

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 33930 of 2018

ORDER:

1) Declaring the action of the third respondent herein in issuing the impugned proceedings in R.C.No.C1/277/2015 dated 12.09.2018, cancelling the licence of the petitioner to collect licence fee for depositing of cell phones/cameras from the pilgrims, as illegal and arbitrary, the present Writ Petition is filed.

2) The averments in the affidavit filed in support of the Writ Petition would show that in the tender notification dated 01.02.2006 issued by the third respondent herein, the petitioner became a successful bidder by offering highest licence fee of Rs.42,09,999/- per year and accordingly paid an amount of Rs.42,09,999/- commencing from 01.04.2016. Pursuant to the approval, the third respondent issued work order vide proceedings in Rc.No.C1/277/215 dated 06.03.2016 i.e., for keeping the cell phones and cameras of pilgrims visiting the third respondent-Devasthanam for safe custody for a period of three years from 01.04.2016. As per the terms and conditions, the third respondent has to ensure placement of security staff to prevent pilgrims carrying mobile phones, cameras and other electronic items, inside the temple by making it obligatory to bring to the notice of the temple authorities, if anyone carries cameras or

cell phones etc. Condition No.29 prescribe the petitioner to place his own staff to prevent carrying cell phones, cameras and electric instruments inside the temple by ensuring that the pilgrims deposit the same by paying Rs.5/- for each instrument. While things stood thus, the third respondent entrusted the work of undertaking security duties to an outsourced agency i.e., Om Sai Professional Detective and Security Services. As the said agency was unsuccessful in checking the pilgrims, made the petitioner to submit several representations to the third respondent. It is the case of the petitioner that being annoyed with the representations made, the third respondent cancelled the licence of the petitioner on 01.03.2017. Challenging the same, the petitioner filed W.P.No.8863 of 2017, wherein, this Court passed an interim order directing the respondents to allow the petitioner to operate the licence rights. Thereafter, another Writ Petition No.429 of 2018 came to be filed requesting the third respondent to allow the petitioner to deposit licence fee on monthly basis. Both the Writ Petitions are pending before this Court. It is said that the petitioner has been doing his business without violating any rules thereunder. It is also alleged that the third respondent issued a show cause notice on 07.09.2018 asking the petitioner to explain that his staff are collecting higher amounts for deposit of cell phones and cameras, to which the petitioner explained denying the allegations made therein. After

considering the explanation, the impugned order came to be passed on 12.09.2018 cancelling the licence. Challenging the same, the present Writ Petition came to be filed.

3) The main ground urged by the learned counsel for the petitioner is that the action of the third respondent in cancelling the licence is only with a view to harass the petitioner. It is said that even before a show cause notice was issued, a criminal case came to be registered against the petitioner on 06.09.2018 and thereafter a show cause notice was issued. It is stated that when the boards are displayed in front of the counter disclosing the amount to be paid, and one of the employees of the Devasthanam being present at the said premises, the question of the petitioner collecting more than the prescribed amount, would not arise. It is stated that though a detailed explanation was given by the petitioner apart from clearing the entire dues through a cheque dated 11.09.2018, the third respondent encashed the same on 14.09.2018 and even without verifying the explanation given, passed the impugned order. It is further stated that when the petitioner has submitted his explanation on 11.09.2018, the impugned order came to be passed on 12.09.2018 without giving an opportunity to explain and the impugned order does not deal with the contents of the explanation. It is stated that the third respondent has no power to cancel the licence as he can only to recommend cancellation of licence to the second

respondent and the second respondent is the approval authority for issuing licences in respect of temples whose annual income exceeds Rs.1,00,000/-. Having regard to all the above, it is said that the impugned order is illegal, improper and without jurisdiction.

