

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31330 of 2015

and

M.P. No. 1 of 2015

M/s. Hotel JP Castle,
Rep. by its partner Innachimuthu,
No. 30A, Old Poothar Theatre,
College Road, Sivasakthi Nagar,
Tiruppur.

... Petitioner

-vs-

1. The Commissioner of Prohibition and Excise,
Chepauk,
Chennai - 600 005.
2. The District Collector,
Tiruppur District.
3. The Assistant Commissioner (Excise),
Tiruppur.
4. The Managing Director,
Tamilnadu State Marketing Corporation,
Gandhi Irwin Bridge Road,
Egmore,
Chennai - 600 008.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to order of the First Respondent dated 21.09.2015 in R.C. No. P & E2(1)/5498/2015 on the file of the First Respondent and quash the same and consequently direct the First Respondent to renew the Petitioner license.

For Petitioner : Mr. L.Chandrakumar for Mr. A.Suresh
For Respondents: Mr. N.Inbanathan,
Additional Government Pleader
(for R1 to R3)
Mr. K.Sathish Kumar
Standing Counsel (for R4)

O R D E R
(through video conference)

Heard Mr. L.Chandrakumar, Learned Counsel appearing for the Petitioner and Mr. N.Inbanathan, Learned Counsel appearing for the First to Third Respondents and Mr. K.Sathish Kumar, Learned Standing Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is running a hotel, viz., Hotel JP Castle, had been granted FL3 licence bearing No. 31/2011-2012 by the First Respondent which had been periodically renewed and was to expire on 31.03.2015. It is borne out from the materials placed on record that the Petitioner had on 06.04.2015 made an application for renewal of that FL3 licence, but it was refused to be considered favorably by the First Respondent in the impugned order in R.C. No. P & E2(1)/5498/2015 dated 21.09.2015 for the reason that it had not been made before the expiry of the licence period ending on 31.03.2015 in terms of Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, (hereinafter referred to as the 'Rules' for short), which reads as follows:-

"21. Renewal of licence :- A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) at least one month before the date of expiry of the licence. The application may be sent to the licensing authority direct. The provisions of rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of a licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee."

That apart, the First Respondent had held in that order that the said FL3 licence granted to the Petitioner was temporarily suspended for 60 days and a show cause notice was issued as per Rules 22(1) and 22(2) of the Rules. The Assistant Commissioner (Excise), Tiruppur was instructed to close the bar and freeze the stocks available with the Petitioner and file report of the action taken in that regard. Aggrieved thereby, the Petitioner has filed this Writ Petition challenges that order.

3. It has been brought to notice that such refusal by the First Respondent to renew the FL3 licence in respect of similarly placed persons when the application for the same had been made after the expiry of the licence period in terms of Rule 21 of the Rules, have been set aside by this Court by holding that the power of renewal is vested with the concerned authority as per the said Rule even after the licence periods had been expired, in the following decisions:-

- (i) Harshini Recreation Club -vs- Commissioner of Prohibition and Excise (Order dated 16.10.2015 in W.P. (MD) Nos. 13094 and 18941 of 2015) passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in Commissioner of Prohibition and Excise Department -vs- Harshini Recreation Club (Order dated 20.04.2017 in W.A. (MD). No. 423 of 2017 and by the Hon'ble Supreme Court of India in Commissioner of Prohibition and Excise Department -vs- Harshini Recreation Club (Order dated 20.09.2018 in S.L.P.(C). Diary No. 27583 of 2018).
- (ii) Hotel Mount Heera -vs- State of Tamil Nadu (Order dated 10.06.2016 in W.P. Nos. 34214, 34215, 34347 to 34350 and 34492 of 2015 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in State of Tamil Nadu -vs- Hotel Mount Heera (Order dated 21.11.2017 in W.A. Nos. 1511 to 1518 and 1519 of 2017 and by the Hon'ble Supreme Court of India in State of Tamil Nadu -vs- Hotel Mount Heera (Order dated 20.09.2018 in S.L.P.(C). Diary No. 27654 of 2018).
- (iii) Manamahal Mandram -vs- Commissioner of Prohibition and Excise (Order dated 30.06.2016 in W.P. (MD) Nos. 7204 and 11395 of 2016 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in Commissioner of Prohibition and Excise -vs- Manamagal Mandram (Order dated 10.11.2017 in W.A. (MD) Nos. 1395 of 2017).
- (iv) Tvl. Hotel Lions India Pvt. Ltd., -vs- State of Tamil Nadu (Order dated 22.11.2016 in W.P. No. 40943 of 2016 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in State of Tamil Nadu -vs- Tvl. Hotel Lions India Pvt. Ltd., (Order dated 29.11.2017 in W.A. No. 1501 of 2017).

Further, the direction issued for temporary suspension of the licence and issue of show cause notice under Rules 22(1) and 22 (2) of the Rules has also been disapproved by this Court in State of Tamil Nadu -vs- Tvl. Hotel Lions India Pvt. Ltd., (Order dated 29.11.2017 in W.A. No. 1501 of 2017, where it has been ruled as follows:-

"10. Question of cancellation of licence arises only during the licence period. As per Section 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981,

licence expired on 31st March 2016. Respondent has submitted renewal application on 23.09.2016. When licence had already expired on 31.03.2016, it is not known as to how Rule 22 of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 can be invoked in cancellation of licence.

11. Reading of Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, indicate that the licencing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed against the licensee and there could be cancellation of licence.

12. During the period of suspension, licensee shall not 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.

13. On the facts and circumstances of the case, when licence had already expired on 31.03.2016, there is an error apparent on the face of the record, in invoking rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for cancellation of licence, as if the licence existed, on the date of issuing show cause notice dated 06.04.2016. Expired licence cannot be cancelled."

4. This Court at the time when this Writ Petition came up for admission on 01.10.2015, had passed the following order:-

" The petitioner Hotel is running a bar for the past 3 years.

Though the period of licence came to an end on 31.3.2015, it is contended that till date, liquor is being supplied and only through the impugned order, the licence has been suspended stating that the petitioner has not made an application for renewal in time.

Taking into consideration the continuous running of business and supply of liquor, it is appropriate to grant an order of interim stay.

Hence, there shall be an order of interim stay.

Mr.Jayaprakash Narayanan, learned Special Govt. Pleader takes notice for R1 to R3.

Notice to R4 returnable in four weeks."

As such, it is evident that the impugned order has not been

given effect till date. Since the Petitioner in this case is similarly placed to the licensees in the aforesaid cases, it is entitled to the same benefit in terms of those orders.

5. Accordingly, the impugned order in R.C. No. P & E2(1)/5498/2015 dated 21.09.2015 is quashed and the matter is remitted to the First Respondent to consider the application dated 06.04.2015 made by the Petitioner for renewal of FL3 licence afresh, taking into consideration the dictum laid down in the aforesaid decisions by conducting enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice and deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Though obvious, it is made clear that the First Respondent shall not be uninhibited and uninfluenced by the impugned order which stands set aside.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Prohibition and Excise,
Chepauk,
Chennai - 600 005.
2. The District Collector,
Tiruppur District.
3. The Assistant Commissioner (Excise),
Tiruppur.
4. The Managing Director,
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Egmore, Chennai - 600 008.

+1cc to the Government Pleader, S.R.No.36348

W.P. No. 31330 of 2015

SS(CO)
RV(21/12/2020)