



*W.A.No.23 of 2022
and W.P.No.11073 of 2022*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.03.2023

Judgment Pronounced on : **30.03.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.23 of 2022 and W.P.No.11073 of 2022
& C.M.P.Nos.306 and 308 of 2022 and W.M.P.Nos.10661, 10662 and
10663 of 2022

In W.A.No.23 of 2022 :

S.Ramasamy

... Appellant

Versus

1. A.Jayaprakash
2. The Secretary,
Home Department,
Govt. of Tamil Nadu,
Fort St. George, Chennai - 600 002.
3. The Collector of Chennai,
Singaravellar Maligai, Rajaji Salai,
Chennai - 600 001.
4. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai - 600 004.



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5. The Commissioner of Police,
Vepery, Chennai - 600 007.
6. The Deputy Commissioner of Police,
Triplicane Range, Vepery,
Chennai - 600 007.
7. The Assistant Commissioner of Police,
Triplicane Range, Chennai - 600 005.
8. The Inspector of Police,
D.1. Triplicane Police Station,
Chennai - 600 005.
9. The Commissioner,
Corporation of Chennai,
Ripon building, Chennai - 600 003.

... Respondents

In W.P.No.11073 of 2022 :

S.Ramasamy

... Petitioner

Versus

1. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.
2. The Inspector of Police,
D.1. Triplicane Police Station,
Chennai - 600 005.

... Respondents

Prayer in W.A.No.23 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 15.12.2021 in W.P.No.16506 of 2015.



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Prayer in W.P.No.11073 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the entire records leading to impugned order made in RC.No.E3(1)/296/105398/2020, dated 18.06.2021 on the file of the first respondent and quash the same and consequently, direct the first respondent to issue renewal of public resort license under Chennai City Police Act, 1888 to the petitioner to conduct Indian Cultural Dance at Pals Restaurant, No.42, Anna Salai, G.G.Complex, Chennai - 600 002.

For Appellant
(in W.A.No.23 of 2022)

&

For Petitioner : Mr.R.Parthasarthy, Senior Counsel
(in W.P.No.11073 of 2022) for Mr.N.K.Vanan

For Respondents : Mr.P.Kumaresan,
(in W.A.No.23 of 2022) Additional Advocate General
Asst. by Mr.P.Balathandayitham,
Special Government Pleader
for RR-2 to 8

: Mr.A.Arun Babu,
Standing Counsel for
Corporation of Chennai for R9

: R1 - No such person

For Respondents : Mr.P.Kumaresan,
(in W.P.No.11073 of 2022) Additional Advocate General
Asst. by Mr.P.Balathandayitham,
Special Government Pleader



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JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

A. The Writ Appeal and the Writ Petition :

Mr.S.Ramasamy is running a restaurant in the name and style of '*Pals Restaurant*' at No.42, Anna Salai, G.G.Complex, Chennai - 600 002. Apart from being a restaurant, there is also entertainment which is provided to its customers in the form of an Indian Cultural Dance show. Under Section 34 of the *Madras City Police Act, 1888*, no enclosed place or building, having area of 500 Sq.ft or upwards, shall be used for public entertainment or resort without a license from the Commissioner. Under the said provision, in respect of these places of entertainment, a license known as 'Public Resort License', with such conditions, is issued by the Commissioner of Police, Chennai.

2. The Government of Tamil Nadu have also framed the rules for grant of such licenses which are known as *Rules For Providing Safety and Convenience At All Places of Public Entertainment or Resort In The City of Chennai*. Under Rule 23, the license granted shall be either temporary or annual. Forms are provided for application of license and the mandatory



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conditions to be followed by the licensees and in respect of building are enumerated in the rules.

3. Originally, the license to the above restaurant was granted on 24.11.1980 to conduct '*cabaret dance*'. The said license was being renewed from time to time, but, however, the permission to conduct *cabaret dance* was changed as performance of *Indian Cultural Dance* with specific condition that there would be no obscene performance or strip-tease or any nude or semi-nude performance and wearing transparent or semi-transparent or scanty dress etc., by the order, dated 06.01.1999 when the license was renewed.

