



W.P.No.14129 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2024

Pronounced on: 05.09.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

W.P.No.14129 of 2024

M/s. Surya Society for Social Service
Rep. by its President Mr. Bonam Sriramakrishna
Having Office at D. No. 1.12.012, Mettakur Road
Yanam 533 464 Pondicherry. Petitioner

/versus/

The Commissioner,
Yanam Municipality,
Yanam. Respondent

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to issue of Writ of Certiorarified Mandamus calling for the records of Respondent pertaining to Order dated 19.05.2024 bearing No.20/B2/YM/SURYA/2024-25 and quash the same, and consequentially direct the Respondent herein not to interfere with the lawful day to day activities of the Petitioner.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel,
for Mr.Surya Teja SS Nalla

For Respondent : Mr.Ramaswamy Meyappan,
Government Advocate (Pondy)



W.P.No.14129 of 2024

WEB COPY

ORDER

M/s.Surya Society for Social Service, represented through its President Mr.Bonam Sriramakrishna in this Writ Petition seek issuance of Writ of Certiorarified Mandamus in W.P.No.14129/2024, being aggrieved by the order passed by the Commissioner of Yanam Municipality *vide* proceedings dated 19/05/2024 cancelling the license granted on 09/01/2024 and the direction of closure of the club activities.

2. In the present Writ Petition, interim stay of the impugned order was granted by this Court on 24/05/2024. Thereafter, the Sub-Divisional Magistrate, Yanam initiated proceedings under Section 144 Cr.P.C and issued show cause notice dated 10/06/2024 as to explain why the Society should not be ordered to close down. Soon after receipt of the reply given on 12/06/2024, the Sub-Divisional Magistrate issued closure order on 13/06/2024. The said closure order is challenged in Crl.R.C.No.1035/2024 on the ground that the closure order issued in abuse of law, with ulterior motive to curtail the fundamental rights. Separate order is passed in Crl.R.C.No.1035 of 2024.

3. The case of the petitioner is that, the petitioner/Society duly



W.P.No.14129 of 2024

registered on 28/02/2022 to provide recreational activities including playing of rummy, was disturbed and interfered by the Police Authorities under the guise of inspection. Therefore, for protection from disturbance, W.P.No.8569/2022 was filed and same was disposed by the Hon'ble High Court on 21/06/2022 with the following observation:-

“If the society is running only recreational activities without any offence, the police have no business to interfere with their routine affairs, at the same time, if the police receive any information with regard to any illegal activities, they have all the rights to proceed against the society as per law.”

4. Thereafter, as per the direction of the Commissioner, Yanam Municipality, applied for license under the Pondicherry Municipalities Act, 1973. While the said application dated 18/09/2022, seeking issuance of license, was pending consideration, a show cause notice was issued by the respondent on 30/09/2022 and on 15/10/2022. Both the notice were duly replied. Without proper consideration of the reply, the Respondent issued order dated 20/10/2022 declining to issue license stating inspite of notices issued, the



W.P.No.14129 of 2024

petitioner/Society failed to produce all the documents that are required to give Municipal license for running the recreational Society. Therefore, it has to stop all the recreational activities within 24 hours of the receipt of the notice.

5. Being aggrieved by the above order dated 20/10/2022, the petitioner preferred W.P.No.28872/2022, to quash the said order and permit the society to carry on the day to day affairs, including playing of rummy (13 cards) and other recreational activities, without any reasonable cause. This writ Petition and another Writ Petition by Sri Satya Sai Recreational Society in W.P.No.28869/2022 was disposed by a common order on 07/12/2022 with the following observation and direction:-

“5. Learned Additional Government Pleader (Puducherry) submitted that the petitioners have filed the applications, under Section 355 of the Puducherry Municipalities Act, 1973 and not under Section 349 of the Puducherry Municipalities Act, 1973. Even though the petitioners had filed their applications under Section 355 of the Puducherry Municipalities Act, 1973, they will treat the



W.P.No.14129 of 2024

applications, as if it were filed under Section 349 of the said Act, and orders will be passed on merits and in accordance with law.

