IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17084 of 2008

The Madras Gymkhana Club,
Rep. by its Honorary Secretary,
Island Grounds, Anna Salai,
Chennai - 600 002. ... Petitioner

Versus

The Revenue Officer,
Corporation of Chennai,
Chennai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari, calling for records leading to pass the impugned order of the respondent dated 14.06.2008 and quash the same.

For Petitioner : Ms.R.Ramya
for Mr.T.V.Krishnamachari

For Respondent : Dr.C.Ravichandaran

O R D E R

The petitioner, who is the Honorary Secretary of the Gymkhana Club, is challenging the impugned order passed by the respondent namely City Municipal Corporation, Chennai and quash the notice dated 14.06.2008 issued by the respondent calling upon the petitioner to apply and get the licence renewed in their favour, failing which action will be taken as contemplated under Section 379-A of the Chennai City Municipal Corporation Act.

2. The learned counsel for the petitioner would submit that the petitioner is the Honorary Secretary of Madras Gymkhana, Anna Salai, Island Grounds, which is registered under the Tamil Nadu Societies Registration Act, 1975. The club has its own bye laws, rules and regulations and it is functioning on the doctrine of mutuality. The club has got various categories of members, who have exclusive right of admission at the discretion

of the General Committee of the Club. They got various sports activities both indoor and outdoor only for the club members. The club provides amenities to the members like serving food etc., Thus, the facilities provided to the members is incidental to the sporting activities. The members meet together and the entry is restricted to members and not others. Even if the members are accompanied by guest, there is restriction regarding number of guests to be admitted. A guest will not be permitted to come without being accompanied by the member. The object of the club is not to derive any profit. In other words, the learned counsel for the petitioner reiterated that the amenity of providing food is restricted only to the members of the club and not for outsiders. While so, the petitioner club received a notice on 14.06.2008 from the respondent stating that the respondent is running the restaurant without licence as required under the Chennai City Minicipal Corporation Act. According to the counsel for the petitioner the provisions of Section 279 of the Act will not have any application to the petitioner club inasmuch as they are only providing an amenity to serve food to the members who pays subscription to the club and not running any restaurant for any profit.

3. In this context, reliance was placed on the decision of this Court in the case of M/s.Chennai Corporate Club P.Ltd., Vs The Health Officer on 18th July 2012, which reads as follows:-

> “3. The club was incorporated on 10.07.2000. The petitioner-club is an assessee under the Service Tax and covered under the Employees State Insurance Act. They also hold a Certificate of Registration under the C.S.T. Act. The petitioner club is regularly paying income -tax, professional tax. The petitioner-club contributes to the Labour Welfare Board. While so, on 08.03.2010, the Health Officer, Corporation of Chennai, issued a notice stating that the club is running the eating house without a license being issued in this regard in contravention of Section 279 of the Chennai City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) (herein after referred to as 'The Act') The petitioner was called upon to apply for the license by paying the required fees, failing which, action will be taken under Section 379 (A) of the Act. In response to the same, the petitioner submitted a detailed reply on 09.03.2010. It has been specifically pointed out to the authorities that the club is not running any eating house as defined under Section 279 of the Act and therefore, there is no requirement of obtaining license”
>
> and
>
> “12.The words, lodging house, eating house, tea shop, coffee house, restaurant, refreshment rooms should be read to mean similar establishments where public are

admitted as a matter of right. A club on the other hand, restricts entry to public and there is no interaction with the public. The explanation to Section 279 of the Act fortifies the views that the lodging house mentioned in Section 279 of the Act cannot apply to a club. The nature of an arrangement between the members of a club, is like a close knit family and all activities are restricted to the members and their family. As has been held in the decision cited above, i.e. The Corporation of Madras by its Commissioner # Vs. Mr.A.D. Charles, the present President and member of General Committee of the Madras Club reported in (1952, 2 MLJ 247), the omission of a club from Section 279 of the Act is conscious omission by the legislation. The relevant portion in the above said decision is as follows:

