

(2014) 11 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 9424 of 2014

P. Sivasubramaniyan

APPELLANT

Vs

The Government of Puducherry

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2014) 11 MAD CK 0214

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner has prayed for issuance of a Writ of Certiorari, to quash the order passed by the first respondent, dated 28.02.2014, in exercise of his appellate powers under the provisions of the Pondicherry Excise Act and Rules framed thereunder.

2. Heard Mr.M.Krishnappan, learned Senior counsel assisted by Mrs.R.Swarnalatha, learned counsel appearing for the petitioner and Mr.A.Tamilvanan learned Government Advocate appearing for the respondents.

3. The petitioner was granted an FL-2 License by the respondent to run a IMFL liquor Shop under the name and style of M/s. Star Wines at No. 9-A, Melavanjoor, Karaikal. The licence was issued by the third respondent under Rule 117 of the Pondicherry Excise Rules, 1970 (Rules). The licence was on a year to year basis ending with 31st March of the immediate following year. The licensee was eligible to seek for renewal for the succeeding year in terms of Rule 115-A of the Rules. The third respondent by order dated 12.10.1990, cancelled the licence on the ground that the petitioner has violated the Rules 203 and 204 of the Rules. Rule 203 prohibits transfer of licence without prior permission and Rule 204 prohibits the licensee to put any other person incharge of the shop other than the person authorised by the Excise Inspector. The allegation was that the petitioner allowed Mr.V.Gunasekaran and four others by admitting them as partners in the business without permission/consultation of the Licencing

Authority. Further dispute arose between the petitioner and the said Mr.V.Gunasekaran and others, which resulted in local law and order situation and proceedings had to be initiated under Section 145 Cr.P.C. Further, there were civil disputes between the parties. Ultimately, the dispute between the petitioner and Mr.V.Gunasekaran appears to have been settled out of Court and thereafter, the suit was dismissed as withdrawn at the appellate stage and the petitioner submitted an application dated 30.10.2001, for renewal of licence. The application had been titled as re-grant of excise licence. The third respondent by order dated 29.10.2002, informed the petitioner that as per the provisions of the Pondicherry Excise Act and Rules framed thereunder do not permit for re-grant of cancelled licence and hence, FL-2 licence in respect of Star Wines cannot be granted. As against which the petitioner filed an appeal before the second respondent, who rejected the appeal by order dated 08.11.2010. Aggrieved by the same, the petitioner preferred further appeal to the Government under Section 60(3) of the Pondicherry Excise Act. The first respondent by the impugned order has rejected the petitioner's application. Therefore, the petitioner is before this Court challenging the order of the first respondent.

4. On a perusal of the impugned proceedings, it is seen that the original authority, first appellate authority as well as second appellate authority rejected the petitioner's request on the ground that there is no power under the Rules to re-grant a cancelled licence.

5. The learned Senior counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of A.Muthukumaran Vs. The Commissioner of Land Revenue reported in 1984-W.L.R., 252. The appellant before the Hon'ble Division Bench of this Court was the third respondent in the Writ Petition, which was filed to quash the order passed by the Board of Revenue, dismissing the appeal filed by the writ petitioner, which was against the order of Collector of Trichirapalli, overruling the objections of the Writ Petitioner for renewal of a C Form Licence for the cinema theatre in Lalgudi. The Writ Petitioner was the owner of the building and land together with furniture, electrical fittings, etc and the theatre was leased out to the writ appellant on a monthly rent. The tenancy was terminated at that stage, the licence granted by the Collector to the writ appellant under the Cinema Regulation Act came up for renewal. The Writ Petitioner/building owner objected to the renewal of the C Form licence on the ground that the licence has been terminated and the possession was not lawful and the theatre has been sub-leased to another person. Further, it was stated that one other person has been inducted as a partner by the writ appellant, which violates the conditions of licence, as it amounts to the transfer of benefit of licence to the partner. The Collector of Tiruchirapalli overruled the objections and renewed the licence against which the writ petitioner filed an appeal to the Board of Revenue, which confirmed the order of the Collector and upheld the renewal of C Form Licence. Aggrieved over which, the Writ Petition was filed by the building owner, which was allowed by the learned Single Judge on the ground that taking in a partner amounts to transfer

of the licence and it violates the conditions of C Form License. On appeal by the licensee, the Hon'ble Division Bench observed that there is absolutely no transfer or assignment of licence in favour of the partner involved in the said case and the partners, who entered into the partnership or interested only in sharing the profit and it has nothing to do with the licence as such and by following the law laid down by the Hon'ble Supreme Court, it was held that there cannot be any illegality in taking in a partner to exploit the licence and the appellant therein has taken a partner to exploit the licence to run the theatre in question, cannot be held to be illegal.

6. The learned Senior counsel submitted that the decision of the Hon'ble Division Bench squarely applies to the facts of the present case also and even assuming, the partners were admitted by the petitioner to the business, which in fact, he did not do, it would not be a violation of the conditions of licence under the Pondicherry Excise Act and the Rules framed thereunder.

7. It is to be noted that the decision of the Hon'ble Division Bench arose out of interpreting a condition of licence issued under the provision of the Tamil Nadu Cinemas (Regulation) Act, 1955. The terms and conditions of the licence under the said Cinema Regulation Act and that of the Pondicherry Excise Act, are totally different. Therefore, the nature of business activity for which licence has been granted, has to be looked into and the proposition laid down by the Hon'ble Division Bench cannot be straight-away applied to the facts of the instant case. However, keeping aside such issue, it has to be seen as to the correctness of the reasons assigned by the third respondent, while passing the order dated 29.10.2002.

