



W.P(MD) No.18205 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) No.18205 of 2022
and
W.M.P(MD) Nos.13279, 13281 & 13282 of 2022**

1.C.Krishnan

2.V.Viswanathan

3.P.Lazar

4.G.Asha

5.M.Sheeba

6.J.Kavitha

... Petitioners

-VS-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Commissioner,
Prohibition and Excise Department,



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Cheppakkam, Chennai – 05.

3. The Director of Town Panchayats,
Santhome High Road,
MRC Nagar, Raja Annamalai Puram,
Chennai – 600 028.
4. The Managing Director,
Tamilnadu State Marketing Ltd.,
CMDA Building, Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai – 8.
5. The District Collector,
Kanniyakumari District,
At Nagercoil, Kanniyakumari.
6. The Superintendent of Police,
Kanyakumari District, Nagercoil.
7. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Nagercoil, Kanyakumari District.
8. The Executive Engineer,
Water Resource Department (PWD),
Kothaiyar Basin, Veppammmoddu Junction,
Nagercoil, Kanyakumari District.
9. The Assistant Executive Engineer,
PWD/WRO, Kodayar Basin,
Kulithalai, Kanyakumari District.
10. The Assistant Commissioner,
Prohibition and Excise, Nagercoil,
Kanyakumari District.
11. The Deputy Director,
Public Health and Preventive Medicine,



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Krishnakoil, Nagercoil,
Kanyakumari District.

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12. The Executive Engineer,
Public Works Department,
Nagercoil, Kanyakumari District.
13. The Revenue Divisional Officer,
Padmanabhapuram, Thuckalay Post,
Kanyakumari District.
14. The Tahsildar,
Killiyoor Taluk,
Kanyakumari District.
15. The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.
16. The Block Health Supervisor,
Killiyoor Block,
Government Primary Health Centre,
Killiyoor, Tholaiyavattam Post,
Kanyakumari District.
17. The Taluk Surveyor,
Killiyoor Taluk,
Tholaiyavattam Post,
Kanyakumari District.
18. The Fire Inspector,
Kuzhithurai, Kanyakumari District.
19. The Executive Officer,
Keezhkulam Town Panchayat,
Kanyakumari District.
20. T. Thulasidas
Secretary, TVL Kudaloor,



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Star Recreation Club, D.No.18/276/07,
Villariviley, Keezhkulam Post,
Killiyoor Taluk, Kanyakumari District.

21.Murugesan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of impugned order passed by the second respondent in R.Dis.No.P&E. 2(1)/3357/2021 dated 08.07.2022 and quash the same as illegal and unconstitutional and consequently forbear the respondents from locating any Recreation Club attached with Bar for selling liquor in and around the Keezhkulam Town Panchayat and to take action against erred officials who have given false reports by misusing their official capacity favoring 20th respondent.

For Petitioner : Mr.T.Arul

For Respondents : Mr.D.Sadiq Raja,
Addl. Government Pleader
for R1 to R19
Mr.Ragatheesh Kumar
for M/s.Isaac Chambers for R20

ORDER

(Made by P.N.PRAKASH, J.)

The minimum facts that are required for deciding this writ petition are as under:-

1.1 Kudaloor Star Recreation Club, represented by Thulasidas, (respondent No.20) was functioning in Gudalur, Theni District and it was



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granted FL2 licence under the Tamil Nadu Liquor (License and Permit) Rules, 1981, (for brevity “the 1981 Rules”) for supplying liquor to their members.

1.2 They shifted their operation from Theni District to Kanyakumari District and accordingly, the FL2 licence was also granted for the newly shifted place of operation of the 20th respondent.

1.3 The said licence was renewed up to 31.03.2022 and thereafter, the 20th respondent appears to have given an application for shifting the premises from Door No.5/48H, Kazhunettan Villai, Puthukadai Post, Vilavancode, Kanyakumari District to Door No.18/276/07, Villari Villey, Keezhkulam Post, Killiyoor Taluk, Kanyakumari District, which has been permitted by the Commissioner of Prohibition and Excise, vide impugned proceedings dated 08.07.2022, aggrieved by which, the present public interest litigation has been filed.

