



W.P(MD)No.9831 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 29.08.2022	Orders Pronounced On 13.10.2022
----------------------------------	------------------------------------

W.P(MD)No.9831 of 2018

and

W.M.P(MD)Nos.9041 to 9043 of 2018

M.Suseela

... Petitioner

Vs.

- 1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai – 600 005.
- 2.The District Collector,
Virudhunagar District,
Virudhunagar.
- 3.The Divisional Excise Officer,
Aruppukottai,
Aruppukottai Division,
Virudhunagar District.



W.P(MD)No.9831 of 2018

4.The Secretary,
Raghaa Recreation Club,
Door NO.4/463, Puliyanikulam Village,
Inam Rettiyapatti Road,
Soolakkaraimedu,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the first respondent in R.Dis.No.P&E2(2)/12139/2017 dated 13.04.2018 and quash the same as illegal and consequently forbear the respondents from permitting the operation of any recreation club or liquor vending sh op in Puliyanikulam Village of Inam Reddiyapatti Panchayat, Virudhunagar District.

For Petitioner	:	M/s.J.Irfana Fathima for M/s.Ajmal Associates
For Respondents		
R1 to R3	:	Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.S.Kameswaran Government Advocate
R4	:	Mr.K.Rajeswaran



W.P(MD)No.9831 of 2018

ORDER

WEB COPY

The petitioner, a resident of Puliyankulam Village, Inam Reddiyapatti Panchayat, Virudhunagar District filed this writ petition to call for the records and quash the proceedings of the first respondent in R.Dis.No.P&E2(2)/12139/2017 dated 13.04.2018.

2.The grievance of the petitioner is that the petitioner and her husband were engaged in the business of manufacture of Pencils and Agarbathis in the name and style of Sri Bhoobhal Engineering Works having their unit located in Door No.4/346 abutting the Inam Reddiyapatti and Puliyankulam main road. The majority of their employees are women and the area is also a residential area. The women working in their Unit were working in both day shift and night shift. The 4th respondent attempted to open a recreation club with bar facility in close proximity in Door No. 4/829 which resulted in grave nuisance to the villagers and the residents of the area which is likely to cause hardship to women, spoil the serene environment of the locality and would also result in breach of peace and tranquility. The local police and the revenue officials recommended to the



first respondent that it would not be appropriate to permit the functioning of a recreation club with FL2 licence. The second respondent/District Collector by his communication dated 10.09.2016 opposed the location of the recreation club in the area citing that more than 25 women are working in the petitioner's unit and grant of permission would result in law and order issue. In furtherance of the same, the first respondent in his proceedings dated 24.02.2017 rejected the said application.

3.In the earlier rejection order, the first respondent recorded that objections were received from the Inspector of Police, Soolakkarai Police Station, Village Administrative Officer, general public and All India Democratic Women Association. It is further stated that the proposed location of the club is an accident prone area and lot of students, women and social welfare organizations conducted Dharna opposing the same. It is further apprehended that imminent law and order problem would arise. Further, near the proposed location of the club Sri Vatsa Polytechnic Office is located, lot of women workers employed in the nearby Textile shop, Tamil Nadu Mercantile Bank is located, Training Centre and Evening Education Institute are located. Apart from that, it is a residential area for many



W.P(MD)No.9831 of 2018

Government employees, Policemen, Judicial Officers. Added to it, there is an orphanage which is being run by the Government in name of Annai Sathya Orphanage Home is located. Considering all these aspects, the earlier application by the 4th respondent for grant of FL2 licence to locate the club in Door No.4/829-B was rejected on 24.02.2017.

4.Immediately in quick succession, the 4th respondent submitted another application for location of recreation club at Door No.4/463, Puliyanikulam village, Inam Reddiyapatti Panchayat, Virudhunagar District. This property is situated right opposite to the petitioner's Manufacturing Unit and other residential and educational centres. On receipt of the second application, the Local Police and Revenue Officials conducted inspection. The third respondent by his proceedings dated 12.02.2018 found that there would be increase in accidents, breach of peace and tranquility. It was also found that All India Democratic Women Association objected to the proposed location of the club. The Village Administrative Officer given a report that the location of the recreation club in the proposed site is not feasible. This being so, strangely the second respondent recommended for FL2 licence in favour of the 4th respondent when on an earlier occasion



rejected the same though for a different location in the same area.

