

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

W.P.Nos.17042, 17051, 17054 & 17057 of 2019
and

W.M.P.Nos.16595, 16597, 16604, 16603, 16607, 16608, 16609 and
16610

A.Jawaharlal ..Petitioner in W.P.No.17042 of 2019
D.Daluram ..Petitioner in W.P.No.17051 of 2019
R.Bhawarlal ..Petitioner in W.P.No.17054 of 2019
Champalal Jain ..Petitioner in W.P.No.17057 of 2019

vs

1.The Collector of Chennai
No.62, Rajaji Salai, 4th Floor,
Chennai-600 001.

2.The Commissioner for Excise,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai-600 005. ..Respondents 1 and 2
in all W.Ps

3.The Taluk Excise Officer,
Mylapore Taluk
Chennai 600 028.

.. 3rd Respondent in
W.P.Nos.17042 & 17051/2019

4.The Taluk Excise Officer,
Pursawakkam Taluk
Chennai 600 084.

..3rd Respondent in
W.P.Nos.17054 & 17057/2019

Prayer in W.P.No.17042 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating the order dated 24.05.2019 bearing Ref.No.K.Dis.L6/7248/2019 and quash that portion of the order wherein the first respondent has reduced the quantum from 60 gms to 50 gms without any reason and direct the second respondent to supply the petitioner opium weighing 60 grams as per their original professional limit from April 19' 2019 till the period of license ie., 31.03.2020.

Prayer in W.P.No.17051 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating the order dated 24.05.2019 bearing Ref.No.K.Dis.L3/7252/2019 and quash that portion of the order wherein the first respondent has reduced the quantum from 45 gms to 36 gms without any reason and direct the second respondent to supply the petitioner opium weighing 45 grams as per their original professional limit from April 19' 2019 till the period of license ie., 31.03.2020.

Prayer in W.P.No.17054 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating the order dated 14.05.2019 bearing Ref.No.K.Dis.L6/7438/2019 and quash that portion of the order wherein the first respondent has reduced the quantum from 60 gms to 50 gms without any reason and direct the second respondent to supply the petitioner opium weighing 60 grams as per their original professional limit from April 19' 2019 till the period of license ie., 31.03.2020.

Prayer in W.P.No.17057 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records culminating the order dated 24.05.2019 bearing Ref.No.K.Dis.L6/7835/2019 and quash that portion of the order wherein the first respondent has reduced the quantum from 60 gms to 50 gms without any reason and direct the second respondent to supply the petitioner opium weighing 60 grams as per their original professional limit from April 19' 2019 till the period of license ie., 31.03.2020.

For Petitioner : Mr.M.Aravind Subramaniam
(in all W.Ps)

For Respondent : Mr.R.P.Pratap Singh
Government Advocate
(in all W.Ps)

COMMON ORDER

This common order will govern these four writ petitions. In other words, this common order will dispose of these four writ petitions.

2. Mr.M.Aravind Subramaniam, learned counsel for writ petitioners in all four writ petitions and Mr.R.P.Pratap Singh, Government Advocate on behalf of of all three respondents in all four writ petitions are before this Court.

3. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

4. Considering the trajectory of the hearing today, short facts shorn of elaboration or in other words factual matrix in a nutshell, which is imperative for appreciating this order will suffice.

5. This Court is informed that all these four writ petitions are similar. To be noted, writ petitioners in each of the four writ petitions are different though the three respondents in all these four writ petitions are same but this Court is informed that the core issue or the central theme in all these four writ petitions, is the same. Therefore, all these four writ petitions are disposed of by this common order.

6. This Court is informed that the writ petitioners were Opium addicts who are now under rehabilitation. As part of rehabilitation, they had been granted permission to carry specified quantities of Opium, as authorized by the 1st respondent. To be noted, such permission has been granted under Rule 26 of the Tamil Nadu Narcotic Drug Rules, 1985 (hereinafter referred to as 'said Rules' for brevity). To be noted, said Rules is a set of subordinate legislation having been made by the Government of Tamil Nadu in exercise of its rule making power under Section 10 read with Section 78 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985).

7. A personal permit was issued to each of the writ petitioners and dates of the personal permits issued to each of the writ petitioners are 30.05.2000, 28.10.1999, 31.03.1999, 25.03.1998 being dates of permits issued to writ petitioners in W.P.Nos.17042, 17051, 17054 & 17057 of 2019 respectively.

8. Pursuant to the aforesaid personal permits, each of the writ petitioners were given specified quantities of Opium and for this, proceedings are being issued/renewed by the 1st respondent every year. Proceedings are for each financial year i.e., from April of one calendar year to March of succeeding calendar year.

