



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **23.07.2019**

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)Nos.5762, 5766, 5782 of 2011
and M.P.(MD)Nos.1, 1 & 1 of 2011

T.Sridharan
Prop. M/s.Thangiya Vaithiyasalai,
6/99A, Anjukuttuvilai Post,
Agastheeswaram Taluk,
Kanyakumari District. ... Petitioner in W.P.(MD).Nos.5762
& 5766 of 2011.

T.Thangaswamy
Prop. M/s. Swamy Ayurvedha Vaithiyasalai,
Anjugramam,
Alagappapuram Village,
Agastheeswaram Taluk,
Kanyakumari District. ... Petitioner in
W.P.(MD).Nos.5782 of 2011

-Vs-

1.The Commissioner,
Prohibition & Excise,
Chepauk, Chennai - 5.

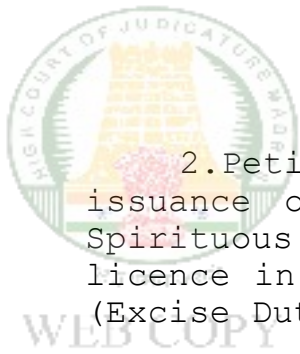
2.The District Collector,
Kanyakumari District,
Nagercoil.

...Respondents in all Petitions

Common Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned orders passed by the 1st respondent in Ma.Aa.1(1)/12798/10, Ma.Aa.1(1)/12799/10 dated 22.02.2011 and Ma.Aa.1(1)/8695/04 dated 04.01.2011 quash the same and directing the respondents to issue the SP-XIV Licence and L3 Licence to the petitioners.

For Petitioner	: Mr.H.Velavadhas
(in all petitions)	
For Respondent	: Mrs.J.Padmavathy Devi
(in all petitions)	Special Government Pleader

COMMON ORDER



2. Petitions in W.P.(MD).Nos.5762 and 5766 of 2011 pray for issuance of a licence in Form SP-XIV in terms of the Tamilnadu Spirituous Preparations (Control) Rules 1984 (in short TSPCR) and a licence in Form L-3 in terms of the Medicine and Toilet Preparation (Excise Duties) Rules 1956 (in short MTPEDR).

3. The petitioner in W.P.(MD).Nos.5762 of 2011 claims to be the Proprietor of a Vaithiyasalai under the name and style of 'Thangiya Vaithiyasalai', manufacturing various Ayurvedic preparations for dispensing to the patients in the Vaithiyasalai. The dispensation is only in-house and not to the public.

4. An application was filed for issuance of SP-XIV licence to the District Collector, who rejected the application on 28.05.2010. An appeal was filed before the first respondent, the Commissioner, Prohibition & Excise, who also rejected the same. Though the reasoning set out in the order is manifold including that the preparation would be an illicit aristam, the reasoning that stands out is that, the petitioner did not hold a licence to manufacture drugs in terms of Drugs and Cosmetics Act 1940 (in short 'Act'), which is a mandatory requirement.

5. In W.P.(MD).No.5766 of 2011, the same petitioner has sought a L-3 licence under the MTPEDR Act from the District Collector. The abovesaid licence is for the manufacture of Ayurvedic preparations for use in-house for in-patients in the Vaithiyasalai, and not for circulation or for commercial purposes. The application for L-3 licence was rejected on 27.05.2010 and an appeal filed by the petitioner challenging rejection was also rejected on 22.02.2011. As in the case of the SP-XIV licence, though various reasons have been set out by the first respondent to justify the rejection of the application for licence, what stands out is the reason that the drug licence has not been obtained.

6. Mr. H. Velavadhas, learned counsel appearing for the petitioner would argued that there is no necessity for a Drug licence to be obtained in the light of Rule (4) (a) of the TNSPCR, 1984. The relevant rule relied upon by him is extracted herein below:

'(4) All application for grant or renewal of licence in Form S.P.XI or in Form S.P.XIV shall be made in Form S.P.XV which shall be duly stamped to the Collector. On receipt of such application and after making the enquiry, if the Collector considers that the applicant is eligible for the licence, he shall issue the licence. If on any account the Collector considers it not necessary to renew a licence, he shall do so only after giving as opportunity to the licensee to represent his case. The Collector shall, in exercising his powers under the rule, have regard to the following considerations namely:-



(a) Whether the applicant has taken out the prescribed licence under the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940) or under the Medicinal and Toilet Preparation (Excise Duties) Rules 1956 or whether he is qualified to hold the licence:

.....'

