



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.02.2023

Pronounced on : 20.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.28575 of 2022

Thamizhavel P.T.Rajan

Commemoration Trust,

Rep.by its Trustee,

Mr.N.Ramesh Rajan

No.26, Second Street, East Abiramapuram,

Mylapore, Chennai – 600 004.

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.Mrs.Indira Subramanian,
Trustee, Thamizhavel P.T.Rajan
Commemoration Trust

(R2 was suo motu impleaded vide
order dated 15.02.2023)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the first



respondent to renew the license to run the petitioner Trust Community Hall, namely, P.T.Rajan Hall, Chokikulam, Madurai for the years 2021 & 2022 forthwith.

For Petitioners : Mr.N.Murali Kumaran, Senior Counsel
for Mr.S.Parthasarathy.

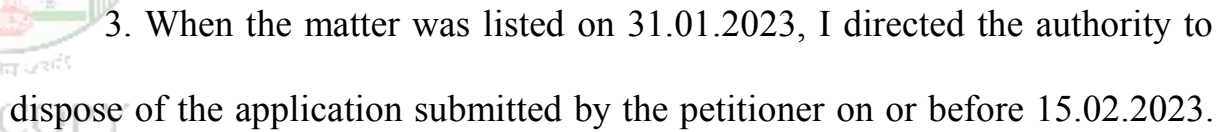
For Respondents : Mr.T.Senthilkumar,
Additional Public Prosecutor for R1

Mr.Ravikannan for R2

ORDER

The issue that arises for consideration is the entitlement of the petitioner- trust to obtain renewal of license under Section 34 of the Chennai City Police Act, 1888 for running their marriage hall.

2. The petitioner is a registered trust. It is running a marriage hall at Chokkikulam, Madurai. License under Ss.34 and 35 of the Act was issued on 26.07.2002 by the Commissioner of Police, Madurai City. It was extended from time to time up to 2020. Since renewal for the subsequent years was not granted, this writ petition came to be filed.



4. Since it was brought to the notice of this Court that one of the trustees was not on the same page, she was *suo motu* impleaded as the second respondent. The learned counsel representing her questioned the maintainability



of the writ petition. Since a trust is not a juristic entity, it could not have filed this writ petition in its name. Secondly, in discretionary matters, writ of mandamus cannot be issued. Since remedy under Article 226 of the Constitution of India is equitable in nature, the applicant's conduct must be above board. The hall is being run without license. There has been violation of the Income Tax Act. The learned counsel pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. Ss.34, 35, 39 and 76 of the Act are relevant for the present purposes. Section 34 and 76 are as follows:-

34.Places of public resort to be licensed.- (1). No enclosed place or building having an area of forty-six and half square metres or upwards shall be used for public entertainment or resort without a license from the Commissioner.

...

76. Power to cancel or suspend any licence and penalty for breach of conditions of licences. - (1) The Commissioner may, at any time and for reasons to be



WEB COPY



recorded in writing, cancel or suspend any licence granted under this Act:

Provided that no such cancellation or suspension shall be ordered unless the holder of the licence has been given a reasonable opportunity of showing cause against the order proposed to be made in regard to him.”

These provisions were considered in quite a few decisions of the Madras High Court. In ***D.P.Anand V. State of Tamil Nadu (1997 II MLJ 413)*** it was held that the authority cannot refuse to renew the license. Paragraph No.21 of the said decision reads as follows:-

“ 21 . Under the provisions of the Madras City Police Act, only restrictions are contemplated for a person who carries on business in an enclosed place or building. As we have found already there are number of restrictions in the form of security deposit, suspension, cancellation and prosecution contemplated by the Act. There is no provision in the Act to prohibit the carrying on business. It is also to be noticed that there is no provision to refuse to grant a licence or renew a licence when a person commits breach of conditions of the licence or commits the other criminal offences like conducting