Thereafter, the first respondent granted FL2 licence for functioning of the club in the proposed location which is vitiated by colourable exercise of power and fraud on statutory entrustment of discretion. Thus, the impugned order was passed on total non-application of mind, malice in law as the authority took a decision contrary to the facts germane to the issue and on extraneous consideration.

5.It is to be seen that this Court in the case of the ***Tamil Nadu State Marketing Corporation Ltd., vs. R.M.Shah and others*** reported in ***2010 (2) CWC 337*** and in the case of ***G.Vetrivel vs. Golden Enclave Owners' Association and others*** reported in ***2012 (6) CTC 661***, held that the satisfaction of criteria under the Rules only reflects eligibility and does not give license automatically to cause nuisance to the residents. This decision was affirmed by the Apex Court. Further referred to the decision of the Division Bench of this Court in the case of ***M.A.Sudhagar vs. The Government of Tamil Nadu, rep. by its Principal Secretary and others*** reported in ***2014 (4) CTC 721***, wherein this Court elaborately dealt the issuance of FL2 license and it was held that on receipt of application for



grant of FL2 licence, the Licensing Authority should satisfy in general, after due enquiry, find three preliminary conditions are satisfied, namely (i) that the local needs justify the grant of Licence; (ii) that public interest shall not suffer by the grant of licence applied for and (iii) that the privilege is not likely to be misused. Further, this Court referred to Rule 8 of The Liquor Retail Vending [In Shops and Bars] Rules, 2003 and held that the discrimination sought to be maintained between TASMAC Shops and Clubs, by prescribing distance for TASMAC shops alone from Educational Institutions and places of worship but not for Clubs from the very same Educational Institutions and places of worship, is discriminatory and is founded upon on elitist presumption. Further in the case of **R.M.Shah** [cited supra], this Court held that any person who is deprived of peaceful life on account of the nuisance created by a liquor shop would challenge the action in locating the shop in a residential or semi-residential locality as offending the right of life guaranteed under Article 21 of the Constitution of India notwithstanding the fact that the liquor shop satisfies the distance criteria. Further, in the case of **G.Vetrivel** [cited supra] the Division Bench of this Court held that whether it is a residential building or a commercial building, it should meet out the public safety and security.



W.P(MD)No.9831 of 2018

WEB COPY

6. In the present case, the learned counsel for the petitioner produced a typed set of papers containing various representations of from Sri Boobhal Engineering Works, Residents of Puliyanikulam Village, All India Democratic Mahila Sangam and hand bill for holding public protest. Recently, the Government issued G.O.Ms.No.17 Home, Prohibition and Excise [VI] Department dated 13.02.2022, following the directions of the Full Bench of this Court stressing the point that no TASMACH shop to be approved by the Collector unless the representations and objections received are considered and orders passed thereon. In this case, the petitioner, the residents and social welfare organizations sent representations but the same was not considered. Further, the learned counsel for the petitioner produced photographs to show the presence of the Club within the vicinity of Kurinji Ladies Hostel, a Church, small temple and Government Hearing Impaired Higher Secondary School. Hence, he prayed for quashing the impugned order passed by the first respondent in favour of the 4th respondent.



7.Added to it, the learned counsel for the petitioner produced a copy of FIR in Crime No.39 of 2022 dated 09.03.2022 to buttress the fact that all is not well. He would submit that the place is used as a den where there are lot of fighting, finally a murder took place in the club premises, thereby creating a fear phobia in the minds of the residents and others. He further submitted that no women is coming forward to work in the petitioner's Manufacturing Unit and the women work force considerably reduced.

8.The learned Additional Advocate General appearing for the respondents 1 to 3 submitted that the second respondent/District Collector filed his counter which was adopted by the respondents 1 and 3. It is submitted that the averments made by the petitioner regarding earlier refusal to grant permission to the 4th respondent on the recommendation of the second respondent is denied. The Secretary of Sri Raghava Recreation Club applied for FL2 licence for location of the club at Door No.4/829-B in Soolakkarai Village, Aruppukottai Taluk, the first respondent vide order dated 24.02.2017 rejected the claim for FL2 licence on the ground of public objection and non-adherence to the specified distance from National Highway as per the Apex Court order dated 31.03.2017 in Civil Appeal Nos.



12164-12166 of 2016. The 4th respondent now shifted the place of functioning of the club to Door No.4/463, Puliyankulam Village, Inam Reddiyapatti Panchayat, Virudhunagar Taluk. The third respondent in his report dated 12.02.2018 submitted that there would be breach of peace and nuisance would be caused. Since the same was mentioned under presumption, the second respondent issued NOC, based on the report from the Superintendent of Police.

