
(2004) 02 MAD CK 0175
In the Madras High Court
Case No : Writ Petition No. 14812 of 2003

E. Ravi Kumar

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Madras City Police Act, 1888 — Section 34

Citation : (2005) CriLJ 311

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : P. Jagadeesan, for the Appellant; P. Gunaraj, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Aggrieved by the proceedings of the respondent dated 1-5-2003, refusing to grant licence for conducting Indian cultural and classical dances under the name and style of "Queen Indian Cultural Dances" at No. 137, Broadway, Chennai-600 108, the petitioner has preferred this writ petition to call for the records and to quash the same.

2. According to the learned counsel for the petitioner, the petitioner was granted licence u/s 34 of the Madras City Police Act (in brevity "the Act") for running a public resort and also for conducting Indian cultural and classical dances at No. 137, Broadway, Chennai-600 108 till 31-12-2000. The said licence was not renewed thereafter. When the petitioner made a fresh application for seeking licence u/s 34 of the Act on 28-2-2003, the same was rejected by the respondent in the impugned proceedings.

3. Even though no show cause notice was required before refusing to grant licence as applied for by the petitioner, the respondent issued a show cause notice dated 16-4-2003, calling upon the petitioner to show cause as to why the application for grant, of licence should not be rejected for the following reasons :-

"(i) Tr. Ravikumar, was earlier arrested along with 9 women accused for conducting obscene dances in the third floor of the said premises in the name and style of Kings Indian Cultural Dance violating licence conditions and a case in B-2 Esplanade Police Station Cr. No. 105/2000, u/s 292-A IPC, and Section 37 of the Madras City Police Act was registered on 8-1-2000 and pending trial in VII Metropolitan Magistrate Court, George Town, Chennai in C.C. No. 1167/2000. In this case, accused A-I Ravikumar alone appearing before the Court and the remaining nine accused who were released on bail are absconding.

(ii) The applicant, Tr. E. Ravikumar, who hails from Pulianthope area has no cultural background and has no reputation status. His mother-in-law Parvathi, W/o. Dayalan and brother-in-law Tvl. Sekar and Shanmugam are noted for their involvement in prohibition offences and Parvathy was convicted in eight cases, Sekar and Shanmugam were convicted in one case each.

(iii) There is no gang way around the auditorium.

(iv) There is no emergency exits provided in the auditorium.

(v) There is no parking space provided".

4. After receipt of the explanation dated 21-4-2003 from the petitioner, the Commissioner, by the impugned proceedings dated 1-5-2003 refused to grant licence on the following grounds:-

" 1. As regards the case in B-2 Esplanade Police Station Cr. No. 105/2000, u/s 292-A IPC and Section 37 C.P. Act pending trial in VII Metropolitan Magistrate Court, George Town in C.C. No. 1167/2000, the applicant has stated that the case was a false and foisted case framed against him. The case is pending for the appearance of the applicant (accused A. 1) and his nine women associates for the past three years. If the applicant and his nine women associates are not guilty of the charge, they are at the liberty to appear before the Court together to prove their innocence which they failed miserably and absconding for the past three years. The statement of the applicant that the case is false and foisted is not true because the applicant was arrested along with nine women accused for conducting obscene dances at No. 137, Broadway, Chennai-108.

2. It is ascertained that the applicant is still residing along with his mother-in-law and brother-in-law at No. 21, Old Slaughter House Road, Pulianthope, Chennai. It is also true that he does not have any cultural background.

3. (i) The auditorium was inspected and it is noticed that the width of 12 feet and length of 40 feet consist of 30 Nos. of seats with one foot breadth tables. Generally no auditorium will have tables but the applicant's dance hall is provided with tables also which would cause inconvenience to the audiences.

(ii) There is no emergency exit in the dance hall. One and a half feet steps goes to the upstairs which reaches to the make-up room of the dancers. But, as per the licence condition, two emergency exit are required.