6. Submission of the learned Additional Government Pleader is recorded.

7. Accordingly, the second respondent is directed to consider the applications of the petitioners, as mentioned above, and dispose of the same, on merits and in accordance with law, within a period of two months, from the date of receipt of a copy of this order.

8. With the above direction, these writ petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

6. Despite multiple requests to consider the application and pass order as per the direction of the High Court in W.P.No.28872/2022 dated 07/12/2022, there was no response from the Municipal Commissioner, Yanam. For wilful disobedience of the High Court order, dated 07.12.2012, the petitioner filed Contempt Petition No.8/2024. Only thereafter, license for the



W.P.No.14129 of 2024

petitioner was issued on 09/01/2024. Consequentially, the Contempt petition was closed on 25/03/2024.

7. While things stood thus, the respondent/Commissioner, Yanam Municipality had issued a notice dated 08/05/2024 stating the Trade License issued by the erstwhile Commissioner found in contrary to the provision of extant laws and rules, hence the license is withheld. It is also informed to the petitioner that they have to apply for Trade License afresh along with documents required by the Municipality to entertain the application and to obtain approval from the Municipal Council. Starting of club without complying the Municipal formalities will be assumed violating Municipal norms. Followed by this notice dated 08/05/2024, on consideration of the petitioner reply dated 10/13-05-2024, order dated 19/05/2024 issued by the respondent cancelling the license issued by the then Commissioner of Yanam Municipality. Further, the petitioner/Society was directed to close down all the activities immediately.

8. The said order of the respondent dated 19/05/2024, invoking



W.P.No.14129 of 2024

WEB COPY

Section 350 of the Pondicherry Municipalities Act to cancel the license issued on 09/01/2024 is impugned in this Writ Petition on the ground that, the arbitrary cancellation of the license is against the principles of natural justice and suffers unreasonableness. The license issued under Section 349 of the Pondicherry Municipalities Act, 1973 cannot be revoked/cancelled without sufficient cause and following the procedure provided under the said Act. No opportunity of hearing before the cancellation of license provided to the petitioner. Action taken against the former Commissioner of Yanam Municipality for irregularities cannot be a reason to unilaterally cancel the valid license granted to the petitioner, without hearing.

9. The Learned Government Advocate (Pondicherry) appearing for the respondent submitted that, the petitioner/Society after commencing its activities without obtaining license, applied for license only after the direction of the High Court in the Writ Petition filed by them. Without filing necessary documents for grant of trade license, citing pendency of contempt petition, the erstwhile Commissioner issued license even without collecting the license fee from the petitioner. Having come to know about the irregularity committed by



W.P.No.14129 of 2024

the erstwhile Commissioner in granting Trade License to the petitioner without production of necessary documents, first notice dated 08/05/2024 issued which was followed by the order cancelling the license and closure of activities.

10. Referring Section 349 and 350 of the Pondicherry Municipalities Act, 1973, the Learned Government Advocate appearing on behalf of the respondent submitted that, the license issued in favour of the petitioner/Society by the erstwhile Commissioner though refers the High Court order and Contempt Petition, the license was not issued in strict compliance of the High Court order. The irregularity in issuing the license could be seen palpably from the fact that, without necessary documents and even without collecting License Fee from the petitioner/Society, the license dated 09/01/2024 was issued. The said license is not a valid license. Hence, after notice same was cancelled in exercise of power under Section 350 of the Pondicherry Municipalities Act.

11. Heard Mr.Srinath Sridevan, Learned Senior Counsel for the



W.P.No.14129 of 2024

petitioner and Mr.Ramaswamy Meyappan, Learned Government Advocate for Pondicherry on behalf of the respondent.

12. The short point involved in this case is, whether the Trade License, granted to the petitioner on 09/01/2024, cancelled through the impugned notice dated 19/05/2024, suffers arbitrariness and violation of natural justice.

