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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.19473 of 2021

Villa Reddi Naidu
Proprietor, Sri Vijaya Durga Wines
2-9-502 Thota Street,
Yanam-533 464

...Petitioner

-Vs.-

The Deputy Commissioner(Excise)
Yanam, Puducherry State.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent herein to consider the application of the petitioner dated 16.07.2021 for renewal of FL-2 license for the current Excise year 2021-22 and grant the same as prayed for.

For Petitioner : Ms.Radha Gopalan
for Ms.G.P.Bhargavi

For Respondent : Ms.N.Mala,
Government Pleader (Puducherry)

O R D E R

Ms.Radha Gopalan, learned counsel appearing on behalf of the counsel on record for writ petitioner and Ms.N.Mala, learned Government Pleader (Puducherry) who accepts notice on behalf of the lone respondent are before this Virtual Court, with the consent of learned counsel on both sides the main writ petition is taken up, as the matter turns on an extremely narrow compass and acute legal angle.

2. Though the prayer in the writ petition is a simple Mandamus, the same pertains to a directive to the respondent to consider an application of the writ petitioner being application dated 16.07.2021 for renewing liquor vending license which is referred to as FL-2 license for the current excise year 2021-22.



3. Learned counsel for writ petitioner submits that the petitioner was originally granted FL-2 licence way back in 1973 in the name of 'Sri Vijaya Durga Wines', the writ petitioner has been applying for renewal of the said license periodically and the same was renewed upto 1982, thereafter, there were some hiccups leading to filing of WP.No.12821 of 1991 and the same was disposed of by a Hon'ble single Judge of this Court on 18.02.1993. A perusal of 18.02.1993 order of the learned single Judge reveals that it is a mere directive to the respondent to consider the writ petitioner's application dated 28.02.1991 within a time frame, but nothing really happened thereafter is learned counsel's say.

4. Learned counsel submits that the writ petitioner could not pursue the matter owing to some personal reasons and it is not necessary to delve into the same or dilate on those facts, owing to the narrow compass on which captioned writ petition turns.

5. Learned State counsel who accepted notice on behalf of the lone respondent submits that the State has taken a policy decision and that policy decision is to the effect that FL-2 licenses shall not be issued. To be noted, the sequitur to this submission of learned State counsel is renewal application qua FL-2 license cannot be considered now.

6. Learned counsel for writ petitioner, in reply, points out that she is aware that FL-2 licenses are not being issued now and that is the obtaining policy decision of State and that is the reason why the writ petitioner is seeking renewal on the strength of the order dated 18.02.1993.

7. This Court having considered the aforementioned submissions is not inclined to accept to the prayer of the writ petitioner, I am inclined to dismiss the writ petition and the reasons are as follows:

(a) Liquor vending is not a right much less a legal right i.e., res extra commercium and law is well settled in this regard inter-alia vide Har Shankar and others Vs. Dy. Excise and Taxation Commr. and others reported in (1975) 1 SCC 737, Assistant Excise Commissioner and others Vs. Issac Peter and others reported in (1994) 4 SCC 104, and Khoday Distilleries Ltd., and others Vs. State of Karnataka and others reported in (1995) 1 SCC 574;

(b) To be noted, law laid down by a Constitution Bench is not just ratio, but declaration of law;



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(c) For a writ petitioner to seek Mandamus, it is imperative that the petitioner has a legal right. This principle has been laid down by Hon'ble Supreme Court way back in Praga Tools Corporation Vs. Shri.C.A.Imanul and others reported in (1969) 1 SCC 585. Praga Tools Principle is to the effect that condition precedent for issue of Mandamus is that a person seeking Mandamus should have a legal right for performance of legal duty by the authority against whom Mandamus is sought. To be noted, Praga Tools principle continues to be good law;

(d) Earlier order made by a learned single Judge of this Court was made nearly three decades ago. It is clearly vintage. As already alluded to supra, the order is dated 18.02.1993 and in about 15 months from now the order will turn 30 years;

(e) Sequitur to the above is, the writ petitioner has alleged that the respondent is in contempt of this order. Contempt also has time line and no elaboration is needed on the same. The time frame for contempt elapsed more than a quarter century ago. All this is vintage in every sense of the term;

(f) The stated position of the State is that a policy decision has been taken that no FL-2 license would be issued. It is also a sequitur submission that therefore, renewal application cannot be considered. There is no reason much less a compelling reason to interfere in this arena of the executive.

(g) The reasons given for the long delay are purely personal and I am unable to persuade myself to believe that such reasons can be accepted for a period spanning over three decades.

(h) As a corollary to the previous point, I am constrained to observe that it appears that the writ petitioner has woken up rather late and has devised the captioned writ petition owing to circumnavigate the obtaining position of FL-2 licenses not being issued by the State.

8. In the light of all that have been set out supra, as already alluded to supra, this Court is not inclined to accede to the prayer i.e., not inclined to answer the prayer in the affirmative. To put it differently, the captioned Writ Petition



is dismissed and considering the nature of fair submissions made in the Virtual hearing, I refrain myself from imposing costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Deputy Commissioner(Excise)
Yanam,
Puducherry State.

+1cc to M/s.G.P.Bhargavi, Advocate, S.R.No.46788
+1cc to the Government Pleader, S.R.No.46584

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SRA[co]
NSK 29/09/2021