4. While so, when an application, dated 30.12.2020 was made to renew the license for the year 2021, the application was rejected by an order, dated 18.06.2021. Aggrieved by the same, Writ Petition in W.P.No.11073 of 2022 is filed to quash the said order and consequently, to direct the first respondent namely, Commissioner of Police to issue renewal of the Public Resort License.



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5. In the meanwhile, one *A.Jayaprakash* filed W.P.No.16506 of 2015, in which, he prayed for a Mandamus, directing the respondents 1 to 8 therein to consider his representation, dated 05.03.2015 and to take necessary action against the ninth respondent therein namely, *S.Ramasamy*, Proprietor, *Pals Restaurant* to cancel the license and to stop the renewal of the license of the *Pals Restaurant* and to penalise the ninth respondent for his illegal activities and for closure of the restaurant permanently. Upon completion of pleadings, the learned Single Judge allowed the Writ Petition and passed the following order:-

" 26. *This being the facts and circumstances established with reference to the sequence of events, this Court is inclined to pass the following order:*

(1) *The respondents 4 to 8 [the Commissioner of Police, the Deputy Commissioner of Police, the Assistant Commissioner of Police, Triplicane Range, the Inspector of Police, D1 Triplicane Police Station and the Commissioner, Corporation of Chennai] are directed to seal the premises of Pals Restaurant functioning at No.42, GG Complex, Anna Salai, Chennai~2 within 24 hours from the date of receipt of a copy of this order and conduct investigation in respect of cases already registered and initiate all further proceedings regarding any other illegality or violations and proceed in accordance with law.*



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(2) *The 8th respondent, Commissioner, Corporation of Chennai is directed to cancel the license already granted in favour the 9th respondent, Proprietor of Pals Restaurant/Pals Restaurant immediately.*

(3) *The respondents 3 and 4 are directed to issue necessary instructions to all the subordinate Police officials across the State of Tamil Nadu to conduct frequent inspections and identify the clubs, restaurants, Associations, etc. and its activities and in the event of conduct of any obscene dances, illegal activities or otherwise, initiate all appropriate actions including cancellation of license, permits, etc. and prosecute the offenders by following the procedures as contemplated under law.*

27. With these directions, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed."

Aggrieved by the same, S.Ramasamy, Proprietor, *Pals Restaurant* has preferred Writ Appeal in W.A.No.23 of 2022.

6. Since the above Writ Appeal as well as the Writ Petition relates to the renewal of license and opening of the said *Pals Restaurant*, both were ordered to be taken up together and disposed off by this common judgment.

B. The Submissions :



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7. Heard *Mr.R.Parthasarthy*, learned Senior Counsel appearing for the appellant / petitioner in both the cases; *Mr.P.Kumaresan*, learned Additional Advocate General appearing for the respondents 2 to 8 in the Writ Appeal and respondents 1 and 2 in the Writ Petition; *Mr.A.Arun Babu*, learned Standing Counsel for Corporation of Chennai appearing for the ninth respondent in the Writ Appeal. In spite of repeated steps taken for service of notice on the first respondent in the Writ Appeal, the notice returned with an endorsement '*door locked*' or '*no such person*'. Private notice was ordered to the learned Counsel appearing before the Trial Court and such notice was served. However, the first respondent in W. A. No. 23 of 2022 has not chosen to appear before this Court.

C. Findings :

8. As far as the Writ Appeal is concerned, it can be seen that the first respondent namely, *A.Jayaprakash*, had originally filed W.P.No.10009 of 2015 with the following prayer:-

" **PRAYER:** *Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing respondents 1 to 8 to consider the petitioner's representation dated 05.03.2015 and to take necessary action against*



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the 9th respondent to cancel the license and to stop renewal of the license of Pals Restaurant at No.42 Anna Salai, G.G.Complex, Chennai-600002 and to penalize the 9th respondent for his illegal activities and violations of rules and regulations and for closure of the Pals Restaurant permanently."

