

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2021
PRONOUNCED ON : 17.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.2397 of 2021 and
W.M.P.No.2703 of 2021

Ellora Restaurant,
Rep by its Proprietor,
R.Sivanandham,
Old No.25, New No.38, Wallers Road,
Chintadripet,
Chennai-600 002. Petitioner

Versus

1.Commissioner of Police,
Greater Chennai Police Office,
Vepery,
Chennai-600 007.

2.Inspector of Police,
F1, Chintadripet Police Station,
Chennai-600 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to show cause notice Rc.No.E3/2/206/132959/2018, dated 23.09.2019 on the file of the 1st respondent to quash the same, consequently directing the 1st respondent to issue renewal of Public Resort License under Chennai City Police Act, 1888 forthwith to the petitioner to conduct Indian Cultural Dance at Old No.25, New No.38, Wallers Road, Chintadripet, Chennai – 600 002.

For Petitioner : Mr.V.Raghavachari for
Mr.M.Sudhakar

For Respondents : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

This Writ Petition has been filed to quash the show cause notice issued by the 1st respondent in Rc.No.E3(2)/206/132959/2018, dated 23.09.2019 and consequently direct the 1st respondent to issue renewal of Public Resort License under the Chennai City Police Act, 1888 forthwith to the petitioner to conduct Indian Cultural Dance at Old No.25, New No.38, Wallers Road, Chintadripet, Chennai.

2.The contention of the petitioner is that the petitioner has been running the business since 1993 and he is conducting Indian Cultural Dance alone under the Public Resort License issued by the 1st respondent/the Commissioner of Police, which has been periodically renewed. The petitioner sent an application for renewal of the Public Resort License for the year 2013 to the 1st respondent on 19.12.2012, but the 1st respondent instead of renewing the license, issued a show cause notice on 01.12.2013, alleging that a discrete enquiry was made and the cultural dance license was

being misused and ladies were allowed to dance in front of predominantly male audience, thereby lowering the dignity of women. The petitioner sent a detailed reply on 07.12.2013, but without considering the reply properly, the renewal application was rejected on 06.05.2014 and the same was challenged in W.P.No.18951 of 2014. This Court by the order dated 23.08.2016 directed the 1st respondent to consider the renewal application. Thereafter, no action was taken by the 1st respondent and hence, contempt petition No.3098 of 2016 was filed. After receiving notice in the contempt proceedings, the 1st respondent again rejected the renewal application on 20.12.2016. As against the rejection order, the petitioner filed another W.P.No.44298 of 2016. The 1st respondent instead of renewing the license, again came up with new frivolous grounds and issued another show cause notice dated 02.06.2017, while W.P.No.44298 of 2016 was pending. The 1st respondent had not conducted any personal enquiry to verify the particulars given in the renewal application. Four CCTV cameras installed in the restaurant and CCTV recordings are available with the petitioner. However, the 1st respondent without verifying the same came to the conclusion that, obscenity was going on under the guise of dance. Further, without any material and without viewing the CCTV recordings, denying the license on

the grounds as stated above is mischievous and arbitrary.

3.The reasons given in the show cause notice was that there was no CCTV camera installed on the front side of the Ellora Restaurant and there is no proper parking provided, resulting in inconvenience to the public. The petitioner gave a reply to the show cause notice on 07.06.2017, wherein it was pointed out that CCTV camera already installed on the front side of the premises and further a lease deed was entered into between the petitioner and a third party land owner in respect of parking area for convenience of General Public, who come to witness the cultural programs at the premises. However, on 20.06.2017 the 1st respondent rejected the renewal application. Thereafter, W.P.No.44298 of 2016 was disposed on 28.06.2017, with a direction to the petitioner to challenge the rejection order, since the renewal application was rejected.

4.Subsequently, W.P.No.16582 of 2017 was filed, challenging the rejection order dated 20.06.2017. Thereafter, this Court appointed an Advocate Commissioner to assess the real situation at the site with regard to adequacy of parking area and to file a report. On receipt of the report, this

Court disposed of the Writ Petition on 07.01.2019 directing the first respondent to pass order regarding the renewal of the license of the restaurant, after giving opportunity to the petitioner to put forth their view.

