

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP.No.4706 of 2019
and

WMP.No.5335 of 2019

P.Thananjayan

.. Petitioner

Vs.

The Deputy Commissioner (Excise),
Government of Puducherry,
Industrial Estate Road, Thattanchavady,
Puducherry - 605 009.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records of the Impugned Order of the respondent bearing No.5409/DCE/S2/FL.2/2018-19/385 dated 10.08.2018 and quash the same and consequently direct the respondent to renew the FL1 licence and FL2 (earlier classified as CL4) licence allotted to the petitioner's deceased brother Mr.Singaravelu Nadar in the name of Jagajothi Wines and Bar Jagajothi respectively and transfer the same in favour of the petitioner.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.J.Kumaran,
Additional Government Pleader
(Pondicherry)

O R D E R

The petitioner, a senior citizen, is the brother of one Singaravelu Nadar who was running a bar under the name 'Bar Jagajothi' at West Boulevard, Pudhucherry. A wholesale licence in CL-I, one retail licence in CL-II and one bar licence had been obtained for the aforesaid bar in the year 1971-72 and a CL-IV licence subsequently. The CL-I licence had been changed to a different entity one, Jagajothi Wines, and had been converted into an FL-I licence thereafter. Likewise, the CL-II licence had been converted into FL-II licence. The CL-II and CL-IV licences had also been converted into FL-II licences.

2. The licences were being renewed on an annual basis, from time to time. In the year 1979-80, the Government of

Pudhucherry had declared excise prohibition, upon the conclusion of which the petitioner would contend that the licences granted earlier automatically got revived. While he states that he paid a sum of Rs.1,000/- on 03.03.1980 for the excise year 1980-81, the respondent disputes this position. In any event, whether the same had last been renewed in 1979-80 or 1980-81, both parties agreed that after 1980 the licences had not been renewed at all.

3. Singaravelu Nadar passed away on 26.01.1993 having not pursued the renewal of the excise licences from 1980 till his demise. Though the petitioner has filed an additional affidavit stating that his sister-in-law (the widow of Singaravelu Nadar) had been seeking renewal of the licences till her demise on 08.05.2003, he admits that no communications are available to evidence this position.

4. The petitioner has been declared as a legal heir of Singaravelu Nadar vide decree dated 08.10.2009 in O.S.No.398 of 2009 by the First Additional District Munsif Court, Pudhucherry. As a legal heir, the petitioner appears to have applied for copies of various documents including the licences as well as extracts from the excise registers to establish his continuing claim to the licences earlier held by his brother. Some of the documents were furnished under Right to Information Act either in the original proceedings or in appellate proceedings. On the basis of the materials obtained, for the first time after the demise of his brother on 26.01.1993, an application was filed on 02.08.2017 seeking renewal of the licences that had earlier stood in his brother's name, along with requisite particulars and annexures.

5. Since there was no response from the respondent to his application, WP.No.4979 of 2018 had been filed seeking a mandamus for consideration of his representation and on 07.03.2018, this Court had directed the respondent to consider representation dated 02.08.2017 and pass orders thereupon, on merits, within a period of eight weeks from date of receipt of a copy of that order.

6. Notices were issued, the petitioner heard and the impugned order passed dated 10.08.2018 passed, rejecting the request of the petitioner. The impugned order proceeds on the basis that there were no licences in subsistence to transfer to the petitioner since all the licences that stood in his brothers' name had lapsed in the year 1980 and had not been renewed thereafter. There was nothing on record or produced by the petitioner to substantiate the so-called efforts of Singaravelu Nadar to have renewed the licences post 1980 till his demise in 1993 or any to evidence the efforts of his wife Amsam for revival/renewal of the licences till her demise in 2003.

7. The impugned order quotes Rule 115A of the Pudhucherry Excise Rules 1970 as per which an application for renewal is

to be filed 30 days prior to the expiry of licence period which is on 31st March of the relevant year. A grace period of 30 days from date of expiry of the licence is available within which time a belated application for renewal may be filed that may be considered by the authority if accompanied by a late fee. Non adherence to the aforesaid procedure would render the licences invalid/inoperable. Learned Government Advocate reiterates the position that the licences held by Singaravelu Nadar had become inoperable in and after 1980.

8. The second ground of rejection is that other licences bearing the same numbers as the licences in question stood in the name of six other entities, namely, M/s.Fortune Enterprises, M/s.Devi Wines, M/s.Sri Meenakshi Wines, M/s.Vijaya Wines, M/s.Vetrivelal Liquors and M/s.Paris Wine Mart. Hence the contention of the petitioner that the licences continued to stand in the name of Bar Jagajothi and were still alive, is factually incorrect.

