



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) No.8541 of 2021

Apple Recreation Club,
Registration No.123/2013,
Represented through its Secretary,
C.Senthil Murugan

... Petitioner

Vs.

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai.

2.The District Collector,
Madurai District.

3.The Assistant Commissioner (Excise),
Madurai District.

4.The District Manager,
TASMAC,
Madurai North,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to receive the license fee and consider the application for renewal of FL-2 license issued in the name of the petitioner's club on the basis of the application dated 04.04.2021 to the third respondent and representation dated 09.04.2021 sent to the first respondent.

For Petitioner	: Mr.M.Thirunavukarasu for Mr.V.S.Kishok Kumar
For R-1 to R-3	: Mrs.J.Padmavathi Devi, Special Government Pleader
For R-4	: Mr.H.Arumugam

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus, directing the respondents to receive the licence fee and consider the application for renewal of FL-2



licence issued in the name of the petitioner's Club on the basis of the application dated 04.04.2021 submitted to the third respondent and the representation dated 09.04.2021 sent to the first respondent.

2.The brief facts of the case are as follows:

(i) The petitioner's Club was formed in the year 2017 in the name of "Seven Star Recreation Club" and thereafter, the same was transposed as "Apple Recreation Club" and the petitioner Club has been given the privilege of liquor licence under FL-2 by the order of the first respondent dated 07.09.2018 and the licence is valid for a period of one year, which is renewable every year on making application. The licence was granted by the first respondent after satisfaction with regard to compliance of the Rules and other provisions as inspected and found by the respondents 2 and 3.

(ii) According to the petitioner, the licence has to be renewed by making application and on payment of fee as per Rule 21 of the Tamil Nadu Liquor (License and Permit) Rules, 1981, along with payment of privilege fee on or before the last day of February every year. Further, the application for renewal made after that period and before 31st March of the year also be considered if there is sufficient reason for the delay, but on payment of additional fee of 25% as the prescribed licence fee.

(iii) According to the petitioner, his licence was renewed in the year 2020 and the same was valid upto 31.03.2021. Therefore, for further renewal, he applied for N.O.C., from the Fire Service and other certificates and issuance of the same was delayed by the concerned Department, due to pandemic situation and due to the Legislative Assembly election and therefore, the petitioner could not process the renewal application for want of certificates from the authorities concerned and therefore, the petitioner's Club was sealed on 02.04.2021 and now, after getting all the necessary certificates, the petitioner applied for renewal of his licence on 04.04.2021. However, the same was not considered till date. Therefore, the petitioner made a representation to the third respondent on 09.04.2021. But, there is no response forthcoming. Hence, this Writ Petition.

3. The learned counsel for the petitioner would state that only due to pandemic situation and Legislative Assembly election, the petitioner could not apply for renewal of licence for want of certificates from the concerned Department and therefore, the petitioner's Club was sealed on 02.04.2021 and hence, suitable direction may be issued to the respondents to renew the licence of the petitioner's Club.

4. In support of his submission, the learned counsel relied on <https://hcservicescentralservices.gov.in> of the Principal Bench of this Court in the case

of **Siruvani Social Welfare Club vs. Commissioner of Prohibition and Excise, Chennai and Others** (W.P.No.31331 of 2015, dated 20.11.2020) . The relevant portion of the said order is extracted hereunder:

3. It has been brought to notice that such refusal by the First Respondent to renew the FL2 licence in respect of similarly placed persons when the application for the same had been made after the expiry of the licence period in terms of Rule 21 of the Rules, have been set aside by this Court by holding that the power of renewal is vested with the concerned authority as per the said Rule even after the licence periods had been expired, in the following decisions:-

(i) Harshini Recreation Club -vs- Commissioner of Prohibition and Excise

(Order dated 16.10.2015 in W.P. (MD) Nos. 13094 and 18941 of 2015) passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in **Commissioner of Prohibition and Excise Department -vs- Harshini Recreation Club** (Order dated 20.04.2017 in W.A. (MD). No. 423 of 2017 and by the Hon'ble Supreme Court of India in **Commissioner of Prohibition and Excise Department-vs- Harshini Recreation Club** (Order dated 20.09.2018 in S.L.P.(C). Diary No. 27583 of 2018).

(ii) Hotel Mount Heera -vs- State of Tamil Nadu (Order dated 10.06.2016 in W.P. Nos. 34214, 34215, 34347 to 34350 and 34492 of 2015 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in **State of Tamil Nadu -vs- Hotel Mount Heera** (Order dated 21.11.2017 in W.A. Nos. 1511 to 1518 and 1519 of 2017 and by the Hon'ble Supreme Court of India in **State of Tamil Nadu -vs- Hotel Mount Heera** (Order dated 20.09.2018 in S.L.P.(C). Diary No.27654 of 2018).

