

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.7675 of 2019

Prism Corporation
Represented by its Director
Mr.T.S.Ashwin
S/o.Mr.T.Suresh
Odyssey Towers 45 and 47
First Main Road, Gandhi Nagar
Adyar, Chennai - 600 020.

.. Petitioner

vs.

1.The Secretary
Department of Prohibition and Excise
Tamil Nadu Government
St George Fort
Chennai - 600 009.

2.The Managing Director
TASMAC
CMDA Tower II
IV Floor, Gandhi Irwin Bridge Road
Egmore, Chennai - 600 008.

3.The Commissioner
Chennai Corporation
Greater Chennai Corporation
Ripon Building
Chennai - 600 003.

4.The Commissioner of Police
Greater Chennai
Chennai - 600 007.

5.RESTO BAR
Rep. By its Proprietor
Mr.Muthurangan
1st Floor, Odyssey Towers 45 and 47
First Main Road
Gandhi Nagar, Adyar
Chennai - 600 020.

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6.The Commissioner

Department of Prohibition and Excise
Ezhilagam Building
Kamarajar Salai, Chempauk
Chennai - 600 005.
(R6 impleaded vide order dated 10.04.2019
made in W.M.P.No.9844/2019 in
W.P.No.7675 of 2019)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 4 not to grant the bar license permanently based on the petitioner representation dated 07.12.2018 and consequently directing the 5th respondent not to open the resto bar permanently and thus render justice.

For Petitioner : Mr.A.Kumaraguru

For Respondents : Mr.R.P.Prathap Singh,
Government Advocate for R1, R4 & R6

Mr.K.Sathish Kumar for R2

Mr.T.C.Gopalakrishnan

Standing Counsel for R3

Ms.Vasudha Thiyagarajan for R5

O R D E R

Mr.A.Kumaraguru, learned counsel on record for writ petitioner and Mr.R.P.Prathap Singh, learned Government Advocate on behalf of respondent Nos.1, 4 and 6, Mr.K.Sathishkumar, learned Standing Counsel for Tamil Nadu State Marketing Corporation (TASMAC) on behalf of respondent No.2 and Ms.Vasudha Thiyagarajan, learned counsel on behalf of respondent No.5 are before this Court. Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation accepted notice on behalf of respondent No.3.

2. With consent of all the counsel before this Court, the main writ petition itself is taken up and disposed of.

3. To be noted, this writ petition pertains to issue of a liquor vending licence which 5th respondent has sought for.

4. There is no dispute or disagreement that 6th respondent i.e., Commissioner, Department of Prohibition and Excise is the authority, who is vested with powers to consider and issue or reject this license which has been sought for by 5th respondent.

5. It is submitted that for the purpose of license being considered, no objection certificate from the jurisdictional police authorities is one the requirements.

6. The law that governs these proceedings is a set of rules which goes by the name 'The Tamil Nadu Liquor (License and Permit) Rules, 1981', which is subordinate legislation made by Tamil Nadu Government in exercise of Rule making powers under the provisions of the parent statute i.e., 'Tamil Nadu Prohibition Act 1937', (Tamil Nadu Act X of 1937). For the purpose of convenience and clarity parent act will be referred to as 'Prohibition Act' and the aforesaid Rules which is subordinate legislation shall be referred to as 'Liquor Vending Rules.'

7. Short facts shorn of unnecessary particulars and details or in other words facts which are imperative for appreciating this order are to the effect that petitioner is running a store in the name and style 'ODYSSEY' and petitioner is dealing with stationary cum books in this store. The petitioner is a lessee in the demised area where the shop is being run. The building in which the shop is being run by the petitioner consists of ground + four floors (5 floors in all). This Court is informed that the demised area, where the writ petitioner is carrying on business i.e., running aforesaid shop is in the basement, ground and mezzanine floors.

8. It is the case of the writ petitioner that some time in December 2018, they came to know that 5th respondent has applied for license for running a Resto Bar for which a liquor license is required under the Liquor Vending Rules. To be noted, there are about 11 categories of licenses, adumbration of which has been made under Liquor Vending Rules and the liquor license which the 5th respondent has sought for is F.L.2, which reads as follows:

'License for possession of liquor by a non-proprietary club for supply to members.'

