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W.P. No.11291 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Pronounced on : 03.11.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.11291 of 2023

M/s.Ellora Restaurant
Rep by its Proprietor Mr.R.Sivanandham
Old No.25, New No.38
Wallers Road, Chintadripet
Chennai - 600 002.

... Petitioner

Vs

- 1.The Commissioner of Police
Greater Chennai
Vepery, Chennai - 600 007.
- 2.The Inspector of Police
F1, Chintadripet Police Station
Chennai - 600 002.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records relating to impugned order in Rc.No.E3(1)/72/22333/2021, dated 02/01/2023 on the file of the first respondent and quash the same and consequently directing the first respondent to issue renewal of Public Resort Licence under Chennai City Police Act 1888, forthwith to the petitioner to conduct Indian



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Cultural Dance at Old No.25, New No.38, Wallers Road, Chindadripet,
Chennai - 600 002.

For Petitioner : Mr.V.P.Sengottuvel
Senior Advocate
Assisted by Mr.S.Gopinathan

For Respondents : Mr.N.Muthuvel
Government Advocate (Crl. Side)

ORDER

The petition is laid by a certain Ellora Restaurant through its proprietor. It must be stated that this description of the petitioner may not be approved in jurisprudence, but the larger issue is more relevant here.

2. According to the proprietor the Ellora Restuarant, on 02.01.2023, the first respondent herein refused to renew the public resort licence to conduct the Indian cultural dances for the period from 01.01.2019 to 31.12.2019 on the following grounds that:

(a) *There is no adequate parking facility.* Here the petitioner has claimed that he has obtained separate space for parking from certain Mr.S.Kumar, but the said Kumar in his statement has stated that he is not the owner of the parking space, and that he



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himself was a lessee of the said parking space under one Mr.K.T.Murugappan, and even the lease deed produced by the petitioner as having obtained from Kumar is a fabricated document.

- (b) During the field inspection, the authorities have found that there is a staircase with a width of 3.21 ft (98 cm), when it is required to be 4 ft. (121.92 cm).
- (c) There is only one way exit to the restaurant. While the petitioner suggested that the common staircase in the complex could be used as the alternative staircase, the same was rejected.
- (d) There is only an entrance to the place for which the licence is sought, without any emergency exit.

Challenging the said proceedings, the petitioner is before his Court.

3. The petitioner has been attempting for renewal of licence for about a decade now, and this has left a long litigious trail, and the present case is the tail end of this trail as of today. According to the petitioner, he has been engaged in this business since 1993, and the public resort licence granted to it was periodically renewed by the first respondent till 2013, but not thereafter. The learned counsel appearing for the petitioner submitted that :



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(a) On 01.12.2013, the first respondent issued a show cause notice, alleging that on a discreet enquiry made by the first respondent, it had come to light that in the guise of cultural dances, the licence granted was being misused by the petitioner, and women were allowed to perform before predominantly male audiences, lowering the dignity of women. To this, the petitioner had sent his reply dated 07.12.2013, but it was rejected by the first respondent vide proceedings dated 06.05.2014. This was challenged by the petitioner in W.P.No.18951 of 2014, and this Court vide its proceedings dated 23.08.2016, directed the first respondent to consider the explanation submitted by the petitioner on 07.12.2013, and further representation if any for renewal of licence, within a period of four weeks. Since the order of the Court in W.P.No.18951 of 2014 was disobeyed by the first respondent, it landed in Contempt Petition No.3098 of 2016.

(b) Thereafter, the petitioner approached the first respondent with his renewal application and this was again came to be rejected vide his proceedings dated 20.12.2016. And this was challenged by the petitioner in W.P.No.44298 of 2016. Pending this petition, the first respondent came out with a fresh show cause notice dated



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02.06.2017, listing further grounds for rejection, wherein it has alleged that no CCTV camera was installed on the front side of the restaurant, and there is no parking space which causes inconvenience to the general public. The petitioner replied to the same, vide his communication dated 07.06.2017, wherein he had pointed out that the CCTV camera has already been installed in the front portion of the restaurant, and had also indicated that a lease deed had been entered into between him and the land owner of parking space. Necessary documents as required were also submitted by the petitioner. But, in spite of that, the first respondent had rejected his request for some technical reasons vide his proceedings dated 20.06.2017.

