



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.11458 of 2020
& WMP Nos.13990 and 13994 of 2020
and Contempt Petition No.609 of 2020
and Sub Application No.298 of 2020

Mrs.Gomathi

(Arrack Shop No.4(0) Karuvadikuppam

... Petitioner in W.P.No.11458 of 2020
& Contempt Petition No.609 of 2020

Vs

1. The Secretary to Government (Excise),
Government of Puducherry, Chief Secretariat,
Puducherry.
2. The Secretary to Government,
(Art and Culture/Wakf) cum Commissioner
Excise, Government of Puducherry Chief Secretariat,
Puducherry.
3. The Deputy Commissioner (Excise) Cum Licensing Authority,
Government of Puducherry, Office of the Deputy
Commissioner (Excise) Industrial Estate,
Thattacnnavadi, Puducherry.
4. Mr.Abhijit Vijay Chaudhari, I.A.S.,
The Secretary to Government,
(Art and Culture/Wakf) cum Commissioner
Excise, Government of Puducherry Chief Secretariat,
Puducherry.
5. Mr.Shashvat Ssaurabh, I.A.S.,
The Deputy Commissioner (Excise) Cum Licensing Authority,
Government of Puducherry, Office of the Deputy
Commissioner (Excise) Industrial Estate,
Thattacnnavadi, Puducherry.
6. V.Kanagaraaj
... Respondents in W.P.No.11458 of 2020

1. Mr.Shurbir Singh, I.A.S.,
The Secretary to Government (Excise),
Government of Puducherry, Chief Secretariat,
Puducherry,



WEB COPY

2. Mr. Abhijit Vijay Chaudhari, I.A.S.,
The Secretary to Government,
(Art and Culture/Wakf) cum Commissioner
Excise, Government of Puducherry Chief Secretariat,
Puducherry.

3. Mr. Shashvat Ssaurabh, I.A.S.,
The Deputy Commissioner (Excise) Cum Licensing Authority,
Government of Puducherry, Office of the Deputy
Commissioner (Excise) Industrial Estate,
Thattachhavadi, Puducherry.

.... Respondents in Cont.P.No.609 of 2020

PRAYER in W.P.No.11458 of 2020: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records relating to impugned order Vide No.01/EC/Appeal No.18/2020 dated 30.07.2020 passed by the 2nd respondent and quash the same and consequently allow Appeal No.18/2020 dated 24.06.2020 preferred by the petitioner under section 60(2) of the Puducherry Excise Act, 1970 and r/w Rule 215 of the Puducherry Excise Rules, 1970 as against order dated vide No.1905/DCE/Arrack/Permit/2020-21/940 dated 29.05.2020 passed by the 3rd respondent and direct respondents 1 to 3 to renew the licence/lease granted to the petitioner with regard to Arrack Shop No.4(O) Karuvadikuppam Oulgaret Municipality thereby cancelling the licence/lease made in favour of the 6th respondent for the said Arrack shop.

PRAYER in Cont.P.No.609 of 2020: Petition filed under Section 11 of the Contempt of Courts Act to punish respondent Nos.1 to 3 for contempt of court for wilful disobedience and deliberate non-compliance/violation of the order dated 10.07.2020 passed by this Court in W.P.No.8986 of 2020 and WMP No.10924 of 2020.

For Petitioner in both : Mr. Prakash Audiypadam

For Respondents in both : Mr. J. Kumaran, AGP

C O M M O N O R D E R

This order disposes W.P.No.11458 of 2020 and Contempt Petition No.609 of 2020.

2. The petitioner holds licences for running of arrack shops in the Union Territory of Puducherry. The shop in question is situated at No.4, (O), Karuvadikuppam, Oulgaret Municipality (shop/shop in question). The petitioner has been holding the licence in regard to the shop in question from 2019 onwards in terms of the Puducherry Excise Rules, 1970 (in short 'Rules'). In line with the applicable Rules, security deposit and bank guarantee of a sum of Rs.1,50,00,000/- has also been furnished by the petitioner.



