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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.06.2019
CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.34636 of 2018
and
W.M.P.No.40158 of 2018

Nehru @ Kuppusamy
No.24, Vasuki Nagar
New Iyyanar Koil Street
Kuyavarpalayam
Puducherry-1

..Petitioner

vs

1.The Commissioner(Excise)
Government of Puducherry
Puducherry.

2.The Deputy Commissioner(Excise)
Government of Puducherry
Puducherry.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in No.3122018/DCE/T (P)/2018/567 dated 06.12.2018 conveying the intention of the Government to withdraw the Provisional Confirmation Order of Arrack Shop No.7(B)-Kanniakoil and to quash the same.

For Petitioner : Ms.S.Radha Gopalan

For Respondents : Mr.J.Kumaran
Additional Government Pleader
(Puducherry)

For intervenor : Mr.K.M.Vijayan, Senior counsel
For M/s.K.M.Vijayan Associates

O R D E R

Ms.S.Radha Gopalan, learned counsel on record for writ petitioner, Mr.J.Kumaran, Additional Government Pleader, Pondicherry on behalf of the respondents 1 and 2 (official respondents) and Mr.K.M.Vijayan, learned Senior counsel on behalf of the learned counsel on record for petitioner in W.M.P.No.3453 of 2019 in W.P.No.34636 of 2018, who is being



heard as an intervenor in the instant writ petition (owing to a separate order made today in implead petition being W.M.P.No.3453 of 2019) are before this Court.

2. With consent of all the aforementioned counsel, main writ petition is heard out.

3. The order that is assailed in the instant writ petition is dated 06.12.2018 bearing No.3122018/DCE/T(P)/2018/567. This order shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

4. Impugned order has been made by the Government of Puducherry.

5. Subject matter of the instant writ petition is an Arrack shop in Pondicherry being Shop No.7-B at Kanniakoil of Bohanur commune, Puducherry [hereinafter 'said shop' for brevity, clarity and convenience]. A Gazette notification dated 04.06.2018 has been placed before this Court as part of the case file and attention of this Court is drawn to License No.7, which goes by the caption 'Kanniakoil'.

6. From the submissions made by the aforesaid learned counsel and learned Senior counsel in the hearing today, it comes to light that auction for running said shop was held and the legislation which governs this exercise and running of said shop is 'Puducherry Excise Act, 1970(No.12 of 1970)' [hereinafter 'said Act' for the sake of brevity].

7. Writ petitioner was declared as Successful bidder qua said shop. There is no disputation or disagreement before this Court that a provisional confirmation order was issued as the writ petitioner was the successful bidder. There is also no disputation that this provisional confirmation order is subject to confirmation by Government and that it was issued solely for the purpose of facilitating the running of said shop with effect from 01.11.2018.

8. Pursuant thereto, an order dated 31.10.2018 was passed, for the period from 02.11.2018 to 30.06.2019 qua said shop. This order also makes it clear that the provisional acceptance of the writ petitioner's bid is subject to confirmation by the Government.

9. It is not in dispute that writ petitioner is running said shop now pursuant to the said provisional confirmation order and interim order made by this Court in W.M.P.No.40158 of 2018 in W.P.No.34636 of 2018, staying the operation of the impugned order. To be noted, impugned order is one withdrawing the



provisional confirmation order. This brings to light the position that from the case files placed before this Court, the writ petitioner vide order dated 31.10.2018 and interim order of this Court has been running the said shop but for the period from 02.11.2018 to 30.06.2019. To be noted, we are now four days away from 30.06.2019. In other words, four days from now, order dated 31.10.2018 would elapse.

10. Be that as it may, the impugned order, as alluded to supra has been made under Section 29(1) of said Act. Section 29 (1) of said Act is captioned 'Power to Withdraw licence' and the same reads as follows:

'29. (1) Whenever the authority which granted any licence under this Act considers that such licence should be withdrawn for any cause other than those specified in Section 28, it may withdraw the licence on the expiration of not less than thirty days' notice in writing of its intention to do so.'

11. A perusal of Section 29(1) reveals that the authorities have power to withdraw the license under this provision for reasons other than those adumbrated in Section 28. It may not be necessary to advert to the reasons adumbrated in Section 28 as it is nobody's case that instant case falls under Section 28 of the said Act.

12. It was contended by learned counsel for writ petitioner that if the provisional confirmation order had been accepted by the Government, the writ petitioner would have been able to run said shop for three consecutive excise years, subject of course to enhancement of the fee payable in this regard.

13. From the case file placed before this Court and the submissions made in the hearing it does not come out with clarity and specificity as to what these three years would be. The reason is a lease renewal order placed before this Court by the writ petitioner being an order dated 21.06.2017 talks about renewal of lease for the period from 01.07.2017 to 30.06.2018 and this period has been described as 'another 12 months'. Learned Senior counsel for intervenor, adverting to this, submits that this would clearly show that the 1st year was from 01.07.2016 to 30.06.2017, and therefore 01.07.2017 to 30.06.2018 has been described as another 12 months. Saying so, it was submitted by the learned Senior counsel for intervenor that the present period of 01.07.2018 to 30.06.2019 would effectively be the third year. It was also highlighted that this is a document filed by writ petitioner in the typed set of papers of writ petitioner.



