



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 12.06.2019**

**CORAM:**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P.[MD]No.453 of 2018**

**and**

**W.M.P.[MD]Nos.452 & 453 of 2018**

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I.Sreekrishnan

... Petitioner

Vs.

1.State rep by,

The Secretary to Government,  
Prohibition and Excise Department,  
Secretariat, Chennai - 9.

2.The Commissioner,

Prohibition & Excise,  
Chepauk,  
Chennai - 600 005.

3.The District Collector,

Kanyakumari District,  
Nagercoil.

4.The Assistant Commissioner,

Excise, Nagercoil,  
Kanyakumari District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pursuant to the impugned order passed by the first respondent in G.O.(D)No.249 dated 06.11.2017 and quash the same.

For Petitioner

: Mr.H.Velavadas

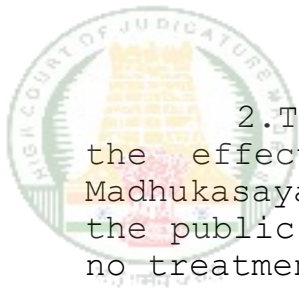
For Respondents

: Mr.A.Thiyagarajan

Government Advocate

**O R D E R**

The petitioner claims to be a Vaidhiyar and maintains and manages an Ayurvedic Siddha Vaithiyasala at Kanyakumari District. He was granted an L3 license on 31.05.1996, after consideration of his application under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. The license is issued permitting the manufacture of Ayurvedic or Unani preparations that are to be dispensed solely for medicinal purposes. According to the petitioner, the license was being renewed periodically and was valid till 31.03.2003. While this is so, an application was filed seeking renewal for the period 2004-2005 on 28.05.2004.



2.The application was rejected making certain allegations to the effect that the license has been misused for preparing Madhukasayam under the guise of Arishtam and supplying the same to the public as illicit liquor. Another reason for rejection was that no treatment of patients was being carried on in the Vaithiyasala.

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3.An appeal was filed before the Commissioner of Prohibition & Excise, Chennai, who remanded the matter to the Collector for fresh enquiry. After enquiry, the application was once again rejected on 26.09.2003.

4.The petitioner moved the Madurai Bench of the Madras High Court in W.P.[MD]No.5979 of 2004, seeking a direction for the disposal of his application for renewal and an order came to be passed on 11.03.2004, directing the renewal application to be disposed within thirty days. The application again came to be dismissed on 28.05.2004. An appeal came to be filed before the Collector that came to be dismissed on 18.01.2005.

5.After a lapse of five years, a request was made by the petitioner seeking change of location of the Vaidhyasala from the existing to an alternate venue in March 2010. Simultaneously, he appears to have moved the Madurai Bench of Madras High Court in W.P. [MD]No.3423 of 2010, seeking a direction to the District Collector to consider his application. By order dated 18.03.2010, the District Collector, was directed to pass appropriate orders on the request for shifting of location on merits within a period of eight [8] weeks.

6.After personal hearing was afforded, the request for change of location was rejected by order dated 31.05.2010 since the license was itself not renewed. An appeal filed before the Commissioner also came to be dismissed. Against the orders of the Commissioner, the petitioner has filed a revision petition to the Principal Secretary. The Principal Secretary has sought parawise remarks from the Collector as to (i) whether proper procedure and Rules were followed by the Collector while rejecting the application for renewal of license, (ii) if there was misuse of the license and (iii) whether any criminal procedure has been initiated against the licensee. The respondent in the impugned order confirms the position that no civil or criminal case is pending against the petitioner. However, the application comes to be rejected on the ground that the revision petition is financially unsound as after verification of passbooks it is seen that the petitioner has a very low balance in the bank accounts. The conclusion by the respondent is as follows:

*"13. ....The Revision petitioner is financially unsound and he verified his pass-books wherein he is having very low balance in both his bank accounts. The Assistant Commissioner (Excise),*



*Kanniyakumari District has also reported that no civil or criminal cases are pending against him."*

7.This Court is of the view that proper consideration has not been afforded to the application of the petitioner. The petitioner has been approaching the authorities in the appellate / revisional hierarchy as well as the Courts repeatedly from 2002, seeking redressal of his grievances except between 2005 to 2010.

8.Be that as it may, the revision petition filed by the petitioner ought to have been afforded proper consideration and a speaking order ought to have been passed having regard to the provisions of Rule 95 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, extracted below:

*'95.Disposal of application for license 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 license, 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 construction 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, in triplicate, for approval of the licensing authority. One copy of the same shall be retained in the office of the licensing authority, one shall be sent to the officer-in-charge or the local Excise Officer as the*



case may be, for record in his office and one shall be with the licensee.'

9. The detailed prescription as above has certainly not been followed in the present case. The counter filed by the respondents merely reiterate the contents of the various orders passed, including the impugned order. In the light of the explicit prescription in Rule 95, setting out four conditions for the grant of license, I am of the view that the respondents should re-hear the petitioner and pass a speaking order in regard to whether the petitioner satisfies the conditions laid down in Rule 95 and consider the request for extension thereafter.

10. The impugned order is set aside and this writ petition is allowed by way of remand. Seeing as the matter has been hanging fire since 2002, a reasoned order shall be passed by the first respondent after affording due opportunity of hearing to the petitioner within a period of eight [8] weeks from date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS )

To

1.The Secretary to Government,  
Prohibition and Excise Department,  
Secretariat, Chennai - 9.

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

3.The District Collector,  
Kanyakumari District, Nagercoil.

4.The Assistant Commissioner,  
Excise, Nagercoil,  
Kanyakumari District.

+1 CC to Mr.H.VELAVADHAS, Advocate ( SR-68169[F] dated 12/06/2019 )

**W.P. [MD]No.453 of 2018**

**12.06.2019**

**MR**

MK (21.10.2019) 4P 6C

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