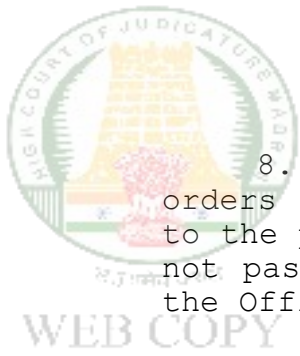
3. While this is so, the petitioner's licence came to be suspended and ultimately cancelled by order of the Deputy Commissioner (Excise) -cum- Licensing Authority/R3 on 05.06.2020. The petitioner filed a statutory appeal against the same before the Secretary to Government-cum-Commissioner (Excise)/R2. Pending appeal, the petitioner had approached this Court by way of Writ Petition in W.P.No.8986 of 2020. The prayer in the Writ Petition was for a direction to R2 to dispose the statutory appeal expeditiously.

4. Bearing in mind that the licence was due to expire shortly, by order dated 10.07.2020, I took note of the submissions of Mr.Prakash Adiapatham, learned counsel for the petitioner then and now and Mr.J.Kumaran, learned Additional Government Pleader, who appeared for the respondents, both then and now. The instructions of Mr.Kumaran to the effect that the hearing of the appeal has been fixed on 16.07.2020 were noted and I had directed that the appeal be disposed before 31.07.2020 and that status quo be maintained till such time.

5. Pursuant thereto, the appeal came to be disposed by R2 on 30.07.2020. Unfortunately, the appellate authority having kept the appeal pending till the date of expiry of the licence, also the last date stipulated by me, merely remanded the matter to the original authority stating that new records have been produced before him which the original authority was in a better position to appreciate. No doubt the manner of disposal of the appeal is fully within the domain of the appellate authority.

6. However, bearing in mind the tenor and spirit in which order dated 10.07.2020 had been solicited and obtained from me, it would have been more appropriate for the appellate authority to have either passed an order of remand earlier so as to enable the original authority to pass the remand order prior to 31.07.2020 or in all fairness, to extend the status quo for a while within which time, the order of remand could have been passed. Neither of this was done. As a result, the petitioner challenged order dated 30.07.2020 in this Writ Petition.

7. When this matter came up for hearing before me on 06.10.2020, the petitioner had already filed the Contempt Petition under disposal stating that there had been rank contempt by the appellate authority in not adhering to the order of this Court dated 10.07.2020. As a means of resolving this dispute, I had directed that an order be passed by the original authority on or before 10.11.2020 and that such order be passed by the Officer who holds charge over Yanam District, since the petitioner expresses no confidence in the Officers in charge of the other Districts. The matter was directed to be listed on 10.11.2020 for production of the order.



8. It is now the petitioner's contention that though orders have been passed on 05.11.2020, which, though adverse to the petitioner, have not been challenged, those orders were not passed on 05.11.2020, but only later and that too not by the Officer stipulated by this Court.

9. Before proceeding to enumerate the points urged before me in support of the Contempt Petition, I dismiss W.P.No.11458 of 2020 as infructuous. The challenge to order dated 30.07.2020 no longer survives in the light of order passed by the original authority dated 05.11.2020 that has attained finality.

10. The petitioner would state that in fact it was the Deputy Commissioner, Puducherry who has passed the order and according to him, this is clear from the fact that the order was handed over by the Deputy Commissioner, Puducherry to him on the night of 10.11.2020. Another copy of the order was received by the petitioner the next day, i.e., 11.11.2020 by RPAD.

11. He points out a discrepancy between the two orders as there is a seal affixed upon the first order which does not figure in the second order, the seal being that of the Deputy Commissioner, Yanam. According to him, there was no reason for the petitioner to have been summoned telephonically by the Deputy Commissioner, Puducherry to receive the order and this one fact would make it clear that the order has been passed only by the Deputy Commissioner, Puducherry and not by the Deputy Commissioner, Yanam as ordered by this Court.