14. To be noted, there is no dispute that the aforesaid lease renewal order had been placed before the Court by the writ petitioner himself.

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15. However, State counsel, referring to the counter affidavit, submits that this is the first year. This is articulated in paragraph 4 of counter affidavit filed in support of writ petition, which reads as follows:

'4.I submit that the current lease year viz., 2018-19 being the first year of a block year of three years i.e 2018-21, all the arrack shops in the U.T. of Puducherry were brought into open auction along with the impugned Arrack shop AS No.7(B)-Kanniakoil.

A Notification bearing No.1710/DCE/T(P)/AUC/2018-19 dated 04.06.2018 for auction has been published by this office in the Extra-ordinary Gazette No.77 of Government of Puducherry dated 12.06.2018. As such, the impugned shop was brought into open auction and was not granted any renewal.'

16. Be that as it may, writ petitioner contended that this is the second year.

17. It may not be necessary to embark upon the exercise of resolving this controversy as the short issue that falls for consideration is whether the withdrawal order under Section 29 (1) of the said Act by the Government, withdrawing the provisional confirmation is sustainable. To put it differently, question is whether impugned order can be sustained.

18. Though there are several averments in the affidavit filed in support of the writ petition, the two grounds that were projected in the hearing today are that (a) if the Government had accepted the provisional confirmation order, writ petitioner would have been able to run the said shop beyond 30th June 2019 and (b) location of said shop having been notified in the gazette [04.06.2018 gazette notification alluded to supra], it cannot now be held to be objectionable by the Government.

19. A perusal of the counter affidavit filed by the State reveals that there has been objection to the location of the said shop. This is articulated in paragraph 6 of the counter affidavit which reads as follows:

'6.It will be pertinent to submit that during the previous lease year 2017-18, the impugned arrack shop and another arrack shop viz., 11(B)-Mullodai Arrack shop could not be established for one month i.e in July 2017 owing to public objection and also due to the objection from sitting MLA of the constituency Thiru.N.Danavelu.



Thereafter, the arrack shop was established after one month by convincing the public somehow.'

20. In the light of the limited scope of submissions that have been made, the points that fall for consideration are two fold and one turns on legal position qua Liquor vending. Liquor vending is not a right and it is a mere concession. This obtaining position of law is fairly well settled. Liquor vending being only a concession and not a right, it cannot be gainsaid by the writ petitioner that the impugned order made under Section 29(1) of said Act is untenable or is liable to be set aside, on the ground that if the provisional confirmation order had been accepted by the Government, writ petitioner would have been able to run the said shop beyond 30.06.2019. This Court is unable to accept the other ground that location having been published in Gazette cannot now be held to be objectionable, as such an order published in a gazette cannot override and take away the statutory powers of the Government under Section 29(1) of said Act. To be noted, in the considered view of this Court, a reading of Section 29(1) brings to light that the power under Section 29(1) is clearly an inherent power to rescind. It applies with greater force in this case as the provisional confirmation order has not been confirmed by the Government. The other aspect of this second point is, while the impugned notice refers to said shop as 7(B), the Gazette publication reads license No.7. When this was noticed by the Court, learned counsel for writ petitioner and State counsel very fairly submitted that both had not noticed it earlier. Be that as it may, as this Court is taking the view that publication of location even if construed as approval of the location, cannot take away the statutory rights of Government under Section 29(1) of said Act, further elaboration or deliberation in this regard is not necessary.

21. Moreover, a perusal of the impugned notice as well as the aforesaid order dated 31.10.2018 makes it clear that what was granted in favour of the writ petitioner is only a provisional confirmation order. It also comes out clearly that this provisional confirmation order is subject to confirmation by the Government. More importantly, it also comes out clearly that the provisional confirmation order itself was granted merely to facilitate the writ petitioner to run the said shop with effect from 01.11.2018. In the light of these aspects of the matter coming out clearly, this Court is unable to persuade itself to hold that the impugned order made in exercise of powers under Section 29(1) of said Act is bad in law.

22. This Court has also taken into account the undisputed obtaining factual position that the money paid by the writ petitioner is for the period 02.11.2018 to 30.06.2019 and in any



event, the writ petitioner has been running the said shop until today. Therefore, the writ petitioner has effectively, run the said shop for the entire period for which monies were paid. This aspect has also been taken into consideration.

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23. In the light of the narrative thus far, as alluded to supra, this Court is unable to convince itself that the impugned order is illegal. Writ petition is devoid of merits and the same fails. Writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner(Excise)
Government of Puducherry
Puducherry.

2.The Deputy Commissioner(Excise)
Government of Puducherry
Puducherry.

+1cc to M/s.S.Radha gopalan, Advocate sr.53106
+1cc to M/s.K.M.Vijayan Associates, Advocate sr.53057

W.P.No.34636 of 2018
and

W.M.P.No.40158 of 2018

jp(co)
nr 07/08/2019