



W.P(MD).No.20394 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20394 of 2022

and

W.M.P.(MD).Nos.14789 and 14791 of 2022

Honey Bee Recreation Club,
Represented by its Secretary,
P.Muthu Vairavan

... Petitioner

Vs.

1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai-600 005.

2.The District Collector,
Madurai District,
Madurai.

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

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.8479/2022/X2, dated 04.05.2022 on the file of the respondent No.2 and quash the same.

For Petitioner : Mr.T.Lajapathi Roy



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For Respondents : Mr.P.Subbaraj
1 and 2 Special Government Pleader

For 3rd Respondent: Mr.H.Arumugam
Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned order passed by the second respondent in Na.Ka.No.8479/2022/X2, dated 04.05.2022.

2.Mr.P.Subbaraj, learned Special Government Pleader, takes notice for the respondents 1 and 2 and Mr.H.Arumugam, learned Standing Counsel takes notice for the third respondent. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner submitted that the petitioner is the secretary of Honey Bee Recreation Club, was granted FL2 license in FL2.No.37/2020-21 for possession of the liquor and supply the same to the members of the club, for consumption. Thereafter, the same was renewed. Thereafter, the Asssitant Commissioner of Prohibition and Excise vide his proceedings dated 20.04.2022, in Na.Ka.No.8479/2022/Madu2, had issued a notice with regard to stoppage of supply, for the reason that the club



was inspected on 19.04.2022 and found that the club made an access near the four way road and thereby the members of the club parked their two wheelers in a haphazard manner and causing obstructions for the traffic as well as the bus stop and the shop has been used by the members obstructing the public to use the bus stop. The petitioner was directed to take remedy and measures and report about the same on 29.04.2022.

4. On 29.04.2022, the petitioner appeared and gave his representation informing that there are two way to the club and there are 1500 sq. ft space available for parking the vehicle for its members on the near side. Further, he had also given undertaking that no vehicle would be parked on the four way road and also near bus stop and also obstruction would be cleared. On 04.05.2022, the Assistant Commissioner of Prohibition and Excise, has conducted a surprise check and found that no remedial measures have been taken, based on which, the impugned order passed. The petitioner strongly refused that surprise check was conducted on 04.05.2022. The petitioner had produced a letter, dated 19.07.2022 addressed to the District Collector/ second respondent furnishing with the photographs showing that the parking area and also clearing the obstruction pointed out by the Assistance Commissioner of Prohibition and Excise, the same has not been considered. On the other hand,



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he proceeded as though the parking area would be acquired. Further, the order of the Commissioner through his word that stoppage of supply of liquor, it amounts to cancellation of license. The District Collector is not having any jurisdiction for cancellation of license. The cancellation of license is to be done only by the licensing authority. In this case, the petitioner is ready to close the entrance abetting the four way road and also ensure that he should open the entrance through the other side of the place, wherein, 1500 sq. ft. open land is available for parking of vehicles without any disturbance to the public or to any one. He further submitted that the petitioner is ready to produce the photographs along with the affidavit showing that 1500 sq.ft. open area is available to park the vehicles and thereby, the bus stop, four way road are not disturbed and obstructed in any manner. The learned counsel appearing for the petitioner submitted that license has been issued following the G.O.Ms.No.32, dated 21.05.2018.

5.The learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the District Collector only issued the impugned order as a temporary measure and thereafter, he had sent a communication to the first respondent in Na.Ka.No.8479/2022/X2, dated 04.05.2022 to take appropriate action. He further submitted that a complaint



has been received from one Prabakaran, vice president of Hindu Munnani Kazhagam, who had given a complaint specially that due to functioning of club abetting the four way road, the public are unable to use the bus stand and also causing hindrance for free movement of traffic, particularly, women. Thus the public had given a complaint as well as a report has been received from the Assistant Commissioner of Prohibition and Excise, had taken immediate action.

6.The learned Standing Counsel appearing for the third respondent submitted that since the petitioner was given FL2 license, as and when the order is placed by him, the TASMAL authority made their supply. It is for the excise authorities to ensure whether the petitioner is following the condition of the license. The third respondent is concerned only with regard to the supply and proper accounting or the same.

7.Considering the submission and perusal of the materials available on records, it is seen that the petitioner's club was granted FL2 license by the first respondent, on the recommendation of the second respondent and other excise authorities. In the proceedings of the first respondent, dated 12.02.2021, there is a Paragraph No.3, which is mentioned that the District



Collector, Madurai District, in his letter dated 17.09.2022 recorded that the Assistant Commissioner of Prohibition and Excise conducted an inspection and that the petitioner is satisfied of the conditions stipulated for the grant of license under Rule 17(b)(ii) of Tamil Nadu Liquor (License and permit) Rules 1981. After collecting the requisite fees, the license has been granted and the same has been renewed. It is seen that the excise authorities have been regularly visiting the club and making inspection as well the TASMAL authorities also. From the photographs, it is seen that there are two ways to the club and one of the way is abetting Madurai to Thoothukudi Main road and also a bus stop, which appears to be the concerned and causing hindrance or disturbance to the public, due to haphazard parking as well as encroaching upon the bus stand. The petitioner agreed to close the entrance abetting the four way road and also ensure to leave the bus stop free from any encroachment for usage, more particularly by woman. From the communication of the second respondent to the first respondent, there is a reference that in the letter dated 19.07.2022 of the petitioner, though 1500 sq. ft have been mentioned, which is in the custody of the petitioner and ready to use the same. In this regard, the petitioner is directed to file affidavit before the concerned authorities.



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8. In view of the same, the impugned order passed by the second respondent, dated 04.05.2022, in Na.Ka.No.8479/2022/X2 is hereby quashed.

The second respondent is directed to consider the first respondent's report and conduct an independent enquiry and thereafter, to proceed with the same, in accordance with law, if required.

9. Hence, this Writ Petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

30.08.2022

Index : Yes / No
Internet : Yes/ No
vsg

To

1. The Commissioner of Prohibition and Excise,
Chepauk,
Chennai-600 005.

2. The District Collector,
Madurai District,
Madurai.



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