)

CHEPAUK, CHENNAI 600 005

PRESENT: THIRU.R.KIRLOSH KUMAR, I.A.S.,

R.C.No.P&E 2(2)/4950/2016
20.10.2016

Dated:

Sub: Prohibition and Excise Department - Tamil Nadu Liquor (Licence and permit) Rules, 1981 - Kancheepuram District - Tvl. Hotel Lions India Private Limited - FL3 Licence No.14/2006-07-
Renewal of FL3 licence for the year 2016-2017
- Application not received in time - Show cause notice issued - Explanation received - Cancellation of licence - Orders issued.

Read: 1. This Office Show cause notice 2(1)/348/2016 dated

06.04.2016.

2. Assistant Commissioner (Ex.), Kancheepuram

Lr.No./35/2016, dated 19.04.2014

3. Tvl.Hotel Lions India Private Limited, Kancheepuram, letter dated 25.09.2016.

ORDER:

Tvl.Hotel Lions India Private Limited, Kancheepuram District was granted FL3 licence bearing No.14/2006-2007. The licensee has not paid the prescribed fees and applied for the renewal of the above licence for the

year 2016-2017.

2) In the reference 1st cited, necessary show cause notice was issued to the licensee Tvl.Hotel Lions India Private Limited, Kancheepuram District as to why his FL3 licence bearing No.14/2007-2007 should not be cancelled for the non-payment and non-submission of application for renewal of licence for the year 2016-17, within 14 days, under rule 22(1) of Tamil Nadu Liquor (Licence and Permit) Rules 1981.

3) In the reference 2nd cited, the Assistant Commissioner (Excise), Kancheepuram has served the show cause notice on 1.04.2016 to the licensee Tvl. Hotel Lions India Private Limited, Kancheepuram District.

4). In the reference 3rd cited, the Director of Tvl.Hotel Lions India Private Limited, Kancheepuram has submitted his explanation as follows:

"We are running the above mentioned bar at our Hotel Lions India premises in Tambaram. We were supposed to have remitted the bar license renewal fee on or before 31.03.2016, as I was away on a business tour and returned to Chennai on 15.09.2016 we were unable to make the payment on the above mentioned date. The person in charge at the bar has also resigned the job due to medical reason, the new staff were unaware of the renewal. Hence we were unable to make the payment. We have remitted the bar license fee on 23rd September 2016. I request your good self accept our license renewal application and I assure you that his kind of situation will not arise in the future. We are enclosing the challan for remittance made on 23rd September, 2016."

5) As per Rule 18 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, "Every licence granted under these Rules shall be valid for the financial year beginning from the 1st of April or date of issue of the licence and ending with the 31st March, immediately following unless otherwise stated in the licence issued in particular case".

In this regard, it is necessary to highlight rule 21 of Tamil Nadu Liquour (Licence and Permit) Rules 1981, which says, "A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) atleast one month before the date of expiry of the licence. The application may be sent to the licensing authority direct. The provisions of rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence

as if it were an application for the original grant of a licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee.

6) As per rule 21 of the TNL (L&P) Rules, 1981, the Commissioner of Prohibition and Excise is authorized to condone the delay only upto 31st March. There is no rule provision to accept delayed payment for renewal.

7) In the above circumstances, the explanation received from the licensee is examined and based on available records the FL3 licence bearing No.14/2006-2007 granted to Tvl.Hotel Lions India Private Limited, Kancheepuram is hereby cancelled as per rule 21 and 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

8) If aggrieved by this order the licensee is at liberty to appeal to the Government (i.e) Secretary, Home, Prohibition and Excise Department, Secretariat, Fort St. George, Chennai - 9, within 30 days from the date of receipt of this order.

Sd/-R.Kirlosh Kumar

Commissioner of Prohibition and Excise (i/c)

To

Tvl.Hotel Lions India Private Limited,
No.205, Mudichur High Road, Tambaram,
Kancheepuram District.

Copy to: 1. The Collector, Kancheepuram District.

