



W.P. (MD) No. 19237 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVU

W.P. (MD) No. 19237 of 2022

and

W.M.P. (MD) No. 14032 of 2022

Jayams Manamagil Mandram,
Represented by its Secretary,
O.B.Denesh Chackravathy.

... Petitioner

Vs.

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

2.The District Collector,
Madurai.

3.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC), Madurai North,
Manalur,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.38446/2022/X2 dated 05.08.2022 on the file of the Respondent No.2 and quash the same as illegal.

For Petitioner

: Mr. T.Lajapathi Roy



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For Respondents

: Mr. D.Gandhiraj (R1 & R2)
Special Government Pleader

ORDER

Heard Mr. T.Lajapathi Roy, Learned Counsel for the Petitioner and Mr. D.Gandhiraj, Learned Special Government Pleader for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a non-proprietary club for which the First Respondent by proceedings in R. DIS. No. P&E 2(1)/12764/2017 dated 25.06.2019 had granted FL2 licence under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 (hereinafter referred to as 'the Licence and Permit Rules' for short). In furtherance to the complaint dated 14.07.2022 received from the Inspector of Police, D-2 Sellur Police Station, the Second Respondent by Order in Na.Ka.No.38446/2022/X2 dated 05.08.2022 has temporarily suspended the said licence issued to the Petitioner, which is challenged in the Writ Petition.



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3. This Court, at the time of admission on 23.08.2022, had granted an order of interim stay of the impugned order, which continues to be in force till date.

4. Learned Counsel appearing for the Petitioner highlights that the First Respondent, who is the Licensing Authority, is alone competent to suspend the licence and no such power is vested with the Second Respondent.

5. *Per contra*, Learned Special Government Pleader appearing for the First and Second Respondents points out from the Counter-Affidavit dated 29.09.2022 filed by the Second Respondent to support the impugned order, which reads as follows:-

“4. It is submitted that the District Collector is competent authority under Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 regarding the Location of shop, Transport Permit, Closure of Shops etc. As per rule 8 of TN.Liquor Retail Vending Rules 2003, the Liquor shop has to be located as per the decision of District Collector. The shops could be shifted only on permission of District Collector as per rule 9 of the said rules. Even the location and plinth area of a Bar is decided by District Collector as



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per rule 9 of the said Rules. Likewise as per rule 12 of Tamilnadu Liquor Retail (in shops and Bar) Vending Rules 2003, the Liquor Shops could be ordered to closed by the District Collector. Therefore the averment that the District Collector is not empowered to pass the impugned order cannot be sustained under law.”

6. Having regard to the rival contentions, it would be necessary to refer to the relevant provisions in the Licence and Permit Rules, which are extracted below:-

“2.(ix) “Licencing Authority” means the Commissioner, or the Collector, as the case may be, authorised to issue licences under these Rules.

.....

17.(B) II. Licence for possession of liquor by a non-proprietary club for supply to members.

F.L.2 The privilege and the licence in Form F.L. 2 shall be issued by the Commissioner on payment of an annual privilege



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fee of Rs. 10,00,000 (Rupees Ten lakhs only), for Chennai City and Rs. 6,00,000 (Rupees six lakhs only) for the other areas, a licence fee of Rs. 10,000 (Rupees ten thousand only) and an application fee of Rs. 3000 (Rupees three thousand only) on an application made in Form F.A. 1.2 by the Honorary Secretary of the club concerned. The licensee shall obtain his supplies of liquor from a whole-sale depot licensee in the State or from such other sources as the Commissioner may appoint or approve, subject to such conditions as he may impose in that behalf. The licensee shall pay club fees as laid down in Rule 34 (4) and the conditions of the licence. The licensee shall maintain accounts of transactions in Form F.Ac. 2 and such other registers or accounts that may be prescribed by the licensing authority from time to time:

Provided that for the sale of draught beer in the licensed premises of the clubs in the City of Chennai, special additional privilege fee at 10 per cent on the existing privilege fee, subject to a minimum of Rs. 10,000 (Rupees Ten thousand only) shall be collected.

Provided further that the Anna International Airport at



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Meenambakkam shall be deemed to have been situated within the limit of Chennai City, as a special case, in so far, as the sale of draught beer is concerned.

....

22. Cancellation or suspension of licences.-

(1) The licensing authority may, after giving in writing to the licence holder an opportunity to show cause within a reasonable time not exceeding 14 days against the action proposed to be taken or order proposed to be issued, stating the reasons there for, by an order in writing specifying the reasons, cancel the licence under these rules or suspend it for such period as it thinks fit, if in its opinion, the licence holder has failed to comply with any of the conditions of the licence or of any of the provisions of the Act or the rules made thereunder.

(2) Notwithstanding anything contained in sub-rule (1), the licensing authority may temporarily suspend the licence for a period not exceeding 90 days pending framing of charges for violation or irregularities noticed. In such a case, the reason



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for suspension shall be communicated to the licence holder

WEB COPY *within 5 days from the date of suspension.*

(3) When a licence is cancelled or suspended or temporarily suspended or is not renewed after its expiry the licence holder shall not sell, use or otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension, temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock. The licence holder shall not also be entitled to claim any compensation on account of cancellation, suspension, temporary suspension or non-renewal of the licence.”

It would be evident on a reading together of the aforesaid statutory provisions that grant of FL2 licence for non-proprietary clubs is conferred only on the Commissioner, who alone could cancel or suspend the same, and no such power could be exercised by the District Collector in that regard.

7. Further, Rule 2(q) of the Tamil Nadu Liquor Retail Vending (In shops and Bars) Rules, 2003, (hereinafter referred to as 'the Liquor Retail Vending Rules' for short) reads as follows:-



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“2. (q) “*retail vending of liquor*” with its grammatical variations and cognate expressions means the vending of liquor by a licensee being the grantee of the privilege of retail sale of bottled Indian-made foreign spirits, but does not include the vending of liquor by the FL.2 to FL.9 licence holders referred to under the heading “(A) Licences for liquor used for consumption” in sub-rule (a) of rule 17 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981;”

It is abundantly clear that the vending of liquor by FL2 licence-holders in non-proprietary clubs referred to under the Heading (A) Licences for liquor used for consumption in sub-rule (a) of Rule 17 of the Licence and Permit Rules has not been included in the Liquor Retail Vending Rules, which cannot have any application to non-proprietary clubs, like the Petitioner in this case. Further, it is not the case of the Respondents that the District Collector has been empowered to suspend FL2 licence granted to non-proprietary clubs by the Commissioner, under any other provision in the Licence and Permit Rules.

8. In view of the foregoing discussion, it is not possible to accept the contention of the Respondents that the District Collector is also empowered to suspend the licence, which would obviously mean that the Second Respondent



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does not possess jurisdiction to pass the impugned order of suspension of licence in the exercise of power under the Liquor Retail Vending Rules, which is relied by the Respondents. The impugned Order in Na. Ka. No. 38446/2022/X2 dated 05.08.2022 passed by the Second Respondent is set aside, but it would not preclude the competent authority to take necessary further action in accordance with law.

9 In the upshot, the Writ Petition is ordered in the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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(1/4)

SM
Index : Yes/No
NCC : Yes/No

Note: Issue order copy by 10.07.2023.



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To



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P.D.AUDIKEAVALU,J.

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

2.The District Collector,
Madurai.

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