(c) In the meantime, when the matter was taken up by this Court on 28.06.2017, it closed the WP.No.44298 of 2016, holding that since the request for renewal of licence for the year 2017 had already been rejected by the first respondent. However, the Court granted liberty to the petitioner to challenge the said order of the first respondent dated, 20.06.2017. Accordingly, the petitioner challenged the proceedings of the first respondent dated 20.06.2017 in W.P.No.16582 of 2017.



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(d) In W.P.No.16582 of 2017, this Court appointed an Advocate Commissioner to assess the real situation of site with regard to the adequacy of parking area. The Advocate Commissioner filed his report, and specified the space available in the property as well as the availability of parking area. Based on the same, this Court vide its order dated 07.01.2019, quashed the order rejecting the renewal of licence by the first respondent, and to consider the renewal of licence to the petitioner from 2019 onwards.

(e) Meanwhile, the lease agreement for the parking space, which the petitioner had entered into came to be cancelled, and the petitioner had since entered into an agreement dated 21.02.2019 with one S.K.Jothinathan, in respect of another parking space, and this was submitted to the first respondent on 25.02.2019. The first respondent however, stuck to his earlier stands and issued a show cause notice dated 19.06.2019, reiterating the same contentions. This notice was challenged by the petitioner in W.P.No.18825 of 2019, and this petition came to be disposed of by this Court 02.07.2019, with a direction to the first respondent to pass orders in accordance with law within a stipulated period.

(f) However, without any application of mind, the first respondent



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yet again rejected the petitioner's prayer for renewal of licence vide his proceedings dated 23.09.2019. The petitioner in his relentless pursuit to remedy, had now filed W.P.No.2397 of 2021. On 17.09.2021, this Court passed an order quashing the proceedings of the first respondent dated 23.09.2019.

(g) Following the order of this Court dated 17.09.2021 passed in W.P.No.2397 of 2021, the first respondent again issued a show cause notice. In the meanwhile, the petitioner also preferred W.A.No.335 of 2022, and a Division Bench of this Court vide its order dated 23.02.2022, disposed of the writ appeal, and granted liberty to the appellant to give an additional reply to the show cause notice.

4. The first respondent has filed its counter which substantially reiterates the facts herein above narrated. In particular, it states :

(a) That the public resort licence was not granted to the petitioner, pursuant to the application made by him in 2013, fundamentally because the petitioner in the guise of Indian cultural dances, misused the licence, as it allowed female to dance before male audiences, and thereby lowered the dignity of women.



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(b) After few litigations, in W.P.No.16582/2017, this Court appointed Thiru.R.Rahul as Advocate Commissioner, and that the learned Court Commissioner has filed his report. One of the core issue was about the parking space necessary for the petitioner-hall, which is mandatory as per Sections 36 and 39 of Chennai City Police Act 1888. In this connection, after the filing of the report by the Commissioner, the lease agreement which the petitioner had entered into for parking space came to be terminated. And since new parking area did not have sufficient parking space for parking the vehicles, another show cause notice came to be issued to the petitioner on 19.06.2019. The petitioner chose not to respond to this show cause notice, but opted to file W.P.No.18825/2019. This was disposed of by this Court on 02.07.2019, with a direction to the first respondent to dispose of the petitioner's application as per law. The petitioner thereafter submitted an application for renewal of licence for the year 2019, and after considering the merit of the petitioner's application, the first respondent rejected it vide its proceedings dated 23.09.2019. The petitioner challenged the said rejection in W.P.No.2397/2021. This Court, vide its order dated 17.09.2021, quashed the order of



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first respondent and issued directions to the first respondent to issue a fresh show cause notice to the petitioner. Accordingly, a fresh show cause notice dated 04.01.2022, was issued to the petitioner, wherein the first respondent had elaborately pointed out the deficiencies, more particularly, the insufficient parking space, a narrow staircase and non-provision of emergency exit in the public resort premises. The petitioner however did not chose to give explanation to the show cause notice, but filed W.A.No.335/2022. This Court, however disposed of W.A.No.335/2022, and directed the petitioner to give its reply to the show cause notice dated 04.01.2022. The petitioner accordingly submitted its explanation on 22.03.2022. This was followed by another letter dated 14.05.2022, wherein the petitioner has indicated that the car parking area of the restaurant was converted into commercial shops and hence he had taken another property (at Chindadripet, Anna Salai, Chennai - 600 002) of a certain Kumar on rental, to park the vehicles. In this regard, a field inspection enquiry was made, and a written statement was obtained by the inspecting authorities both from the petitioner and also from the said Kumar. In his written statement, the petitioner



