IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.16059 of 2020 and
WMP.Nos.19995, 19996 & 19997 of 2020

M/s.A.M.S.Liquor Merchants
Licence No.1/FL-1,
Rep. by its Partner S.Nirmala
T.S.No.C/5/22/1/1/1
Puliyankottai Salai, Karaikal
Pudhucherry - 609 602. …Petitioner

Vs.

1.The Government of Puducherry,
Rep. by its Secretary,
Department of Excise,
Karaikal, Puducherry.

2.The Commissioner,
Department of Excise,
Karaikal, Puducherry.

3.The Deputy Commissioner (Excise),
Karaikal,
Puducherry.

4.The District Collector,
Karaikal,
Puducherry. …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Appeal No.26 of 2020 dated 09.09.2020, quash the same, and further direct the 3rd respondent to renew the petitioner's License (FL-1) for the period from 01.04.2020 based on the petitioner's application dated 26.02.2020 forthwith.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for Isaac Chambers

For Respondents : Mr.J.Kumaran
Additional Government Pleader (Pondicherry)

O R D E R

The petitioner is a firm engaged in the business of sale of Indian and Foreign liquors and claims to be in business for the last 40 years. A show cause notice was issued on 29.03.2020 wherein the Excise Officer i.e. R3 alleges that the running squad had detected certain quantum of liquors that were placed in the premises without any lock and key. The allegation is itself vague. The notice continues to allege that the shop was not kept closed as required by virtue of orders in force at that time and for the aforesaid reasons, the respondent had suspended the operation of the excise licences of the petitioner.

2. This was followed by a notice dated 21.04.2020 calling upon the petitioner to show cause why the suspended licence not be cancelled. The very next day, the petitioner has proceeded to compound the violation, and the reason for compounding is stated thus 'the violation of licence condition and illegal sale of liquors during curfew period', and remitted an amount of Rs.50,000/-. With this, the proceedings for suspension would, in my view, and qua the aforesaid allegations, stand closed conclusively.

3. Notwithstanding the compounding of the offence, the petitioner has preceded to file a response to the show cause notice on 27.04.2020. It has denied the allegations made that an individual was found in the vicinity of the shop carrying 48 bottles of liquor of 180 ml. after the lock down was announced. The petitioner has disavowed all connection with said individual stating that it is unaware of and unconnected with him.

4. On 31.05.2020, R3 has issued a notice in pursuance of the suspension order issued originally. This, in my view, is a fatal flaw and, if at all the respondents were of the view that there are other violations for which a suspension is called for, then proceedings for suspension ought to have been initiated afresh, since the suspension in relation to the allegations mentioned in the earlier notice stand closed by virtue of the proceedings for compounding. Those proceedings cannot, in my view be continued any further. Thus, notice dated 31.05.2020 and proceedings thereafter, in my view are misconceived.

5. In any event, pursuant to the notice, the petitioner has responded setting out and furnishing various details of stocks, the quantum of sales, average daily sales as well as other materials called for by the respondents. An order of cancellation came to be passed on 02.07.2020 as against which an appeal was filed before the first appellate authority, who has dismissed the appeal.

6. The original as well as the appellate authority refer to two reports, of the Sub-Inspector of Police, Karaikal dated 29.03.2020 and report of the Excise Officer dated 29.03.2020, both of which the petitioner states, have not been supplied to it.

7. The impugned order of the first appellate authority contains the following reasoning:

> '(i) Regarding the claim of maintenance of accounts of transaction, condition No.4 of license mandates maintaining correct daily accounts of transaction and submitting returns every month to the excise officers concerned. It is observed from records of Deputy Commissioner (Excise), Karaikal that appellant had not followed monthly submission of accounts. Further, only records of permit cannot be considered as maintenance of daily accounts of transaction.
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> (ii) It is seen from records that suspension order was immediately issued by respondent as Excise Officer reported that licensed premises was not kept closed. Liquor to the tune of Rs.63,43,080/- was seized and isolated within the premises for being kept in open condition. It is seen that violations were of serious nature as they pertained to violation of directions of Deputy Commissioner (Excise) issued to curb illegal sale of liquor during the pandemic. Further, no show cause notice is contemplated under Section28 of Puducherry Excise Act, 1970 for suspension of licence.
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> (iii) Regarding compounding, it is seen from the records that compounding was done on the basis of special report dated 29.03.2020 filed by town police station, Karaikal on illegal sale of liquor. As per Section 44 of Puducherry Excise Act, 1970, the licensee who is reasonably suspected of having committed an offence under Section33 and Section 28(1)(b) may be penalized.
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> (iv) Regarding claim of appellant about non-violation of Rule 199A of Puducherry Excise Act, 1970, it is seen from records that excise officer has reported that liquor stocks were placed in open godown area. During hearing before the undersigned, clip of CCTV footage was

shown to undersigned in support of the claim. But from CCTV footage, only the roadside view could be seen. The CCTV footage had no view of the closed premises.

(v) Regarding not sealing of premises, it is observed that is is responsibility of licensee to abide by terms and conditions of licence and Puducherry Excise Act and Rules, 1970. Further, it is also seen that Rule 199-A does not envision sealing of licensed premises by excise officials to enforce the Rules.

