



W.P.No.26046 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.26046 of 2021
and
W.M.P.No.27489 of 2021

S.Kasturi

... Petitioner

Vs

1. The Secretary to Government-cum-Commissioner (Excise),
Government of Puducherry,
Chief Secretariat,
Puducherry – 605 001.

2. The Deputy Commissioner (Excise),
Government of Puducherry,
Office of the Excise Commissioner,
Excise Department,
Thattanchavady,
Pondicherry.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, to declare the order passed in vide Proceedings No.3004/DCE/S2/FL.2/Vil.II dated 16.07.2021 on the file of the second respondent in so far as concerning the demand of



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renewal fee for the period from 2017-2018 to 2021-2022 together with interest on the aforesaid renewal fees amounting to Rs.64,51,510/- as a condition precedent for renewal of license of FL.2 of M/s.S.S.Bar(Lic.No.29/FL.2) as illegal and unconstitutional and direct the second respondent to effect renewal of licence in FL.2 for M/s.S.S.Bar(Lic.No.29/FL.2) with effect from 01.02.2022 in terms of the schedule of kist amount so fixed under the provisions of Puducherry Excise Rules, 1970 periodically.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.V.Vasantha Kumar
Additional Government Pleader

ORDER

This is the third round of litigation before this Court. The petitioner is running a bar in the name and style of M/s.S.S. Bar in Puducherry. Originally the said shop was owned by the petitioner's husband late Thiru.Sambasivam and after his death the liquor license was to be transferred to the petitioner as the legal heir of her late husband Thiru. Sambasivam.



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2. There was a family dispute between the petitioner and the members of the petitioner's husband family. A partition suit was filed by them in O.S.No.243 of 1999. The respondents had declined to renew the FL2 License during 2016 in view of on going family dispute. The petitioner thus filed W.P.No.12190 of 2016.

3. The family members of the petitioner's husband late Thiru.Sambasivam also filed a writ petition before this Court in W.P.No.12324 of 2016.

4. These writ petitions were filed for the following relief:-

W.P.No.	Prayer
W.P.No.12190 of 2016	This writ petition has been filed for a Certiorarified Mandamus, to call for the records of the second respondent pertaining to its proceedings in No.3004/APPEAL/S2/FL.2/2015-2016/641 dated 17.02.2016 and quash the same and consequently direct the second respondent to cancel the FL II license issued to the fourth respondent for running the liquor shop under the name "S.S.Bar" at 69, Othavadai Street Mudaliarpur, Puducherry – 605 004.
W.P.No.12324 of 2016	This writ petition has been filed for a Certiorari, to call for the records relating to impugned order vide No.3004/APPEAL/S2/FL.2/2015-16/641 dated 17.02.2016 passed by the fifth respondent and quash the same as highly illegal, unlawful, arbitrary, ultravires, unconstitutional also on the grounds that it reveals malafide attitude, which resulted, for non application of mind on the part of the second respondent.



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5. By an interim order dated 01.04.2016 in W.M.P.No.10544 of 2016 in W.P.No.12190 of 2016 filed by the petitioner, following order was passed:-

“Thus, in terms of above order, the learned counsel appearing for the petitioner-S.Kasturi represented that, the petitioner wanted to withdraw the Writ Petition with liberty to workout her remedy under the provisions of Pondicherry Excise Act. It is seen from the documents filed before this Court that the said S.Kasturi has not preferred any Appeal against the order, dated 21.07.2016, which was impugned in W.P.No.26442 of 2016, but it appears that, based on interdepartmental note, generated by the Deputy Commissioner Excise, Pondicherry, the order suspending the FL2 License has been revoked and the license has been renewed without prejudice to the rights of the petitioner in W.P.No.12190 of 2016 and other related cases, and subject to the outcome of O.S.No.243 of 1999. It is rather surprising to note, as to how the Deputy Commissioner (Excise) could have passed such an order, when there is an injunction order from renewing the license in favour of Kasturi. License which has not been renewed cannot be restored. That apart, the Deputy Commissioner Excise by passing such order dated 23.08.2016, in No.3004/DCE/S2/FL.2/1999-2000/Vil.II, has virtually violated the injunction order passed by this Court, for which, he would be liable for contempt, which will be taken into consideration on the next hearing date.



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5. Therefore, until further orders, the proceedings of the Deputy Commissioner (Excise) dated 23.08.2016, shall remain stayed, and consequently, the fourth respondent/kasturi is restrained from running the shop S.S.Bar, at 69, Othavadai Street, Mudaliarpeta, Puducherry, or any other place, pending disposal of this Writ Petition. Notice to respondents, returnable by 01.11.2016”

6. By a common order dated 27.02.2020 in W.P.Nos.12190 and 12324 of 2016, this Court had passed a detailed order. Relevant portion of the said order reads as under:-

“69. Any relief in respect of income from the liquor business and future succession to FL-II license which is in the name of the petitioner in W.P.No.12190 of 2016 shall be subject to the final outcome of the partition suit in O.S.No.243 of 1999 pending before the Additional Sub Court, Puducherry.

70. The petitioner in W.P.No.12190 of 2016 has also paid the renewal fee of Rs.10 lakhs for the Excise Year 2016-17 but was unable to utilise the same due to the intervening order of this Court on 30.09.2016.

71. I therefore direct the official respondents to permit the said petitioner in W.P.No.12190 of 2016 to carry on business for the residual period of license for which she could not carry on business and thereafter renew the subject license in the name of the petitioner in W.P.No.12190 of 2016. Such renewable in time to come shall be subject to the outcome of the partition suit in O.S.No.243 of



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1999.