5.He further submitted that parking site agreement entered with the third party was cancelled. Thereafter, the petitioner entered into a new lease agreement on 21.02.2019 with one S.K.Jothinathan and the same was submitted to the first respondent on 25.02.2019 and the petitioner was expecting issuance of license. On the contrary on 19.06.2019 a show cause notice was issued, for the same reason, which was raised in the earlier show cause notice. Challenging the same, the petitioner filed W.P.No.18825 of 2019 and this Court by order dated 02.07.2019 directed the 1st respondent to consider in line with the directions earlier given by this Court in W.P.No.16582 of 2017 and also taking into account the Rules pertaining to parking space needed for parking cars and two wheelers for a restaurant, which has a seating capacity of 37 seats and thereafter to pass an order within a period of four weeks.

6.The 1st respondent on receipt of the above order has taken unilateral decision to cancel the PRL License of the Ellora Restaurant vide cancellation order RC.No.E3(2)/206/132959/2018, dated 23.09.2019. The 1st respondent failed to consider the fact that when the earlier show cause notice issued, the petitioner had approached this Court and this Court in one of the Writ Petition, appointed an Advocate Commissioner who gave a report, based on which, this Court had narrated the issue of providing car parking. At this stage, now the 1st respondent gave various other reasons, which is not covered under show cause notice. Further, the petitioner was not given an opportunity to give his explanation and passed an order of rejection.

7.In the order of cancellation, dated 23.09.2019 there is no material to show that there was any physical inspection being carried out. Further none of the enclosures/annexure which are referred to in the cancellation order have not been furnished to the petitioner. Despite several request, without giving any particulars, the first respondent stated that the petitioner has violated the terms and conditions of the license and hence, the petitioner is not eligible for renewal of license. Finally, the petitioner's application was

rejected and cancelled the license, which was not existing on the day of cancel. The petitioner license was granted in the year 1993 and it was renewed till the year 2013 and it was in force till 2013.

8.The Deputy Commissioner of Police, Triplicane District issued a show cause notice on 03.09.2019 directing the petitioner to furnish the members view, type of dances, specific kind of dance, information about the fixed artist or group for performance and to produce the PRL license of Ellora Restaurant. But other than the above particulars, no other particulars were called for. The petitioner replied to the show cause notice on 10.09.2019. Further, the questions raised in the show cause notice and the reasons stated in the impugned order both are contrary to each other. The show cause notice was issued for one reason and impugned order has been passed for another reason, which is highly impermissible in the eye of law that too without giving an opportunity to the petitioner to give his explanation. The rejection and cancellation order is not permissible. The size of the Restaurant is hardly (32x27) Sq.Ft and it has seating capacity for only 37 persons, which does not need a parking space. Further the reason assigned that there is no kitchen and parking space, exposes the lack of

knowledge of the respondent on the subject. It is the Health authority of the Corporation of Chennai who are empowered to grant the certificate. The law does not require a kitchen for a restaurant. Under the Catering Act, it is only a hall and eateries to be served in public and that are the requirements and no place of preparation mentioned. Further submitted that hotels like Saravana Bhavan, Sangeetha, Adyar Ananda Bhavan, Vasantha Bhavan etc., are allowed to run, without any parking space. On the contrary the petitioner is targeted without any reason.

9.He further submitted that the show cause notice is predetermined one and the information sought for in the show cause notice and the reasons adduced in the impugned order are entirely on different footing. The impugned notice is illegal, against the violation of Article 14, 19(1) (g) and 21 of the Constitution of India. The first respondent by not renewing the license and not allowing to carry on the business resulted in heavy loss to the petitioner and it had also affected 70 families and their livelihood. The first respondent is empowered to issue temporary license as per the Rule 23 and 35 of the Chennai City Police Act, 1888. The first respondent has violated the judgment of the Apex Court.

10.The first respondent rejected the renewal of license on flimsy reasons, when it involves the life, liberty and profession of a community. The petitioner is only organizing Indian Cultural Dance in the premises of Ellora Restaurant and had not involved in any criminal case, violating the license and law.

11.In support of his submissions, the learned counsel for the petitioner relied on the case of “***State of Maharashtra and another Versus Indian Hotel and Restaurants Association and others reported in (2013) 8 SCC 519***”, wherein the Hon'ble Apex Court had given suggestions and regulations to continue with the bar girls dancing in dance bars. Further, it had held that a large number of imaginative alternative steps could be taken instead of completely prohibiting dancing, *if the real concern of the State is the safety of women*. It is can be permitted with reasonable restrictions on bar dancing, but without completely prohibiting or stopping the same.

12.In the case of “***Indian Hotel and Restaurant Association (AHAR) and another Versus State of Maharashtra and others reported in (2019) 3 SCC 429***” had held that “*the State cannot take exception to staging*

dance performances per se, which would be in violation of Article 14, 19(1)(a), 19(1)(9) of the Constitution of India”.

