

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.16152 of 2012

Indian Officers Club,
5/1, T.R.Naidu Street,
Tuticorin,
Tuticorin District,
Rep by its Secretary

... Petitioner

-Vs-

1.The Commissioner of Prohibition & Excise,
Chepauk, Chennai 600 005.

2.The District Collector,
Tuticorin District, Tuticorin.

3.The Assistant Commissioner (Excise),
Tuticorin.

4.The Managing Director,
Tamil Nadu State Marketing Corporation,
CMDA Building, Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

.... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to order of the 1st respondent in Na.Ka.No.MMA2(1)/28830/2007 dated 07.05.2012 in respect of the petitioner FL2 Licence No.03/2000-2001 at Indian Officers' Club, Tuticorin and quash the same and consequently, direct the first respondent to renew the petitioners licence.

For Petitioner : Ms.A.L.Ganthimathi
For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Ms.A.L.Ganthimathi, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to order of the 1st respondent in Na.Ka.No.MMA2(1)/28830/2007 dated 07.05.2012 in respect of the petitioner FL2 Licence No.03/2000-2001 at Indian Officers' Club, Tuticorin and quash the same and consequently, direct the first respondent to renew the petitioners licence."

3. The case of the petitioner is as follows:-

The petitioner had applied for Bar Licence for the benefit of its members in the year 2000 under Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for grant of FL-2 Licence. The first respondent by proceedings dated 13.09.2000, granted licence and the same was renewed from time to time upto 31.03.2008. Thereafter, the renewal application was filed within time before the expiry of the Licence period. The renewal for the year 2002-03 was granted on 05.06.2002, for 2003-04, it was granted on 23.02.2004, for 2004-05, it was granted on 07.07.2004, for 2005-06, it was granted on 06.07.2005, likewise, the period of licence had been extended upto 30.07.2007.

4. while so, the petitioner by resolution dated 07.02.2006, called for applications from members who were interested in taking licence on lease. However, after realising that the licence cannot be transferred under the Rules, a subsequent resolution was passed on 30.03.2006, cancelling the earlier resolution dated 07.02.2006. According to the petitioner, upto 26.08.2008, the Bar has been operated by the petitioner Club.

5. While matter stood thus, some of the members of the Club who were removed from the membership of the Club, appeared to have lodged a complaint against the Club stating that there was an agreement permitting the third party to run the Bar for the period of five years from 25.04.2003. In response to the complaint, a show cause notice was issued on 10.07.2008, referring the report of the District Collector dated 02.05.2008 and 12.06.2008, alleging that the FL-2 Licence has been leased out to third party for a period of five years and subsequently, the Bar was again leased out to another third party and the Club was functioning with proprietary character and as commercial place. Therefore, the petitioner had violated several provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

6. The petitioner was called upon to show cause against their violation. On receipt of the show cause notice, the petitioner submitted their reply denying the allegations stating that the so called third parties were not known to the Club and the Bar was operated by the petitioner Club. The first respondent also called the petitioner for personal hearing on 11.08.2008. Thereafter, an order was passed on 26.08.2008 and

01.09.2008, cancelling the licence which was granted in favour of the petitioner and thereafter, the first respondent refused to renew the licence for the subsequent year from 2008-09. Aggrieved by the action of the first respondent, the petitioner approached this Court in W.P.No.21851 of 2008. This Court by order dated 18.03.2011, had set aside the impugned orders cancelling the licence and the matter was remitted back to the first respondent to give another opportunity to the petitioner Club and consider all the relevant circumstances including the defence taken by the Club and their explanation and consider for grant of licence.

7. Thereafter, the petitioner was called upon to appear before the first respondent for personal hearing. The petitioner appeared for personal hearing on 17.05.2010 and reiterated the same submissions which were made during the earlier opportunity granted to him. Finally, the first respondent by his proceedings dated 07.05.2012, rejected the request of the petitioner for grant of licence in favour of the Club.

8. The learned counsel for the petitioner Club would reiterate the defence of the Club which was disclosed before the first respondent. The learned counsel would submit that the first respondent did not take into consideration certain relevant materials and therefore, the impugned action by the first respondent is liable to be interfered with.

9. Per contra, learned Special Government Pleader appearing for the respondents would submit that the Club had violated the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, particularly, he would draw the attention of this Court to Rule 24 which reads as follows:-

"24. Transfer of licence, change of premises of locality:--

Licences issued under these Rules shall not be sold, transferred or sub-rented without the previous permission of the licensing authority. A licence holder shall not change the premises in which he carries on business under his licence except with the previous permission of the licensing authority. Permission to shift the business during the currency of the licence outside the area in which the licence is intended to serve shall be treated as the grant of a fresh licence and all the provisions relating to the grant of a new licence shall likewise apply to granting of such permission except those relating to payment of the licence fee and collection of security deposit with reference to Rule 23."