9. A perusal of the affidavit filed by *A.Jayaprakash* would show that he had filed a petition in public interest on the ground that the said dance programme, conducted in the said *Pals Restaurant*, is obscene in nature and also paves way for prostitution and the restaurant acts as a connector between the customer and the dancing girls. The programme depraves the mind of the youth and creates law and order situation. The said Writ Petition came to be dismissed by the then First Bench of this Court by an order, dated 07.04.2015 and the same is extracted as hereunder:-

" Learned counsel for the petitioner, after making some arguments, seeks to withdraw the writ petition. He has also made an endorsement to that effect.

2. The writ petition is dismissed as withdrawn. No costs. Consequently, M.P. No.1 of 2015 is also dismissed."

10. Thus, it can be seen that the said Writ Petition is dismissed as withdrawn, that too, after arguments and absolutely, no liberty whatsoever



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was granted to file fresh Writ Petition on the same cause of action. As a matter of fact, we have perused the endorsement made in the bundle which also reads as "*permitted to withdrawn*". But, however, the very same *A.Jayaprakash*, the first respondent herein filed W.P.No.16506 of 2015 with verbatim the same prayer which is extracted hereunder:-

" Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondents 1 to 8 to consider the petitioner representation dated 05/03/2015 and to take necessary action against the 9th respondent to cancel the license and to stop renewal of the license of Pals Restaurant at No.42, Anna Salai, G.G.Complex, Chennai-600 002 and to penalized the 9th respondent for his illegal activities and violations of rules and regulations and for closure of the Pals Restaurant permanently."

11. Even on a perusal of the affidavit filed in support of both the Writ Petitions, it can be seen that they are verbatim the same except for mentioning about the withdrawal of the earlier Writ Petition. Therefore, after withdrawing the Writ Petition after some arguments, the petitioner himself adds to the earlier order as if this Court viewed that he had personal interest and therefore, cannot file public interest. We are unable to see any such observation or liberty in the earlier order to file fresh Writ Petition,



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moreover, we are also unable to see any such personal interest in the affidavit filed in support of the present Writ Petition.

12. Essentially, the self-same Public Interest Litigation is filed for the second time. Therefore, in our considered view, the learned Single Judge erred in not considering the earlier order of the Division Bench, whereby, the very same prayer stood rejected as the petitioner has withdrawn the Writ Petition after some arguments. When no liberty whatsoever has been granted to file the present second Writ Petition, the second Writ Petition ought not to have been entertained by the learned Single Judge. Secondly, on the mere *ipse dixit* of the petitioner, there cannot be *locus standi* to file the Writ Petition. He has got nothing to do with the permission or the license. Therefore, unless it is termed as Public Interest Litigation, the present Writ Petition also cannot be entertained. If it is termed as a Public Interest Litigation, then also it was not for the learned Single Judge to entertain the same as the same has to be listed before a Division Bench of this Court dealing with PIL matters. Therefore, looking from any angle of the matter, the order of the learned Single Judge is unsustainable in law, hence, we interfere with the same.



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13. As far as the Writ Petition No.11073 of 2023 is concerned, the same challenges the order of the first respondent namely, the Commissioner of Police, Greater Chennai Police, Vepery, Chennai refusing to renew the license of the Writ Petitioner. It is useful to extract the order as such which reads as hereunder:-

" Whereas it is brought to your notice that you have applied for renewal of Public Resort License for Pal's Restaurant, No.42, G.G.Complex, Anna Salai, Chennai-2 for the purpose of conducting Indian Cultural Dance at the above said Restaurant for the year 2021.

2) The application for the renewal of Pal's Restaurant is duly considered. During 2018 a case was registered against the applicant in D1 Triplicane P.S. in Cr.No.303/2018, U/s 294(a), 509, 109 IPC & 34, 37, 40 A CP Act on 12.05.2018 and case is under investigation stage. Hence, there is an objection to renew the PRL.

3) In view of above said reason, your application for renewal of Public Resort License for the year 2021 shall not be considered and the same is hereby rejected.

4) Receipt of the order should be acknowledged immediately."

Thus, it can be seen that the renewal was refused for the only reason

of a case in Cr.No.303 of 2018 which was registered under Sections 294(a),



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509 and 109 of *The Indian Penal Code* read with 34, 37, 40 A of *The Chennai Police Act, 1888* was under investigation.