13. For the point of the mandatory requirement of show cause notice, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of “**Gorkha Security Services Versus Government (NCT of Delhi) and others reported in (2014) 9 SCC 105**” wherein it had held that “*the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same.*” In the case of “**UMC Technologies Private Limited Versus Food Corporation of India and another reported in (2021) 2 SCC 551**” held that “*the legal position is that the show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom. Expressed its mind in the show cause notice so that the noticee could have sent suitable reply for the same*”. In this case, the show cause notice does not fulfil the requirements of the valid show cause notice. In the case of

“Tarlochan Dev Sharma Versus State of Punjab and others reported in (2001) 6 SCC 260” it had held that “the orders passed there one of the requirement is that the principle of natural justice is with the proper show cause notice to be served seeking explanation for any omission or commission. It is clear that the facts constituting gravamen of the charge have to be communicated.”

14.The learned Government Advocate (Crl.Side) has filed a counter and submitted that the contention of the petitioner is not correct. He further submitted that there is no dispute with regard to earlier show cause notices issued and Writ Petitions filed by the petitioner. As per the direction of this Court, inspection of the premises was conducted and the following observations made:-

“ a) The premises where the PRL is applied is a single hall with measuring 410 x 234 cms (13x7.5 feet). And the Restaurant has no provision for kitchen and cooking.

b) A stage with a dimension 196 x 119 x 12 cm (6x4x1/2 feet) as its length, breadth and height was installed in the hall and remaining space is left for.

c) *The entrance of the first floor is only through a small stair case of width 48 cm for entry and one for exit. There is no provision for alternative emergency stair case and only single person can access the stair case at a time, which is not enough to evacuate the inmates on emergency situation.*

d) *The premises at No.25, Wallers Road, Chintadripet houses a complex of shops having 18 shops in the ground floor, 12 shops in the first floor and two Godown in the second floor apart from the above mentioned hall for which PRL was applied. The complex is already a heavy congested building without space for parking.*

e) *Apart from stage, the remaining area can accommodate maximum 25 chairs without any table, which clearly indicate that this is not a place for any big gathering.*

f) *The applicant has applied for PRL seeking permission for Indian Cultural Dance at Ellora Restaurant. However, no such Restaurant is actually available. Unless the applicant obtains a proper license for a Restaurant, the question of issuance of PRL for cultural dance do not arise.”*

15.Further he submitted that the PRL (Public Resort License) was misused to conduct dance of young ladies in front of male audience. The

place is a congested commercial area and the small space for parking identified by the petitioner cannot meet the required parking norms. In order to clarify the ambiguities during Inspection, the petitioner was summoned to appear before the first respondent. His reply dated 10.09.2019 was carefully considered and thereafter, the cancellation order dated 23.09.2019 was issued to the petitioner herein. The petitioner herein has been issued with Public Resort License in the year 1993 based on the conditions prevailing then. For renewal of the license for the year 2019, the jurisdiction Police Officer, who visited the premises submitted a report, stating that the new parking area is not sufficient to park vehicles as per the mandatory norms. A show cause notice was issued to the petitioner listing out the ambiguities. The field officers recommended that unless the ambiguities are cleared, the PRL would be cancelled. After careful consideration of records and the clarification by the petitioner, the application for issuing PRL was ordered to be cancelled vide order dated 23.09.2019.

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16.The Deputy Commissioner of Police, Triplicane District called for certain particulars from the petitioner regarding the renewal of the PRL. Based on the report of the Deputy Commissioner of Police, Triplicane

District, a notice was issued to the petitioner listing out the ambiguities calling for his explanation. With regard to the contention of the petitioner that Hotels like Saravana Bhavan, Sangeetha, Adayar Ananda Bhavan and Vasanth Bhavan have not provided sufficient space for parking, is not correct. They have provided sufficient space for parking vehicles and permitted to run the Hotel only and not having PRL. The petitioner's Ellora Restaurant obtained Public Resort License, but not provided required space for running Indian Cultural Dance Program. The first respondent herein does not have any personal vendatta against the petitioner herein. Since the petitioner herein not cleared the ambiguities pointed out and complied to the norms prescribed, the application for issuance of Public Resort License was rejected and the order was passed on 23.09.2019. The petitioner's PRL License was misused to conduct dance of young ladies in front of predominantly male audience, thereby lowering the dignity of women. Advocate Commissioner Mr.Raghul in his report stated that parking space (A) is just a 10 x 22.5 ft area and space (B) 6.4x25.8 ft public road which cannot accommodate even a single car. Also the Valet parking space inspected by advocate commissioner is no longer available and for the reasons best known only to the petitioner, they entered into a new