72. In case the petitioner is unable to carry on the liquor business, the license shall be offered to the petitioner in W.P.No.12324 of 2016 and the members of the family. Otherwise, transfer, renewal or succession to the liquor license business shall be subject to the outcome of O.S.No.243 of 1999.

73. It is made clear that under no circumstances the petitioner in W.P.No.12190 of 2016 shall assign or transfer the license to the 5th respondent or her nominee or any other person unless the petitioner in W.P.No.12324 of 2016 is unable to establish rights over the liquor business in O.S.No.243 of 1999. Interse rights of the parties will be subject to the outcome of the partition suit in part O.S.No.243 of 1999. All rights arising out of the income from the said business will be subject to the outcome of the said suit.

74. I therefore request the learned Additional Sub-Judge, Puducherry, before whom O.S.No.243 of 1999 is pending, to dispose the said suit, within a period of twelve months from the date of receipt of a copy of this order. The learned Additional Sub-Judge, Puducherry shall ensure that none of the parties resort to any dilatory tactics in the disposal of the said suit.

75. The Registry is directed to transmit a copy of this order to the Additional Subordinate Court, before whom O.S.No.243 of 1999 is pending, for an effective compliance of the above order.

76. In the light of the above direction,



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W.P.No.12190 of 2016 stands allowed and W.P.No.12324 of 2016 stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.”

7. Despite the above order, the respondents failed to allow the petitioner herein to operate the bar for the residual period of the license as was ordered by this Court in its order dated 27.02.2020. Instead of complying with the order dated 27.02.2020, the respondents demanded a sum of Rs.51,96,056/- for the period during which the bar was under closure due to the interim orders of this Court.

8. Under these circumstances the petitioner filed Contp.No.520 of 2021. Meanwhile, the respondent issued yet another communication dated 16.07.2021 bearing reference No.3004/DCE/S2/FL.2/Vol.II.

9. By an order dated 22.07.2021, the above contempt petition was disposed by recording the undertaking of the respondent to comply with the order of this Court dated 27.02.2020 passed in W.P.No.12190 of 2016 by allowing the petitioner to operate the bar for a period of six months starting from 01.08.2021 to 28.02.2022.

10. While disposing the contempt petition this Court had also



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recorded that as far as demand for Rs.64,61,510/- in terms of the Communication dated 16.07.2021 was concerned, the petitioner was given liberty to workout the remedy in accordance with law. Hence the present writ petition has been filed by the petitioner.

11. The learned counsel for the petitioner would submit that during the period when the bar was not in operation pursuant to the interim order of this Court dated 01.04.2016 and 30.09.2016, the petitioner cannot be saddled with liability.

12. It is submitted that eventuality contemplated under Rule 115A of the Pondicherry Excise Rules, 1970 will apply for the period in past only if the bar was in operation. However, this is a peculiar case where the petitioner was unable to operate the bar on account of the interim order passed by this Court on 01.04.2016 and 30.09.2016 in W.M.P.Nos.29180 of 2016 and 29181 of 2016 in W.P.No.12324 of 2016 filed by the family members of the petitioner's husband late Thiru.Sambasivam.



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13. Defending the Impugned Order, the learned Additional Government Pleader for the respondents would submit that the second respondent / Deputy Commissioner (Excise) has duly complied with the order of this Court by permitting the petitioner to operate the bar for a period of six months from 01.08.2021 to 31.01.2022 and also directed the licensee to pay an amount of Rs.64,51,510/- as the license renewal fee for the period from 2017-2018 to 2021-2022 under extant the provisions of the Puducherry Excise Rules, 1970.

14. It is submitted by allowing the petitioner to run the bar without paying the prescribed license renewal fee is not only violative of the Puducherry Excise Rules in vogue but will also impose revenue loss to the respondent.

15. It is submitted that by an order dated 22.07.2021, this Court had directed the petitioner to pay the license fee for the period between 2017-2018 and 2021-2022 under the provisions of the Pondicherry Excise Rules, 1970.

16. It is submitted that private dispute between the petitioner and



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the her relatives cannot deprive the respondent the legitimate revenue under the provisions of the Pondicherry Excise Rules, 1970 and the rules made there under. Hence, prays for dismissal of the present writ petition.

17. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

18. There is no justification in saddling the petitioner with license fee for the period during which the bar was kept under closed pursuant to the order passed by this Court on 01.04.2016 and 30.09.2016 in W.P.No.12190 of 2016 and W.M.P.Nos.29180 & 29181 of 2016 in W.P.No.12324 of 2016.

19. W.P.No.12324 of 2016 was filed by the petitioner's relatives with a view to arm twist the petitioner to give up her rights over the bar license which was standing in the name of petitioner husband late Thiru.Sambasivam.

20. The order of this Court cannot cause prejudice to the petitioner.



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In this connection, a reference is made to the following latin maxim:

“Actus curiae neminem gravabit”. It means an Act of the Court shall prejudice no one.

21. Under these circumstances, I am inclined to allow this writ petition. The petitioner shall pay the requisite license fee for renewal of the license only for the ensuing in accordance with the provisions of the Pondicherry Excise Rules, 1970. Liberty is however given to respondent to recover the loss sustained by it from the petitioner who had filed W.P.No.12324 of 2016 in accordance with law.

22. The writ petition stands allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

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Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
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C.SARAVANAN, J.



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To

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Government of Puducherry,
Chief Secretariat,
Puducherry – 605 001.
2. The Deputy Commissioner (Excise),
Government of Puducherry,
Office of the Excise Commissioner,
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