10. The learned Special Government Pleader appearing for the respondents would submit that as per the rule, the licence

granted is not transferable except in the permission of the authority and in this case, no such permission had been taken before the Bar was handed over to the third party to run by them. Therefore, there appears to be a clear violation of the rule by the petitioner. The authority had rightly rejected the request of the petitioner for grant of licence.

11. The learned Special Government Pleader would also submit that while considering the application for grant of licence, the first respondent had also noticed several violations and felt that continuance of licence would be against the public interest. The learned Special Government Pleader would draw the attention of this Court to the impugned action where it is clearly mentioned that the petitioner had violated the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and the report of the Collector was not in favour of the petitioner. It appears that the first respondent has relied on the report of the Collector and took final decision.

12. From the above circumstances, it could be seen that the petitioner was given clear opportunity to participate in the enquiry and in spite of the same, he was not able to convince the authority in acceding to his request. On the other hand, it is the case of the respondents that the petitioner violated the conditions of licence by leasing out the Bar to the third party which is not permissible under rules, particularly, Rule 24 which is extracted supra. In fact, in the impugned order, the first respondent has stated that the petitioner had violated the Rule 19(A)(i) and also the report of the District Collector which was against the petitioner Club, having the Bar.

13. In the above circumstances, the findings of the fact by the District Collector cannot be interfered with by this Court, unless, it is shown that such findings was mala fide or perverse. In the instant case, the petitioner has not demonstrated that the findings of the District Collector in this regard was either perverse or unacceptable by this Court. In view of the same, this Court does not find any infirmity in the order passed by the first respondent and therefore, it is a clear view that the petitioner is not entitled to the relief as prayed for in the writ petition.

14. The writ petition therefore stands dismissed. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Commissioner of Prohibition & Excise,
Chepauk, Chennai 600 005.

2.The District Collector,
Tuticorin District, Tuticorin.

3.The Assistant Commissioner (Excise),
Tuticorin.

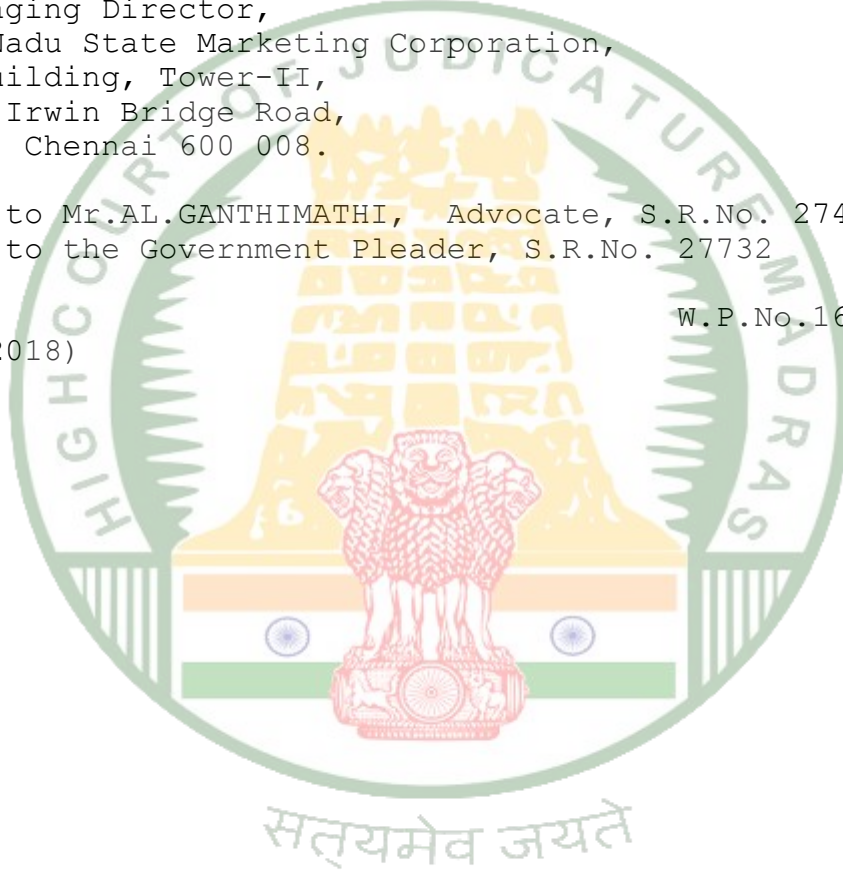
4.The Managing Director,
Tamil Nadu State Marketing Corporation,
CMDA Building, Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008.

+1cc to Mr.AL.GANTHIMATHI, Advocate, S.R.No. 27402

+1cc to the Government Pleader, S.R.No. 27732

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TR(11/05/2018)



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