4) A counter came to be filed by the third respondent denying the averments made in the affidavit. The averments in the counter are to the effect that several complaints were received against the petitioner collecting higher amounts from the pilgrims, as such the licence of the petitioner was cancelled on 01.03.2017. Subsequent to the orders passed by this Court in W.P.No.8863 of 2017, the temple has received number of complaints against the petitioner on various dates and hence, a show cause notice was issued on 07.07.2017. It is stated that without submitting an explanation, the petitioner made representations seeking grant of facilities of payment of money by way of instalments, which was rejected on 23.12.2017, leading to filing of W.P.No.429 of 2018, which is pending before this Court. It is said that the cheque dated 28.02.2018 given by the petitioner towards payment of licence fee was dishonoured, which lead to filing of the complaint under Section 138 of the Negotiable Instruments Act. While things stood thus, number of complaints are made against the petitioner, to which a show cause notice was again issued, calling upon the petitioner to explain, for which, the petitioner sent a reply giving explanation without paying the fine amount as demanded in the

show cause notice. The repeated complaints made by the pilgrims against the petitioner lead to lodging of a report before the police on 06.09.2018. Thereafter, the impugned order came to be passed after considering his explanation.

5) The learned Government Pleader for Endowments mainly submits that merely because a cheque given towards the dues was encashed, does not by itself mean that the respondents have agreed or consented to allow the petitioner to use the said premises. It is to be noted here that the licence has been cancelled because of the petitioner collecting higher amount than prescribed in the tender. The basis to cancel the licence being the repeated complaints received from the pilgrims with regard to the higher amounts collected while depositing the cell phones and cameras. In fact almost all the complaints contain even the addresses and mobile numbers of the persons, who gave the complaints.

6) From the narration of events, it is clear that pursuant to a show cause notice dated 06.09.2018, which was served on the petitioner on 08.09.2018 the explanation came to be submitted on 11.09.2018 and thereafter the impugned order came to be passed on 12.09.2018. One of the main arguments advanced by the learned counsel for the petitioner is that the authorities have not considered

the entire contents of the explanation given on 11.09.2018 while passing the impugned order on 12.09.2018.

7) The grievance of the petitioner appears to be that his representation dated 11.09.2018 was not considered properly and no opportunity of hearing was not given to him. The record discloses that the petitioner herein gave an explanation to the notice on 11.09.2018 and on the very next day i.e., on 12.09.2018 the impugned order came to be passed canceling the licence of the petitioner. The reason for canceling the licence is that the petitioner has been squeezing the pilgrims for money and the amount collected was found to be more than the limit prescribed. Along with the counter, the complaints lodged by the pilgrims are enclosed to show that the petitioner acted contrary to the conditions of the licence. In other words Sri G.V.Shivaji, learned counsel for the petitioner would contend that the authorities did not consider all the aspects raised by the petitioner in his explanation to the show cause notice.

8) On the other hand, the learned counsel for the respondent, more particularly, the standing counsel for the Endowments would contend that even earlier the licence of the petitioner was suspended on receipt of the complaints but since the said order came to be passed without giving notice, the same was stayed by this Court. The counsel further submits that a reading of the impugned order shows

that the explanation given by the petitioner was referred to in the order and as such it cannot be said that there was no application of mind by the authorities.

9) It is to be noticed that the order canceling the licence of the petitioner came to be passed on 12.09.2018 and thereafter alternate arrangements are said to have been made by the temple authorities for safe custody of cellphones, Cameras and other electronic equipment to the pilgrims and that the said arrangement is continuing even till today. But, at the same time, it is to be noticed that the explanation given by the petitioner was on 11.09.2018 and immediately on the next day the impugned order came to be passed by referring to couple of sentences in the explanations given by the petitioner. Prima facie it appears that the totality of the explanation given by the petitioner was not taken into consideration and no personal hearing was offered to the petitioner. At the same time, after canceling the licence, a cheque given by the petitioner was encashed by the authorities.

10) Hence, the order under challenge is set-aside and the respondent/authorities are directed to pass appropriate orders after considering the explanation given in detail within a period of 10 days from today in accordance with law after giving an opportunity of personal hearing to the petitioner.

11) Since an alternative arrangement for safe custody of cell phones, cameras and other electronic equipments is made after cancellation of the licence on 12.09.2018, the said arrangement shall be continued till an order is passed basing on the explanation given by the petitioner.

12) With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed.

Dt:20.12.2018
GM

JUSTICE C. PRAVEEN KUMAR

