

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.4494 and 14469 of 2018
and W.M.P.Nos.5523 and 12541 of 2018

W.P.No.4494 of 2018:-

Smt.C.Devaki

... Petitioner

-vs-

1.The Commissioner (Excise),
Government of Puducherry,
Puducherry.

2.The Deputy Commissioner (Excise),
Government of Puducherry,
Puducherry.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in Order No.10768/DCE/S2/FL.2/2003 dated 09.02.2018 rejecting the application of the petitioner dated 28.02.2017 for renewal of FL.2 Licence No.176/FL.2 granted under Tourism Category for the period 2017-18 and to quash the same and further direct the second respondent to renew the petitioner's Licence No.176/FL.2 as prayed for in petitioner's application dated 28.02.2017.

W.P.No.14469 of 2018:-

Smt.C.Devaki

... Petitioner

-vs-

1.The Commissioner (Excise),
Government of Puducherry,
Puducherry.

2.The Deputy Commissioner (Excise),
Government of Puducherry,
Puducherry.

3.The Union of India,
Rep., by Union Territory of Puducherry,
Rep., by its Chief Secretary,
Puducherry.

4.The Union of India,
Rep., by Union Territory of Puducherry,
Rep. by Revenue Secretary,
Puducherry.

... Respondents

[Respondents 3 and 4 are impleaded as per order dated
19.07.2018 in W.M.P.No.21720/2018 in W.P.No.14469/2018]

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in Order No.7704-A/DCE/S2/2018 dated 04.06.2018 rejecting the application of the petitioner dated 28.02.2017 for renewal of FL.2 Licence No.176/FL.2 granted under Tourism Category for the period 2018-19 and to quash the same and further direct the 2nd respondent to renew the petitioner's Licence No.176/FL.2 as prayed for in petitioner's application dated 28.03.2018.

For Petitioner : Mr.V.T.Gopalan, Senior Counsel
(in both W.Ps.) for Mrs.S.Radha Gopalan

For Respondents : Mr.J.Kumaran,
(in both W.Ps.) Government Advocate (Puducherry)

COMMON ORDER

Heard Mr.V.T.Gopalan, learned Senior Counsel for Mrs.S.Radha Gopalan, learned counsel for the petitioner and Mr.J.Kumaran, learned Government Advocate (Puducherry) for the respondents.

2.With the consent on either side, these writ petitions are taken up for final disposal.

3.The petitioner has filed Writ Petition No.14469 of 2018 challenging the order passed by the second respondent dated 04.06.2018 rejecting the petitioner's application dated 28.02.2017 for renewal of FL.II licence granted under Tourism Category for the period 2018-19 and for a consequential direction upon the second respondent to renew the petitioner's licence in terms of the said renewal application.

4. In the impugned order, the second respondent has stated that he has carefully considered the order dated 22.03.2018 and other orders of the Hon'ble Supreme Court prohibiting sale of liquor along the National Highways / State Highways and the orders of the Hon'ble High Court dated 28.04.2018 and the application dated 28.03.2018 submitted by the petitioner for renewal of FL.II licence issued under Tourism Category and the same cannot be acceded to, since the petitioner's premises is located along the National Highways (NH-45A), and the local area, where the hotel is located, is not the municipal agglomeration and as such the directions issued by the Hon'ble Supreme Court cannot be applied to the petitioner's case.

5. Mr. V. T. Gopalan, learned Senior Counsel appearing for the petitioner submitted that the second respondent failed to consider the vital fact that licence has been issued to the petitioner's Restaurant under Tourism Category and such restaurant is not easily accessible to the drivers of heavy vehicles, which ply on the National Highways. Further, it is submitted that the customers are not permitted to carry liquor outside the restaurant and they have to consume the same only in the restaurant.

6. Further, it is submitted that the interpretation given by the second respondent that the observations of the Hon'ble Division Bench applies only to urban agglomeration and since the shop of the petitioner is located in a Commune Panchayat, the same is not applicable and therefore, the impugned order is totally illegal and arbitrary. Further, the second respondent failed to take into consideration the relevant circumstances including nature and development in the area and the object underlying the direction prohibiting the sale of liquor on National and State Highways will not apply to the petitioner for the simple reason that the licence granted to the petitioner's restaurant, which is adjacent to, and admittedly licensed shop on the same side of Cuddalore-Puducherry Road. Therefore, it is submitted that the rejection of the petitioner's application is discriminatory.

7. It is further submitted that the orders passed by the Hon'ble Supreme Court dated 11.07.2017 and 23.02.2018 made it clear that the State Governments would not be precluded from determining whether the principles, which were laid down by the Hon'ble Supreme Court dated 11.07.2017 in *Arrive Safe Society of Chandigarh vs. The Union Territory of Chandigarh and Another* should also apply to the areas covered by local self governing bodies and statutory development authorities. Further, the

learned Senior Counsel referred to the definition of "Commune" by relying upon the meaning given in Wikipedia as "Nagaratchi Mandram" (municipal council). Further, by referring to the various orders passed by the Government of Karnataka, Government of Kerala, Government of National Capital Territory of Delhi, Government of Andhra Pradesh and Government of Tamil Nadu, it is submitted that the Governments have consistently interpreted that municipal area to include Corporation, Municipalities and Town Panchayats. Therefore, it is submitted that the order passed by the second respondent is unsustainable.

8.Mr.J.Kumaran, learned Government Advocate (Puducherry) by referring to the counter affidavit, reiterated the stand taken in the impugned order and submitted that the petitioner's premises falls within the jurisdiction of a Commune Panchayat and therefore, the observation made by the second respondent in the impugned order is perfectly justified.