2. The Assistant Commissioner's (Excise), Kancheepuram

3. The MD, Tamil Nadu State Marketing Corporation Limited, Gandhi Irwin Bridge Road, Egmore, Chennai - 8.

4. Stock file.

//Forwarded By order//

Superintendent

2. When the correctness of the said proceedings dated 20.10.2016 was challenged in W.P.No.40943 of 2016, with a prayer to issue a writ of certiorarified mandamus to quash the said proceedings dated 20.10.2016 and to direct the Commissioner of Prohibition and Excise Department, Chennai, 3rd respondent therein to renew the FL.3 Licence, following a common order made in batch of writ petitions viz., W.P.Nos.34214 of 2015 etc, writ Court vide order dated 22.11.2016, condoned the delay in filing the FL.3 Renewal application and further directed the Commissioner of Prohibition and Excise Department, Chennai, 3rd

respondent therein, to consider the renewal application submitted for FL.3 Licence in accordance with law and pass orders within a period of eight weeks from the date of receipt of a copy of the order made in the writ petition.

3. Assailing the correctness of the said order, instant writ appeal has been filed.

4. Emphasis has been made by Mr.M.Elumalai, learned Government Advocate, on the sentence but, in no case, after the expiry of the licence, the licencing authority can admit an application' and that the licencing authority, has no authority, to entertain an application submitted, after the expiry of the date on which, the licence, expires. He submitted that an application for renewal, has to be made within 30 days, before the expiry of the licence and the power to condone delay can be exercised, if only an application is submitted, within 30 days, from the last date, on which, an application of FL3 licence, has to be filed, till the date of expiry of licence and not beyond that date. In nutshell, applications filed between 1st March to 31st March of every year alone, can be entertained, provided good and sufficient cause is shown.

5. Submissions have been made that when Rule 21 of the Tamil Nadu Liquor (Licence & Permit) Rules, 1981 mandates that, in no case, after the expiry of licence, no application should be admitted, submission of applications for renewal of FL.3 licence, cannot be sought for, as a matter of right, after the period prescribed and that therefore, rejection of applications filed for renewal of FL.3 licence, submitted beyond the period stated therefor, is valid, and that the writ Court, ought to have sustained the orders of rejection of the said applications, and ought not to have directed Commissioner, Prohibition & Excise Department, Chennai, to consider the applications, submitted for renewal of FL.3 licence in accordance with law.

6. Heard Mr.M.Elumalai, learned Government Advocate and Mrs.Maduri Dondi Reddy, learned counsel for the caveator.

7. Earlier while considering the effect of the proviso to rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and catena of decisions, in W.A.Nos.1511 of 2017 etc. batch filed by appellants herein, this Court at paragraph No.12, held as follows.

"12.The proposed amendment intended to be made in Rule 21 is that, an application for renewal of licence, received, after the expiry of the licence period i.e. 31st March of the concerned year, will not be considered and that the licence, already granted will be deemed to be cancelled. In the light of the decisions, the amendment proposed,

fortifies our view that, as per the existing rule, belated applications for renewal of licences, can be entertained, subject to the applicant, offering good and sufficient reasons for the delay and on payment of additional fee of 25% of the prescribed licence fee, ie., an application filed even after 31st March , can be considered. Amendment is yet to be made. Existing rule position, as on today, in Tamilnadu Liquor (Licence & Permit) Rules, 1981, has been understood by the department and therefore, amendment has been sought for. Going through the reasons, assigned by the writ Court, we do not find any merit in the instant writ appeals. "

8. As grounds of challenge made in the instant Writ appeal and W.A.Nos.1511 of 2017 etc. batch, are similar in nature, we are of the view that common judgment made in W.A.Nos.1511 of 2017 etc. batch, is applicable to the case on hand.

9. Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 deals with cancellation or suspension of licence and the same is extracted hereunder.

"(1) The licensing authority may, after giving in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order proposed to be issued, stating the reasons there for, by an order in writing specifying the reasons, cancel the licence under these rules or suspend it for such period as it thinks fit, if in its opinion, the licence holder has failed to comply with any of the conditions of the licence or of any of the provisions of the Act or the rules made thereunder.

(2) Notwithstanding anything contained in sub-rule (1), the licensing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed. In such a case, the reason for suspension shall be communicated to the licence holder within 5 days from the date of suspension.