4. It is also verified that there is no parking space available in front of Door No. 137, Broadway, Chennai-108, where programme is to be conducted. It is reported that the neighbours are experiencing inconveniences by the persons visiting the dance hall parking their vehicles in front of this premises and nuisance caused during the night hours in the dance hall."

5.1 With respect to the reasons 1 and 2 stated in the impugned proceedings for rejecting the licence, learned counsel appearing for the petitioner, placing reliance upon the decision of P. K. Misra, J. in W.P. No. 12706 of 2002 dated 21-6-2002 (D. P. Anand v. State of Tamil Nadu, Rep. by the Secretary to Government, Chennai) and D.P. Anand Vs. State of Tamil Nadu and another, contends that the pendency of the criminal case cannot be a ground for refusing the licence to the petitioner as it cannot be assured that the petitioner is guilty in those criminal cases, that are yet to be decided.

5.2 With respect to the reasons 3(i) and (ii) and 4 of the rejection of the licence, learned counsel for the petitioner argues that the respondent, having granted licence in the same premises till 31-12-2000, they cannot now refuse to grant licence for the reasons referred to above.

6.1 Per contra, Mr. P. Gunaraj, learned Special Government Pleader appearing for the respondents reiterating the reasons stated in the impugned proceedings of the respondent dated 1-5-2003, contends that the petitioner and nine women, who are all accused in Crime No. 105 of 2000 are still absconding and evading the trial and therefore, they are not entitled to challenge the proceedings of the respondent dated 1-5-2003, refusing to grant licence.

6.2 According to Mr. M. S. Palanisamy, learned Special Government Pleader, unless the petitioner complies with the conditions required for public safety, he is not entitled for licence. As a matter of fact, renewal of the licence granted by the respondent earlier, by itself cannot be a ground to seek licence once again, as there cannot be any estoppel against the statutory requirements.

7. I have given careful consideration to the submissions of both the parties.

8. The ratio laid down by this Court in D.P. Anand Vs. State of Tamil Nadu and another, and the order of P. K. Misra, J. in W.P. No. 12706 of 2002 dated 21-6-2002 (D. P. Anand v. State of Tamil Nadu Rep. by the Secretary to Government, Chennai) that merely because criminal cases are pending, it cannot be assumed that the petitioner is guilty in those criminal cases as those cases are yet to be decided cannot be disputed. But, in the instant case, the petitioner himself protracted the trial in Crime No. 105 of 2000, by not rendering himself available during the trial. Concededly, non-bailable warrant is still pending against the petitioner. Therefore, as rightly, contended by learned Special Government Pleader, the petitioner is not entitled to rely upon the above said two decisions rendered by this Court.

9. Section 39 of the Act empowers the respondent to make rule 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 open or used and from time to time may rescind or alter such rules. By exercising the said rule making power, the Commissioner of Police, Madras with the approval of the Governor of Tamil Nadu framed the Rules under Sections 36 and 39 of the Act, which provides sufficient guidelines, which has to be followed while granting, refusing, revoking or suspending the licence as the case may be.

10. The Apex Court while dealing with obscenity and public decency in *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others*, held as follows (at page 1276 of Cri LJ) :

".....where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. In other words, treating with sex in a manner offensive to public decency and morality. Therefore, a balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way,"

11. Once the Commissioner of Police, Madras has come to the conclusion that the petitioner is not entitled for the licence for want of compliance of the conditions required for public safety, it may not be proper for this Court to interfere with the same by exercising the power of judicial review conferred under Article 226 of the Constitution of India, and to direct the respondents to grant such licence for public resort, overlooking the maintenance of public decency and morality. Assuming that the licence of the petitioner was renewed earlier, as rightly pointed out by the learned Additional Government Pleader, the petitioner is not entitled to seek licence claiming estoppel against the statutory requirements.

12. Finding no reason to interfere with the proceedings of the respondent, this writ petition is liable, to be dismissed and the same is dismissed, No costs.