9.The third respondent in his recommendation dated 09.04.2018 referred to the survey sketch prepared by the Head Surveyor and counter signed by the Tahsildar, Virudhunagar Taluk showing that the School for Differently abled persons is situated 680 meters away from the club, Annai Sathya Orphanage is situated 680 meters away, Pillayar temple is situated 280 meters away, VAO office is situated 360 meters away, Kurinji Ladies Hostel is situated 650 meters away and a Church is situated 855 meters away from the club. It is further submitted that there is no dwellings within 300 meters radius of the club. Further, there is no violation in the norms fixed by the Tamil Nadu Liquor [Licence and Permit] Rules, 1981 and recommended for grant of FL2 licence to the said club.



WEB COPY

10. It is submitted that earlier proposed location of the club and the present location are different places. Earlier location was at Door No.4/829-B, Soolakkarai Village of Aruppukottai Taluk and the application for FL2 licence was rejected on the ground of public objections and non-adherence to the specified distance from National Highway. The present location of the club is at Door NO.4/463, Puliyankulam Village, Inam Reddiyapatti Panchayat, Virudhunagar Taluk and the reason for grant of FL2 licence is that there is no dwellings within 300 meters radius of the club, there is no educational institutions or place of worship within 100 meter radius as mandated by the Tamil Nadu Liquor [Licence and Permit] Rules, 1981. Further, in the same locality already a recreation club bearing FL2 licence NO.13/2014-15 is functioning till date for the past 16 years and the challenged club bearing FL2 licence No.1/2018-2019 is functioning till date for the past 3 years and no untoward incident recorded. It is also submitted that the functioning of the 4th respondent Club is monitored regularly, surprise inspections are conducted by the Assistant Commissioner of Excise, Virudhunagar at regular intervals. The Club is adhering to all the terms and conditions of the licence in compliance with the provisions of the



W.P(MD)No.9831 of 2018

Tamil Nadu Prohibition Act, 1931 and the Tamil Nadu Liquor [Licence and Permit] Rules, 1981 from April 2018 onwards. Further, the learned Additional Advocate General submitted that the first respondent Commissioner of Prohibition and Excise granted FL2 licence based on the report submitted by the second respondent and the third respondent that the 4th respondent satisfied all the conditions and after receipt of the privilege and licence fees, FL2 licence was granted.

11.The learned counsel for the 4th respondent Club filed his counter and submitted that originally the agriculturist and villagers of the Alagapuri Village, Virudhunagar District joined together and formed a society in the name and style of “Alagapuri Neer Vadipaguthi Sangam” . The Sangam vide resolution dated 26.08.2014 changed the name of the Society to “Sri Raghaa Recreation Club”. The competent authorities were informed about the same and the certificate of registration was issued. From the date of inception, the Club is strictly following the rules and regulations. It is submitted that the contention of the petitioner that opening of the club at Door No.4/463 Inam Reddiypatti Panchayat, Virudhunagar Taluk would result in nuisance to the villagers and residents and would endanger the



safety of women folk in the area and employer in the petitioner's Manufacturing Unit are false. Earlier the Club made an application for FL2 licence for the premises at Door No.4/829-B which was rejected by the first respondent for the reason that the premises was situated within a distance of 15.7 meters from the National Highway. Hence, the present location was identified, construction was put up, all the amenities and space for the Club were made ready. Thereafter, the 4th respondent applied for grant of FL2 licence for Door No.4/463, Puliyankulam Village, Inam Reddiyapatti Panchayat, Virudhunagar District which was examined by the 3rd respondent and the Superintendent of Police, Virudhunagar, who gave a report to the second respondent. The Superintendent of Police, Virudhunagar issued NOC for issuance of FL2 licence to the 4th respondent. The second respondent after consideration of the report of the 3rd respondent and the Superintendent of Police, Virudhunagar recommended grant the FL2 licence to the 4th respondent. The first respondent on scrutiny of the application and the report, granted licence to the 4th respondent.

