

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.31340 of 2007

M/s.Kongu Lodge,
Rep.by the Proprietor,
K.P.Krishnaswamy 11/123,
Kozhikode Road,
Chambala, Gudalur 643 212,
Nilagiri District.

.... Petitioner

Vs.

1.The Commissioner of Prohibition and Excise,
Chepauk, Kamarajar Salai,
Chennai - 600 005.

2.M.Zain ul Habith
@ Zainul Babu

3.Gudalur Taluk Muslim Orphanage,
Rep.by its President.

4. Mr.T.Unni Mohamed ... Respondents
(Respondents 2 and 3 impleaded
as per order dated 19/11/2007
in MP Nos.2 & 3/2007 in W.P.31340 of 2007)

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the proceedings of the Respondent in Rc.No.P&E 2(1)20316/2007 dated 25.09.2007 and quash the same.

For Petitioner : Mr.A.Jenasena

For Respondents: Mr.K.Ravi Kumar
Additional Government Pleader
for R1
Mr.P.V.Ravichandran for R2
Mr.SDS.Philip for R3

Mr.J.Franklin for R4

O R D E R

The Petitioner herein was originally granted with a FL.3 licence on 19.06.2007, for sale of liquor in their Hotel premises located at No.11/123, Chambala, Gudalur. There were certain complaints in the running of the Bar, from private parties, who have been subsequently impleaded as party Respondents 2 to 4 in this Writ Petition, owing to which, an enquiry came to be conducted, after issuance of a show-cause notice dated 08.08.2007. During the course of enquiry, the first respondent herein had observed that there was no violation of the Provisions of the Tamil Nadu Liquor (License and Permit) Rules. However, since the respondent apprehended that there was a likelihood of Law and Order problem, the Petitioner's licence FL.3 No.15 of 2007-2008 came to be canceled, through an order dated 25.09.2007, which is impugned in this writ petition. When the writ petition came to be admitted by this Court, interim orders were granted, protecting the running of the Bar and now it is brought to the notice of this Court that from the year 2007 - 2008, the licence have been periodically renewed and extended, till date.

2. It is further brought to the notice of this Court that on the instructions of the first respondent herein, an enquiry came to be conducted by the Assistant Commissioner, Excise, Nilgiris District on the status of the FL.3 licence granted to the petitioner and a detailed report dated 28.09.2018 of the Assistant Commissioner, Excise, was produced before this Court. A perusal of the report evidences that, apart from the private dispute between the Petitioner and the Respondents 2 to 4, there is no Law and Order problem pertaining to the running of the Petitioner's Bar and that the Bar is functioning smoothly, without any disturbance.

3. The Learned Counsel for the Petitioner submitted that there is no violation, either to the conditions of the licence or the provisions of the Act. The grievance of the Respondents 2 to 4 is only a dispute between them which will not warrant any interference with their business. According to the learned counsel, the Bar is now functioning smoothly without any complaints, which itself will prove that the complaints of these private respondents are baseless.

4. The learned counsels appearing for the Respondents 2 to 4 objected to the grounds raised by the Petitioner, stating that the Mosques and Schools are located in close vicinity to the Petitioner's licenced Bar and as per the conditions of the licence and the provisions of the Tamil Nadu Liquor (License and Permit) Rules, the same is impermissible.

5. I am unable to agree with the submissions of the Counsels for the Respondents 2 to 4, for the reasons that the distance requirement under the Rule Tamil Nadu Liquor Retail Vending (in shops and Bars) Rules 2003, would be applicable only to the IMFL retail vending shops run by the TASMAC and not applicable to FL.3 licence, so far as the Tamil Nadu Liquor (Licence & Permit) Rules 1981, is concerned. While that being so, the FL.3 licence originally granted to the Petitioner herein can only be termed to be in accordance with the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules and as such, the submissions of the learned counsel for the Respondents 2 to 4, is unacceptable.

6. Further, taking into account the enquiry report as evidenced in the letter of the Assistant Commissioner to the Commissioner dated 28.09.2018, the Petitioner's FL.3 licence has been periodically renewed from the year 2007 - 2008, 2008 - 2009 to 2019 - 2020. The report also evidences that apart from the private dispute between the parties, there is peace prevailing in the area and no disturbance to the public or transport has been reported in connection with the running of the Petitioner's bar. While that being so, it would not be appropriate to interfere with the running of the Bar at this point of time, through any adverse observations.

7. Though the impugned order pertains to cancellation of the FL.3 licence for the period ending 2007 - 2008, in view of the fact that the respondents have chosen to renew the licence subsequently till date and since the licence has been granted in accordance with the provisions of the Act and also by taking note of the prevailing situation surrounding the vicinity of Bar, this Court is constrained to quash the impugned order dated 25.09.2007.

8. In the light of the above observations, the order of the Respondent in R.C.No.P&E 2(1)20316/2007 is quashed and the writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pns

To

The Commissioner of Prohibition and Excise,
Chepauk, Kamarajar Salai,
Chennai - 600 005.

+lcc to the Government Pleader Sr.52301
+lcc to Mr.A.Jenasenan, Advocate Sr.52108
+lcc to Mr.S.D.S.Philip, Advocate Sr.51553

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