



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.1224 of 2018

and

W.M.P.(MD) Nos.1310 and 1311 of 2018

Dolphin Recreation Club,
represented by its Secretary,
K.Seenivasan

... Petitioner

vs.

1.The Commissioner of Prohibition and Excise,
Prohibition and Excise department,
Ezhilagam, Chepauk,
Chennai- 600 005.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Assistant Commissioner (Excise),
Prohibition and Excise Department,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made by the second respondent in his proceedings No.Na.Ka.Ka2/11244/2016 dated 04.12.2017 and quash the same as illegal and consequently, direct the second respondent to consider the petitioner's application and issue FL2 license to operate his Recreation Club at Marnari Village within the time that may be stipulated by this Court.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.J.Gunaseelanmuthiah
Additional Government Pleader

O R D E R

Citing the prohibition on the location of the shop within the proximity of a State High Way, the present impugned order dated 04.12.2017 came to be passed. While the writ petition was pending, certain clarifications came to be issued byway of an order of the Hon'ble Apex Court, insofar as it relates to local self governing bodies vide order dated 23.02.2018 in Civil Appeal Nos. 12164 and 12166 of 2016. The relevant portion of the said order which reads as follows:

"Having regard to these directions, we are of the view that the state governments would not be precluded from determining whether the principle which has been laid down by this Court in the order dated 11 July 2017 in Arrive Safe Society (supra) should also apply to areas covered by local self -governing bodies and statutory development authorities. We are inclined to allow the state governments to make this determination since it is a question of fact as to whether an area covered by a local self-governing body is proximate to a municipal agglomeration or is sufficiently developed as to warrant the application of the same principle. In deciding as to whether the principle which has been set down in the order dated 11 July 2017 should be extended to a local self-governing body (or statutory development authority) the state governments would take recourse to all relevant circumstances including the nature and extent of development in the area and the object underlying the direction prohibiting the sale liquor on national and the state highways. The use of the expression 'municipal areas' in the order dated 11 July 2017 does not prevent the state governments from making that determination and from taking appropriate decisions consistent with the object 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."

2. As per the above observations of the Hon'ble Apex Court, it would be appropriate to permit the petitioner to approach the respondents herein and also in view of the categorical observation therein giving liberty to individual licensees to submit the representation to the Hon'ble authorities of the State Government.

3. In the light of the order of the Hon'ble Apex Court passed, the impugned order dated 04.12.2017 is set aside and the matter is remitted back to the second respondent for fresh consideration, in the light of the Hon'ble Apex Court observation, which has been extracted above. The petitioner is also granted liberty to submit a

fresh representation to the second respondent for the purpose of re-consideration. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

4. With the above observation this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1.The Commissioner of Prohibition and Excise,
Prohibition and Excise department,
Ezhilagam, Chepauk,
Chennai- 600 005.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Assistant Commissioner (Excise),
Prohibition and Excise Department,
Virudhunagar District,
Virudhunagar.

+1cc to M/S.Niranjana S.Kumar, Advocate SR.No. 74479
+1cc to Special Government Pleader, SR.No. 74678

W.P.(MD) No.1224 of 2018
and

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23.07.2018

das
JM/RP/SAR 4/27.07.2018/3P/6C