



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P(MD) No.12308 of 2021

and

W.M.P(MD)No.9663 of 2021

Sri Annapoorna Tower,
Proprietor T.Navaneetha Krishnan
No. 48, Kuruvikaran Salai,
Near Anna Bus Stand, Madurai District ... Petitioner

vs.

1. The Commissioner of Prohibition and Excise,
Chepauk,
Chennai - 600 005.
2. The Assistant Commissioner (Prohibition),
District Collector Office,
Madurai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the 1st respondent impugned order dated 27.04.2021 in his proceedings in SE.MU.AA.No.MA(MA) AA2(1)/2020/2021, quash the same and consequently directing the 1st respondent to renew the petitioner's FL-3 licence for the period of 2021 to 2022 in the premises of Sri Annapoorna Tower, No.48, Kuruvikaran Salai, Near Anna Bus Stand, Madurai District.

For Petitioner : Mr.P.Murugesan
For Respondents : Mr.P.Thilak Kumar
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the 1st respondent's impugned order dated 27.04.2021 in his proceedings in SE.MU.AA.No.MA(MA) AA2(1)/2020/2021, quash the same and consequently directing the first respondent to renew the petitioner's FL-3 licence for the period from 2021 to 2022 in the premises of Sri Annapoorna Tower, No.48, Kuruvikaran Salai, Near Anna Bus Stand, Madurai District.



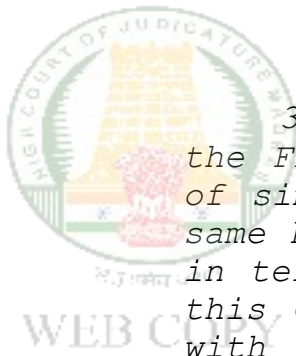
2. According to the petitioner, he has been running FL3 Bar in the subject premises from the year 2010 by obtaining FL3 licence and he has been renewing the licence every year on or before 31st of March. The petitioner's licence was due for renewal before 31.03.2021. The petitioner on 02.03.2020, made a representation to the respondents to modify his licence FL3 Star Category to Non-classified Hotel and the same has been forwarded to the Regional Director (South), India Tourism-Chennai, Ministry of Tourism, Government of India to furnish their star classification status to ensure appropriate payment of privilege fees to this department of renewal of their FL3 liquor licence.

3. The petitioner would further submit that while the matter stood thus, the petitioner's wife who was admitted in hospital for delivery, delivered two per-matured babies who were died and his father-in-law was also affected by Covid-19. In such circumstances, the petitioner was not able to renew the licence within time and therefore, he had made a representation to the authority for renewing his licence which was received by the respondents on 05.04.2021. The petitioner requested the respondents to condone the delay of 4 days in renewing his licence and also sought for permission to pay the renewal fee through online and in the meantime, the petitioner was directed to close his Bar on the ground of non renewal of licence by a communication dated 02.04.2021. The petitioner made a representation on 05.04.2021.

4. The petitioner would further state that he had not violated any condition for the past 10 years and he had invested huge money in the said premises to run the Bar and if the licence is not renewed, he will be put to irreparable loss and hardship. He would further submit that liquor worth of Rs.5 Lakhs was inside the premises and the premises has been locked by the 2nd respondent on 02.04.2021. The petitioner would state that he would undergo irreparable loss and hardship if the locked premises is not opened. The petitioner filed W.P(MD)No.10791/2021 and during the pendency of the writ petition, the impugned order dated 27.04.2021 came to be passed which was signed on 05.05.2021 and the same was served on his counsel on 09.07.2021 and therefore, this Court has dismissed the above writ petition with liberty to challenge the impugned order passed by the 1st respondent dated 27.04.2021, against which, the present writ petition has been filed.

5. The learned counsel for the petitioner would specifically contend that only due to the pandemic situation and the further tragedies in his family, he was not able to renew the licence in time and his Bar was sealed on 02.04.2021. The learned counsel for the petitioner relied on the decision 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)**.

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



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:-

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"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.

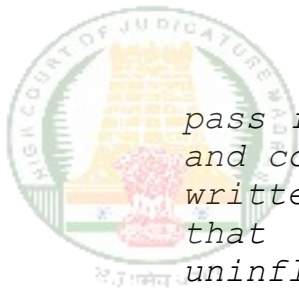
11. Reading of Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, indicate that the licencing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed against the licensee and there could be cancellation 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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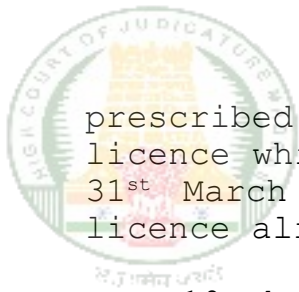
6.The learned Government Advocate appearing for the official respondents had relied on G.O.(Ms)No.30, Home, Prohibition and Excise (VIII) Department, dated 07.05.2018, wherein amendment has been made to Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules 1981, which reads as follows:-

"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"

7.By relying on the above amendment, the learned Government Advocate would state that as per the above rule, the petitioner has to apply for renewal of licence before the expiry of the licence period. The learned Government Advocate would further state that as per the said G.O., the application submitted by the petitioner for renewal of licence, received after the expiry period namely, 31.03.2021, cannot be considered.

8.Heard the learned counsel for the petitioner as well as the respondents.

9.Admittedly, as per the amended Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules 1981, 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.

10. Though the respondents state that the petitioner has applied after the expiry of the licence period i.e., 31.03.2021 of the concerned year and therefore, it will not be considered and the licence granted will be deemed to be cancelled, considering the pandemic situation by which, the entire functioning of the administration system itself has come to stand-still for various reasons and considering that the delay is only for a period of 4 days, as an exceptional case, the respondents shall consider the application of the petitioner for renewal on payment of additional fee of twenty five per cent of the prescribed licence fee, positively, within a period of two weeks from the date of receipt of a copy of this order. The impugned order dated 27.04.2021 passed by the 1st respondent in his proceedings in SE.MU.AA.No.MA(MA) AA2(1)/2020/2021, is quashed in respect of the petitioner is concerned.

With the above direction, the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/pm

Note:(i) 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 - 600 005.

2. The Assistant Commissioner (Prohibition),
District Collector Office, Madurai.

+1 CC to M/s.GP (SR-23496[F] dated 22/07/2021)

+1 CC to M/s.P.MURUGESAN, Advocate (SR-23669[F] dated 23/07/2021)

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20.07.2021

RC (02.08.2021) 6P-5C

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