9. To be noted, 5th respondent has been described in the writ petition as follows:

'RESTO Bar

Rep. By its Proprietor

Mr.Muthurangan

1st Floor, Odyssey Towers 45 and 47

First Main Road

Gandhi Nagar, Adyar

Chennai - 600 020.'

However, from the pleadings and submissions made in the hearing, it comes to light that the applicant qua aforesaid Liquor license is one Mr.Muthu Rathinam who is Secretary of a Club which goes by the name 'K.P.Park Sports Club'.

10. Learned counsel for 5th respondent submits that the aforesaid description of the 5th respondent is incorrect and on instructions submits that correct description is 'Dr.D.Muthurathinam, Son of M.Duraisamy, Secretary of K.P.Park Sports Club and residing at Flat No.2-B, 2nd Floor, Sundaram Regent Flats, 5 and 6, Thirumalai Nagar Main Road, Valasaravakkam'. This is recorded and any reference to 5th respondent in this order shall be a reference to this correct description.

11. Before this Court proceeds further, learned counsel for 2nd respondent i.e., TASMAC and learned Standing Counsel for Chennai Corporation submitted that they have no effective role with regard to grant of license or consideration/scrutiny of an application for grant of license. However, as alluded to supra, a no objection certificate from the jurisdictional police authority through 4th respondent is one of the requirements.

12. Therefore, as alluded to supra, the ultimate decision regarding granting or rejecting license sought/applied for by 5th respondent is to be taken by 6th respondent.

13. 4th respondent has filed a counter affidavit dated 09.04.2019, wherein it has been mentioned that the jurisdictional Joint Commissioner of Police viz., South Zone and other hierarchy of police officials including Inspector of Police, J-2 Police Station, Adyar (which this Court is informed is the jurisdictional police station) have been directed to verify the character and antecedents of the applicant i.e., 5th respondent and send a report.

14. Today, learned Government Advocate, on instructions from the Inspector of Police of the aforesaid jurisdictional Police Station viz., J-2 Police Station, Adayar, who is present in Court submits that verification has been made and the report has been sent to the office of the Commissioner of Police, i.e., 4th respondent. To be noted, on instructions, it is submitted that report from the jurisdictional police was sent to the Commissioner of Police on 04.05.2019 by post.

15. Be that as it may, learned counsel for 5th respondent submits that 5th respondent was not enquired or was not called for any enquiry and 5th respondent is therefore not aware of any such enquiry or report.

16. Considering the scope of this writ petition, it may not be necessary to go into those aspects of the matter. 5th respondent has filed a counter affidavit, wherein it has been inter alia asserted by the 5th respondent that 5th respondent's application satisfies all the requirements, particularly requirements under Rule 19 (B) (2) of Liquor Vending Rules and has already secured necessary no objection from various authorities with the exception of no objection certificate from the police.

17. Learned counsel for 5th respondent pressed into service an order made by a Hon'ble Division Bench of this Court dated 28.04.2018 made in W.P.No.23974 of 2017. Adverting to the said order, it was submitted by learned counsel for 5th respondent that as long as the applicant does not violate the conditions of Liquor Vending Rules, the applicant is entitled to a license.

18. It was also submitted that Liquor Vending Rules is exhaustive and it makes provisions for various kinds of license and the place where the licensees can operate including restrictions in this regard.

19. Another submission is that a case of this nature ought to have been filed as a Public Interest Litigation. As this writ petition has already been entertained by my predecessor Hon'ble Judge and pleadings are complete, this Court deems it appropriate to leave all questions in this regard open in this case and the same is reserved for another matter where there is serious contest in this regard.

20. In the light of the narrative supra, Mr.R.P.Prathap Singh, learned Government Advocate submits that 6th respondent will take a decision on liquor license application of 5th respondent in accordance with law, in accordance with the aforesaid Liquor Vending Rules as expeditiously as possible and in any event within four weeks from the date of receipt of a copy of this order.

21. In the aforesaid back drop, considering the nature of this writ petition, this Court is of the considered view that 6th respondent shall take into account the objections raised by the writ petitioner in the instant writ petition also while deciding one way or the other about the application that has been made by 5th respondent for grant of license. To be noted, objections raised by the writ petitioner shall be considered by perambulating within the four corners of the aforementioned Liquor Vending Rules viz., The Tamil Nadu (License and Permit) Rules, 1981.