agreement for parking, which is two streets away from the restaurant that to on a congested lane. In the heavily congested commercial area, even this small parking space identified by the petitioner cannot meet the required parking norms, as the identified parking area already houses commercial buildings, which themselves do not have adequate space for parking. There are around 1000 wholesale and retail shops with 4000 labours which are frequented by minimum 3000 floating population on daily basis in a given time and with this huge floating population, and public visiting the restaurant, the safety of dancer may not be ensured by the applicant. Also performance of dance events by the applicant in such congested and crowded area, sure to disturb public peace. The petitioner failed to comply the prescribed norms for issuance of PRL. Thus with these ambiguities, there is no possibility of granting license.

17.The learned Government Advocate (Crl. Side) further submitted that the rules issued under Section 36 and 39 of the City Police Act, 1888 clearly stipulated the conditions while granting license and issued guidelines taking all the aspects into consideration, including the physical feature of the building, the likely outbreak of any epidemic or any

contiguous disease and specified the provisions for ample space for parking vehicle etc. In this case, on the physical examination and on the report of the Advocate Commissioner, it is found that necessary provisions are not followed. Hence, the show cause notice issued and the license cancelled are proper.

18. Considering the above submissions, the following issue arises for consideration. The first issue is that there is no proper parking space and the second issue is that entry and exist for public is not proper. There is no provision for alternative emergency stair case and only single person can access the stair case at a time, which is not enough to evacuate the inmates in an emergency situation, without heavy causality. With regard to public safety, the petitioner is duty bound to give utmost care. In this case, on the factual aspects and on the physical features of the building and the congested area of its location and not specifying the form of Indian Dance and non availability of complete restaurant facilities, it is not possible to grant license unless the ambiguities mentioned and pointed are rectified. Further, with regard to the bar dances in Maharashtra, the culture and livelihood of bar girl dances and other pertains to the State of Maharashtra.

The same culture is not followed here.

19.The licensing authority has to strictly follow the rules and on satisfaction of the same, the license is to be issued. In view of the above ambiguities, the licensing authority in the rejection order had clearly enlisted the ambiguities and the reason for the rejection. The contention of the petitioner is that not all the ambiguities are cleared or there is no such ambiguities. It is admitted that the Public Resort License is sought for the hall which is in the second floor of the building in Maruthi Shopping Complex, Wallers Road, Chinthadripet having 18 shops in the ground floor, 12 shops in the first floor and 2 godowns in the second floor apart from the hall wherein license is sought. The Public Resort License is issued by the Police where public gatherings with sufficient space and for valid reasons are sought. In this case, on the physical features of the building and the location, it is apparent that it is situated in a congested area. The exit is projected through a small staircase of 48 cm width and the available parking area is also questionable one. No doubt, the rejection order contains the details and reasons but in the show cause notice it is seen that the petitioner is not put on notice calling for his explanation for all the reasons as stated in

the rejection order.

20.In view of the same, this Court finds that the rejection order is not sustainable. Hence, this Court quashes the order, dated 23.09.2019, in Rc.No.E3(2)/206/132959/2018 passed by the 1st respondent. The 1st respondent is directed to issue fresh show cause notice mentioning all the infirmities following all mandatory requirements detailing the breaches and defaults committed so that the petitioner can understand the precise case against him and get an opportunity to rebut the same.

