

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.30609 of 2019

WMP.No.30676 of 2019

M/s.Drizzle
Represented by its Proprietor
Mr.S.Prakash ...Petitioner

Vs.

The Commissioner
Prohibition and Excise
Chepauk, Chennai-600 005 ...Respondent

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari Mandamus, calling for the records of the respondent in his proceedings vide proceedings No.P & E 2 (2)/5374/2015 dated 18.10.2019 and to quash the same and for a consequential direction to the respondent to renew the F.L-2 License No.07/2013-2014, in respect of the petitioner for the year 2019-20 at Plot No. 67, 68 & 69, Golden Sea View, Part-3, VGP 2nd Main Road, VGP Layout, Palavakkam, Chennai-600 041 on payment of privilege fee and renewal fee only for the current year.

For Petitioner : Mrs.N.Kavitha Rameshwar

For Respondent : Mr.B. Anand
Government Advocate

O R D E R

Heard Mrs.N.Kavitha Rameshwar, learned counsel for the petitioner and Mr.B.Anand, Government Advocate for the respondent.

2. The petitioner challenges order dated 18.10.2019. Brief submissions of the petitioner are that it is a society that had obtained an FL-2 License as early as on 16.05.2013 as a club-restaurant supplying Indian Made Foreign Liquor (IMFL) to its members and their guests. Renewal fee in respect of the license was paid till 31.03.2017.

3. While this is so, the Supreme Court in the case of State of Tamil Nadu Vs.K.Balu, [(2017) 2 SCC 281] ordered initially that no shop situated within 500 meters from the edge of a national/state highway shall sell liquor. Since the petitioner fell within the aforesaid parameters, it took immediate steps to shift from the then address to the present address at Palavakkam. It took sometime for the petitioner to identify and put in place the necessary infrastructure in the new premises and have the club ready for operation. The process was complete in October 2017.

4. On 15.10.2017, the petitioner sought renewal of its license for the year 2018-19 without success. The representations were repeated thereafter also without success. W.P.No.30114 of 2018 was thus filed on 13.11.2018, seeking a direction to the respondents to renew the license in respect of the club at its new address for the year 2018-19, that is for the period 01.04.2018 to 31.03.2019.

5. A final order was passed on 22.11.2018 by this Court directing the respondent to consider the claim of the petitioner and pass orders in a time bound manner.

6. On 12.12.2018, the renewal application was rejected on the ground that the application had not been made within the time provided under statute. This was challenged in W.P.No.34060 of 2018 praying for a quash of order dated 12.12.2018 and a consequential direction for renewal of the license at the new venue of the club.

7. On 30.04.2018, the writ petition was allowed, directing the petitioner to file a renewal application along with requisite annexures and applicable fee before the respondent within a period of two weeks from date of receipt of copy of that order.

8. On 28.05.2019, while not specifically filing an application, the petitioner merely requested consideration of

its request for renewal of FL-2 License. It brought to the notice of the authority that the closure of the club during the interim period was on account of the forced shifting of the bar. Since no action was taken by the respondent, petition for contempt was moved pending which the impugned order dated 18.10.2019 has been passed. The contempt was thus closed.

9. Prior to passing of the impugned order, vide communication dated 09.10.2018, the respondent put the petitioner to notice of certain payments required to be made by it, conditional upon which the application for renewal would be considered.

10. According to the respondent, there was a shortfall in fee for the periods 01.04.2014 to 31.03.2015, 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017, since the actual privilege fee collected was a sum of Rs.6,00,000/- per annum whereas the amount payable was Rs.10,00,000/- per annum. Thus, computing the difference of Rs.4,00,000/- per annum, the petitioner was called upon to pay a sum Rs.12,00,000/-.

11. In addition, the petitioner was also called upon to remit the privilege fee for the periods 01.04.2017 to 31.03.2018, 01.04.2018 to 31.03.2019 and 01.04.2019 to 31.03.2020. Thus the respondent was of the view that, as a pre-condition for the receipt of privilege fee for the period 2019-20, which the petitioner admits it does have to pay, privilege fees in respect of the intervening two years, that is 2017-18 and 2018-19, would also required to be paid. Furthermore, since the fees for the intervening two years had not been remitted, according to the respondent, the question of renewal does not arise as the licence was deemed to stand cancelled.