12. An explanation has been tendered to this allegation by the respondents in the Contempt Petition which is extracted below:

7. I humbly submit that, as directed by the Hon'ble High Court, Madras enquiry proceedings were conducted by me and orders also passed under my dictation with my seal and signature on 05.11.2020. Considering the deadline given by the Hon'ble High Court and normal postal delay. The original orders along with and advanced photocopy duly authenticated by my seal to the petitioner, was handed over to Thiru G.Satyanarayanan, Deputy Tahsildar-cum-Excise Inspector, Yanam who proceeded to Puducherry for Diwali Holidays with instructions to handover the original orders related to Hon'ble High Court to the Office of the Government Pleader personally and the duly authenticated advanced copy of the orders to the office of the Deputy Commissioner (Excise), Puducherry with instructions to serve the authenticated order copy to the petitioner as it was done earlier while serving a notice dated 12.10.2020,



WEB COPY

so that the petitioner may be aware of the order passed, which he may receive after the fixed hearing date i.e. on 10/11/2020 through speed post. The entire proceedings were recorded in the concerned original file which was handed over to the Office of the Deputy Commissioner (Excise), Puducherry. The Hon'ble High court may kindly peruse the same.'

13. On a consideration of the rival contentions on this point, I believe that the allegations raised by the petitioner are hyper technical and I do not agree with the petitioner that the order has, in fact, been passed by a person not stipulated by this Court. As explained by the respondents, it was perhaps to ensure that the order reached the petitioner within the time frame fixed by the Court that the order was communicated by the Commissioner, Yanam to the Deputy Commissioner, Puducherry for onward transmission to the petitioner. This is, in any event, a plausible explanation and thus I do not see any need for interference on this account.

14. Yet another submission is in regard to the events that have transpired after passing of the appellate order dated 30.07.2020. The petitioner points out that despite the order of this Court dated 10.07.2020 ordering status quo till 31.07.2020, auction notification has come to be issued on 25.07.2020 wherein the shop in question is also included. This is an admitted position and thus on this score, there could be no dispute that an error has been committed by the respondents.

15. Finally, the petitioner would allege that the bank guarantee offered for a sum of Rs.1,50,00,000/- has been invoked even as early as in July, 2020.

16. Mr.Kumaran sought a days' time to produce records and has produced some material today in regard to the amounts remitted by the petitioner in relation to EMD as well as guarantees and what the appropriations are by the respondents.

17. I am not inclined to refer to this argument by the petitioner, since they are, in no way, connected to the Contempt Petition filed by the petitioner. In fact, this submission does not emanate from out of the Contempt Petition, but only out of the rejoinder filed by the petitioner to the counter affidavit filed by the second respondent. Moreover, the submissions traverse several factual issues that would not concern me in a Writ Petition.

18. I am given to understand that the present licence holder continues till 30.06.2021. Mr.Kumaran informs the Court that fresh auction notice will be issued for the shop in question for the period commencing 01.07.2021 and agrees that



the petitioner is not in arrears of any amount including kist, for the shop in question.

19. The Contempt Petition is thus disposed putting the respondents to terms for admitted violation as recorded at paragraph 14 of this order. The respondents in the Contempt Petition are directed to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) to the Cancer Institute, Adayar, Chennai within a period of four (4) weeks from today and file a memo of compliance before the Registry of the Court.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sl

To

1. The Secretary to Government (Excise),
Government of Puducherry, Chief Secretariat,
Puducherry.
2. The Secretary to Government,
(Art and Culture/Wakf) cum Commissioner
Excise, Government of Puducherry Chief Secretariat,
Puducherry.
3. The Deputy Commissioner (Excise) Cum Licensing Authority,
Government of Puducherry, Office of the Deputy
Commissioner (Excise) Industrial Estate,
Thattacnavadi, Puducherry.

Copy to:

1. The Officer's Incharge
Cancer Institute
Adyar, Chennai
2. The Section Officer,
Contempt Section
High Court, Madras
3. The Section Officer,
Writ Section,
High Court, Madras

+1CC to Office of the Government Pleader, Sr.No.28261/21

W.P. No.11458 of 2020
& WMP Nos.13990 and 13994 of 2020
and Contempt Petition No.609 of 2020
and Sub Application No.298 of 2020

RLD (CO)