1.4 In the affidavits sworn to by the petitioners in support of this public interest litigation, they have fairly averred as follows in paragraph Nos.18 and 19:-



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“18. I submit that aggrieved against the manner in which the grant of FI2 License was obtained in an illegal manner, the Panchayat President of Keezkulam Town Panchayath has filed a Writ in W.P(MD)No: 15986 of 2022 and obtained an Order of Status Quo Dated 22.07.2022 and the matter is pending. At that time of filing writ petition, we came to know that the 20th respondent also filed another writ petition in W.P(MD).No.12070 of 2022 to consider their application dated 28.06.2021 for change of premises and during pendency of said writ petition, we came to know that the 2nd respondent has granted permission in favour of 20th respondent to shift their club with bar to the present location by order dated 08.07.2022. Therefore, considering the emergency situation the exact distances from the location of 20th respondent's bar was unable to ascertain and mentioned only approximate distance from the location of bar in the said writ petition in W.P(MD)No: 15986 of 2022. Thereafter, we taken a Arial view measurement with the help of the qualified Civil Engineer and prepared topo sketch and furnished details thereof which are described infra.



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19. I submit that the field inspection report given by the Assistant Commissioner of Prohibition and Excise/ 10th respondent dated 21.06.2022 which was submitted before the Honourable court by the learned Government Pleader in W.P(MD)No: 15986 of 2022, on the file of this Honourable court, it is falsely reported as if, only one house is situated within 30 meters on the Western Side and another house is situated on the Eastern Side within 100 meter, and one Sastha temple is situated within 250 meters, one Angel Matric school is situated within 450 meters, one Anthoniyar church is situated within 450 meters.”

2. We pointed out it to Mr.Arul, learned counsel for the petitioners that when a learned Single Judge has entertained the writ petition in W.P(MD) No.15986 of 2022, which has been filed challenging the same impugned proceedings and has further passed an order of status quo on 22.07.2022 and has also posted the matter for orders on 18.08.2022, how would it be proper for this Court to entertain the present public interest litigation.



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3. In response, Mr.Arul placed material before us to show that the authorities have not properly taken into consideration all the relevant factors before passing the impugned proceedings and that in the present writ petition, he is also seeking a direction to take appropriate action against certain officials in the Prohibition Department for giving an incorrect report to the licensing authority for the grant of licence to the 20th respondent, which report was placed before the learned Single Judge in W.P(MD) No.15986 of 2022.

4. Mr.Arul, in his inimitable style, assailed the report as a false one in support of which, he contended that there are several temples, churches, shops and residential areas in and around the place, where the 20th respondent has been granted the FL2 licence. He also contended that the petitioner's prayer for taking action against the prohibition officials for having given the said report cannot be agitated before the learned Single Judge and that is the reason why this present public interest litigation has been filed.



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5. In paragraph No.18 of the affidavit which has been extracted supra, the reason given for filing this public interest litigation has been set out, which we do not want to repeat.

6. As regards the contention of Mr.Arul that action should have to be taken against the officials who had submitted the report referred to above, we are of the view that such an action can be taken only after a finding is given by the learned Single Judge that the report is a false one. The learned Single Judge, after hearing both parties, by a detailed order dated 22.07.2022, has granted an order of status quo and has further posted the matter on 18.08.2022. When the report is in seizin by the learned Single Judge, we cannot sit as an appellate authority and give a finding in the public interest litigation that the said report is a false one and consequently, direct that action should be taken against the officials for having given the said report. Moreover, admittedly, the said report has not been given to the Court, but it has been given to the Commissioner of Prohibition for the purpose of deciding the grant or otherwise of the FL2 licence to the 20th respondent.



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7. Thus, looking at from any angle, we are of the considered opinion that the present public interest litigation is not maintainable and without expressing any opinion on merits, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

[P.N.P., J.] [R.V., J.]
12.08.2022

Index : Yes / No
Internet : Yes / No

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