

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2019

PRONOUNCED ON : 30.04.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.34060 of 2018

& WMP Nos.39564 & 39565 of 2018

M/s.Drizzle

Represented by its Proprietor

Mr.S.Prakash

...Petitioner

Vs.

1. State of Tamil Nadu,
Rep. By its Principal Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

...Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his order Letter No.P&E 2(2)/5374/2015 dated 12.12.2018 and to quash the same as being an illegal and unsustainable in law and for a consequential direction to the 2nd respondent to renew the F.L.-2 License No.07/2013-14, in respect of the petitioner for the year 2018-2019 at the new address at Plot No.67,68, & 69, Golden Sea View, Part - 3, VGP 2nd Main Road, VGP Layout, Palavakkam, Chennai - 600 041.

For Petitioner : Ms.N.Kavitha Rameshwar

For Respondents: Mr.A.Zakkir Hussain, Govt. Advocate

O R D E R

The petitioner was the holder of an FL-2 licence, running a club and restaurant in Neelangarai without interruption, till the year 2016. On 15.12.2016, the Supreme Court in the case of State of Tamil Nadu V. K.Balu ((2017) 2 SCC 281) held that it was impermissible for bars to be run within 500 meters limit

from the edge of a highway and consequently the petitioner had to shift the location of his restaurant and bar elsewhere.

2. The renewal fee for the FL-2 licence had been paid upto 31.03.2017. Thus, for the year 2017-18, the petitioner was on the look - out for alternate premises to set up the club and bar and he states that he was in a position to finalise the alternate location only in October, 2017.

3. The petitioner states that the process of renewal is effected on-line and the application could not be submitted till such time the alternate location had been identified and finalised as the system was designed to accept only those application forms that were complete as regards all fields. The petitioner thus, was unable, despite its best efforts, to access the online portal. Several representations were made to the Commissioner, Prohibition and Excise, Chennai/R2, for acceptance of the renewal fee at the new address, manually. According to the petitioner all requisite statutory clearances and licenses, such as fire safety and food safety and standards had also been obtained.

4. There being no response to the representations made on 25.06.2018 and 25.08.2018, the petitioner was constrained to approach this Court in W.P.No.30114 of 2018 seeking a direction to R2 for renewal of FL-2 licence for the period 2018-19 at the new address, viz. VGP 2nd Main road, VGP Layout, Palavakkam, Chennai. The Writ Petition was ordered on 22.11.2018 directing R2 to consider the request of the petitioner for renewal of licence and pass appropriate orders on merits and in accordance with law within a period of four weeks from date of receipt of a copy of the order. The petitioner thereafter approached R2 for renewal of licence and the impugned order dated 12.12.2018 has been passed by R2 rejecting the application on the ground that the same had not been submitted within time.

5. Learned counsel for the petitioner stresses on the position that pursuant to December 2016, the petitioner had to necessarily close all operations in compliance of the order of the Supreme Court dated 15.12.2016. Moreover the impugned order dated 12.12.2018 inter alia states that the petitioner had neither paid the requisite fee nor applied for renewal of the licence before the expiry of the licence period i.e., 31st March, as required under the Rules and hence the FL-2 licence had already been cancelled by R2 vide proceedings No.P & E 2(2)/5374/2015 dated 28.12.2017.

6. This order, though available at the time when this Court passed the order in W.P.No.30114 of 2018 dated 22.11.2018, was not cited by the Government Pleader nor was a copy of the same circulated to the Court or to the petitioner. According to

the counsel for the petitioner it was only on receipt of the impugned order that the petitioner was even aware that such an order had been passed.

7. Mr.Zakkir Hussain, learned Government Advocate for the respondents, however, reiterates that the order has been served by the respondents upon the petitioner, albeit at the old address, viz. No.2/632, Sulthan Ahamed Street, ECR/Neelankarai Village, Sholinganallur Taluk, Kancheepuram Taluk on 29.12.2017.

