

W.P.(MD) Nos.15986, 16780 & 19095 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
01.03.2023	31.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) Nos.15986, 16780 & 19095 of 2022
and
W.M.P.(MD) Nos.11556, 11558, 12161, 13946, 13948, 13949 & 13951 of
2022**

W.P.(MD) No.15986 of 2022:

P.Sarala

... Petitioner

-vs-

1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Secretariat
Chennai-600 009

2.The Commissioner
Prohibition and Excise Department
Cheppakkam, Chennai-05

3.The Managing Director
Tamilnadu State Marketing Ltd.
CMDA Building
Tower-II, Gandhi Irwin Bridge Road
Egmore, Chennai-8

4.The District Collector
Kanniyakumari District
@ Nagercoil
Kanniyakumari

5.The Executive Officer
Keezhkulam Town Panchayat
Kanyakumari District

6.T.Thulasidas

7.The Assistant Commissioner
Prohibition and Excise
Nagercoil, Kanyakumari District

8.The Block Health Supervisor
Killiyoor Block
Tholayavattam Post
Kanyakumari District

9.Murugesan

10.Paulmony

11.Sudha

12.Paulian

13.Mohamed Khan

14.Devadasan

15.C.Vijayakumar

16.Jasmine

17.Markirate Joseph

18.A.Samuthira Pandiayn

19.Shoba

20.A.Deepa

21.A.Vijayakumar

22.Mallika

23.Alphonsal

24.John Renjith Singh

25.Ibrahim

26.Anitha

... Respondents

[R7 to R9 are impleaded vide Court order dated 07.09.2022 in W.M.P. (MD) No.15550 of 2022 in W.P.(MD) No.15986 of 2022; R10 to R14 are impleaded vide Court order dated 18.10.2022 in W.M.P.(MD) No.17979 of 2022 in W.P.(MD) No.15986 of 2022 and R15 to R26 are impleaded vide Court order dated 18.10.2022 in W.M.P.(MD) No.17986 of 2022 in W.P.(MD) No.15986 of 2022]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration declaring (a) the proceedings of the second respondent in R.Dis.P and E.2(1)/8078/2018, dated 31.01.2019, which is referred to in the proceedings in R.Dis.No.P and E.2(1)/3357/2021, dated 08.08.2022 (b) the Field Inspection Report of proposed seventh respondent dated 21.06.2022 (c) the consequential proceedings of the second respondent vide proceedings in R.Dis.No.P and E.2(1)/3357/2021, dated 08.07.2022 are invalid and void and consequently to forbear the respondents from locating any Recreation Club attached with Bar for selling liquor in and around the Keezhkulam Town Panchayat.

[Prayer amended vide Court order dated 13.09.2022 in W.M.P.(MD) No.15848 of 2022 in W.P.(MD) No.15986 of 2022]

For Petitioner : Mr.T.Arul

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilakkumar
Govt. Pleader for R1, R2, R4, R5 R7 & R8
Mr.S.Sivanesan
Standing Counsel for R3
Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers for R6

W.P.(MD) No.16780 of 2022:

K.Sudhan

... Petitioner

-vs-

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Secretariat
Chennai-600 009
- 2.The Commissioner
Prohibition and Excise Department
Cheppakkam, Chennai-05
- 3.The Managing Director
Tamilnadu State Marketing Ltd.
CMDA Building
Tower-II, Gandhi Irwin Bridge Road
Egmore, Chennai-8
- 4.The District Collector
Kanniyakumari District
@ Nagercoil
Kanniyakumari
- 5.The District Manager
TASMAC
Nagercoil
Kanyakumari District
- 6.The Assistant Commissioner (Excise)
Nagercoil, Kanyakumari District
- 7.The Revenue Divisional Officer
Padmanabhapuram
Thuckalai Division
Kanyakumari District
- 8.The Tahsildar
Killiyoor Taluk

Kanyakumari District

9.The Executive Officer
Keezhkulam Town Panchayat
Kanyakumari District

10.T.Thulasidas

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the second respondent in R.Dis.No.P&E. 2(1)/3357/2021, dated 08.07.2022 and quash the same as illegal and unconstitutional, consequently forbear the respondents from locating any Recreation Club attached with Bar for selling liquor at Keezhkulam Town Panchayat, Kanyakumari District especially near petitioner temple Arulmigu Uthayagiri Sastha Rajarajeshwari Devasthanam.