12.The club is situated 650 meters away from Ladies Hostel, 280 meters away from temple, 680 meters away from Annai Sathya Orphanage



and 855 meters away from church, finding the club premises is not situated within any prohibited area and finding that there is no deviation of rules and regulations, the club was granted FL2 licence. The petitioner with a hidden agenda filed the present writ petition with false and vexatious allegations. The whole case of the petitioner is only based on assumption and presumptions which cannot be basis for maintaining a writ and the same cannot be entertained. The presence of the petitioner Manufacturing Unit is not a ground for rejection or revocation of FL2 licence which is not a condition precedent for grant of FL2 licence. The FL2 licence cannot be granted or rejected on the whims and fancies of an individual but only in strict adherence to the Tamil Nadu Liquor [Licence and Permit] Rules, 1981 and the Liquor Retail Vending [In Shops and Bars] Rules, 2003. The liquor is served exclusively to the members of the Club and in a closed area, hence, there cannot be any objections from the petitioner. It is further submitted that for the past three years the Club is functioning without any untoward incident except for a stray isolated incident between individuals.

13.Further, Public Interest Litigation was instituted by one Perumalsamy in W.P.(MD).No.12684 of 2018 with similar allegations and



prayed for cancellation of FL2 licence granted to the respondent. The said writ petition was dismissed by this Court vide order dated 05.07.2018. The judgments referred by the petitioner are entirely different from the issues raised by her and the same are not applicable to the facts of the case. It is further submitted that the Club is situated in a remote area without any hamlet of 300 meters, there is no educational institution or place of worship within 100 meters, the Club is 910 meters away from National Highways as per the distance norms prescribed by the Apex Court, there is no TASMAL outlet functioning 5 kms radius and the club is situated at a distance of 1.5 kms in Soolakkarai Village. The FL2 licence was granted finding 4th respondent functioning with strict conformity to the rules and regulations, without any violation or deviation, of any of the Tamil Nadu Liquor [Licence and Permit] Rules, 1981 and the Liquor Retail Vending [In Shops and Bars] Rules, 2003.

14.Considering the submissions and on perusal of the materials placed before this Court, it is seen that initially the 4th respondent Club sought for FL2 licence at Door No.4/829-B, Soolakkarai Village, at that time, the application for FL2 licence was rejected by the first respondent



vide order dated 24.02.2017 for the reason that the proposed location of the club was an accident prone area, All India Women Association and Social Welfare Organizations held Dharna and protest including road roko, there was a Polytechnic College Office, Textile shop, Bank, Training Centres, it is a residential area for many Government employees, Policemen, Judicial Officers and also abutting the National Highways. On the same breath, another application was made on 01.12.2017, this time location of the club was at Door No.4/463, Puliyankulam Village, Inam Reddiypatti Panchayat, Virudhunagar Taluk. The commencing of the Club was objected not only by the petitioner but several others. The location of the present premises is 1 km from the National Highways, further opposite to the present location there is a Pencil Company wherein 20 women workers are employed, in the adjoining residential area, lot of women including elders make their regular walking during morning and evening. The residents of the area made a protest objecting for location of any liquor shop, the Women Association objected to the same and held Dharna. They have sent representation to the Collector, the Superintendent of Police apprehending that if the Club is allowed to function in the said location, possibility of road accident is also there. The report of the Inspector of Police, Soolakkarai Police Station



W.P(MD)No.9831 of 2018

dated 16.01.2018 confirm the same. The Divisional Excise Officer sent his report to the Assistant Commissioner of Excise in Na.Ka.Ka.//135/2017 dated 12.02.2018 by a detailed report. From the report, it is found that a factory by name Sir Boobhal Engineering Works situated right opposite to the proposed place, Pencil and Agarbathi Industry functioning with 30 women workers, confirming the objections of the petitioner. Added to it, one Mrs.S.Sumathi, Secretary, All India Democratic Women Association made objections and her statement recorded. It is also found that there was a working women hostel where 150 women are staying, elders and ladies used the place for morning and evening walk proximate to the location of the club. The residents given representation to the Collector on the Public Grievance Day on 08.01.2018. Finding serious and sustained objections from majority of the people, residents therein and the report of the Inspector of Police, Soolakkarai Police Station, the Divisional Excise Officer's report, the Village Administrative Officer's report, all recommended for rejection of issuance of FL2 licence to the 4th respondent finding the objections real, sustainable and there is every possibility of law and order issue, disturbance of peace and tranquility of the area.