12. According to the petitioner, there was no liability for the intervening two years, that is, 2017-18 and 2018-19, since firstly, the shifting of the premises was forced and for no fault of its and secondly and consequently, the club had been non-functional for the stated periods. The stand of the respondent to the effect that the licence stands cancelled is objected to and reliance, in this regard, is placed upon Rule 21 of the Tamil Nadu Liquor (License and Permit) Rules, 1981 ('Rules'), as it stood prior to amendment, that did not contain the stipulations/conditions relied upon by the respondent in canvassing this stand. The Rule (as it stood prior to amendment dated 07.05.2018) reads as follows:

21. Renewal of license.- A license holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of 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 Rule 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 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.

13. The respondents on the other hand rely on the provisions of amended Rule 21 as per which an application for renewal would have to be filed on or before the last date of February of the year in which the license would expire. Where the application was filed after the stipulated period but on or before 31st of March of the year in which the license would expire, the authority was permitted to admit the application upon consideration of the reasons for delay and on additional payment. However, if the application was filed after the 31st of March of the year in which it expired, then such license would be deemed to have been cancelled and the applicant in such a scenario would have to seek issuance of the licence afresh. Amended Rule 21 reads as follows:

21. Renewal of licence.- A licence holder desiring to renew the licence shall make an application in the prescribed norm (the same as for the original grant of the licence) along with payment of applicable privilege fees on or before the last day of February of the year in which the licence would expire. The application may be sent to the licensing authority directly. The provisions contained in 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 been made after the last day of February of the year in which the licence would expire, 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 percent of the prescribed licence fee. However, an application for renewal of license which is received after the expiry of the licence i.e March of the concerned year, will not be considered and the

licence already granted will be deemed to be cancelled.

14. This Rule has come to be considered by a Division Bench of this Court in the case of State of Tamil Nadu V. Hotel Mount Heera (W.A.Nos.1511 to 1518 & 1519 of 2017 dated 21.11.2017) wherein the Bench states,

'12. The proposed amendment intended to be made in Rule 21 is that, an application for renewal of licence, received, after the expiry of the licence period i.e. 31st March of the concerned year, will not be considered and that the licence, already granted will be deemed to be cancelled. In the light of the decisions, the amendment proposed, fortifies our view that, as per the existing rule, belated applications for renewal of licences, can be entertained, subject to the applicant, offering good and sufficient reasons for the delay and on payment of additional fee of 25% of the prescribed licence fee, ie., an application filed even after 31st March, can be considered. Amendment is yet to be made. Existing rule position, as on today, in Tamilnadu Liquor (Licence & Permit) Rules, 1981, has been understood by the department and therefore, amendment has been sought for. Going through the reasons, assigned by the writ Court, we do not find any merit in the instant writ appeals.

13. Hence, the writ appeals are dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.'

15. I am informed that the above decision has attained finality. The prevailing position thus is that Rule 21, as amended, will apply only prospectively, with effect from 07.05.2018, that is, for the period from 01.04.2018 (2018-2019) and thereafter only. For the prior periods, it is unamended Rule 21 that would be applicable sans the rigour of the conditions imposed post amendment. I hold accordingly.

16. This petitioner has, admittedly, not been running the club from 15.12.2016 till date. I have, in my decision dated 30.04.2019 in W.P.No.34060 of 2018 also considered the circumstances on account of which the club was required to move resulting in the intervening period of inactivity in paragraph Nos.14 and 21 as follows:

14. Taking into account the narration of facts as well as the position that the shifting was not voluntary but was occasioned only by reason of the judgment of the Supreme Court, the Bombay High Court concluded that the petitioner could not be visited with fee in these circumstances and the demand was set aside. The conclusion in the aforesaid matter would advance the case of the petitioner before me as well, as the facts and circumstances are broadly similar.

21. Moreover, I find some force in the submission of the petitioner to the effect that the change in location and the consequent elapse of time in identifying the new premises for the shop was the reason for the delay in seeking renewal of licence. Evidently, the shift was not voluntary and the petitioner cannot be blamed for the elapse of time, in the circumstances as I have noticed and narrated above.

17. The respondent has nowhere disputed the factual matrix of the matter as set out above or the compulsions on account of which the petitioner did not run the club from October 2016 till date. This, coupled with my decision in regard to the applicability of old Rule 21 to this case, leads me to the conclusion that the respondent ought not to have passed the impugned order to the effect that the licence was cancelled since the petitioner had not remitted the fee for the periods 2017-18 and 2018-19 and calling upon the petitioner to remit the fee for the three years in question.