8. It is not in dispute that the licence was cancelled by order dated 12.10.1990 in exercise of the power under Section 28(1)(b) of the Act. The ground on which, the licence was cancelled is that the licence has been transferred to a partnership firm by putting a shop incharge of person, who has not been authorised, there was a civil dispute between the petitioner and the other person, who is said to have inducted as a partner. The alleged partners filed a suit in O.S.No. 30 of 1930, against the petitioner herein on the file of the Additional District Judge, Pondicherry at Karaikal for a declaration that M/s. Star Wines run under the licence granted by the Excise Department is the absolute property of the plaintiff and for a injunction against the defendant (writ petitioner herein) not to interfere in the conduct of the business. The plaintiffs relied upon a partnership deed and on account of the terms and conditions therein, they claimed that the licence held by the defendant has become their property. The petitioner/defendant contended that he did not enter into any partnership, but the fifth plaintiff therein obtained certain blank signatures in stamp paper for the purpose of creditors and for borrowing money and these documents were used and the partnership is illegal and abuse of public policy. The plaintiff has not registered the partnership under Section 69 and the suit itself is not maintainable and no injunction can be granted. After full trial, the suit was decreed in part. While the

suit was pending, an appeal was preferred by the plaintiffs, challenging the order dated 12.10.1990, cancelling the liquor shop licence. That appeal was dismissed by the second respondent by order dated 26.03.1991.

9. The petitioner preferred an appeal in A.S.No. 382 of 1991 against the decree in O.S.No. 30 of 1990. During the pendency of the appeal, there was a settlement among the parties and O.S.No. 30 of 1990, was dismissed as withdrawn by order dated 07.08.2001. Thereafter, the petitioner submitted a representation to the second respondent on 30.10.2001. The representation is titled to re-grant of excise licence. Copy of the representation was sent to the third respondent. The third respondent by order dated 29.10.2002, rejected the request stating that Rules do not permit for re-grant of cancelled licence. The petitioner preferred an appeal before the second respondent, who confirmed the same and the second appeal to the first respondent was also rejected. The question that would arise is whether the petitioner sought for re-grant of his licence, which was cancelled or requested for revoking the order of cancellation and to permit him to enjoy the benefits of the licence. It is seen that the licence was cancelled on 12.10.1990, by the third respondent on the ground that the petitioner has transferred the licence to a partnership entrusted the management of the shop to a person not authorised by the department. The petitioner did not challenge the order dated 12.10.1990, by filing an appeal. The rival party, the plaintiffs filed an appeal, which was rejected by order dated 26.03.1991. Thereafter, the plaintiffs did not proceed with the matter and though the Suit filed by them was partly decreed. On appeal by the petitioner in A.S.No. 382 of 1991, a compromise was arrived at and the Suit was dismissed by order dated 07.08.2001. By then more than 10 years lapsed after cancelling the licence, after the Suit was dismissed, the petitioner approached the third respondent setting out all the facts as to under what circumstances, civil litigation was commenced and ultimately about the dismissal of the Suit as withdrawn.

10. With the above submissions, the petitioner stated that he has become entitled to have the revocation of the cancellation order and seek for re-grant of the licence and restore him to the original position. The copy of the decision of the trial Court as well as the High Court dismissing the Suit as withdrawn and copy of the order passed by the second respondent rejecting the appeal filed by the plaintiffs for grant of licence in their favour dated 26.03.1991, were enclosed. Further, the petitioner stated that the licence was cancelled not on account of his fault, but on account of certain acts committed by third parties. Therefore, he prayed for permitting him to do business and he is willing to appear before the authority for providing necessary information. The third respondent while considering the said representation dated 30.10.2001, presumably was guided by the subject column in the representation, which states re-grant of excise licence, but on a careful perusal of the entire averments in the representation, it is seen that the prayer made by the writ petitioner was for revocation of the cancellation of licence, dated 12.10.1990. This error which occurred in the order passed by the third respondent was not set right in appeal by the second

respondent, who held that the licence having been cancelled in the year 1990, there is no question of renewal or re-grant of the licence after lapse of 20 years. The same was the finding rendered by the first respondent.

11. In my view, the petitioner sought for revocation of the cancellation of licence and he did not seek for a fresh grant or re-grant of the licence. Further, 11 years the petitioner did not do anything owing to the pendency of the proceedings before the Civil Court. On appeal to the High Court against the Civil Court decree, the matter appears to have been settled between the parties and the Suit was dismissed as withdrawn. The consistent case of the petitioner was that the signatures have obtained from him in blank papers and a partnership deed was created, he had no point of time admitted the partnership deed in the written statement or in the appeal. In any event, the Suit filed by the private parties has been dismissed as withdrawn. In such circumstances, the impediment which was stated as reason for cancellation of the licence does not any longer survive and this was the factual position, when the petitioner submitted his representation dated 30.10.2001.

12. In the light of the above discussion, this Court has no hesitation to hold that the order refusing to consider the petitioner's request for cancellation of licence is incorrect, as the scope of his application has been misunderstood, as if he is requesting for a re-grant of a cancelled licence, when the prayer made by the petitioner before the respondent was to restore the licence, which was cancelled or in other words set aside the order of cancellation.

13. In the light of the above, the Writ Petition is allowed and the impugned order is set aside. Consequently, the order passed by the respondents 2 and 3 are also set aside and the matter is remanded to the third respondent for fresh consideration. The third respondent shall consider the petitioner's application dated 30.10.2001, requesting for revocation or order of cancellation of licence, dated 12.10.1990, examine all the documents that would be placed by the petitioner and after hearing the petitioner in person pass orders on merits and in accordance with law. Above direction shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.