

(2000) 11 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 11196 of 2000

P.R. Gunasekaran

APPELLANT

Vs

The Commissioner, Prohibition and Excise, The District
Collector and The Deputy Commissioner, Prohibition and
Excise

RESPONDENT

Date of Decision : 09-11-2000

Acts Referred:

Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 14, 14(2), 14(3), 18, 19(2)

Citation : (2000) 11 MAD CK 0015

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

**Advocate : A.L. Somayaji for R. Sugumaran, for the Appellant; S. Manikumar,
Addl. Govt. Pleader, for the Respondent**

Judgement

S. Jagadeesan, J.—The Petitioner is the licensee to run the IMFL retail vending shop for the year 1998-99. The shop was originally located

at No. 15, Ground Floor, Anna Commercial Complex, Anna Nagar, Madras - 40. The licence was renewed for the further period 1999-2000.

During April 2000 the Petitioner applied for the permission to shift the shop to Door No. AB-127, Ground Floor, Flat No. 37, Anna Nagar.

Chennai - 40. The third Respondent who is the appropriate authority to grant the permission made a personal inspection and after satisfying with

regard to the compliance of the requirements of the Rules and Regulations permitted the Petitioner to shift the shop and the Petitioner also

commenced his business in the new place from 3.5.2000. The third Respondent once again inspected the premises on 21.5.2000 on the objections

raised by some of the residents of Shanthi Colony, Anna Nagar. Madras.

2. The Petitioner applied for the renewal of the licence for the period 2000-2001 and the necessary applications were submitted on 13.5.2000.

The third Respondent issued a show-cause notice in his proceedings dated 22.5.2000 to the Petitioner, asking him to submit his explanation as to

why the application for renewal of licence shall not be rejected because of the objections raised by the public. The Petitioner also submitted his

explanation on 31.5.2000. The third Respondent, by his proceedings dated 31.5.2000 has rejected the application of the Petitioner for renewal.

The Petitioner preferred an appeal to the second Respondent herein on 2.6.2000. The second Respondent by his proceedings dated 16.6.2000

confirmed the order of the third Respondent and rejected the appeal. The Petitioner further preferred a revision before the first Respondent which

was also rejected. Aggrieved by the same, the present writ petition has been filed.

3. The first Respondent has filed counter affidavit, wherein the averments made in the affidavit upto the granting of permission for shifting of the

shop were admitted. Further it is stated that, subsequent to the shifting of the shop on 15.5.2000, the public of the locality objected to the location

of the shop and a news item was also appeared on 21.5.2000 in the Tamil Daily "Dinamalar" highlighting the public objection. The third

Respondent made a personal inspection on 21.5.2000 and detected certain violation of the licence conditions and hence the Petitioner's licence

was suspended on 22.5.2000 under Rule 19(2) of the Tamil Nadu Liquor (Retail Vending) Rules.1989. The Deputy Commissioner of Police,

Prohibition Enforcement Wing, Central Zone. Chennai had requested the licensing authority to consider the objection of the residents of Shanthi

Colony stating that if the shop is to function it will lead to serious breach of law and order. In the meantime, the Petitioner applied for the renewal

of the licence. In view of the objections already raised, the show-cause notice was issued to the Petitioner and after considering the explanation,

the application for renewal was rejected.

4. The third Respondent has also filed a separate counter affidavit, almost identical to that of the first Respondent.

5. The Learned Senior Counsel for the Petitioner contended that when once the Petitioner had been permitted to shift the shop and the licence was

issued to run the business in the new shop, thereafter it is not open to the Respondents to reject the renewal of the licence on the ground of the

objections raised by the public. It is not the case of the Respondents that the shop is located in contravention of any of the Rules and Regulations

or the provisions of the Act. When the statutory provisions had been duly complied with and the Petitioner was permitted to locate the shop, the

objections from the public cannot be a ground to shift the shop or to refuse the renewal. He placed reliance in the judgment *Murugesan v. Assistant*

Commissioner (Excise) 1998 (II) CTC 661 as well as the unreported judgment in *Lakshmana Perumal v. The District Collector, Kanchepuram*

WP. 414/ 2000 dated 19.1.2000.