9.Earlier, the petitioner filed Writ Petition No.4494 of 2018 challenging the order passed by the second respondent dated 09.02.2018 rejecting the petitioner's application dated 28.02.2018. Both the writ petitions were clubbed together. When the matter came up earlier, the Court heard the submissions of the learned counsels in an elaborate manner and came to the conclusion that the second respondent cannot take a decision in the matter, since it is the Government, which has to take a decision as to whether the area would fall within the categories, which have been carved out as exceptions in the order passed by the Hon'ble Supreme Court. Therefore, the petitioner had taken out applications to implead the Governments as respondents and accordingly, respondents 3 and 4 were impleaded vide order dated 19.07.2018.

10.The learned Senior Counsel submitted that the petitioner would be satisfied if the Government is directed to take a decision in the matter by taking note of the observations made by the Hon'ble Supreme Court as well as the Hon'ble First Bench of this Court.

11.Mr.J.Kumaran, learned Government Advocate (Puducherry) submitted that reasonable time may be granted to the Government to take a decision in the matter. Therefore, for the present, deciding the correctness of the impugned order becomes unnecessary, as it is the Government, which has to take a final decision in the matter as to how the area in which the petitioner's premises is situated has to be classified and such other matters as pointed out by the Hon'ble Supreme Court. At this juncture, it would be relevant to refer to the operative portion of the order and direction [State of Tamil Nadu and Others vs. K.Balu and Another in MA Nos.489 of 2018 and etc.,] issued by the Hon'ble Supreme Court in its order dated

23.02.2018, which reads as follows:-

"8.....The use of the expression 'municipal areas' in the order dated July 2017 does not prevent the state governments from making that determination and from taking appropriate decisions consistent with the objection of the orders passed by this Court. We leave it open to individual licensees to submit their representations to the competent authorities in the state governments if they are so advised upon which appropriate decisions may be taken by the state governments. We have issued this general direction to obviate both litigation before the High Courts and repeated recourse to applications to this Court."

12.The Hon'ble First Bench of this Court, in W.P.No.23974 of 2017 (K.Balu vs. State of Tamil Nadu and Others) challenging an order passed by the Commissioner of Prohibition and Excise Department, Chennai directing the District Collectors to permit all F.L.I to F.L.II Licensed shops, which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect, which according to the writ petitioner was contrary to the direction issued by the Hon'ble Supreme Court in State of Tamil Nadu and Others vs. K.Balu and Another reported in 2017 2 SCC 281, after elaborately considering the matter, allowed the writ petition by order dated 28.04.2018 wherein the following observations have been made.

"18.The Supreme Court, by its order dated 23.2.2018, referred to above, left it open to individual licensees to submit their representations to the competent authorities in the State Governments, which were obviously to be decided on a case to case basis.

19.In our view, the impugned communication is not in accordance with the judgments and/or orders of the Supreme Court, referred to above, insofar as the same directs the District Collectors to permit all F.L.I to F.L.II licensed shops which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect. Representations could only have been decided on a case to case basis by the State Government taking into account all relevant factors as per the judgments and/or orders, referred to above.

20.In our view, the clarification that the intent of the order in the State of Tamil Nadu and other v. K.Balu and another, supra, as modified in Arrive Safe Society of Chandigarh vs. The Union

Territory of Chandigarh and another (supra) was not to prohibit licensed establishments within the municipal areas, would have to harmoniously be interpreted with the bar on liquor shops along stretches of National and State Highways which fall within the limits of a Municipal Corporation, City, Town or Local Authority, and decision in this regard would have to be taken on a case to case basis and would perhaps not apply to licensed clubs and hotels in urban agglomerations which are not easily and/or ordinarily accessible to drivers of motor vehicles.

21. In our view, the impugned notice cannot be sustained to the extent it directs the District Collectors to permit all F.L.I and F.L.II licensed shops which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect. The State authorities will have to carry out the exercise of determining if any liquor shop set up or proposed to be set up and/or re-opened was covered by the order of the Supreme Court dated 11.7.2017 in Arrive Safe Society of Chandigarh (supra), on a case to case basis.

22. The Governments would have to take recourse to all relevant factors, including the nature and extent of development in the area and the object underlying the direction prohibiting the sale of liquor on National and State Highways."

13. In the light of the above, while holding that the challenge to the impugned order passed by the second respondent has become unnecessary, as it is respondent nos. 3 and 4, who have to take a decision in the matter, the following direction is issued.

(i) The petitioner is directed to submit a comprehensive representation to the fourth respondent viz., the Revenue Secretary, Union Territory of Puducherry, Union of India, Puducherry enclosing a copy of the orders and all relevant materials which they propose to rely upon including the orders, which have been passed by the neighbouring States and the orders of the Hon'ble Supreme Court and the Hon'ble First Bench of this Court, the relevant portions of which have been referred above.

(ii) On receipt of the representation, the fourth respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner, take note of the decisions referred above and the other materials that the

petitioner may place and pass a reasoned order on merits and in accordance with law.

(iii) The above direction be complied with within a period of three weeks' from the date of receipt of a copy of this order.

14. With the above directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner (Excise),
Government of Puducherry,
Puducherry.
2. The Deputy Commissioner (Excise),
Government of Puducherry,
Puducherry.
3. The Chief Secretary,
The Union Territory of Puducherry,
The Union of India, Puducherry.
4. The Revenue Secretary,
The Union Territory of Puducherry,
The Union of India, Puducherry.

+1cc to Mr. S. RADHA GOPALAN, Advocate, S.R.No.51293

+2 cc to the Government Pleader, S.R.Nos.51018, 51019

W.P.Nos.4494 and 14469 of 2018

SMI/06.08.2018