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has stated that Kumar had handed over the whole parking area to him. Whereas Kumar in his statement has stated he did not hold any property of his own, and that he was only holding a paid parking facility by way of rental agreement with one Murugappan at Park Town, Chennai-600 002, and that he had vacated the said property now. The statement of Kumar implies that the parking slot indicated by the petitioner in his communication dated 14.05.2022 was not held by Kumar, and that Kumar was not the owner, but only a lessee under Murugappan, and that too for a different property, which has since been vacated and returned to Murugappan. This apart, the petitioner has not shown any rental agreement that he had entered with the original owner of the property for parking the vehicles, which implies that his premises has no parking area. Due to absence of parking space, which is a pre-requisite under Section 36 and 39 of CCP Act, the application of the petitioner lacks merit. This apart, the staircase was narrow and does not satisfy the minimum requirement, and that there is only one exit.

- (c) The premises where the petitioner intends to hold cultural performance is in a congested area, and conducting any such



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programme may disturb public peace.

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5. The pursuit of the petitioner to obtain a public resort licence has been relentless, and the story is a decade old now. At various points of time, there has been denial to grant the licence by the licensing authority, the first respondent herein, for multiple reasons. Initial objection appears to be that the petitioner, in the guise of promoting the Indian Traditional Art Forms, has lead its show for performance essentially by women, in which, it tends to offend the dignity of women. Later, it assumed different allegations, the grounds more specific, such as (a) absence of CCTV camera; (b) lack of parking space; (c) absence of emergency exit from the hall; (d) absence of emergency staircase; (e) width of the staircase etc.,

6.1 So far as offending the dignity of the women is concerned, there is an element of moral policy, but freedom of expression under Article 19(1)(a) can be restrained reasonably by the State on grounds *inter alia* decency under Article 19(2). No licence for promotion of any traditional art form of the State or the country cannot let to be abused for performances and that may provoke the basic instincts of men. It is not so much about the individual right to ascertain what is decent, but it is about conforming to the



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licence conditions, if there are any.

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6.2 Turning to the other criteria, this Court plainly cannot re-write the legal requirements if they are already in place. Parking space surely is a criterion on which the petitioner is seen wobbling. Admittedly, the petitioner does not have a parking space of its own and it depends largely on some leased parking space. The size of the parking space depends on the number of audience, the petitioner may accommodate for its programme. Given whether it is going to be a parking for two wheelers, parking for four wheelers, or parking for small cars or SUVs, may vary and here the petitioner needs to make the position clear. Secondly, there is nothing wrong for obtaining a parking space for lease, but then the lease must be subsisting and at any rate, subsisting during the entire period of the public resort licence.

6.3 Turning to the availability of emergency doors for the hall where the performance would take place, it is mandatory, and that the petitioner has not provided one. Regarding the width of the staircase, the authority is the best judge. Suppose if there were to be a fire accident in a small hall with a single exit, it would be absolutely imminent both for the performer and also



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the audience to get out of the hall with utmost safety, and also for the fireman to enter the hall with utmost ease. This Court may not be able to say what should be the ideal width of the staircase, for these are all the matters that should concern the perception of the authority more than the Court. After all, the Court sitting in judicial review, cannot replace the authority, but can only evaluate what the authority has done, conforming to statutory directives.

7. It may be that the petitioner has been continuously denied of public resort licence multiple times during the last decade, and that it might have approached this Court several times. But what is essential for it to obtain a remedy for setting aside the impugned proceedings is that it might have to show whether the impugned order appears to have ignored any of the considerations which the first respondent has omitted to consider or if the proceeding is tainted with malafides. The petitioner has not spared any efforts to explain to this Court how the impugned proceedings is bad in law.

8. To conclude, inasmuch as the first respondent has specifically pointed out certain shortcomings required to be complied with, it is for the petitioner to rectify the same and satisfy the first respondent about the due



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compliance of such requirements. Once they are done, the petitioner is free to approach the first respondent with a fresh application for obtaining the public resort licence. So far as the present petition is concerned, this Court does not find any reasons to interfere with the impugned proceedings of the first respondent, and hence, it is accordingly disposed. No costs.

03.11.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order

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To:

- 1.The Commissioner of Police
Greater Chennai
Vepery, Chennai - 600 007.
- 2.The Inspector of Police
F1, Chintadripet Police Station
Chennai - 600 002.



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N.SESHASAYEE.J.,

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Pre-delivery order in
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