



W.P.(MD)No.19777 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.08.2022

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THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.19777 of 2022
and
W.M.P.(MD)No.14424 of 2022

King Cobra Sports and Recreation Club,
Rep. by its Secretary,
Mr.M.Sundar Raja,
S/o.V.Murugan,
Door No.46/17B, Melur Main Road,
Uthangudi,
Madurai District.

.. Petitioner

Versus

- 1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai.
- 2.The District Collector,
Madurai.
- 3.The Assistant Commissioner of Prohibition and Excise,
Collectorate,
Madurai.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC), Madurai North,
Manalur,
Madurai District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying
for issuance of a Writ of Certiorari, to call for the records pertaining to the



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impugned order in Na.Ka.No.39030/2022/X2, dated 05.08.2022, on the file of the second respondent and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy
For R1 to R3 : Mr.R.Subbaraj
Special Government Pleader
For R4 : Mr.H.Arumugam

ORDER

The petitioner filed this Writ Petition challenging the proceedings of the second respondent, in Na.Ka.No.39030/2022/X2, dated 05.08.2022.

2.The contention of the petitioner is that the petitioner Club had obtained Licence F.L.2. No.29/2019-2020 by paying the requisite fee. The first respondent/Commissioner of Prohibition and Excise, Chennai, had granted FL2 licence on 03.12.2019 after obtaining report from the second respondent, dated 11.10.2019. From that date onwards, the petitioner club is serving liquor to its members. The said licence has been renewed periodically. The Prohibition and Excise Officers visited and inspected the club premises regularly. This being so, from the impugned proceedings, it is seen that a case in Crime No.206 of 2022 for the offences under Sections 294(b), 323 and 506(i) IPC has been registered by the Inspector of Police, K.Pudur Police Station, Madurai, against one Sridhar, S/o.Govindharaj, Murugesan,



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S/o.Sivanandi and Murugan, S/o.Veluchami, based on which, the impugned order came to be passed.

3.On perusal of the F.I.R. in Crime No.206 of 2022, it is seen that one Duraipandi, S/o.Malaisami, lodged the said complaint alleging that on 22.06.2022 at 04.00 pm., when he was consuming alcohol along with his friend one Sundar in the petitioner club, they were joking and laughing, at that time, one Sridhar, who was working as employee in the club, objected to the same and shouted at them stating that once they consumed liquor, they have to leave the club without disturbing the others. They informed that they would leave the place within two minutes. Getting infuriated by the same, the employees of the club assaulted them. After taking treatment, the said Duraipandi lodged the complaint. Based on the said complaint, a case in Crime No.206 of 2022 for the offences under Sections 294(b), 323 and 506(i) IPC, came to be registered. The said case was quashed by this Court in Crl.O.P.(MD)No.13355 of 2022 on 25.07.2022 on the basis of the compromise between the parties. This being so, in a perfunctory manner, in the impugned order, the said Crime No.206 of 2022 has been referred to be the cause and reason for suspending the supply of liquor to the petitioner club.



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4.The learned counsel for the petitioner further submits that the Inspector of Police, K.Pudur Police Station, had also registered a case in Crime No.265 of 2022 against the petitioner for the offence under Section 24 of the Tamil Nadu Prohibition Act, 1937, alleging that on 14.07.2022 at 07.50 pm. when they were on patrol duty, entered into the petitioner club and on inspection, found that six persons were inside the club premises and consuming liquor. On enquiry, it was found that they were not the members of the petitioner club. Further, they found that the two wheelers of the members have been parked in the road in a haphazard manner, obstructing traffic. Since the petitioner club was found violating the rules, the above case registered and the F.I.R. along with a report dated 14.07.2022, forwarded to the second respondent. Though the second respondent cited Crime No.265 of 2022 in the reference portion of the impugned order, in the impugned order, he has mentioned Crime No.206 of 2022 and its facts, which already quashed by this Court in Crl.O.P.(MD)No.13355 of 2022, dated 25.07.2022.

5.The learned counsel for the petitioner further submits that FL2 licence granted to the petitioner club by the first respondent/Commissioner of Prohibition and Excise, Chennai, and not by the second respondent/District Collector, Madurai. The second respondent has no jurisdiction and authority



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to suspend or cancel the FL2 licence given to the petitioner club. Further, the petitioner had not violated any of the conditions mentioned in the FL2 licence.

6.The learned counsel for the petitioner further submits that as per Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, the licensing authority has to give in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order to be issued. In this case, neither the petitioner was issued with any show cause notice nor an opportunity was given to them before passing the impugned order, which is in clear violation of principles of natural justice.

7.The learned Special Government Pleader appearing for the respondents 1 to 3 submits that as per Section 23 of the Tamil Nadu Prohibition Act, 1937, the State Government or the Collector or the prescribed authority, as the case may be, has power to cancel or suspend licences and permits. Hence, the second respondent is having power to suspend the licence. Further, as per Section 23(4) of the Tamil Nadu Prohibition Act, 1937, where a *prima facie* case has been made out, the State Government or the Collector or the prescribed authority, as the case may be, may, at any time and for reasons to be recorded in writing, suspend any such licence or permit and in such a



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case, it shall not be necessary to give an opportunity to the holder of the licence or permit to state his objections. In view of the report submitted by the Inspector of Police, K.Pudur Police Station, *prima facie* case is made out. Hence, dispensing with notice of personal hearing, suspension of petitioner's licence has been ordered.

8.Considering the rival submissions and on perusal of the materials, it is seen that it is not in dispute that the petitioner is holding FL2 licence under the Tamil Nadu [Liquor and Permit] Rules, 1981. As per Rule 17(a) of the said Rules, FL2 licences are issued to a non-proprietary club. As per Rule 22 of the Rules, the licensing authority may, after giving in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order proposed to be issued, stating the reasons therefor and thereafter, proceed to issue appropriate orders. Further, as per Section 23 of the Tamil Nadu Prohibition Act, 1937, before any licence or permit is cancelled or suspended for breach of any of the licence conditions, ordinarily not exceeding 14 days time to be granted for filing objections. If *prima facie* case is made out, notice can be dispensed with.

9.On the facts of the case, the respondents have not made out a *prima facie* case. Further, it is seen that the second respondent/District Collector,



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Madurai, though mentioned a case in Crime No.265 of 2022 in the reference portion of the impugned order, in the impugned order, has mentioned a case in Crime No.206 of 2022, which already quashed by this Court in Crl.O.P. (MD)No.13355 of 2022, dated 25.07.2022. Further, the facts narrated therein also had referred as facts of the present case, which would only prove that how in a perfunctory manner, the second respondent had passed the impugned order mechanically without application of mind. Further, FL2 licence issued by the first respondent/Commissioner of Prohibition and Excise, Chennai, who is the licensing authority and not the second respondent/District Collector. In view of the same, this Court quashes the impugned order of the second respondent, dated 05.08.2022, which is not sustainable both on law and on facts. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.08.2022

Index : Yes/No

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Note:- Issue order copy on 26.08.2022.

To

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

2.The District Collector,

Madurai.

<https://www.mhc.tn.gov.in/filing>



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M.NIRMAL KUMAR, J.

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3.The Assistant Commissioner of Prohibition and Excise,
Collectorate,
Madurai.

4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC), Madurai North,
Manalur,
Madurai District.

Order made in
W.P.(MD) No.19777 of 2022

25.08.2022