13. The petitioner/Society after a long legal battle, had obtained license from the Commissioner of Yanam Municipality on 09/01/2024. The said license refers the details of litigation and satisfaction to grant license. Surprisingly, the order granting license is silent about the production of necessary documents and payment of license fees. Later, it appears that the present incumbent to the office of Commissioner, Yanam Municipality had found certain irregularities in granting the license. Hence, issued the notice dated 08/05/2024 which reads as below:-

“It is brought to the notice of the undersigned
that you are going to start the recreational club



WEB COPY



W.P.No.14129 of 2024

activities soon in Yanam based on the orders pronounced by the Hon'ble High Court in Contempt Petition No.8 of 2024, which closed the contempt petition based on the information given before the Hon'ble Court that Trade License was issued by the then Commissioner, Yanam Municipality, in favour Trade Lice

However, it is informed to you that, the Government has detected certain regularities committed by the then Commissioner, Yanam Municipality, Thiru Arul Pragasam, the Respondent in the above said Contempt Petition, on the issue of trade license to recreational clubs in Yanam region and hence necessary disciplinary proceedings have been initiated against him. Now, this office is on the process of cancelling the said Trade License issued in your favour.

As such, the trade license issued by him, in contrary to the provision of extant laws and rules, are hereby withheld by this notice.



WEB COPY



W.P.No.14129 of 2024

It is further informed that you have to apply for Trade License afresh along with documents required by this Municipality to entertain your application and to obtain approval from the Municipal Council. Starting of club without complying the municipal formalities will be assumed violating municipal norms and necessary action will be initiated.

(xxx),
Commissioner i/c
Yanam Municipality"

14. This notice does not specifically mentions the irregularities which warrants cancellation of license. Nonetheless, the license is cancelled by the subsequent order dated 19/05/2024. Which reads as below:-

“The Trade License issued by the then Commissioner Thiru R. Arul Pragasam, Municipality vide license No. 2174/B2/YM/Surya/2023-24, dated 09-01-2024 is cancelled under section 350 of the Pondicherry Municipalities Act as it failed to comply the conditions stipulated for awarding such license. Yanam.



W.P.No.14129 of 2024

WEB COPY

As such, you are hereby directed to close down all your activities IMMEDIATELY in the premises referred in the above said license. Failure to adhere the instructions will attract necessary penal action against you.

This order shall take immediate effect.”

15. The petitioner claims that for the notice dated 08/05/2024, he sent a detailed reply dated 10/13-05-2024. However, there is no reference in the impugned notice dated 19/05/2024 about this reply. As pointed out earlier, whether the petitioner furnished all the necessary documents along with the license fees before issuance of license on 09/01/2024 is not clear from the License dated 09/01/2024 granted in the name of the petitioner Society. Likewise, in the order dated 19/05/2024 it is not specifically stated that for the irregularity or for not furnishing documents and license fees, the license granted stands cancelled. Only in the counter and in the course of arguments, new reasons for cancellation is mentioned.



W.P.No.14129 of 2024

WEB COPY

16. In *Mohinder Singh Gill -vs- Chief Election Commissioner, New Delhi and others* reported in (1978 (1) SCC 851 the Hon'ble Supreme Court has held that, *“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of challenge, get validated by additional grounds later brought out.”* For the said reason, the notice dated 19/05/2024 is liable to be quashed

17. Accordingly, the order of the respondent/Commissioner, Yanam Municipality through the notice dated 19/05/2024 is set aside. The respondent/Commissioner, Yanam Municipality, is at liberty to issue show cause notice for cancellation of license dated 09/01/2024 by assigning reasons. If any such show cause notice issued, the petitioner has to reply within 7 days from the receipt of the show cause notice. Thereafter, on considering the material records, orders to be passed.



W.P.No.14129 of 2024

WEB COPY

18. That apart, in case of any violation of license conditions, the Commission, Yanam Municipality is entitled to take action only by following the due process of law and not arbitrarily. There shall be an order of *status quo ante* as on and prior to 19/05/2024, till action in accordance to law initiated.

19. With the above observation, this Writ Petition is disposed of.

No costs.

05.09.2024

Index :Yes.
Internet :Yes.
Speaking Order/Non-Speaking Order.
bsm

To:-

1. The Commissioner, Yanam Municipality, Yanam.
2. The Public Prosecutor (Puducherry), Madras.



WEB COPY



W.P.No.14129 of 2024

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
W.P.No.14129 of 2024

05.09.2024