8. Moreover, the counter filed by the second respondent relies heavily on Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 (in short, 'Liquor Rules') that state that a licence holder desiring renewal of licence shall make an application in Form F.A.1.2 along with payment of applicable privilege fee on or before the last date of February of the year in which the licence expires. In the present case, the applicant has neither paid the requisite fee nor has it applied for renewal within the timelines stipulated and it is in these circumstances, that the representations filed by the petitioner have been rejected.

9. As far as the submission of the petitioner regarding the submission of application form on-line, the counter filed admits that the Registry of the Commission of Prohibition and Excise, which is the licensing authority for issue of FL-2/FL-3 licence and renewals thereof, has transitioned from manual processing of applications to on-line processing of the same. The counter states that this conversion from manual to online is for the purpose of streamlining efficiency and in order to ensure that the status of the FL licences are monitored properly. There is thus no quarrel or dispute in regard to the submissions of the petitioner in regard to this aspect of the matter.

10. The substratum of the arguments of the learned counsel for the petitioner revolve around Rule 22 of the Liquor Rules that provide for cancellation or suspension of licence, particularly the violation of the principles of natural justice. Sub-rule (1) provides for issuance of notice to the licence holder to show cause within reasonable time, not exceeding fourteen (14) days, as to why the licence held by it not be cancelled or suspended. In the present case, admittedly, no notice has been issued to the petitioner in terms of Rule 22 specifically proposing cancellation of licence.

11. The petitioner relies on the judgment of the Division Bench of the Bombay High Court in W.P.No.7597 of 2018 in the case of Shri Vikra Uddhav Chug V. The State of Maharashtra and others dated 10.09.2018 passed in a similar factual matrix as the present matter.

12. The petitioner in that Writ Petition had challenged a demand notice issued by the Superintendent of State Excise. The demand arose in circumstances similar to the present case where the petitioner had to re-locate his shop from within the distance of 500 meters from the National Highway consequent upon the judgment of the Supreme Court in the case of State of Tamil Nadu and others (supra) and was thus unable to renew his licence in time after identifying alternate premises. The petitioner had applied for shifting of licence that was accepted. However, he was unable to shift to the new premises as there was a prohibition on the use of that shop for consumption or vending of alcoholic drinks. The petitioner thus requested the authority to cancel the shifting order and his request was acceded to.

13. At that juncture the Supreme Court modified its earlier order restricting the prohibition in its order dated 15.12.2016 to those shops and licence holders not situated within Municipal Corporation and Municipal Council areas. As a result, shops situated in Municipal Corporation and Municipal Council areas could continue business without being affected by earlier of the Supreme Court dated 15.12.2016. The petitioner was one of the beneficiaries of the modification and his licence in the original premises was thus renewed. However, a demand notice was issued to him on the ground that he had not discharged the liability to licence fee payable on account of the transfer of the licence from one site to another. It is the aforesaid demand that was challenged before the Court.

14. Taking into account the narration of facts as well as the position that the shifting was not voluntary but was occasioned only by reason of the judgment of the Supreme Court, the Bombay High Court concluded that the petitioner could not be visited with fee in these circumstances and the demand was set aside. The conclusion in the aforesaid matter would advance the case of the petitioner before me as well, as the facts and circumstances are broadly similar.

15. Learned counsel for the petitioner also relies on a decision of the Division Bench of this Court in the case of State of Tamil Nadu represented by the Secretary, Department of Prohibition and Excise and others V. Hotel Mount Heera and another (CDJ 2017 MHC 7700). The challenge was to a proposed amendment to Rule 21 of the Rules. The amendment intended was that an application for renewal of licence that was received after expiry of licence period would not be considered, as a consequence that the licence originally granted would be deemed to stand cancelled. The Bench noted that the amendment was only proposed and had not in fact been carried into effect.

