

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18299 of 2018 and W.M.P.No.21613 of 2018

Mr.P.Anbu @ Gothandaraman

... Petitioner

-vs-

1.Union Territory of Pondicherry,
Rep., by the Commissioner (Excise),
Government of Puducherry,
Office of the Excise Commissioner,
Excise Department, Saram,
Pondicherry-605 013.

2.The Deputy Commissioner (Excise),
O/o. of the Deputy Commissioner (Excise),
Government of Puducherry,
Pondicherry.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to impugned order vide No.7704-B/DCE/S2/2018 dated 04.06.2018 passed by the second respondent and quash the same and consequently direct the respondents to grant permission for reopening the Bar having Licence No.273/FL.2/2016-17 in petitioner's Hotel namely "Hotel Aksharadha", situated at Villianur Commune Panchayat, Puducherry in consistent with the object of the orders passed by the Apex Court and also taking into account of Census Reports of the year 1991 & 2011.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.J.Kumaran,
Government Advocate (Puducherry)

O R D E R

The petitioner has filed this writ petition challenging the order dated 04.06.2018 passed by the second respondent rejecting the petitioner's application for renewal of FL.II licence granted to the bar located in "Hotel Aksharadha", situated at Villianur Commune Panchayat, Puducherry.

2. More or less identical order was put to challenge before this Court in Smt.C.Devaki vs. The Commissioner (Excise), Government of Puducherry and Others in W.P.Nos.4494 and 14469 of 2018 and this Court, by order dated 26.07.2018, had disposed of the writ petitions by issuing direction to the Government. The operative portions of the order read as follows:-

"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."

3. I find that in this writ petition, the Government of Puducherry is not a party respondent. Nevertheless, in the other writ petition, they were impleaded as parties and direction has been issued. Therefore, in this case also, this Court opines that identical direction may be issued, since it is the Government, which has to take a decision in the matter.

4. Mr. Prakash Adiapadam, learned counsel for the petitioner would submit that one distinguishing feature in the present case is that as per the Census Report of the years 1991 and 2011, Villianur Commune Panchayat was declared/classified as 'Census Town' as well as declared/classified as 'Urban Area' under Urban Agglomeration.

5. Mr. J. Kumaran, learned Government Advocate (Puducherry) submits that what has been referred to is only a Census Report and that cannot advance the case of the petitioner.

6. In any event, as decided in the earlier writ petitions, it is for the Government to decide bearing in mind the directions issued by the Hon'ble Supreme Court and the Hon'ble First Bench of this Court.

7. 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 the Government, who has to take a decision in the matter, the following direction is issued.

(i) The petitioner is directed to submit a comprehensive representation to 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 Revenue Secretary, Union Territory of Puducherry, Union of India, Puducherry 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.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

Note : Since it is not a respondent in this writ petition, Registry is directed to communicate a copy of this order to the said Authority.

To

1. The Commissioner (Excise),
Office of the Excise Commissioner,
Excise Department, Saram,
The Government of Puducherry,
The Union Territory of Pondicherry,
Pondicherry-605 013.

2. The Deputy Commissioner (Excise),
O/o. of the Deputy Commissioner (Excise),
Government of Puducherry,
Pondicherry.

3. The Revenue Secretary,
Union Territory of Puducherry,
Union of India, Puducherry.

+1cc to Mr.M.VAIKUNTH, Advocate, S.R.No. 51011
+1cc to the Government Pleader, S.R.No. 51016

W.P.No.18299 of 2018

PA (CO)
TR(29/08/2018)



WEB COPY