

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.NO.1950 OF 2018

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

.. Appellant

Vs.

1.The Commissioner of Prohibition and 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 11,
Gandhi Irwin Road, Egmore,
Chennai - 600 008.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.04.2018 in W.P.No.16152 of 2012.

W.P.No. 16152/2012: Petition praying to issue a Writ of Certiorarified Mandamus Calling for the records relating to order of the 1st respondent in Na.Ka. No.MMA2(!)/ 28830/ 2007 dated 7.5.2012 in respect of the petitioner FL 2 License No.03/ 2000-2001 at Indian Officers Club Tuticorin and quash the same and consequently direct the 1st respondent to renew the petitioners license.

For Appellant : Ms.A.L.Ganthimathi
For Respondents 1-3 : Ms.A.Sri Jayanthi
Special Government Pleader
For Respondent 4 : Mr.K.Sathish Kumar

J U D G M E N T

(Judgment of the Court was made by Dr.Vineet Kothari, J.)

The appellant M/s.Indian Officers Club have filed the present intra Court appeal against the order passed by the learned Single Judge in W.P.No.16152 of 2012 filed by the appellant / petitioner against the respondents, whereby, the first respondent Commissioner of Prohibition and Excise, Chepauk, Chennai refused the renewal of FL2 License for sale of Liquor within their Club premises on the ground that the petitioner let out the said facility to another third party one Mr.J.Prakash. The observation of the learned Single Judge in the order, which is impugned in this Writ Appeal, is quoted below for ready reference:

"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 fidy 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."

2. The reasons assigned by the learned Commissioner in the order dated 07.05.2012, which was quoted by the learned Single Judge, are also quoted below for ready reference:

"On the basis of the order of the High Court of Madras the connected persons are enquired and the deposition and enquiry documents and explanation are enclosed and sent to the District Collector, Tuticorin and asked for report on this, the reference 6 cited letter of the District Collector, Tuticorin has sent detailed noted. In that stated that nearby this club, Ladies tailoring training school, elementary school are existing and at a distance of 30 ms ladies hostel run by social welfare department is functioning and this club is situated in a place where or poor to wealthy people reside and for this club, if FL 2 license is issued, it will be a hindrance to the public and specifically for ladies and children will be more hindrance and this club's main entertainment is playing cards and is against to the rules and between the club members and executives, there is no smooth relation are informed. For the above mentioned reasons, and by considering the interest of public and by considering the present circumstances for the M/s.Indian Officers Club the license of F.L.2 need not be issued and sent report."

3. The learned counsel for the appellant submitted that the reasons assigned in the impugned order of the learned Commissioner of Prohibition and Excise were that the premises of the Club being situated near the Elementary School and Ladies Tailoring Training School, etc., were never allowed to be controverted by the learned counsel for the appellant. As such no notice with such adverse report was ever supplied to the appellant along with the show cause notice giving opportunity to the learned counsel for the appellant to controvert the same and therefore, the learned Commissioner has erred in passing the impugned order and the learned Single Judge has dismissed the writ petition for the aforesaid reasons.

4. The learned counsel for the fourth respondent submitted that they have only supplied liquor to the appellant / petitioner only on the basis of the joint License obtained by them, without which they cannot supply the liquor.

5. Having heard the learned counsel for the parties and from impugned order of the Commissioner dated 07.05.2012, it is clear that the said impugned order dated 07.05.2012 was passed by the Commissioner in pursuance of the remand order of this Court in the earlier writ petition filed by the writ petitioner namely W.P.No.21651 of 2008 which was allowed by this Court on 16.03.2010 sending the matter back to the learned Commissioner of Prohibition and Excise, for giving opportunity to the appellant / petitioner. However, though the earlier rejection of License was for different reasons, in the impugned order altogether different reasons were given by the learned Commissioner while rejecting the request of the appellant / petitioner for renewal of FL.2 License.