9. The petitioner places great reliance on the decision of a learned Single Judge of this Court in the decision in the case of V.B.Chandramohan Vs. Union of India (W.P.No.29896 of 2002 dated 13.09.2002) wherein the court accepted the prayer of that petitioner for belated renewal of a liquor licence upon the petitioner remitting the licence fees with penal charges. Equally so, the learned counsel would urge that this petitioner also be granted the benefit of renewal of the FL-I and FL-II licences as he is also ready to remit the licence fee and penal charges, amounting to a substantial sum. The authority has distinguished the above decision stating that the Court had specifically said that that decision was not to be used as a precedent in the case of other persons who belatedly apply for renewal.

10. The petitioner also relies on the provisions of Section 203 of the Pondicherry Excise Act, 1970 ('Act') that entitles a legal heir of a deceased licence holder to seek continued renewal of the licence in his/her hands. To this end, he has placed on record a reply dated 10.01.2012 of the authorities under the RTI Act in another case where legal heirs have been permitted to seek, and have been granted renewal of licences upon the demise of the original licence holder. The respondent counsel/Government Advocate however points out that in that case, the requisite application had been filed by the legal heir within the time set out in Rule 115A as contrasted with the present case.

11. The decision of the Hon'ble Division Bench in the case of Mr.R.Sarveswaran Vs. Union of Territory of Puducherry and two others (W.P. No.13483 of 2007 dated 13.06.2019) is also of no assistance to the petitioner, since in that case the Bench was considering of a prayer for Mandamus forbearing the respondents from establishing or re-locating or granting a licence for the setting up of a liquor shop in a particular area of Pondicherry, specifically in the light of the guidelines of the Supreme Court dated 15.12.2016 for

establishing or running of liquor shops on national and state highways and the facts are not apposite to the matter on hand.

12. The petitioner also relies on a decision of a Division Bench of this Court in V.Pethaperumal and Others Vs. State of Pondicherry and Others, (W.P.No.5556 and 5720 of 2010) [MANU/TN/0768/2011] especially the counter filed by the Union Territory of Puducherry therein, wherein the Division Bench rejected the challenge to G.O.Ms.No.1/Excise dated 22.02.2010. Though the challenge was dismissed, the Bench has recorded the contentions of the Government in counter to the effect that substantial numbers of FL-I and FL-I licences has been issued to individuals and other entities by the Puducherry Government. This is cited specifically to meet the arguments of the Government to the effect that there was a freeze in the year 1989 of the existing number of IMFL licences and the imposition of ban upon issuance of new licences to individuals, and a decision taken that fresh licences would be issued thereafter only under the Tourism Category.

13. In 2003 the grant of licences appears to have been liberalised and widened to extend to co-operative societies and Government of Pudhucherry undertakings. It is only in 2009 that the ban was lifted and new licences were issued to private persons in Pudhucherry. This, I find from paragraph-18 of the order of the Division Bench in V.Pethaperumal's case.

14. Clarity was required on the number of licences that has been issued by the Government of Puducherry over the years in various categories, and the aforesaid information was thus sought from the Government in response to which the following tabulation has been circulated:

Details on number of licences issued in Puducherry region					
w.r.t. W.P.No.4706 of 2019 & WMP.No.5335 of 2019					
No. of Licences issued in Puducherry region					
Sl. No.	Year	CL1	CL2	CL4	Total
1	1974-75	32	69	*	101
2	1975-76	27	61	23	111
3	1976-77	24	59	*	83
4	1977-78	21	58	22	101
5	1978-79	22	59	21	102
Sl.No	Year	FL.1	FL.2	Total	Remarks
6	1979-80	60	*	60	
7	1980-81	59	*	59	

8	1981-82	*	*	*	
9	1982-83	*	*	*	
5	1983-84	35	96	131	
6	1984-85	28	86	114	
7	1985-86	*	*	*	
8	1986-87	30	107	137	
9	1987-88	30	106	136	
10	1988-89	32	131	163	Only Tourism Category FL.2 Licences and FL1/ FL2 licence to Co-operative like PASIC, PAPSCO, CONFED, etc. have been issued.
11	1989-90	33	131	164	
12	1990-91	33	132	165	
13	1991-92	33	132	165	
14	1992-93	32	123	155	
15	1993-94	33	135	168	
16	1994-95	34	136	170	
17	1995-96	34	136	170	
18	1996-97	33	137	170	
19	1997-98	34	137	171	
20	1998-99	35	138	173	
21	1999-2000	38	139	177	
22	2000-01	39	142	181	
23	2001-02	39	145	184	
24	2002-03	40	144	184	
25	2003-04	42	168	210	
26	2004-05	42	178	220	
27	2005-06	42	184	226	
28	2006-07	42	188	230	
29	2007-08	42	194	236	
30	2008-09	42	208	250	
31	2009-10	41	216	257	
32	2010-11	41	219	260	
33	2011-12	41	222	263	
34	2012-13	41	229	270	
35	2013-14	40	244	284	
36	2014-15	42	261	303	
37	2015-16	41	268	309	
38	2016-17	41	271	312	
39	2017-18	40	248	288	
40	2018-19	42	272	314	
41	2019-20	40	268	308	
* Data not available					