14. In this regard, the very F.I.R came to be challenged by the first accused namely, the Manager of the Restaurant and by the order, dated 23.12.2022 in CrI.O.P.No.23611 of 2019, the learned Single Judge, took into consideration the observations of this Court made in an earlier Contempt Petition in Cont.P.No.1446 of 2018 (By one of us, the Acting Chief Justice) that the only material for registering the case being the photographs produced by the respondent Police, which were circulated among the Members of the Bar, Senior Woman Counsel and three other Women Counsel present in the Court being neutral persons have also stated that material did not contain any obscenity. Therefore, the learned Single Judge, after perusing the photographs, came to the conclusion that there was nothing obscene and that there was no material whatsoever to proceed further and the F.I.R was quashed. It is pertinent to state here that even during the present hearing the same photographs alone are produced as the sole material to allege obscenity and once again we also had circulated the photographs to five women lawyers present in the Court and after perusing



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the photographs they were of the view that there was no obscenity found in the dance.

15. It goes without saying that once the F.I.R is quashed, it relates back to the date of registering the F.I.R i.e., 12.05.2018 itself and therefore, it undoes the mischief created by the registration of the case. Therefore, the order passed by the first respondent, dated 18.06.2021, impugned in the Writ Petition, cannot stand as the sole reason, which is mentioned for non-renewal of license being the registration of the Cr. No.303 of 2018 and that the same being under investigation, is no longer possible and therefore, the said order is liable to be interfered with by us.

16. Accordingly, the order of the respondent, dated 18.06.2021 is liable to be quashed. Since the period for renewal i.e., year 2021 itself is now over, we hereby direct the Writ Petitioner to make a fresh application for renewal of the license for the current year i.e., 2023 within one week from the date of receipt of copy of this order and the same shall be considered by the first respondent namely, the Commissioner of Police, Greater Chennai Police, Vepery, Chennai within two weeks therefrom and



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pass orders thereon in accordance with law by duly taking to account the Orders passed by this Court in CrI.O.P.No.23611 of 2019 and Cont.P.No.1446 of 2018.

D. The Result :

17. In the result,

(i) W.A.No.23 of 2022 shall stand allowed and consequently, the order of the learned Single Judge, dated 15.12.2021 in W.P.No.16506 of 2015 is set aside and W.P.No.16506 of 2015 shall stand dismissed;

(ii) W.P.No.11073 of 2022 stands allowed and the order of the first respondent, dated 18.06.2021 bearing RC.No.E3(1)/296/105398/2020 is quashed and consequently, the Writ Petitioner is directed to make a fresh application for renewal of the Public Resort License of the restaurant namely, *Pals Restaurant*, No.42, Anna Salai, G.G.Complex, Chennai - 600 002 for the year 2023 within one week from the date of receipt of copy of the order and the first respondent namely, the Commissioner of Police, Greater Chennai Police, Vepery, Chennai shall consider the same and pass orders in accordance with law by duly taking to account the Orders passed



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by this Court in CrI.O.P.No.23611 of 2019 and Cont.P.No.1446 of 2018

within a period of two weeks therefrom.

(iii) However, there shall be no order as to costs.

(iv) Consequently, connected miscellaneous petitions are closed.

(T.R., ACJ.)

(D.B.C., J.)

30.03.2023

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Secretary,
Home Department,
Govt. of Tamil Nadu,
Fort St.George, Chennai - 600 002.
2. The Collector of Chennai,
Singaravellar Maligai, Rajaji Salai,
Chennai - 600 001.
3. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai - 600 004.
4. The Commissioner of Police,
Vepery, Chennai - 600 007.
5. The Deputy Commissioner of Police,



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Triplicane Range, Vepery,
Chennai - 600 007.

6. The Assistant Commissioner of Police,
Triplicane Range, Chennai - 600 005.
7. The Inspector of Police,
D.1. Triplicane Police Station,
Chennai - 600 005.
8. The Commissioner,
Corporation of Chennai,
Ripon building, Chennai - 600 003.



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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

grs

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