For Petitioner : Mr.T.Arul
for Mr.R.Sreenivasan

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilakkumar
Government Pleader for R1, R2, R4, R6 to R8
Mr.S.Sivanesan
Standing Counsel for R3 & R5
Ms.Farjana Ghousia for R9
Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers for R10

W.P.(MD) No.19095 of 2022:

1.C.Krishnan

2.V.Viswanathan

3.P.Lazar

4.G.Asha

5.M.Sheeba

6.J.Kavitha

... Petitioners

-vs-

1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Secretariat
Chennai-600 009

2.The Commissioner
Prohibition and Excise Department
Cheppakkam, Chennai-05

3.The Director of Town Panchayats
Santhome High Road
MRC Nagar, Raja Annamalai Puram
Chennai-600 028

4.The Managing Director
Tamilnadu State Marketing Ltd.
CMDA Building
Tower-II, Gandhi Irwin Bridge Road
Egmore, Chennai-8

5.The District Collector

Kanniyakumari District
@ Nagercoil
Kanniyakumari

- 6.The Superintendent of Police
Kanyakumari District
Nagercoil
- 7.The Deputy Superintendent of Police
Vigilance and Anti-Corruption Department
Nagercoil, Kanyakumari District
- 8.The Executive Engineer
Water Resource Department (PWD)
Kothaiyar Basin
Veppammoodu Junction
Nagercoil, Kanyakumari District
- 9.The Assistant Executive Engineer
PWD/WRO, Kodayar Basin
Kulithurai
Kanyakumari District
- 10.The Assistant Commissioner
Prohibition and Excise, Nagercoil
Kanyakumari District
- 11.The Deputy Director
Public Health and Preventive Medicine
Krishnankoil
Nagercoil
Kanyakumari District
- 12.The Executive Engineer
Public Works Department
Nagercoil
Kanyakumari District
- 13.The Revenue Divisional Officer

Padmanabhapuram
Thuckalai Post
Kanyakumari District

14.The Tahsildar
Killiyoor Taluk
Kanyakumari District

15.The Inspector of Police
Pudukadai Police Station
Kanyakumari District

16.The Block Health Supervisor
Killiyoor Block
Government Primary Health Centre
Killiyoor, Tholaiyavattam Post
Kanyakumari District

17.The Taluk Surveyor
Killiyoor Taluk
Tholaiyavattam & Post
Kanyakumari District

18.The Fire Inspector
Kuzhithurai
Kanyakumari District

19.The Executive Officer
Keezhkulam Town Panchayat
Kanyakumari District

20.T.Thulasidas

21.Murugesan

22.C.Vijayakumar

23.Jasmine

24.Markirate Joseph

25.A.Samuthira Pandiayn

26.Shoba

27.A.Deepa

28.A.Vijayakumar

29.Mallika

30.Alphonsal

31.John Renjith Singh

32.Ibrahim

33.Anitha

34.Paulmony

35.Sudha

36.Paulian

37.Mohamed Khan

38.Devadasan

... Respondents

[R22 to R33 impleaded vide Court order dated 18.10.2022 in W.M.P.(MD) No.17984 of 2022 in W.P.(MD) No. 19056 of 2022 and R34 to R38 impleaded vide Court order dated 18.10.2022 in W.M.P.(MD) No.17985 of 2022 in W.P.(MD) No.19095 of 2022]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of impugned order passed by the second respondent in R.Dis.No.P&E.2(1)/3357/2021, dated 08.07.2022 and quash the same as illegal and unconstitutional and consequently forbear the respondents from locating any Recreation Club attached with Bar for selling liquor in and around the Keezhkulam Town Panchayat and to take action against erred officials who have given false reports by misusing their official capacity favouring twentieth respondent.

For Petitioner : Mr.T.Arul

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilakkumar
Government Pleader
for R1 to R3, R5, R8 to R14, R16 to R18
Mr.S.Sivanesan
Standing Counsel for R4
Mr.S.Ravi
Additional Public Prosecutor for R7, R7 & R15
Ms.Farjana Ghousia for R19
Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers for R20

C O M M O N O R D E R

D.KRISHNAKUMAR, J.

Challenge in these writ petitions is to the order dated 08.07.2022, passed by the Commissioner, Prohibition and Excise Department, granting permission to Tvl.Kudaloor Star Recreation Club, Kanniyakumari District, for shifting the recreation club from 5/48H, Kazhunettan Vilai, Puthukadai Post, Kanniyakumari District, to Door No.18/276/07, Villariviley, Keezhkulam Post, Killiyoor Taluk, Kanniyakumari District.

2. Since the issues involved in these writ petitions are one and the same, they have been clubbed together, heard together and are being disposed of by this common order.

3. Learned counsel appearing for the petitioners submitted that Keezhkulam Town Panchayat is having population of more than 20,000 and the entire villagers want alcohol free society and therefore, the Panchayat passed a resolution for not allowing TASMAC shops in the their village for the past fifteen years. Now, the Secretary, TVL Kudaloor Star Recreation Club has approached the Commissioner, Prohibition and Excise Department for shifting his Club from 5/48H, Kazhunettan Vilai, Puthukadai Post, Kanniyakumari

District, to Door No.18/276/07, Villariviley, Keezhkulam Post, Killiyoor Taluk, Kanniyakumari District and the Commissioner also, by the impugned order, has granted permission for the so-called shifting of the recreation club.