7. Thus according to him, one of the conditions to be complied with by the applicant is possession of either a licence under the Act or a licence under the MTPED Rules and the conclusion of the authority to the effect that the Drug licence was mandatory is incorrect.

8. Likewise, as far as L-3 licence is concerned, he relies on Rule 95 of the MTPED Rules to state that the Rule does not mandate obtaining a drug licence. Rule 95 is extracted below.

'95. Disposal of application for licence to manufacture medicinal and toilet preparations in a bonded/non-bonded manufactory by the licensing authority.- (1) On receipt of an application, licensing authority shall cause such enquiries to be made as it may deem necessary including enquiries into the following:

(i) the qualifications and previous experience of technical personnel engaged in the manufacturing operation;

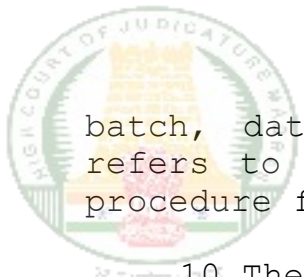
(ii) the equipment of the bonded and non-bonded manufactory;

(iii) soundness of the applicant's financial position; and

(iv) suitability of the proposed building for the establishment of manufactory.

(2) If the licensing authority is satisfied that the applicant is a fit party whom a licence for the manufacture of medicinal and toilet preparations in a bonded or non-bonded manufactory may be granted, it shall issue a licence, approve the plans submitted. If they are in order, and direct the applicant to contract or establish, as the case may be, and equip the manufactory as per approved plans. The applicant shall modify the plans in such manner as the licensing authority may direct at any time before or after the approval of the plans. After the completion of constructions and equipment of the manufactory the licensing authority shall cause a verification of the plans; the applicant then shall submit blue prints of the plans, shall be retained in the office of the licensing authority, one shall '

9. He also relies upon a decision of the Division Bench of this Court in a batch of writ appeals in W.A.2943 and 2944 of 2001 and



batch, dated 19.04.2006, wherein at para 17, the Division Bench refers to the provisions of Rule 95 which prescribe the standard procedure for grant of licence.

10. The learned Special Government Pleader defends all three impugned orders, reiterating the necessity for a Drug licence for an application for SP-XIV and L-3 licences. She would also point out that the preparations in question contain alcohol or high quantities of alcoholic substances and are not-fit for distribution to the public. To me, the critical question is whether the possession of a Drug licence is mandatory for the grant of the licences sought.

11. To answer this, I need look no further than Rule 94 of the MTPED Rules, extracted below:

"94. The applicant to be in possession of the requisite licence under the Drugs and Cosmetics Act, 1940.- No licence for the manufacture of medicinal and toilet preparations or renewal of such licence shall be granted to an applicant unless he holds the requisite licence under the Act for the manufacture of the said medicinal preparations."

A plain reading of the aforesaid rule would make it clear that no licence for manufacture of medicinal and toilet preparations can be issued to an applicant until a Drug licence is obtained by it. Thus, a drug licence is a pre-condition for issuance of a licence under the MTPED Rules.

12. Rule (4) (a) of the TNSPC Rules calls upon the applicant to hold either a Drug licence or a L-3 licence and the latter in turn requires the applicant to hold a Drug licence.

13. In fact the decision of the Division Bench referred to supra also supports this position, since in conclusion the Division Bench states as follows.

'However, it is made clear that if any application is made for grant of licence, the authority concerned is bound to follow the procedure provided in the licencing chapter, particularly Rule-95 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 and dispose of the application expeditiously.'

Chapter 6 of the MTPED Rules dealing with licensing comprises of Sections 82 to 95 and includes 94 which, in my considered view, imposes a mandatory condition.



14. In the light of the aforesaid discussion, all three writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Commissioner,
Prohibition & Excise,
Chepauk, Chennai - 5.
2. The District Collector,
Kanyakumari District,
Nagercoil.

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-77062[F] dated 23/07/2019)

W.P. (MD) Nos. 5762, 5766, 5782 of 2011
23.07.2019

gns/tm

JM/17.09.2019/5P/4C