



W.P.No.19940 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.19940 of 2024
& W.M.P.Nos.21819 & 21821 of 2024

Sri Thirumala Recreation Club, Yanam
Represented by its President
GokavarapuKasiviswanadham
D.No.01-16-070 Kowsalya Complex,
Draksharama Road, Yanam

.... Petitioner

/versus/

1. The Sub Divisional Magistrate Yanam.
Pondicherry.
2.The Commissioner,
Yanam Municipality,
Yanam.
3.The Superintendent of Police,
Yanam.
4.The Member Secretary,
Yanam Planning Authority,
Yanam.

.... Respondents

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 leading to the issuance of the impugned order passed by the 2nd respondent in No.2699/YM/ENT/(License)/2024/2025 dated 11.07.2024 and the consequential order passed by the 1st respondent in



W.P.No.19940 of 2024

No.315/SDMY/D1/Clubs/2024, dated 11.07.2024 and consequently direct the respondents herein not to interfere with the lawful club activities/functioning of the petitioner club in any manner except in accordance with law.

For Petitioner : Mr.R.Hari Krishnan
for Mr.K.Suresh Babu

For R1, R2 & R4 : Mr.Ramaswamy Meyappan,
Government Advocate (Pondy)

For R3 : Mr.K.S.Mohandass
Public Prosecutor, (Pondy)
Assisted by Ms.N.Dhanalatchumi

ORDER

The petitioner herein is a Sri Thirumala Recreation Club represented by its President, was granted Licence by the Yanam Municipality on 11.01.2024. He sought for police clearance *vide* letter 18.04.2024. The said request was declined by the 3rd respondent on 23.04.2024. Meanwhile, the Sub Divisional, Magistrate, Yanam issued order under Section 144 of Cr.P.C., on 11.07.2024 restraining the petitioner from carrying out club activities.

2. Being aggrieved by the order dated 11.07.2024, the present petition is filed seeking Certiorarified Mandamus.



W.P.No.19940 of 2024

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3. The Learned Counsel for the petitioner submitted that after due consideration of the request to grant license, the Commissioner of Yanam, Municipality has issued the license to the petitioner club to conduct recreation activity. The said licence is valid from 01.04.2024 to 31.05.2024. Necessary licence fees of Rs.10,000/- was paid to the Yanam Municipality on 02.04.2024. The said demand draft was returned with the following queries:-

i. The petitioner's society had not paid the prescribed licence fee before the obtaining the licence. Any licence obtained without payment of fee has no validity. There is no such provision in any municipality act to pay the licence fee before commencement of trade/society activities.

ii. There is no record available with regard to licence submitted by the petitioner society which raises the veracity of the licence.

4. A detailed reply was sent to the Yanam Municipality on 05.07.2024 and request was made not to disturb the functioning of the societies and lawful activity. Though there is no provision in the Pondicherry Municipality Act, 1973 that the licence fees should be paid before issuance of



W.P.No.19940 of 2024

licence. The fees was returned on untenable ground. While so, the Sub Divisional Magistrate, Yanam has issued order under Section 144 of Cr.P.C on 11.07.2024 alleging that the activity of the club has caused disturbance to the public peace and tranquillity. The impugned order dated 11.07.2024 reads as below:-

“It is brought to my notice by the Commissioner, Yanam Municipality, that you are going to start a Recreation Club under the name and style “Sri Tirumala Recreation Club” at Door No.1-16-070, Kousalya Complex, Draksharama Road, Yanam-533464, without valid license required to be issued by the Yanam Municipality.

Already this office had issued an order under Section 144 of Cr.P.C. and closed down the recreational activities carried out by M/s. Surya Society for Social Service at D. No. 1-12-001 and 1-12-012, New Bus Stand Road, Mettacur, Yanam based on the report of the Superintendent of Police, Yanam from the angle of law and order.

The same report will applicable to your club also. Hence, you are hereby directed NOT to start



W.P.No.19940 of 2024

any recreational club in the said address mentioned at para 1 above. Failing which, necessary action will be taken against you for disturbing the peace and tranquillity of the region.”

5. On the same day, notice from the Yanam Municipality been issued to the petitioner club seeking for the following documents:-

“1. Approval of the Yanam Planning Authority for functioning the society/club in commercial zone for recreational activities and also the Town Planning approval and Occupancy Certificate for recreational activities for general public as per the Pondicherry Town and Country Planning Act ‘1969 and Puducherry Building ByeLaws and Zoning Regulations

2. No Objection certificate from the Superintendent of Police as per 149(3) (a) of the Pondicherry Municipalities Act and notification issued in G.O. Ms. No.353, dated 30- 12-1976 of the Local Administration Department, Puducherry.

3. NOC from the Building Owner.

4. Memorandum of Association for society registration and details of society Members.



W.P.No.19940 of 2024

5. Games/Recreational Activities proposed.
6. Rules and regulations to enroll members in society/club.
7. Labour License from Labour Department.
8. FSSAI License if canteen/ food served is proposed to be prepared in the premises.
9. Trade license under section 355 of the Puducherry Municipalities Act if food is supplied.
10. Fire Safety Certificate issued after the date of notice.
11. Maximum no. of members permitted at a time along with parking facilities details not enclosed.

6. On combine reading of the order passed by the 1st respondent/Sub Divisional Magistrate and the notice issued by the 2nd respondent/Yanam Municipality both dated 11.07.2024 clearly show that the impugned order of the Sub Divisional Magistrate, Yanam dated 11.07.2024 bristles with non-application of mind. Referring to another Society, namely, M/s.Suriya Society for Social Service, the impugned order been issued to the Petitioner/Sri Thirumana Recreation Club. This clearly shows non-application of mind.



W.P.No.19940 of 2024

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7. Hence, the impugned order of the 1st respondent/Sub Divisional Magistrate, Yanam stands quashed. Accordingly, this Writ Petition is disposed of with the following observations:-

(i) The 2nd respondent/Commissioner of Yanam Municipality is at liberty to proceed with the notice dated 11.07.2024 and get itself satisfied whether the crucial and mandatory documents required for running a recreation club is possessed and produced by the petitioner herein and proceed further.

(ii) The petitioner herein is hereby directed to furnish the above 11 documents mentioned in the notice issued by the 2nd respondent/Yanam Municipality, dated 11.07.2024, within a period of 15 days, from the date of receipt of copy of this order. On such submissions of the required documents, Yanam Municipality shall proceed further in accordance with law.

(iii) As far as 3rd respondent/Superintendent of Police, Yanam is concerned, the request for grant of 'No objection certificate' shall be considered if it is duly accompanied by a valid license by the Yanam Municipality and



W.P.No.19940 of 2024

other necessary documents.

(iv) As far as the power of the 1st respondent/Sub Divisional Magistrate, Yanam to proceed under Section 144 of Cr.P.C. It is needless to say, it can be exercised only in case of specific report of any breach of public peace and tranquillity brought to the notice of the petitioner. A general order without any specific allegation about the activity which causes disturbance to the public peace will not sustain.

8. With the above observations, this *Writ Petition is disposed of.*

No costs. Consequently, connected Miscellaneous Petitions are closed.

05.09.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order.
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W.P.No.19940 of 2024

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To:-

1. The Sub Divisional Magistrate Yanam.
Pondicherry.
2. The Commissioner, Yanam Municipality, Yanam.
3. The Superintendent of Police, Yanam.
4. The Member Secretary, Yanam Planning Authority, Yanam.
5. The Public Prosecutor (Puducherry), Madras.



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W.P.No.19940 of 2024

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
W.P.No.19940 of 2024

05.09.2024