4. Learned counsel for the petitioners mainly canvassed that the Commissioner, Prohibition and Excise Department has to consider the request of the Secretary of the Recreation Club under Rule 19(A)(a)(b) of Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and the conditions stipulated thereunder have to be satisfied. According to the learned counsel for the petitioners, the Secretary of the Recreation Club approached Keezhkulam Village Panchayat seeking permission to run a godown in the locality and the Village Panchayat also granted permission to him to run a godown, however, contrary to the said permission, he tries to conduct a Recreation Club for the purpose of using liquor in the club, which is in total violation of the said Rules. Further, originally, the Recreation Club was permitted to possess 500 units of liquor and it was enhanced to 2000 units of liquor.

5. Learned counsel for the petitioners further submitted that the Recreation Club was originally registered in Gudalur, Theni District, under the Societies Registration Act and FL2 licence was granted for the members of

Gudalur Region. However, the Secretary of the Club gave application for change of the Club premises from Gudalur to Kazhunettanvilai, Pudhukadai Post, Vilavancode Taluk, Kanyakumari District, by adding some more members of that locality and then registered the Club afresh. Since the earlier society and the new society are different and having separate entities, the Secretary of the Recreation Club cannot claim that the new Club is the same as that of the old Club. While transferring from Gudalur, Theni District to Keezhkulam, Kanyakumari District, out of 232 members, only 39 members hail from Kanyakumari District and there is no membership from Keezhkulam Village. The said Village Panchayat also strongly objected for running a Recreation Club in their area for the reason that the villagers should not suffer from consuming alcohol.

6. Learned counsel for the petitioners, by relying upon the report of Assistant Commissioner (Excise), Nagercoil, submitted that based on the application submitted by the Secretary of the Recreation Club, the Assistant Commissioner has recommended for granting licence. In the report, it is observed that since there is no TASMAC shop in and around the area where the Recreation Club is sought to be shifted, the people are required to go to Pudukkadai and Theruvukkadai for consuming alcohol and therefore, the

Secretary of the Recreation Club has satisfied the provisions of Rule 19(A)(a)(b) of the Rules, regarding local need. Further, several particulars have been given in the said report recommending for shifting of the Recreation Club. However, according to the learned counsel for the petitioners, the said report is based on irrelevant materials and there is no authentication. Further, the Commissioner has failed to consider the distance criteria for running a Recreation Club for the purpose of using liquor in the club. However, the Commissioner, based on the said report, without applying mind, has mechanically passed the impugned order and the same is liable to be quashed.

7. Learned Additional Advocate General appearing for the respondent – Department submitted that the Assistant Commissioner (Excise) has conducted a detailed enquiry and submitted a report and based on his report, the Commissioner has passed the impugned order. That part, the Commissioner has also obtained a report from the District Collector and other statutory bodies granting no objection for shifting of the Recreation Club. Therefore, the impugned order is sustainable in law.

8. Mr.Isaac Mohan Lal, learned Senior Counsel, appearing for the Recreation Club, submitted that the distance criteria is not applicable for grant of FL2 licence. Further, there is no Temple, School, Hospital in the close proximity of the Recreation Club. Therefore, the Club is located in an isolated place and no one can use the pathway to club except the members of the Club. The distance between the Club and the junction is about 40 meters. Hence, the apprehension of the petitioners is unfounded. Further, all the requirements as per the guidelines issued by the respondent – Authority have been satisfied and therefore, the respondent – Department has granted permission to shift the Recreation Club. Further, there is no statutory bar for any person becoming a member of any Club. The membership is as per the bye-laws of the Club. Hence, for these reasons, the learned Senior Counsel prays for dismissal of the writ petitions.

9. Heard the learned counsel on either and carefully perused the materials available on record.

10. The primordial contention of the petitioners is that the report of the Assistant Commissioner (Excise) is totally contrary to the real facts and also not inconsonance with the 1981 Rules. According to the respondents, the

villagers are required to go to other villages for consuming alcohol and there is no objection from the villagers for shifting the Recreation Club and there is no school, hospital and temple in the close proximity. But, according to the petitioners, the said report is absolutely incorrect and based on the irrelevant materials, the impugned order has been passed.