(3) When a licence is cancelled or suspended or temporarily suspended or is not renewed after its expiry the licence holder shall not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock. The licence holder shall not also be entitled to claim any compensation on account of cancellation, suspension, temporary suspension or non-renewal of the licence.]"

10. Question of cancellation of licence arises only during the licence period. As per Section 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, licence expired on 31st March 2016. Respondent has submitted renewal application on 23.09.2016. When licence had already expired on 31.03.2016, it is not known as to how Rule 22 of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 can be invoked in cancellation of licence.

11. Reading of Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, indicate that the licencing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed against the licensee and there could be cancellation of licence.

12. During the period of suspension, licensee shall not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock.

13. On the facts and circumstances of the case, when licence had already expired on 31.03.2016, there is an error apparent on the face of the record, in invoking rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for cancellation of licence, as if the licence existed, on the date of issuing show cause notice dated 06.04.2016. Expired licence cannot be cancelled.

14. In the light of the above discussion and decisions considered, we are of the view that there are no merits in the writ appeal, warranting interference. Hence, Writ Appeal is dismissed. consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Managing Director,
Tamilnadu State Marketing Corporation Ltd.,
Gandhi Irwin Bridge,
Egmore, Chennai - 600 008.

2.The Secretary,
Department of Prohibition & Excise,
Fort.ST.George, Chennai-9.

3. The District Collector,
Kancheepuram District.

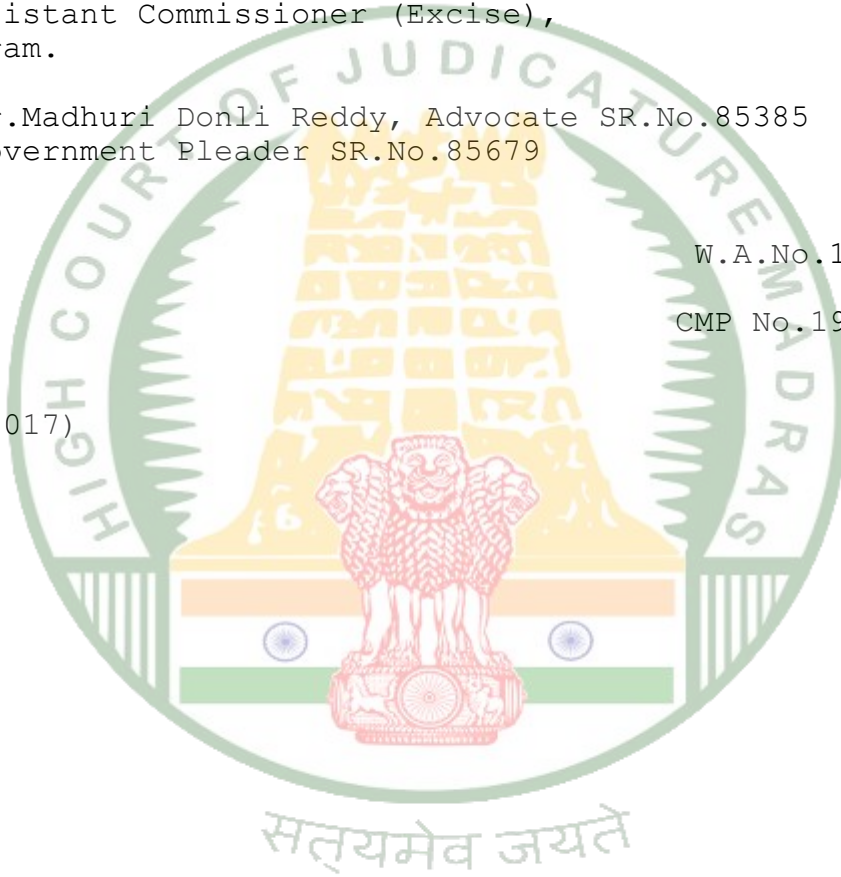
4. The Commissioner,
Prohibition and Excise Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

5. The Assistant Commissioner (Excise),
Kancheepuram.

+1cc to Mr.Madhuri Donli Reddy, Advocate SR.No.85385
+1cc to Government Pleader SR.No.85679

W.A.No.1501 of 2017
and
CMP No.19799 of 2017

VGII(CO)
GN(26/12/2017)



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