(iii) Manamahal Mandram -vs- Commissioner of Prohibition and Excise (Order dated 30.06.2016 in W.P. (MD) Nos. 7204 and 11395 of 2016 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in **Commissioner of Prohibition and Excise -vs- Manamagil Mandram** (Order dated 10.11.2017 in W.A.(MD) Nos. 1395 of 2017.

(iv) Tvl. Hotel Lions India Pvt. Ltd., -vs- State of Tamil Nadu (Order dated 22.11.2016 in W.P. No. 40943 of 2016 passed by the Learned Judge of this Court, which has been confirmed by the Division Bench of this Court in **State of Tamil Nadu -vs- Tvl. Hotel Lions India Pvt. Ltd.,** (Order dated 29.11.2017 in W.A. No. 1501 of 2017.



Further, the direction issued for temporary suspension of the licence and issue of show cause notice under Rules 22 (1) and 22(2) of the Rules has also been disapproved by this Court in **State of Tamil Nadu -vs- Tvl. Hotel Lions India Pvt. Ltd.**, (Order dated 29.11.2017 in W.A. No. 1501 of 2017), where it has been ruled as follows:-

"10. Question of cancellation of licence arises only during the licence period. As per Section 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, licence expired on 31st March 2016. Respondent has submitted renewal application on 23.09.2016. When licence had already expired on 31.03.2016, it is not known as to how Rule 22 of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 can be invoked in cancellation of licence.

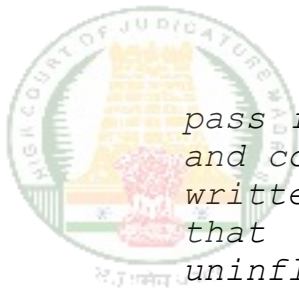
11. Reading of Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, indicate that the licencing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed against the licensee and there could be cancellation of licence.

12. During the period of suspension, licensee shall not not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock.

13. On the facts and circumstances of the case, when licence had already expired on 31.03.2016, there is an error apparent on the face of the record, in invoking rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for cancellation of licence, as if the licence existed, on the date of issuing show cause notice dated 06.04.2016. Expired licence cannot be cancelled."

.....

5. Accordingly, the impugned order in R.C. No. P & E2 (1)/5497/2015 dated 21.09.2015 is quashed and the matter is remitted to the First Respondent to consider the application dated 06.04.2015 made by the Petitioner for renewal of FL2 licence afresh, taking into consideration the dictum laid down in the aforesaid decisions by conducting enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice and deal with each of the contentions raised and



pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Though obvious, it is made clear that the First Respondent shall not be uninhibited and uninfluenced by the impugned order which stands set aside."

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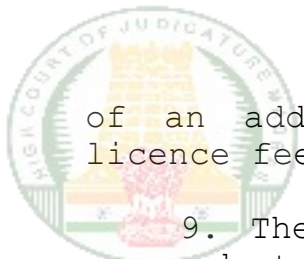
5. The learned Special Government Pleader appearing for the official respondents relies on G.O.(Ms)No.30, Home, Prohibition and Excise (VIII) Department, dated 07.05.2018, wherein amendment has been made to Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules 1981, as follows:

"21. Renewal of licence :- A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) atleast one month before the date of expiry of the licence. The application may be sent to the licensing authority direct. The provisions of rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of a licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee. However, an application for renewal of licence which is received after the expiry of the licence period i.e 31st March of the concerned year will not be considered and the licence already granted will be deemed to be cancelled"

6. The learned Special Government Pleader would further state that the petitioner has to apply before expiry of the licence period and as per the said G.O., the application submitted by the petitioner for renewal of licence which is received after the expiry of the licence period ie., 31st March of 2021, cannot be considered.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The decision relied on by the learned counsel for the petitioner will squarely apply to the present case. Further, it is not is dispute that the whole world is aware of the present pandemic situation by which the entire functioning of the administrative system has come to a standstill for various reasons and therefore, the reasons stated by the petitioner are acceptable reasons. Further, it is also stated that if there is any delay, on payment



of an additional fee of twenty-five percent of the prescribed licence fee, the application for renewal can be considered.

9. Therefore, considering the present pandemic situation, the respondents are directed to consider the representation of the petitioner dated 04.04.2021, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, in the light of the order passed in W.P.No.31331 of 2015, dated 20.11.2020.

10. With the above direction, the writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar(Records)

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/ /2021

Sub Assistant Registrar

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai.

2.The District Collector,
Madurai District.

3.The Assistant Commissioner (Excise),
Madurai District.

4.The District Manager,
TASMAC, Madurai North,
Madurai.

+1CC to THE SPECIAL GOVERNMENT PLEADER(SR-17924[F] dated 28/04/2021)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-17882[F] dated 28/04/2021)

Order made in
W.P (MD) No.8541 of 2021
27.04.2021

PM

SRS/24.05.2021/6P/7C

<https://hcservices.ecourts.gov.in/hcservices/>