WEB COPY



obscene dances. The Legislature could provide for total refusal of licence or renewal of licence when a person commits breach of the conditions of the licence or the offences like one mentioned above. In the absence of such a provision, we have to take it that the intention of the Legislature is not to Prohibit once for all the carrying on business like running the cultural dances etc., even if he commits breach of the licence or commits the offence of obscenity by misusing the licence granted to him. Therefore, in my view Section 76 of the Madras City Police Act empowers the licensing authority namely, the Commissioner only, to cancel or suspend the licence already granted exercising the powers under that Section. The licensing authority or the Commissioner cannot refuse to renew the licence, since for misuse, a number of punishments are provided as, as indicated earlier.”

6. D.P.Anand was followed in ***C.Thangaraj. V. The Commissioner of Police, Egmore, Chennai (W.P.No.3376 of 2016 dated 15.02.2016)***. Paragraph No.10 of the said order reads as follows:-

“ 10. Today, when the matter is taken up for consideration, learned counsel for the petitioner submitted



WEB COPY



that by relying upon the judgment rendered by the learned Single Judge in W.P.No.327 of 2011 dated 20.1.2011 under the identical situation, this Court has directed the respondent police to consider the application of the petitioner dated 23.12.2010, on merits and in accordance with law expeditiously, within four weeks. The said order was passed by relying upon the earlier judgment delivered by this Court in the case of D.P.Anand v. State of Tamilnadu and another, 1997 II MLJ 413, wherein, in paragraph 27, it was held as follows;-

"27. As we have already indicated, there are methods enumerated by the Madras City Police Act as well as the Indian Penal Code to curb the activities of such persons indulging in immoral and indecent or obscene activities. They could be punished by the criminal court and the licensing authority by suspending or cancelling their licence or forfeiture of their security deposit. But in the absence of a provision for refusing to grant a licence when a person commits an offence with reference to decency, morality or



WEB COPY



obscenity or for that matter commits the offence again and again the court is helpless except to state that person has to be allowed to carry on the business, without detriment to his fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. But at the same time, the authorities cannot remain as silent spectators. He could interfere and prevent the person by imposing the penalties mentioned above. The authority concerned has not been empowered to deprive the persons of the chance of carrying on the business. When the Legislatures themselves have not chosen to provide such a power, the court cannot confer such a power upon the said authority. The power of the court, however high it may be, is only to interpret the law and enforce it, not to embark upon enacting laws, even though to a limited extent it can suggest the authorities concerned to do so." "

7. In *S.Gunaraja V. The Commissioner of Police Greater Chennai* (W.P.No.10512 of 2018 dated 03.02.2022), the effect of the amendment made



to Section 35 of the Act was considered. Paragraph Nos.12, 13, 14, 15 and 18

of the said order read as follows:-

“ 12. Before dealing with the issues, it is worthwhile to refer Section 39 of the Act, which empowers the Police Commissioner to make rules for ensuring order and decency and for the public safety at all places of public entrainment and for regulating the times during which the places referred to in Sections 34 and 35 shall be allowed to be opened. Section 39 of the Act reads as under:

39. Power to make rules.- The Commissioner may make rules for ensuring order and decency and for the public safety at all places of public entertainment or resort, and for regulating the times during which the places referred to in sections 34 and 35 shall be allowed to be opened or used and from time to time may rescind or alter such rules; and in case of breach of any such rules or of the conditions of the licence granted under section 36, may order such places to be closed, and while such order is in force, such places so ordered to be closed shall be deemed to be unlicensed places.

13. A perusal of the above, it is clear that the Police



WEB COPY



Commissioner can make rules for regulating the closure and opening timings in respect of the places referred to the original Sections 34 and 35 of the Act. Section 34 of the Act refers to the places of public resort and Section 35 of the Act refers to the places which are mentioned as under:

“35. Eating houses, hotels, wine shops, fencing schools, etc. to be licensed.- No enclosed place or building shall be used as an eating house, boardinghouse, lodging-house, hotel, gymnasium or fencing school, without a licence obtained from the Commissioner.