> "In appeal I am of the opinion that this Madras club does not fall within the ambit of Section 279, Madras City Municipal Act for the following three good reasons. First of all, the section meticulously describes the types of places which are hit at by the section. Though Clubs constitute a well known and distinct category of institutions, they are not mentioned as one of these types governed by this Section 279. The Legislature cannot be credited with such a blissful ignorance as to ignore these Clubs if it had really intended to make them come within the meaning of Section 279. On the other hand it seems plain as pointed out by the learned City Civil Judge that had the Legislature intended so, it would have added "clubs" to many other names of places found in Section 279(1) and that it seemed plain that the legislature did not consider that clubs stood in need of the inspection, supervision and services, on the part of the Corporation, which the issue of a licence under Section 279 involves and entails. Secondly, this Madras Club cannot be brought within the meaning of the first type of institutions viz, lodging house or eating house. The terms "lodging house" and "eating house" normally connote places to which the members of the public have a right of admission and in which they have no interest otherwise than as mere lodgers or boarders. I have already described the bye-laws and amenities provided by this Club and it would be outrageous to describe this Madras club as only a variety of lodging house or eating house. Therefore, the learned City Civil Judge has pointed out that the matter did not require an elaborate discussion though in fact he has discussed the English cases on this subject which support his conclusion. But really speaking the discussion of these English

cases is not very relevant except to throw additional light on this matter because we are guided by the language of Section 279 and as I have just now mentioned by no stretch of imagination the Madras club can be described either as a lodging house or a eating house. Therefore, we have to find whether this club would come within the second category of institutions viz, any place where the public are admitted for repose. The rules of the Madras club excluding all excepting the members of the Club would show that this Club could not be an institution where the public can go and have repose. The third category of institution mentioned in Section 279 is a place where food is sold or prepared for sale. No doubt if the expressions are construed by themselves, they can be stretched to fanciful lengths and will take in to mention one illustration even Vaishnavite temples. On the other hand we must remember that the constructions that should be placed on this third category must be 'ejusdem generis' to be of the same variety as the other two categories enumerated above. In order to support this conclusion that it was a place where food was sold or prepared for sale, the argument which was advanced in the lower court was that the tax officers are assessing the Madras Club to sales-tax. But this argument does not now support the position taken by the Corporation in view of the recent decision of Mack J. in --'Cosmopolitan Club Madras v. Deputy Commercial Tax Officer [(1952) I M.L.J. 401.], wherein my learned brother held that the levy of sales tax has no scope."

4. The respondent filed a counter affidavit, wherein it was stated that the writ petition is not maintainable especially when the order which is challenged in this writ petition is only a notice calling upon the petitioner to comply with the requirement under the provisions of Chennai City Municipal Corporation Act. Further, even for serving of food in the club, the petitioner club must obtain licence even though food is served only to the members and not to the public. Apart from members and the guests accompanying the members are served, there are facilities made inside the club like Kitchen, Bar, Lodging and other services. In such circumstances, the respondent is justified in issuing the notice calling upon the petitioner The counsel for the respondent would further contend that even though the petitioner contended that they are only serving food to the members after collecting subscription fee, which itself would show that they are running Restaurant, which is also mentioned in their Bye-Law XI as per which the members are prohibited to bring outside food and to consume the food

items prepared only in the club's kitchen only on payment of bills. Therefore, the learned counsel for the respondent prayed for dismissal of the writ petition.

5. Heard both sides. Admittedly, the petitioner is a club registered under the Tamil Nadu Societies Registration Act. The notice, which is impugned in this writ petition was issued by the respondent, calling upon the petitioner to apply for licence for the restaurant run by them. According to the petitioner, they are not running any restaurant but serving food to their members and therefore, there is no requirement to apply for licence, as called for in the impugned notice.

6. The issue involved in this writ petition is no longer res integra inasmuch as the same was settled by the order passed by this Court mentioned above. As per the order passed by this Court, a recreational club is not similar to eating house, lodging house or restaurant where admission of public is not restricted. On the other hand, the admission of general public is restricted in a recreational club. In the instant case, it is the case of the petitioner that they serve food items to their members on receipt of subscription fee and that they are not running a restaurant for profit. While so, applying the decision mentioned supra, the impugned order passed by the respondent cannot be sustained. The impugned notice of the respondent is set aside. The writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt

To

The Revenue Officer,
Corporation of Chennai,
Chennai.

+1cc to Dr.C.Ravichandaran, Advocate sr.no.44747
+1cc to Mr.T.V.Krishnamachari, Advocate sr.no.44279

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