11. On perusal of the impugned order, we find *lacuna* since the report of the Assistant Commissioner (Excise) reveals that there is no objection from the villagers and also the villagers are consuming alcohol in the nearby villages. To substantiate the said contention, there is no substantial material on the part of the respondent – Department to the effect that any notice has been issued to the public. Apart from that, it is seen that the President of the Village Panchayat has also passed a resolution not permitting to run any Recreation Clubs in their Village for the purpose of using alcohol in the club. According to the petitioner, TASMAC shops are permitted in their village, as the villagers do not consume alcohol. Such being the position, now the respondents have made an attempt to allow liquor in the villager, by shifting the club to the petitioner village. As per Bye-Laws, non-members can also use the recreation club.

12. At this juncture, it would be relevant to refer Rule 19 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, which deals with conditions to be satisfied before a privilege is granted and the licence is issued and the procedures to be followed in dealing with applications and it is extracted hereunder:

“19.Conditions to be satisfied before a privilege is granted and the licence is issued and the procedure to be followed in dealing with applications. - (A) On receipt of the application, the licensing authority shall verify the particulars furnished in the application. In the case of application of all kinds, he shall satisfy himself in general, after due enquiry.-

(a) that the local needs, justify the grant of licence, and

(b) that public interest shall not suffer by the grant of the licence applied for and that the privilege is not likely to be misused.

...

...”

13. These are all the main ingredients for granting licence in favour of Recreation Clubs. But, a perusal of the entire materials and the reports

submitted by the District Collector, Assistant Commissioner (Excise) as well as the Commissioner, Prohibition and Excise Department shows that they have not satisfied the above ingredients. The Assistant Commissioner (Excise) has not followed the procedures for inviting objections from the villagers. The report submitted by the Commissioner, Prohibition and Excise Department, shows that he has not independently applied his mind and based on the report of the Assistant Commissioner (Excise), mechanically he passed the impugned orders, which is in total violation of the above provision. Therefore, we have no hesitation to interfere in the impugned order passed by the respondents on the ground that the respondents have violated Rule 19 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and the matter may be remitted back to the authority concerned to pass appropriate orders as per law.

14. In the result,

- (i) W.P.(MD) No.15986 of 2022 is partly allowed and the impugned order dated 08.07.2022, passed by the Commissioner, Prohibition and Excise Department, alone is quashed,

- (ii) W.P.(MD) Nos.16780 & 19095 of 2022 are allowed and the impugned order dated 08.07.2022, passed by the Commissioner, Prohibition and Excise Department, is hereby quashed.
- (iii) The matter is remitted back to the file of the Commissioner, Prohibition and Excise Department, for fresh consideration. The Commissioner, Prohibition and Excise Department shall pass orders, after providing due opportunity to the petitioners and the respondent – Recreation Club, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that the Commissioner, Prohibition and Excise Department, shall obtain fresh reports from the authority concerned.
- (iv) No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.]

[R.V., J.]

31.03.2023

NCC : Yes / No
Index : Yes / No

Internet : Yes / No

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To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.
- 2.The Commissioner,
Prohibition and Excise Department,
Cheppakkam, Chennai-05.
- 4.The District Collector,
Kanniyakumari District
@ Nagercoil,
Kanniyakumari.
- 6.The Assistant Commissioner (Excise),
Nagercoil, Kanyakumari District.
- 7.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalai Division,
Kanyakumari District.
- 8.The Tahsildar,
Killiyoor Taluk,
Kanyakumari District.
- 3.The Director of Town Panchayats,
Santhome High Road,
MRC Nagar, Raja Annamalai Puram,
Chennai-600 028.
- 6.The Superintendent of Police,
Kanyakumari District, Nagercoil.

- 7.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Nagercoil, Kanyakumari District.
- 8.The Executive Engineer,
Water Resource Department (PWD),
Kothaiyar Basin,
Veppammoodu Junction,
Nagercoil, Kanyakumari District.
- 9.The Assistant Executive Engineer,
PWD/WRO, Kodayar Basin,
Kulithurai,
Kanyakumari District.
- 11.The Deputy Director,
Public Health and Preventive Medicine,
Krishnankoil,
Nagercoil,
Kanyakumari District.
- 12.The Executive Engineer,
Public Works Department,
Nagercoil,
Kanyakumari District.
- 15.The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.
- 16.The Block Health Supervisor,
Killiyoor Block,
Government Primary Health Centre,
Killiyoor, Tholaiyavattam Post,
Kanyakumari District.
- 17.The Taluk Surveyor,
Killiyoor Taluk,
Tholaiyavattam & Post, Kanyakumari District.

18.The Fire Inspector,
Kuzhithurai,
Kanyakumari District.

W.P.(MD) Nos.15986, 16780 & 19095 of 2022

D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

krk

COMMON ORDER
IN
W.P.(MD) Nos.15986, 16780 & 19095
of 2022
and
W.M.P.(MD) Nos.11556, 11558,
12161, 13946, 13948, 13949 &
13951 of 2022

31.03.2023