

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :27.06.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.17466 of 2019

VENPER ACADEMY,
Represented by its CEO,
J.Satheesh Kumar,
S/o.Mr.Janardhanan,
Odyssey Towers 45 and 47,
First Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020.

Corporate Address:-
No.1/445, 2nd Floor,
Upstairs to KFC,
Opste to Sri Ramachandra University,
Mount Poonamalle Road,
Porur, Chennai.

..Petitioner

vs

- 1.The Commissioner,
Department of Prohibition and Excise,
Ezhilagam Building,
Kamarajar Salai, Chepauk,
Chennai - 600 005.
- 2.The Secretary,
Department of Prohibition and Excise,
Tamilnadu Government,
St George Fort,
Chennai - 600 009.
- 3.The Managing Director,
TASMAC,
CMDA Tower II,
IV Floor, Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
- 4.The Commissioner,
Chennai Corporation,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

5.The Commissioner of Police,
Greater Chennai,
Chennai - 600 007.

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

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 5 not to grant the bar license permanently based on the petitioner representation dated 11.12.2018 and 25.04.2019 and consequently directing the 6th respondent not to open the resto bar permanently and thus render justice.

For Petitioner : Mr.A.Kumaraguru

For Respondents

R1, R2 & R5 : Mr.R.P.Pratap singh
Government Advocate

R3 : Mr.K.Sathish Kumar
Standing counsel

R4 : Mr.T.C.Gopalakrishnan,
Standing counsel

R6 : Ms.Vasudha Thiagarajan

O R D E R

Mr.A.Kumaraguru, learned counsel on record for writ petitioner, Mr.R.P.Pratap singh, learned Government Advocate for respondents 1, 2 and 5, Mr.K.Sathish Kumar, learned Standing counsel for respondent 3, Mr.T.C.Gopalakrishnan, learned Standing counsel for respondent 4 and Ms.Vasudha Thiagarajan, learned counsel for Respondent 6 are present before this Court.

2. With consent of all the aforesaid learned counsel, main writ petition is taken up and disposed of.

3. There is no dispute or disagreement before this

Court as between the aforesaid learned counsel that this matter is covered by an earlier order made by this Court being order dated 14.06.2019 in W.P.No.7675 of 2019 in the case of Prism Corporation, Represented by its Directorate Vs. The Secretary, Department of Prohibition and Excise.

4. For the purpose of convenience, clarity and ease of reference, Paragraphs 3 to 25 of the earlier order are extracted and reproduced. The same read as follows:

'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 of 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.'

5. To be noted, in the aforesaid order, which has been extracted and reproduced, Respondent No.1 in the earlier order is Respondent No.2 in the instant writ petition. Respondent No.2 in the earlier order is Respondent No.3 in the instant writ petition. Respondent No.3 in the earlier order is Respondent No.4 in the instant writ petition. Respondent No.4 in the earlier order is Respondent No.5 in the instant writ petition. Respondent No.5 in the earlier order is Respondent No.6 in the instant writ petition. Respondent No.6 in the earlier order is Respondent No.1 in the instant writ petition. Therefore, reference to ranks of respondents in earlier order shall be read with suitable adaptations while reading it in the context of this order.

6. In the instant writ petition, 6th respondent herein [Respondent No.5 in earlier order] has filed a counter affidavit dated 26.06.2019 and learned Government Advocate shall forward a copy of the same to Respondent No.1 along with a copy of the representation dated 11.12.2018 from the writ petitioner, which has already been sent to the 1st respondent.

7. 1st respondent shall consider the writ petitioner's aforesaid representation dated 11.12.2018 and the objections to the same i.e., by treating aforesaid counter affidavit dated 26.06.2019 as objections to same before taking a decision on the application of 6th respondent herein for grant of F.L.2 License. The 1st respondent shall take up the representation, which forms subject matter of the earlier order dated 14.06.2019 and the representation dated 11.12.2018, which forms subject matter of the instant writ petition together along with the respective objections thereto and take a decision regarding the F.L.2 License at one go. In other words, the instant order and the earlier order dated 14.06.2019 made by this Court in W.P.No.7675 of

2019 shall be read together i.e., in conjunction with and in continuation of one another and decision regarding the F.L.2 License shall be taken in the light of both these orders read together. In the earlier order, this Court had fixed a time frame of four(4) weeks from the date of receipt of order. In the light of both the matters being taken up together, the entire exercise shall now be completed within four(4) weeks from 03.07.2019 i.e., by 31.07.2019.

8. This writ petition is disposed of on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

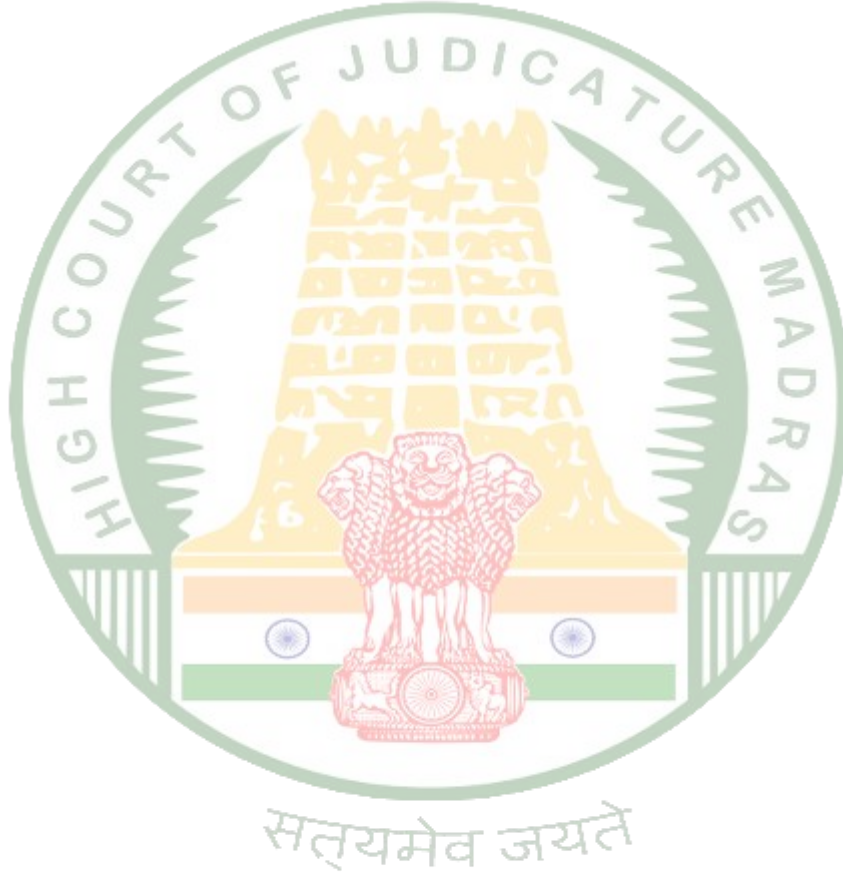
- 1.The Commissioner,
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- 4.The Commissioner,
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Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

5.The Commissioner of Police,
Greater Chennai,
Chennai - 600 007.

+1cc to Mr.K.Sathish Kumar , Advocate SR.No. 53686
+1cc to Mr.A.Kumarasamy , Advocate SR.No. 53788
+1 cc to Government Pleader Sr.No. 53987

W.P.No.17466 of 2019

ppa (CO)
A.SK(03/07/2019)



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