16. Incidentally, the Bench observed that the State, by proposing the amendment in question, had clarified the position

that renewal applications filed presently, that were belated, could well be entertained if the authority concerned was of the view that sufficient reasons had been offered for the delay and conditional upon payment of prescribed and necessary fee. Applying the same to the case on hand, the application of the petitioner for renewal, though belated, can well be taken up for consideration by the authorities upon payment of the necessary charges and fee.

17. Moreover, Rule 22 of the Liquor Rules reads as follows:

'22 Cancellation or suspension of licences.- (1) The licensing authority may, after giving in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order proposed to be issued, stating the reasons there for, by an order in writing specifying the reasons, cancel the licence under these rules - 26 - or suspend it for such period as it thinks fit, if in its opinion, the licence holder has failed to comply with any of the conditions of the licence or of any of the provisions of the Act or the rules made thereunder. (2) Notwithstanding anything contained in sub-rule (1), the licensing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed. In such a case, the reason for suspension shall be communicated to the licence holder within 5 days from the date of suspension. (3) When a licence is cancelled or suspended or temporarily suspended or is not renewed after its expiry the licence holder shall not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock. The licence holder shall not also be entitled to claim any compensation on account of cancellation, suspension, temporary suspension or non-renewal of the licence.'

18. In the present case no notice has been placed on record affording opportunity to the petitioner to show cause why the FL-2 licence is to be cancelled. In fact, it is admitted that no such notice has been issued. Even the order of cancellation has, been communicated to the petitioner only to the old address. The Government confirms at page 3, line about 8 of the counter that 'The District Collector, Kancheepuram, in his letter dated 11.10.17 has reported that the Assistant Commissioner (Excise), Kancheepuram has inspected the above licenced premises on 22.09.2017 and reported that the club and the bar was closed on 01.04.2017 as per the Hon'ble Supreme

Court order and the above club secretary has not remitted the prescribed fees and not applied for the FL-2 licence (bearing No.7/2013-14) for the year 2017-2018.

19. Thus when the authorities were clearly aware of the position that the petitioner has complied with the order of the Supreme Court and has closed the bar as early as on 01.04.2017, I fail to understand why order dated 28.12.2017 was communicated to the old address, knowing full well that it was closed. The aforesaid order came to the attention of the petitioner only in the impugned rejection order dated 12.12.2018.

20. Though there is no challenge before me to order dated 28.12.2017, the order of rejection dated 12.12.2018 is based only on the same, as well as on the provisions of Rule 21 relied on by the respondents. In the light of my categorical conclusion that the order dated 28.12.2017 has itself been passed in blatant violation of the principles of natural justice and the decision of the Division Bench of this Court in the case of Hotel Mount Heera and another (supra), the only recourse left to the Court is to set aside impugned order dated 12.12.2018, and I do so.

21. Moreover, I find some force in the submission of the petitioner to the effect that the change in location and the consequent elapse of time in identifying the new premises for the shop was the reason for the delay in seeking renewal of licence. Evidently, the shift was not voluntary and the petitioner cannot be blamed for the elapse of time, in the circumstances as I have noticed and narrated above.

22. In the light of the discussion as above, this Writ Petition is allowed and the impugned order dated 12.12.2018, quashed. The petitioner is permitted to file a fresh application along with requisite annexures and applicable fee before the second respondent within a period of two (2) weeks from the date of receipt of a copy of this order. The second respondent shall consider the application on merits and in accordance with law without reference to the delay occasioned in filing the same and pass orders on merits, upon hearing the petitioner, within a period of four (4) weeks from conclusion of personal hearing. No costs. Consequently, connected Miscellaneous Petitions are closed.

SI

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Prohibition and Excise,
Chepauk, Chennai - 600 005.

+1cc to M/s.N.Kavitha Advocate, SR.No.42835/19
+1cc to the Govt.Pleader, Vide Sr.No.43176/19

Writ Petition No.34060 of 2018
& WMP Nos.39564 & 39565 of 2018

Kak(26/06/2019)



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