(vi) From the records, it is seen that reasonable time has been given by respondent to explain the stock discrepancies. As records itself were not maintained properly, justification of limited staff does not seem to be reasonable.

(vii) From the records it is seen that claim of appellant that stock report of officials on 13.04.2020 tallied 100% with stock report of the appellant in respect of stocks of beer in the godown is found not to be correct. It is seen from records that on the request of appellant himself re-verification was done in which also there were discrepancies in stock records.

(viii) Regarding claim of appellant for compounding and cancellation of licence on same grounds, it is observed that compounding under section 44 and suspension and cancellation proceeding under Section 28 were for two different violations under Puducherry Excise Act and Rules, 1970.'

8. As expressed by me in W.P.No.16053 of 2020, which has been heard by me along with the present writ petition, orders of the original and appellate authority in this case as well are bereft of the factual particulars required to sustain the order and the violations and irregularities alleged in the maintenance of records, stocks and sales are to be established by the respondents by reference to materials found. The entirety of the observations of the first appellate authority in regard to the alleged discrepancies are theoretical and do not reveal any independent application of the material that are stated to be available on record or the responses that have been furnished by the petitioner. As regards the reference to the violation of orders to contain the pandemic, those offences have been

compounded and as I have indicated in paragraph-4, proceedings cannot be continued any further, qua those offences.

9. On the basis of the aforesaid discussion, the impugned orders of original and appellate authorities are set aside. The respondents are granted liberty to issue a show cause notice afresh indicating the violations and furnishing all materials on the basis of which the allegations are based. After receipt of response from the petitioner, hearing the petitioner and consideration of all materials, the officer will pass an order within a period of eight (8) weeks and the application of the petitioner for renewal of its licence shall be considered thereafter and subject to such order.

10. A legal issue has also been raised on the interpretation of Section 44 of the Puducherry Excise Act, 1970 (Act). Section 44 deals with the compounding of offences and states that the Excise Commissioner, the Deputy Commissioner or other Excise Officer may accept from any person, whose licence or permit is liable to be cancelled or suspended under Section 28, or who is reasonably suspected of having committed an offence under various provisions delineated therein, a sum of money not exceeding one lakh rupees and subject to such minima as may be prescribed in lieu of such cancellation or suspension or by way of compensation for the offence that may have been committed.

11. The stand of the revenue appears to be that the operation of Section 28 and Section 44 are in different planes and therefore proceedings for suspension and cancellation will continue even if certain issues in the notices/orders of suspension and cancellation have been compounded by a licence holder. To crystallize, if a show cause notice addresses multiple issues and if the addressee/licence holder choses to accept and compound a portion of the issues, according to the respondents, proceedings for adjudication may well continue, qua the remaining allegations.

12. In the present matter, bearing in mind the nature of the order that has been passed by me, a detailed enunciation of this issue may not be necessary, since there is no identity between the issue raised in show cause notice dated 21.04.2020 and the issue based upon which order of cancellation dated 29.03.2020 has been passed. The continuation of the proceedings pursuant to show cause dated 21.04.2020 is, as observed by me earlier, misconceived since it turns on an entirely different set of issues. The proper procedure, in my considered view, would have been for the Excise Officer to have issued a show cause notice afresh qua any other irregularities that he believes should be raised; but this has not been done. Liberty to do so has been granted in this order.

13. In fact the compounding of the offence in regard to the violation of the curfew condition is itself, in my view, improper. The compounding has been effected for violation of curfew condition during the operation of the Disaster Management Act, 2005 (DM Act) imposed on 22.03.2020. Thus, at the time when the shop was stated to have been kept open, it was the Disaster Management Act that was in force, which does not contain any provision for compounding of offences, and rightly so, bearing in mind the object, reasons and purpose for which the DM Act has been enacted, its objects being as follows:

> 'An Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto.
>
> Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:
>
> Statement of Objects and Reasons.—The Government have decided to enact a law on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation.

14. Be that as it may, the authorities have proceeded to compound the offence committed under the Excise Act, which, in my considered view, is contrary to the object and intendment of the Disaster Management Act. The control exercised by the Centre and State under the DM Act is in public interest and to control the situation caused by the prevailing disaster, in this case, the COVID - 19 pandemic. Any restrictions placed on the activities and movement of the public is also for the aforesaid reason only.

15. To then extend the benefit of compounding qua that offence would be a travesty of the DM Act, in letter and spirit as the DM Act contains no provision for the compounding of offences committed in violation of the orders issued thereunder. Thus, even if the parent enactment contains a provision for compounding of offences, if the offence committed is a violation of the orders issued under the DM Act, the option of compounding becomes unavailable. It appears that in this case, an FIR has been registered and enquiry is on-going, which is a subject matter of proceedings before this Court.

16. This writ petition is disposed as above. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary,
Government of Puducherry,
Department of Excise,
Karaikal, Puducherry.

2.The Commissioner,
Department of Excise,
Karaikal, Puducherry.

3.The Deputy Commissioner (Excise),
Karaikal, Puducherry.

4.The District Collector,
Karaikal, Puducherry.

+1cc to the Government Pleader, S.R.No. 26972

W.P. No.16059 of 2020 and
WMP.Nos.19995, 19996 & 19997 of 2020

BP(CO)

GN(02/07/2021)