



WP.(MD)No.27217 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of reserved : 22/12/2023

Date of pronounced : 15/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

WP (MD) No.27217 of 2023

and

WMP (MD) No.23389 of 2023

M/s.Glow and Grow Studio
Lotus Bali Spa
Rep. by its Partner Ms.E.Margret Divya
Hotel High Point,
No.9, Reyonlds Road,
Cantonment,
Trichy. : Petitioner

Vs.

- 1.The District Collector,
Tiruchirapalli District,
Trichy.
- 2.The Commissioner of Police,
Tiruchirapalli District,
Trichy.
- 3.The Commissioner,
Trichy Municipal Corporation,
Trichy.
- 4.The Corporation Health Officer/Deputy Director,
Tiruchirapalli District,
Trichy. : Respondents

PRAYER:-Writ Petition has been filed under Article 226 of the Constitution of India, to issue appropriate Writ, Order or Direction in nature of a Writ of Mandamus directing the 2nd respondent Commissioner of Police,



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Tiruchirappalli to give 'No Objection Certificate' for the petitioner's Spa namely "Glow and Grow Lotus Bali Spa" run since 2016 at Hotel High Point No.9, Reyonld Road, Cantonment, Trichy, by considering the 4th respondent, dated 01/08/2023.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

ORDER

This Writ Petition has been filed seeking for direction to the 2nd respondent Commissioner of Police, Tiruchirappalli to give 'No Objection Certificate' for the petitioner's Spa namely "Glow and Grow Lotus Bali Spa" run since 2016 at Hotel High Point No.9, Reyonld Road, Cantonment, Trichy, by considering the 4th respondent, dated 01/08/2023.

2.The facts in brief:-

The petitioner is a partnership Firm called 'Glow and Grow Studio Lotus Bali Spa'. They are engaged in providing professional massage therapeutic services and aroma therapy massages. They engaged trained persons with qualified and experience in that profession. They are running Spa without any trouble. For running Spa, there was no specific provision of law, to get licence for



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establishing or running Spa, only trade licence must be obtained from the Corporation. In 2018, Spa was registered with GST and also registered under the Ministry of the Micro, Small and Medium Enterprises. In 1994, Trichy was designated as Municipal Corporation. In 2018, amendment was carried in the Coimbatore City Municipal Corporation, 1981. The District Collector was made as competent authority to give licence. But whether the amendment was extended to Trichy Corporation is also not known. During February, 2023, the second respondent Commissioner insisted the petitioner to get proper licence. For obtaining licence, the petitioner has to get 'NOC' from the Commissioner of Police and Health Officer of Corporation. So, an application was submitted, on 27/03/2023. But the second respondent, by communication, dated 05/04/2023 in Na.Ka.No.Ms/8846/2023, rejected the application stating that the licensee has not possessed the qualification required under Government Order, dated 27/02/2019. Since no amendment was made in respect of Trichy Corporation Limit, they cannot insist upon the compliance of licence. Later, the Government notified the Tamil Nadu Urban Local Bodies Rules, 2023 dated 12/04/2023, G.O.Ms.No.45, Municipal Administration and Water Supply (Election) Department, dated 12/04/2023, by which the Commissioner/Designated Authority to give



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licence after obtaining 'NOC' from the Commissioner of Police. The Rules prescribed the qualification for the applicant for running Spa. But the above said qualifications are exempted for the existing Spa. Another application was sent by the petitioner seeking 'NOC', on 21/07/2023. But so far, the application is not considered. Hence, this petition.

3.Heard both sides.

4.A simple question is involved in this matter.

5.The learned Senior counsel appearing for the petitioner would straightaway draw the attention of this court to the Tamil Nadu Urban Local Bodies Rules, 2023, which was notified in G.O.Ms.No.45, Municipal Administration and Water Supply (Election) Department, 12th April 2023, to impress upon the Court that the qualification prescribed under Rule 299 will not apply to the existing Spa and Massage Parlour on the date of notification. So, according to him, the communication sent by the Commissioner of Police, Trichy stating that they have not engaged qualified persons as per the notification, now according to him, it is *per se* illegal.



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6.The issue with regard to Spa has its own history.

Unregulated Spa started functioning through out the State. When one such a petition was filed before the Principal Seat of this court in WP No.24629 of 2014 and batch of other writ petitions, this court directed the Government to take proper action for bring a new legislation or subordinate legislation under the provisions of Chennai City Municipal Corporation Act or The Chennai City Police Act, for regulating the Spa. In pursuance of the above said direction, the Government issued notification making regulations for making the licence, qualification, etc.

7.That was issued by the Government in G.O.Ms.15, M.A & W.S(M.C.1) Department, dated 31/01/2019. The above said resolution was adopted by the Chennai Corporation Council. So, it covers only to the Municipal Corporation of Chennai. Later, Tamil Nadu Urban Local Bodies Rules, 2023 was notified by the State Government, wherein Rule 299 was amended by incorporating the Rules for the licence, qualification, etc., to be obtained by the Spas running in urban area other than Chennai.

8.For better appreciation, we will extract the Rule 299:-



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"299.Licensing of Spa, Massage Parlour and Beauty Parlour with partition or room or sauna or bathing facility.-(1)No place shall be used as a spa and massage parlour within the municipal limit without obtaining a licence issued by the Commissioner.

(2)No licence shall be granted for spa and massage parlours, unless the applicant possesses a degree from any recognized universities in the following subjects:-

(a)Bachelor of Physiotherapy (BPT) with 4 years duration and 6 months compulsory internship; (or)

(b)B.Sc., (Occupational Therapy); (or)

(c)M.Sc., (Occupational Therapy):(or)

(d)Diploma in Physiotherapy with 3 years duration:

Provided that this qualification shall not apply to spas and massage parlors existing on the date of notification of these Rules."

9.As per the above said Rules, licence is required to be issued by the Commissioner on the application made by the applicant. So, now getting licence for running or



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continuing spa is made compulsory, whether it exists or new spa does not make the difference. Licence is mandatory for both. There can be no quarrel on that particular issue, but the problem lies with regard to the interpretation of Rule 229(2). It is made obligatory on the part of the applicant to engage the persons, who are qualified. The proviso makes it clear that this qualification will not apply to the existing Spas on the date of the notification.

10. Here, the problem for the Commissioner of Police and the Commissioner of Municipal Corporation, Trichy, now they say that as per sub section (2) Rule 299, the persons must engage only qualified persons. But forgetting for a moment that it will not apply to the Spas, which are already existence. The authorities cannot insist upon the applicant, who are already in existence to engage some qualified persons. Thus, we need not go into the validity of this provision, since it is not under issue now. Only applicability is now under challenge. So for issuing the licence to the petitioner, neither the Commissioner of Police, nor the Commissioner of Municipal Corporation, Trichy can insist upon the compliance of sub rules.



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11.Since enough materials are placed to show that this Spa was already in existence, there shall be a direction to the Commissioner of Police, Trichy namely the 2nd respondent herein to consider the application for 'NOC', dated 21/07/2023 and pass orders and issue 'NOC', if other parameters are complied, within a period of 15 days from the date of receipt of a copy of this order.

12.With the above said direction, this writ petition stands **disposed of**. No costs. Consequently, connected Miscellaneous Petition is closed.

15/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Collector,
Tiruchirapalli District,
Trichy.
- 2.The Commissioner of Police,
Tiruchirapalli District,
Trichy.
- 3.The Commissioner,
Trichy Municipal Corporation,
Trichy.
- 4.The Corporation Health Officer/Deputy Director,
Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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