Provided that nothing in this section shall apply to any gymnasium or fencing school of any educational institution controlled or recognised by the State Government.”

14. Subsequently, by Tamil Nadu Act 43/2007, the Chennai City Police (Amendment) Act, 2007 came into force with effect from 08.09.2007, wherein, Section 35 has been amended to the following effect:

“35. Fencing-schools and gymnasium to be licensed:-
(1) No enclosed place or building shall be used as a fencing-school or gymnasium without a licence obtained from the



WEB COPY



Commissioner:

Provided that nothing in this section shall apply to any fencing-school or gymnasium of any educational institution controlled or recognized by the State Government.

(2) No enclosed place or building shall be used as an eating-house, boarding-house, lodging-house or hotel without obtaining a no objection certificate from the Commissioner in regard to traffic clearance by the Municipal Corporation for the grant of a licence, for the first time, under the relevant City Municipal Corporation Act.”

15. A perusal of the Section 35 prior to its amendment, creates an embargo that without obtaining a licence from the Commissioner, no enclosed place or building shall be used as an eating house, boarding house, lodging-house, hotel, gymnasium or fencing school. However, subsequently, the said embargo was done away by virtue of the Chennai City Police (Amendment) Act, 2007 with effect from 08.09.2007 since 'the places to be licensed' mentioned in Section 35 (prior to amendment), viz., “Eating houses, hotels, wine shops, fencing schools, etc.” were removed and substituted with 'the



WEB COPY



places to be licensed', viz., "Fencing-schools and gymnasium", and thereby made it clear that no enclosed place or building shall be used as an eating-house, boarding-house, lodging-house or hotel without obtaining a **no objection certificate** from the Commissioner in regard to traffic clearance. Thus, in order to use any enclosed place or building as an eating house, boarding house or hotel, No objection Certificate has to be obtained from the Commissioner only with regard to traffic clearance and therefore, interference of the police and fixing the time limits that too during night hours when usually no much traffic is there, cannot be sustained.

...

18. A perusal of the above order, it appears that the Division Bench has only stated that as long as power is available to the Commissioner of Police, the same can be exercised as per law. Further, the Bench has stated that in the absence of any rule which can be brought forth by exercising power under Section 39 of the Madras City Police Act, 1888, running of business cannot be curtailed. However, as



WEB COPY



discussed above, by virtue of the Chennai City Police (Amendment) Act, 2007, the power of the Commissioner to issue licence in respect of eating houses, hotels, etc., was taken away and made the Municipal Corporation to grant licence, however, subject to producing no objection certificate from the Commissioner in regard to traffic clearance. Therefore, by virtue of amendment of Section 35 of the Act, except issuing no objection certificate in regard to traffic clearance for the purpose of licence being granted by the Municipal Corporation in respect of eating houses, hotels, etc., the Commissioner has no power to regulate the opening and closing timings of the said establishments and as such, the police authorities have no role to interfere with the business activities of the same and fix the timings. However, at the time of passing the above judgment by the Division Bench, the Chennai City Police (Amendment) Act, 2007 was not brought to the notice of the Division Bench. Therefore, this Court is ventured upon to pass orders taking into consideration of the Amendment Act and G.O.Ms.No.60 Labour and Employment (K2), dated 28.5.2019.”