15.This being the fact, for the reasons best known, the second respondent/District Collector gave No Objection for issuance of FL2 licence to the 4th respondent. Further, the second respondent not considered, adverted, gave any reason as to why the report of the third respondent, VAO, Inspector of Police, Soolakkarai Police Station and the general public were not considered. On the other hand, the second respondent conveniently states that on the basis of the report given by the Superintendent of Police, Virudhunagar, recommended for issuance of FL2 licence to the first respondent. The first respondent relies on the report and recommendation of the second respondent and FL2 licence was given to the 4th respondent. The issuance of FL2 hinges on the report of the second respondent. The second respondent without considering the objections from the Public, social welfare organizations, VAO, Inspector of Police, Soolakkarai Police Station. The persons who had been to the place, conducted enquiry and given the field report. On the contrary, the second respondent given a report in favour of the 4th respondent without any justification which is not proper and cast serious doubt, the manner in which No Objection Certificate given. The second respondent over looking the objections brushed aside the tangible materials against issuance of FL2 licence to the 4th respondent.



WEB COPY

16.The Division Bench of this Court held three conditions to be satisfied before issuance of FL2 licence, namely, (i) that the local needs justify the grant of Licence; (ii) that public interest shall not suffer by the grant of licence applied for and (iii) that the privilege is not likely to be misused. In this case, it is admitted by the 4th respondent that the Club was formed as a Society in the name and style of “Alagapuri Neer Vadipaguthi Sangam” with registration No.201/02 by one Govindaraj. His son Arun Karthikeyan, an Engineering Graduate took over the Association and changed the name as Sri Raghaa Recreation Club from 24.02.2015, functioning from Door No.4/829-B, Soolakkari, Aruppukottai Taluk. Further, the report of the Inspector of Police, Soolakkarai confirms, there is no such club functioning in the said address. Though it was projected as membership club, it is functioning otherwise with profit motive. The Division Bench of this Court held, for issuance of FL2 licence, the conditions both in Tamil Nadu Liquor [Licence and Permit] Rules, 1981 and the Liquor Retail Vending [In Shops and Bars] Rules, 2003 are to be followed in strict sense.



17.It is to be seen that the approach of State is to eliminate liquor vending in any manner which is the object of the Tamil Nadu Prohibition Act and the interest of Public and their welfare to be the primary concern. This approach is consistent, the Division Bench of this Court issued directions in this regard in W.p.(MD).No.11806 of 2017 batch. Following the same, recently the Government issued G.O.Ms.No.17 Home, Prohibition and Excise [VI] Department dated 13.02.2022, wherein the Collectors were directed to consider the representation and objections received in the location of the liquor shops. The objections and conditions for the liquor shops would be equally applicable to the FL2 licence [Club licence]. It is also to be seen that the earlier objections and presence of Hearing Impaired School, Working Womens Hostel, Temple, Church and the objections of the general public still exists except for a change in location to overcome the distance criteria. The apprehension of public nuisance and threat for public movement and serene atmosphere still exists.

18.The District Collector in his counter admitted that in the same locality already a recreation club bearing FL2 Licence No.13/2014-2015 is functioning. If that is so, the first condition i.e. local needs justify the grant



W.P(MD)No.9831 of 2018

of licence does not arise. Further, it is not disputed that murder took place within the 4th respondent's club premises on 09.03.2022, one Ramar of Inam Reddiyapatti Panchayat was murdered inside the club and a case in Crime No.39 of 2022 for the offence under Section 302 IPC registered against one Rajeshwaran [Singam] and Karuppasamy of Inaam Reddiyapatti. Thus, sufferance of public interest is found. Further, on perusal of the order passed in W.P.(MD).No.12684 of 2018 dated 05.07.2018, it is seen that the writ petition was dismissed for non-disclosure of certain facts and this Court had not gone into the aspect of violation of Rules.

19.In the present case, it is clear that there have been clear violation of Rules by the second respondent in recommending for issuance of FL2 licence in favour of the 4th respondent. The first respondent primarily gone by the recommendation of the 2nd respondent report and issued FL2 licence in favour of the 4th respondent. In view of the same, this Court finds that issuance of impugned order by the first respondent is not proper. Hence, the impugned order passed by the first respondent in R.Dis.No.P&E2(2)/12139/2017 dated 13.04.2018 is hereby set aside.



W.P(MD)No.9831 of 2018

WEB COPY

20. Accordingly, the writ petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

21. This Court places its appreciations to M/s.J.Irfana Fathima, young upcoming Counsel for her thorough preparation and effective arguments made in this case against the veterans.

13.10.2022

Speaking Order / Non-Speaking Order

Internet : Yes / No

Index : Yes / No

cse

To

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

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Divisional Excise Officer,
Aruppukottai,
Aruppukottai Division,
Virudhunagar District.



WEB COPY



W.P(MD)No.9831 of 2018

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

W.P(MD)No.9831 of 2018

13.10.2022