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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18450 of 2021

and

W.M.P.No.19682 & 19683 of 2021

1.S.Selvaraj
2.Ajesh Ram
3.Madhesh Ram

..Petitioners

vs

1. Union Territory of Puducherry,
Rep. by the Chief Secretary of Government (Excise)
Government of Puducherry, Secretariat,
Beach Road, Puducherry - 605001.

2. The Commissioner (Excise),
Karaikkal District, Puducherry State.

3. The Deputy Commissioner (Excise),
Karaikkal District, Puducherry State.

4. The District Collector,
Karaikkal District, Puducherry State.

5. J.Anand @ Jaya Anand

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in impugned notice No.8659/DCE/C2/2021-2022 dated 15.06.2021 pending investigation on the file of the 3rd respondent and quash the same and further direct the 2nd respondent to conduct a fresh enquiry.

For Petitioners : Mr.Viswanath
for Mr.N.Udaya Kumar

O R D E R

The Notice dated 15.06.2021, issued by the third respondent is under challenge in the present writ petition.



2. The petitioner states that his daughter Vinodha and her husband Radha Krishnan were running the liquor shop at Vanjor namely Lakshmi Bar and Vinodh Liquors. The licenses were partly, solely owned by Late Mr.Radhakrishnan and Mrs.Vinodha. Mr.Radhakrishnan was murdered by the 5th respondent J.Anand & others in the year 2013. Thereafter, the business was carried by his legal wife Mrs.Vinodha. After that on 26.04.2015, Mrs.Vinodha was murdered by the one local goondas, Ezhilarasi & others with help of Thugs and antisocial elements for personal motive trying to grabbing the said liquor shop and other properties on the instigation of 5th respondent.

3. The learned counsel for the petitioners state that the criminal cases against those accused persons are pending for trial.

4. As far as the present writ petition is concerned, the petitioners state that the 3rd respondent is acting in a prejudicial manner and allowing the 5th respondent to participate in the enquiry proceedings, in spite of the fact that no summons were issued to the 5th respondent. The learned counsel for the petitioners relying on the contentions stated in Paragraph No.13 of the affidavit, states that the 5th respondent is an influential person and there is a possibility of pressurizing the third respondent and in such an event, third respondent will not in a position to decide the issues judiciously and in a neutral manner.

5. The averments in Paragraph No.13 of the affidavit filed in support of the writ petition by the petitioner reads as under:

"13. Further, when we appear for the enquiry the 5th respondent whom no notice was issued present inside the enquiry hall and threatened in the presence of 3rd respondent and left with no option, we had given as we would take time to appear by showing that I am not well and sick. My full intention now is to prevent the 2nd and 3rd petitioners from the hands of hooligans and 5th respondent who can do anything for their property."

6. However, there is no specific malafide allegation against the third respondent. The presence of the 5th respondent in the office of the 3rd respondent caused certain inconvenience to the writ petitioner. If at all, the 5th respondent is to be enquired into by the third respondent, it is contended that he must be properly summoned and an enquiry is to be conducted by following the procedures as contemplated under law.

7. Perusal of the averments in Paragraph No.13 as stated



above would reveal that the grievance of the petitioners is that the 5th respondent was present inside the enquiry hall and threatened the petitioner in the presence of the 3rd respondent. If that is the allegation against the 5th respondent then the 3rd respondent is duty bound to initiate action against the 5th respondent in the manner known to law, for threatening the petitioner. The Enquiry Officer must allow the parties to represent their case freely and fairly. Opportunity provided must be in a fair manner. If anybody started threatening or pressurizing the other person, then the Enquiry Officer must initiate appropriate action and if the allegations of the petitioners against the 5th respondent is true and occurred in the presence of the 3rd respondent in the Enquiry Hall, the 3rd respondent has to initiate appropriate actions and prevent such actions during further enquiry.

8. The 3rd respondent is exercising the quasi judicial powers. Thus, the enquiry must be conducted in a neutral manner and by allowing the parties to represent their case freely and fairly. Any intervention by any other parties, who are not summoned or who are not connected must be viewed seriously by the Authorities Competent. In such circumstances, if required a Police Complaint to be lodged, if there is an allegation of threatening in the presence of the Enquiry Officer.

9. As far as the third respondent is concerned, he is exercising the quasi judicial power and the authority has not been impleaded as respondent in its personal capacity to establish the malafide intention. In the absence of establishing any malafide intention on the part of the third respondent, it would not be appropriate on the part of this Court to change the Enquiry Officer. On some occasions, even the officials may not be in a position to suddenly prevent other interested persons. However, if an allegation is raised, then the said allegation is to be properly addressed in the manner known to law.

10. No writ against a notice needs to be entertained in a routine manner. The writ petition is filed challenging the notice directing the petitioner to appear before the third respondent on 21.06.2021 at 11.30 A.M. The date and time mentioned in the impugned notice is expired and the notice also lost its relevance on account of efflux of time. Thus, the third respondent is directed to conduct an enquiry in a judicious manner and by allowing the petitioner to represent their case freely and fairly and thereafter consider the case on merits and pass appropriate orders by following the procedures as contemplated under the Statute. Accordingly, the third respondent is directed to continue the enquiry proceedings and conclude the same as expeditiously as possible.



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11. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Chief Secretary of Government (Excise),
Union Territory of Puducherry,
Government of Puducherry, Secretariat,
Beach Road, Puducherry - 605001.
2. The Commissioner (Excise),
Karaikkal District, Puducherry State.
3. The Deputy Commissioner (Excise),
Karaikkal District, Puducherry State.
4. The District Collector,
Karaikkal District, Puducherry State.

+1cc to Mr.N.Udayakumar, Advocate, S.R.No.47247

W.P.No.18450 of 2021
and
W.M.P.No.19682 & 19683 of 2021

PVS (CO)
SU(08/10/2021)