WEB COPY

8. Granting of license under the provisions of the Chennai City Police Act is not an judicial or quasi judicial act of the Commissioner of Police. But an administrative and an executive act. (*vide Sk.Md.Soleman V. State of West Bengal AIR 1965 (Cal) 312*). The action of the authority has to be tested in the light of the well settled principles of administrative law. If discretion is not exercised reasonably, but capriciously and whimsically, writ will lie. If irrelevant factors are taken into account, the writ Court will interfere. Since 2002, the license was renewed from time to time. If there are arrears of property tax, it is for the municipal authority to recover them. If there are tax related issues, it is for the concerned authorities to step in. If Government Orders have been violated, it is for the concerned department to withdraw the concession by citing the breach. None of the reasons set out in the notice dated 14.02.2023 are germane. Section 35 of the Act refers to traffic clearance alone and that too only once. The expression “ for the first time” employed in Section 35(2) of the Act is significant. D.P.Anand had authoritatively held that there is no jurisdiction to refuse renewal. Penalizing contravention is one thing, declining to renew is another. The first respondent failed to exercise discretion by taking into account irrelevant matters. This has vitiated the process. The first respondent ought to have cleared the application for renewal as a matter of course.



WEB COPY

9. The learned counsel appearing for the second respondent is right in his contention that a registered trust cannot sue in its own name. It is well settled law that a trust is not a juristic person or a corporate person (*vide Thiagesar Dharma Vanikam V. CIT (1963) 50 ITR 798*). It was held therein as follows:-

" A trust is an institution which has no corporate personality. It is not a legal person. The word 'trust' is a convenient and a compendious description of the trustees, the beneficiaries and the subject-matter of the trust. Sometimes, the expression 'trust' is used to denote the trustees. For example, when the trustees carry on a business, we generally say that the trust is doing so. When we refer to the fact that the trust is owning properties, we only refer to the interest of the beneficiaries in the property, as in Indian law there is no line dividing title into legal and equitable. The trustees of a trust in India have no title to the trust properties; the properties only vest in them for administration and management. The instrumentality of the trustees to hold and manage trust properties should not cause any misapprehension of the real position of the trustees vis-a-vis the trust. They occupy a representative position



WEB COPY

representing the trust and they are not strangers to the trust.

When the trustee acts, it is only the trust that acts, as the trustee fully represents the trust. A business carried on on behalf of a trust rather indicates a business which is not held in trust, than a business of the trust run by the trustees."

10. The question is whether on this technical ground, the petition should be dismissed. The answer is "no". Courts should be guided by considerations of justice. In cases concerning grant of route permits under the Motor Vehicles Act even if there were dispute among partners or family members, Courts used to direct grant of permits because that would be in public interest. If permit is refused, the buses cannot ply on the route and public would ultimately suffer. Such an approach has to be adopted in this case also. The consequence of refusal of license would mean closing down the marriage hall itself. This is definitely not in the interest of the public or the trust itself. A writ petition is not a civil suit. I take judicial notice of the fact that so many cases filed by trusts have been entertained.

11. Section 34 of the Act does not contain any guideline regulating grant of license. However, the authority will bear in mind the overall statutory



scheme before exercising discretion. Factors such as law and order, decency and public safety are some of the broad parameters. Once discretion has been exercised and license was granted, the authority cannot refuse renewal subsequently. Of course, for breach or non-observance of the conditions of license, there can be forfeiture of the security deposit or suspension and cancellation of the license and imposition of penalty. Under Section 35 of the Act, only no-objection certificate from the commissioner with regard to traffic clearance is contemplated and that too only once. It is not the case of the respondents that the trust had not adhered to the license terms and conditions. It is true that the trustees were implicated in criminal cases. But the prosecutions were quashed vide order dated 06.12.2021 in CrI.O.P.(MD)No.16843 of 2019 and order dated 04.02.2022 in CrI.O.P.(MD)Nos.16278 and 16281 of 2021. The first respondent had assumed jurisdiction not conferred under law. The first respondent is directed to renew the petitioner's license for the years 2020 onwards. The writ petition is allowed. No costs.

20.06.2023

Index : Yes / No

Internet : Yes / No

PMU



WEB COPY



To

The Commissioner of Police,
Madurai City,
Madurai.



WEB COPY



G.R.SWAMINATHAN, J.

PMU

WP(MD)No.28575 of 2022

20.06.2023