21.With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

17.09.2021

Index : Yes/No
Internet: Yes/No

dna/vv2

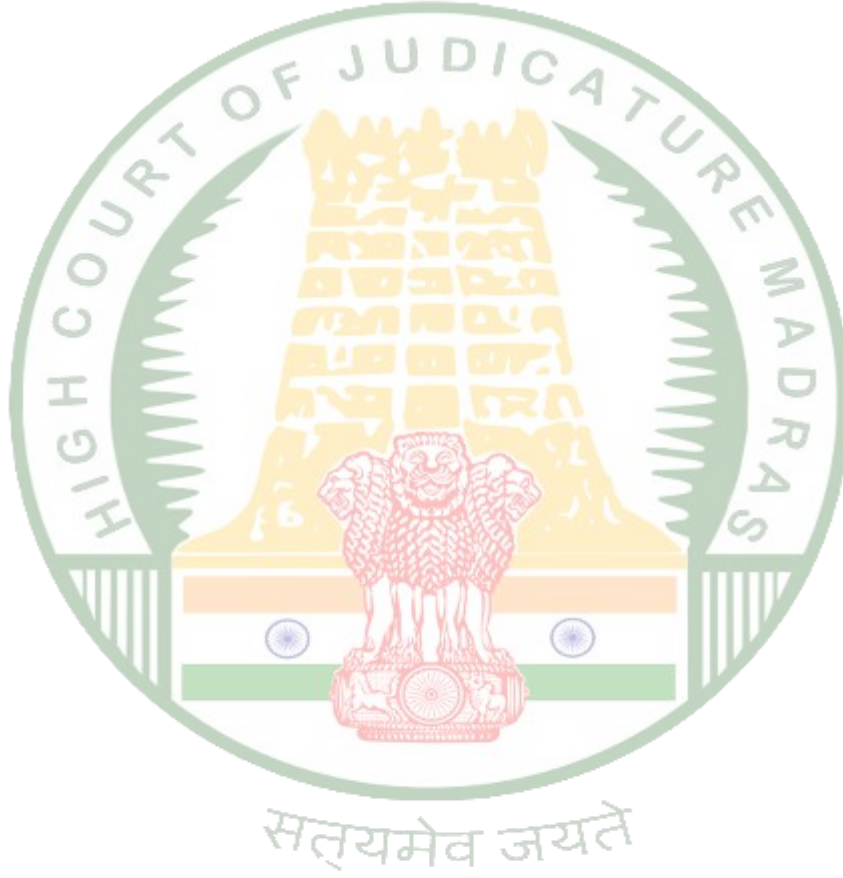
To

1.The Commissioner of Police,
Greater Chennai Police Office,
Vepery,
Chennai-600 007.

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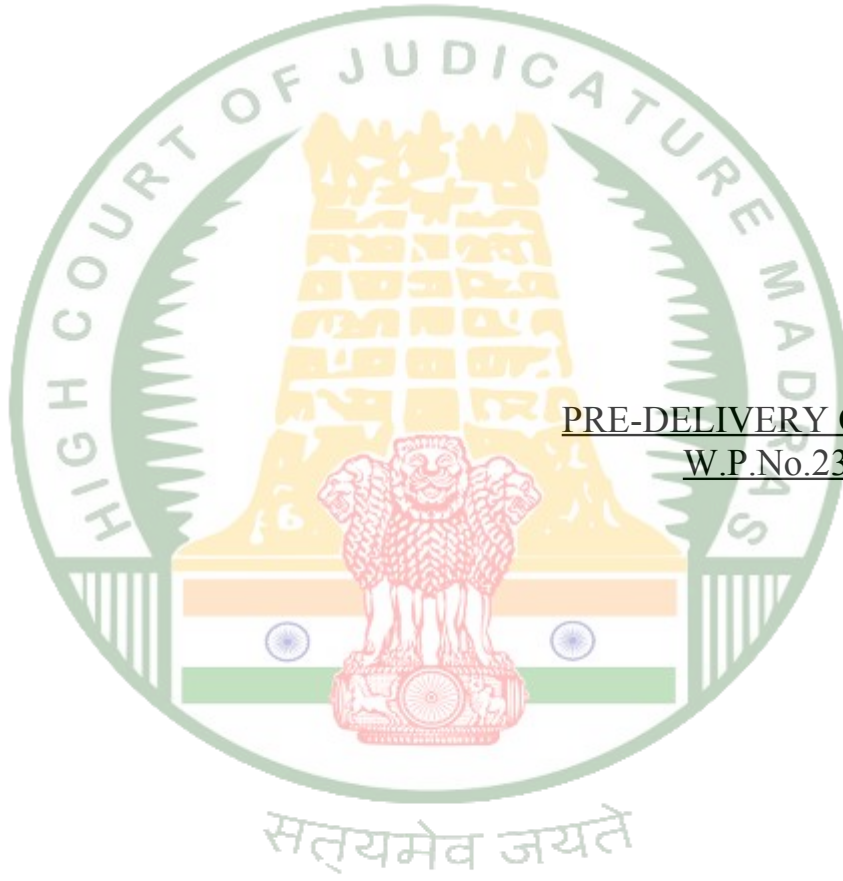
2.The Inspector of Police,
F1, Chintadripet Police Station,
Chennai-600 002.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.,
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PRE-DELIVERY ORDER IN
W.P.No.2397 of 2021

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