9. In the aforesaid circumstances, sometime in February 2019, each of the writ petitioners applied for renewal. Such renewal request / application was made to the 1st respondent, who this Court is informed is the specified authority under said Rules. In the case of writ petitioner in W.P.No.17051 of 2019, the writ petitioner was thus far being given 45 grams per month and the same has been reduced to 36 grams. When the renewal for calendar year i.e., 2019-2020 (be precise from 01.04.2019 to 31.03.2020) was given and with regard to the other three writ petitioners being petitioners in W.P.Nos.17042, 17054 and 17057

of 2019, the quantity which was 60 grams per month thus far, has been reduced to 50 grams.

10. The aforesaid reduction in the monthly quantity is the trigger for the writ petitioners to file the instant writ petitions in this Court. When the matter came up for admission, learned State counsel took time to produce records. Records were produced in Court today.

11. Records reveal that a three member Medical Advice Committee was formed and this three member Medical Advice Committee is constituted by a Professor of General Medicine, A psychiatrist and a Chest Physician. Based on the advice of the three member Medical Committee, aforesaid reduction has been made is State counsel's say.

12. A perusal of the files that were produced reveals that there are no details about clinical examination of the writ petitioners by the Medical Committee. It is submitted by the learned counsel for writ petitioners, on instructions, that none of the writ petitioners were examined. In other words there was no physical / clinical medical examination of any of the writ petitioners by the Medical Committee is learned writ petitioners' counsels' say.

13. In this regard, learned counsel for writ petitioners drew the attention of this Court to Rule 28 of said Rules which reads as follows:

28. Record of medical examination: (1) In every case of medical examination under these rules, the Medical authority shall before arriving at its decision, take into consideration the age, general health, medical history and period of habituation to taking opium and any other matter as it deems fit and may make such such clinical examination of the applicant and carry out such test as it deemed necessary. The medical authority may also take into consideration any statement made by the applicant or any fact or observation recorded in writing by the personal medical Advisor of the applicant produced by him.

2. A record of the medical examination of the applicant under these rules shall be kept by Medical Authority in from ND/ME. The document, if any, produced by the applicant shall form part of the record. The record of the medical examination in Form ND/ME with the document referred to above shall be forwarded to the Collector immediately after the medical examination is completed.

14. A perusal of Rule 28 of the said Rules reveals that Medical Authority concerned should necessarily make clinical

examination of the applicant and carryout such tests that are deemed necessary. Besides this, some other parameters have also been laid down in said Rules, which inter alia reveal that the Medical Authority concerned should also take into consideration the statement made by the applicant or any fact or observation that is recorded in writing by the personal Medical Advisor of the applicant. To be noted, the applicant under the Rules is reference to writ petitioners in each of these writ petitions. In the instant case, a perusal of the impugned order reveals that there is a observation recorded in writing from the personal Medical Advisor of the writ petitioners, but there is nothing about clinical examination of writ petitioners either in the impugned orders or in the records as shown to this Court by State Counsel as relevant parts of the records.

15. In the light of the narrative thus far and more so, in the light of Rule 28 which has been extracted and reproduced supra, the following order is passed:

A. 1st respondent, after taking into account the convenience of the three member Medical Committee, shall communicate at the earliest in any event within a fortnight from the date of receipt of a copy of this order to each of the writ petitioners in writing under due acknowledgment, a date, time and venue for clinical examination of each of the writ petitioners.

B) The writ petitioners shall make themselves available for clinical examination on the date, time and venue mentioned in such communication without fail.

C) After such clinical examination, the Medical Committee shall submit its decision to the 1st respondent Collector and while doing so, the Medical Committee shall take into account all the parameters / determinants which has been adumbrated in Rule 28 of the said Rules, which has been extracted and reproduced supra and other relevant determinants contained in said Rules.

D) After such medical report, 1st respondent shall revisit each of the impugned orders and consider enhancing the quantity and pass orders which shall be read as addendum to each of the impugned order. 50 mg for the month of April has admittedly not been given to the writ petitioners. This is recorded and this also shall be taken into account while revisiting the impugned orders.

(E) To be noted though obvious, it is made clear that the impugned order will continue to operate and the writ petitioners will be entitled to get the quantity

which has been sanctioned vide the impugned order until the aforesaid exercise is completed.

(F) Addendum order of the 1st respondent shall also be communicated to each of the writ petitioners under due acknowledgment.

G) The aforesaid exercise of clinical examination of each of the writ petitioners by the Medical Committee and addendum order by the 1st respondent under the said Rules and communication of the same to each of the writ petitioners shall be completed within a over all time frame of 8 weeks from the date of receipt of a copy of this order.

16. All four writ petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Collector of Chennai

No.62, Rajaji Salai, 4th Floor,
Chennai-600 001.

2.The Commissioner for Excise,
Ezhilagam, Kamarajar Salai,
Chepauk, Chennai-600 005.

3.The Taluk Excise Officer,
Mylapore Taluk
Chennai 600 028.

4.The Taluk Excise Officer,
Pursawakkam Taluk
Chennai 600 084.

+4ccs to Mr.M.Aravind Subramaniam,Advocate,S.R.No.56659 to 56662

W.P.Nos.17042, 17051, 17054 &
17057 of 2019

MR (CO)

RRS (10/07/2019)