6. The principles of natural justice require the adverse materials against the appellant to be put to the appellant and giving them an opportunity of hearing to controvert the same. This exercise does not seem to have been undertaken by the said Commissioner despite the remand made by this Court. There is no dispute before us that the factors like existence of the Elementary School and Ladies Tailoring Institute have been situated within the prohibited limits of the said Club were never put to the present appellant / petitioner and the renewal of License was refused on these grounds. There was again breach of principles of natural justice and giving opportunity of hearing the appellant.

7. In these circumstances, we again allow the present Writ Appeal and restore the matter back to the first respondent - the Commissioner of Prohibition & Excise, setting aside the order dated 07.05.2012 of the Commissioner as well as the order passed by the learned Single Judge on 12.04.2018 in W.P.No.16152 of 2012 and direct the Commissioner to pass appropriate reasoned order after giving proper and reasonable opportunity of hearing and also make the final report against the petitioner / appellant available to the petitioner and then allow them to advert the report by giving the petitioner the opportunity of hearing on 18.12.2019. We grant a period of three months from the date of hearing to the said Authority to pass such orders in accordance with law.

8. The Writ Appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

TK

To

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

2.The District Collector
Tuticorin District
Tuticorin.

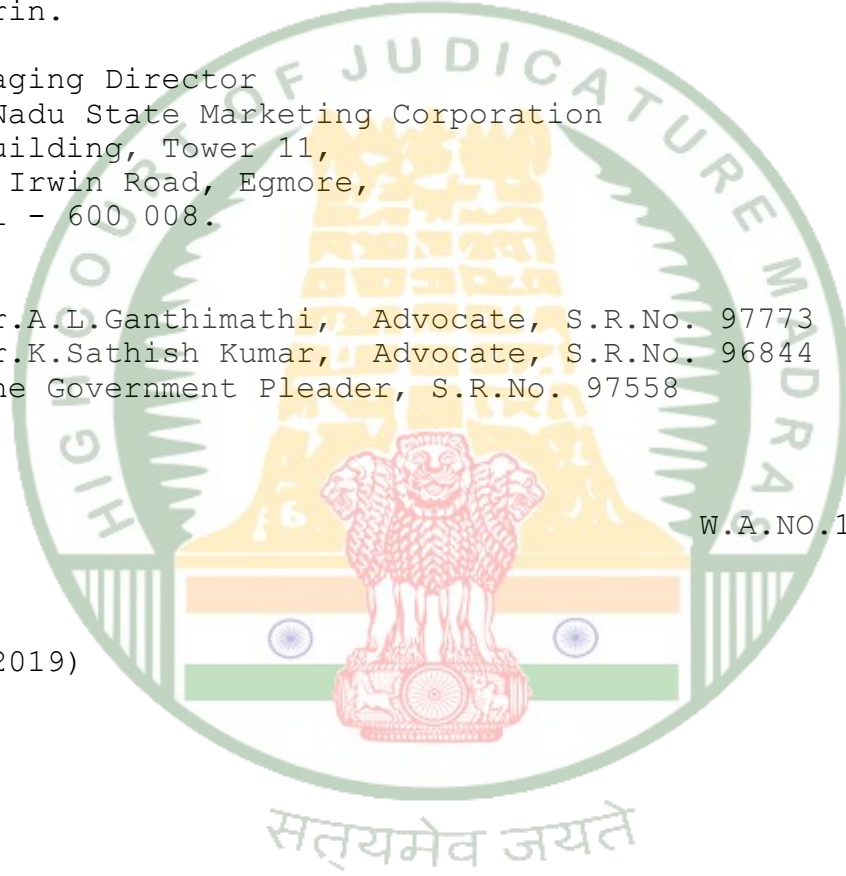
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+1cc to Mr.A.L.Ganthimathi, Advocate, S.R.No. 97773
+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No. 96844
+1cc to the Government Pleader, S.R.No. 97558

W.A.NO.1950 OF 2018

SAI (CO)
GN(11/12/2019)



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