18. I am also inclined to exclude the intervening period from 01.04.2017 till 31.03.2018 for the following reasons:

(i) There is no dispute on the position that privilege fee has been remitted till 31.03.2017.

(ii) On pronouncement of the judgement in the case of State of Tamil Nadu V. K.Balu (supra), that is from 15.12.2016, the petitioner, in compliance with the judgement, shut shop and commenced efforts to re-locate the club.

(iii) The new premises were located and requisite infrastructure put in place in October 2017.

(iv) From then on, that is, from October 2017 onwards, the petitioner has been making efforts for renewal of the licences, to no avail.

(v) By order dated 22.11.2018, the petitioner was permitted to seek renewal of licence with requisite application and fee. This

order and the findings of facts in relation to the sequence of dates and events as above have become final.

(vi) No fee was remitted as, according to the petitioner, the remittance can be effected only once access to the portal of the respondent authorities was granted. This was denied and thus, the remittance could not be effected. The procedure for application and remittance, as stated by the petitioner, is that the process of renewal of license was via an online portal that could be opened and accessed only from the office of the respondent and such access will be granted only if the application were accepted by the respondent. Neither the counter filed by the respondent nor Mr. Anand before me, dispute this as being the correct procedure to be followed. In any event, the learned counsel conveys the readiness of the petitioner to effect remittances as and when the portal is enabled in this regard. This is recorded.

19. As regards the quantification of the remittances itself, the demands are as follows:

S.No .	Year	Annual Privilege fee payable	Actual privilege collected	Difference fee to be paid
1	2014-15	10,00,000/-	6,00,000/-	4,00,000/-
2	2015-16	10,00,000/-	6,00,000/-	4,00,000/-
3	2016-17	10,00,000/-	6,00,000/-	4,00,000/-
			Total	12,00,000/-

20. As regard the licence fees, and in line with my opinion in this regard in the earlier paragraphs, the petitioner need to remit the licence fee for the periods 2018-19 and 2019-2020, that is 01.04.2018 to 31.03.2020 only. Let the needful be done by the respondents in terms of enabling the remittance in order that the petitioner remit the same forthwith, and in any event with two weeks from today.

21. Mr. Anand requests that the petitioner be directed to remit the licence fee for the intervening period of 01.04.2017 to 31.03.2018 as well as the petitioner could well seek a refund of the same in line with Section 24-A providing for 'Refund of licence fee in certain cases'. The provision entitles a licensee, who has not transacted any business under the licence to apply to the licensing authority for refund of the licence fee along with the licence granted, upon receipt of which the

authority may refund the licence fee, if he is satisfied that the licensee has not transacted any business under licence granted to him. In the present case there is no dispute on the position that the petitioner has not transacted any business from 15.12.2016 till date. In such circumstances, the condition set out under Section 24-A stands admittedly complied with. The petitioner is permitted to seek refund of the fee to be remitted for the period 2018-19 and such request if made, shall be considered by the respondent in the light of the applicable provisions and the observations contained in this order.

22. As regards the differential fee to be demanded, admittedly there has been no show cause notice issued in the respective periods when the licence were current, i.e., 2014-15, 2015-16, 2016-17 or even thereafter and the present demand has been raised only under the impugned order straightaway and without prior notice. The impugned order refers to Government Order MS.No.23 stipulating enhancement with effect from 01.04.2012. A copy of this Government Order has not been produced before me and admittedly, neither has the petitioner been supplied with a copy of the same nor given an opportunity prior to such enhancement. Thus, this demand is set aside.

23. Liberty is granted to the respondents to issue show cause notice annexing applicable Government Orders and other material particulars to the petitioner in this regard. Such liberty, since it relates to the periods 2014-15 to 2016-17, shall be exercised within a period of four (4) weeks from date of receipt of a copy of this order or not at all.

24. The Writ Petition is disposed as above. No costs. Connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS VIII)

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//True Copy//

Sub Assistant Registrar

To

The Commissioner
Prohibition and Excise
Chepauk, Chennai-600 005

+1cc to Government Pleader SR.NO. 10425
+1cc to Mrs.N.Kavitha Rameshwar, Advocate sr.9379

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