



W.P.(MD)No.5778 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.5778 of 2024

M/s.Volga Recreation Club,
Represented by its Secretary,
Sivasathiya Dharma

... Petitioner

Vs.

- 1.The Commissioner of Prohibition and Excise,
O/o. the Commissioner of Prohibition and Excise,
Chepauk,
Chennai.
- 2.The District Collector,
Nagercoil,
Kanyakumari District.
- 3.The Superintendent of Police,
Nagercoil,
Kanyakumari District.
- 4.The Tahsildar,
Killiyoor Taluk,
Kanyakumari District.
- 5.The Assistant Commissioner of Excise,
Nagercoil,
Kanyakumari District.



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6.The Inspector of Police,
Nithiraivilai Police Station,
Kanyakumari District.

7.The Commissioner,
Kollencode Municipality,
Kanyakumari District.

8.Russel Raj Kamali

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent dated 11.10.2023 in Proc.No.P&E 2(1)/705/2022 and quash the same and consequently direct the respondents 1 to 6 to grant FL2 license to the petitioner to run a bar in the petitioner's club.

For Petitioner : Mr.K.Navaneetharaja

For R-1, R-2 : Mr.J.K.Jayaselan
R-4 and R-5 Government Advocate

For R-3, R-6 : Mr.M.Vaikkam Karnanithi
Government Advocate

For R-8 : Mr.K.P.Shankarakumara Kuruparan

ORDER

This Writ Petition is filed challenging the proceedings dated 11.10.2023, whereby the petitioner's request to grant FL-II license was rejected on the premise that the petitioner Club is situated within 100 meters from Nithiravilai



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Junction and within 100 meters radius from New life Christian fellowship Church and Sree Dharma Sastha Temple. Apart therefrom, a hospital, Ayurveda Vaidhyasalai and St.Jude's College are situated close to the Club.

2. Further, the eighth respondent filed a Writ Petition in W.P.(MD)No. 26983 of 2022, which is a Public Interest Litigation, directing the respondents therein not to grant FL-II license to the petitioner Club and the same is pending consideration. This Court is informed by both the learned counsel for the petitioner and the respondents herein that there is no interim order in the said PIL.

3. It is submitted by the learned counsel for the petitioner that the respondents have misdirected themselves in examining as to whether the Church, Temple, etc., are situated within 100 meters from the Club, when Rule 8 of the Liquor Retail Vending (In Shops and Bars), Rules, 2003 provides that no shop shall be established in Municipal Corporations and Municipalities within a distance of 50 meters from any place of worship or educational institutions. It is not in dispute that the petitioner Club would come under Vilavancode Municipality, Kanyakumari District, thus, what ought to be considered was whether the above places of worship, college etc., would fall



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within 50 meters from the petitioner Club and not 100 meters.

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4. It was also brought to the notice of this Court by the learned counsel for the respondents that the Government had issued guidelines regarding issuance of new FL-II license under Tamil Nadu Liquor (License and Permit) Rules, 1981 and would make a specific reference to the Rule 19 which reads as under:

"19. Conditions to be satisfied before a privilege is granted and the license 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:-

*(i) that the local needs justify the grant of the license; and
(ii) that public interest shall not suffer by the grant of the license applied for and that the privilege is not likely to be misused."*

5. It is submitted that the petitioner has not only satisfied the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, but has also satisfied the conditions set out under the Tamil Nadu Liquor (License and Permit) Rules, 1981.



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6. On perusal of the impugned order, I find no reference to the above Rules. In any event, as stated earlier, there is apparent misdirection, insofar as the impugned order proceeds on the basis that the temples, churches and place of worships exist within the distance of 100 meters, whereas, in respect of the Municipalities, enquiry ought to have been conducted whether the places of worship, college etc., were within a distance of 50 meters from the shop where liquor is stocked and sold. The impugned order suffers from the above infirmity, which goes to the root of the matter and thus, liable to be set aside.

7. It is made clear that if any orders are passed in the PIL filed by the eighth respondent, the respondents/authorities shall pass orders in accordance therewith.

8. In such circumstances, the impugned order passed by the first respondent in Proc.No.P&E 2(1)/705/2022 dated 11.10.2023 is set aside. The respondents/authorities are directed to examine afresh the request of the petitioner in accordance with Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 and Tamil Nadu Liquor (License and Permit) Rules, 1981 and pass orders in accordance with law, after affording reasonable opportunity



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of hearing to the petitioner, within a period of eight weeks from the date of

receipt of a copy of this order.

9. In view of the above, this Writ Petition is disposed of. No costs.

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NCC:yes/no

Index:yes/no

Internet:yes/no

Nsr

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MOHAMMED SHAFFIQ, J.

Nsr

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