22. To be noted, objections of the writ petitioner is by way of a representation dated 07.12.2018 which has been sent to respondent Nos.1, 2 3 and 4.

23. At the request of learned counsel for 5th respondent, the counter affidavit dated 10.04.2019 filed by 5th respondent in the instant writ petition is treated as 5th respondent's response to the objections of the writ petitioner and this also shall be considered by 6th respondent as response to writ petitioner's representation. In this regard learned Government Advocate undertakes to forward copies of writ petitioner's representation dated 07.12.2018 and 5th respondent's counter affidavit dated 10.04.2019 to the 6th respondent along with a copy of this order.

24. In other words, 6th respondent will consider the writ petitioner's objection dated 07.12.2018 and 5th respondent's aforesaid counter affidavit dated 10.04.2019 (which at the request of learned counsel for 5th respondent is treated as response to the objections of the writ petitioner) before taking a decision on the application of 5th respondent for grant of F.L.2 license.

25. The entire exercise shall be completed within four weeks from the date of receipt of a copy of this order.

26. This Writ Petition is disposed of on above terms. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vsm

To

1.The Secretary
Department of Prohibition and Excise
Tamil Nadu Government
St George Fort, Chennai - 600 009.

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IV Floor, Gandhi Irwin Bridge Road
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Kamarajar Salai, Chempauk
Chennai - 600 005.

+1cc to Mr.T.C.Gopalakrishnan, Advocate SR.No.48523

+1cc to Mr.K.Sathish Kumar, Advocate SR.No.48718

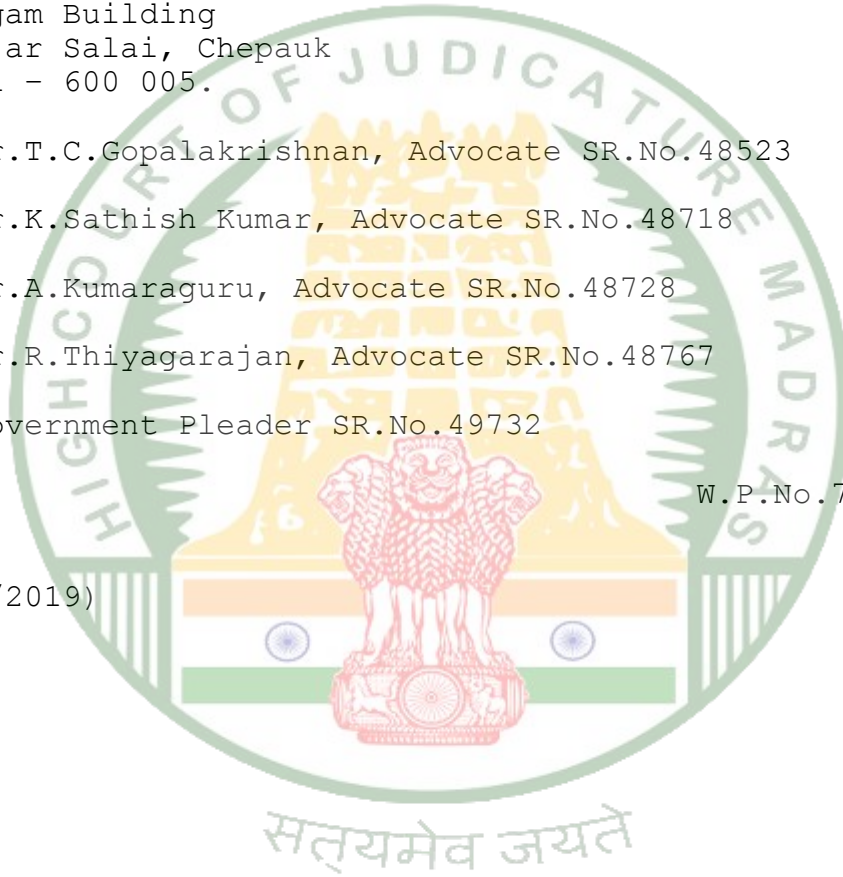
+1cc to Mr.A.Kumaraguru, Advocate SR.No.48728

+2cc to Mr.R.Thiyagarajan, Advocate SR.No.48767

+1cc to Government Pleader SR.No.49732

W.P.No.7675 of 2019

VD(CO)
GMY(24/06/2019)



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