15. He confirms that the number of FL-I licences fluctuated between 30 and 42 and the increase from 30 in 1996-97 to 42 thereafter, was by way of licences that had been issued to Government undertakings and Co-operative Societies only. The decision to refrain from issuing licences to individuals appears to be based on the policy of the Government to this effect and there would be no justification to intervene in such a case.

16. Reliance on Chandramohan's case will not also support the case of the petitioner for the reason that the renewal in that case, was sought by the licence holder himself. The defense that the licence had become inoperable or that there was any change in policy in the interim period which rendered it impossible to renew the licence was also not raised in that case as it has been done before me. It was in such circumstances that the Court accepted the petitioners' case expressly noting that the case shall not become a precedent in other matters of delayed applications for renewal.

17. In the present case, the petitioner has sought renewal of the licence that stood in his brother's name and that too after a period of thirty seven (37) years when the licence was last active, viz. 1980 (or 81 as contended by the petitioner). Admittedly, it had lapsed thereafter and the licence holder Singaravelu Nadar made no efforts to revive it even till 1993 when he passed away. There the matter ends. It simply cannot be said that the licence continued to exist in a vacuum even after the demise of the original licence holder when the original licence holder had himself not expressed any interest in reviving the same for thirteen (13) long years. Seen in this context the argument in relation to Section 203 and the entitlement thereunder, is entirely misplaced. In fact, there is considerable delay even on the part of the petitioner in approaching the authorities and the elapse of time between 1980 (or 1981) when the licence had been rendered inoperable and 2017, when he filed a representation seeking renewal, is too wide to be ignored. The petitioner is asking me to bring back to life a dead asset, which, I am afraid, one simply cannot do.

18. For the above reasons, this writ petition is dismissed. In the light of the view taken by me aforesaid, I see no necessity to advert to or address the other issues raised including in regard to the entries in the excise registers. No costs. Connected miscellaneous petition is closed.

09.10.2020

vs

After pronouncement of order on 09.10.2020, the matter was listed for clarification yesterday (13.10.2020) and today (14.10.2020) specifically to enable both learned counsel to clear the discrepancies in the number of licenses issued for the period 2019-20. The discrepancies arise from a comparison

of the tabulation circulated by Mr.Kumaran vis-a-vis the details placed before this Court by the petitioner as culled out from the official website of the Union Territory of Pondicherry.

2. Firstly, Mr.Kumaran, would clarify that his tabulation relates only to those licenses issued for Pondicherry Region. The total number of licenses as per his tabulation is 308 whereas, the website reflects 298. He points that the website reflects the number of licenses issued upto 30.09.2019 and for the period 01.10.2019 to 31.03.2020 there had been 10 licenses issued. The overall figures thus tally at 308.

3. As regards the enhancement in the number of FL1 licenses from 33 during excise year 1989-90 to 40 in excise year 2019, he would state that his submissions in the earlier hearings to the effect that FL1 licences were issued only to individuals and Co-operative societies was not entirely correct. Subsequent instructions received from the authorities indicate that FL1 licenses are issued to those entities holding manufacturing licenses as well, such as breweries. With this, the enhancement from 33 licenses in 1989-90 to 40 in 2019 also stands explained. The aforesaid discussion does not in any way affect the conclusion in my order dated 09.10.2020, as the matter was listed for clarification only to solicit an explanation on the aforesaid factual discrepancies, which now stands resolved.

14.10.2020

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Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Deputy Commissioner (Excise),
Government of Puducherry,
Industrial Estate Road, Thattanchavady,
Puducherry - 605 009.

+1cc to Mr.S.Raveekumar, Advocate, S.R.No. 33618

+1cc to the Government Pleader, S.R.No. 33966

WP.No.4706 of 2019
and WMP.No.5335 of 2019

NRJK (CO)

GN (24/11/2020)