6. On the other hand, the Government Pleader appearing for the Respondents contended that the objection from the public quarters is also a valid

ground to consider the shifting of the shop or the renewal of licence: especially when it involves the law and order problem. In this case, even

though the Petitioner was permitted to shift the shop, immediately thereafter the objections were received from the residents of the area. The third

Respondent having inspected the site to verify with regard to those objections had suspended the licence of the Petitioner. Subsequently after

giving due opportunity to the Petitioner, the request for renewal of the licence was rejected. When there is likelihood of the law and order problem,

it is open to the authorities to consider the same and issue suitable directions. He also relied upon the unreported judgment of this Court in (W.P.I

7492 of 1998 dated 26.11.98) *Chinniah v. The Special Commissioner and Commissioner (Prohibition and Excise)*.

7. I carefully considered the contentions of the respective counsels. Each case has to be decided on the facts of that particular case. In this case,

the question for consideration is whether the Respondents are justified in rejecting the renewal of the licence of the Petitioner in respect of his

IMFL shop on the ground of objection from public.

8. Admittedly the Petitioner had been granted licence to run the IMFL Retail vending shop at AB-127, Ground Floor, Flat No. 37, Anna Nagar,

Chennai-40 by permitting the shifting of the shop. The Petitioner also commenced his business in the said premises since 3.5.2000. The third

Respondent, the licensing authority had granted the licence only after satisfying

himself that the location of the shop is not in contravention of any of the Rules or the Regulations framed under the statute. While so, an objection was raised by the residents stating that the IMFL shop is located in a residential area and its functioning is causing nuisance to them apart from threatening from peaceful living. The IMFL shop is also running a full-fledged Bar which is unauthorised and illegal and if the IMFL shop is allowed to continue in the same place, then they have to show their protest to the functioning of the IMFL shop in that area. Before ever any action could be taken, the residents also voiced their objection through a Tamil Daily. Hence the third Respondent inspected the place once again on 21.5.2000 and temporarily suspended the licence on the ground that the licence number, price list and the statutory warning were not exhibited. The third Respondent also found during his inspection that the continuance of the shop in the above premises will lead to vehement opposition and ugly protest by the local residents which may in turn will cause law and order problem. On this ground, the renewal of the licence of the Petitioner was rejected.

9. The Tamil Nadu Liquor (Retail Vending) Rules. 1989 framed under the Prohibition Act governed the issue of licence for the IMFL trade and also the location of the shops. So far as the location of the shop is concerned, Rule 18 deals with the same which is as follows:

(1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty metres) and in other areas 100

(hundred) metres from any place of worship or educational institutions:

Provided that the distance restriction shall not apply in areas designated as ""Commercial"" or"" ""Industrial"" by the Development or Town Planning

Authorities Provided further that no shop shall be established within the premises of any hotel or other eating place or in any premises immediately

adjoining such hotel or eating place:

Provided that if any place of worship, educational institution, hotel or eating place comes into existence subsequent to the grant of a licence it shall

not disentitle the licensee to continue to possess such licence or to apply for the renewal thereof;

Provided also that no new liquor shops shall be established in any tribal areas covered under Integrated Tribal Development Project and Hill Area

Development Project in the Hill area of vellore. Salem. Nammakkal, Dindigul, Tirunelveli and Kanniyakumari districts.

(2) Every shop shall be housed in a pucca building and no part of the shop shall be thatched either on the sides or on the roof.

(3) There shall be provision for keeping the liquor under lock and key, accessible only to the licensee or his authorised employees.

There is no dispute that the third Respondent, the licensing authority had satisfied himself that the conditions prescribed under this Rule had been

duly complied with regard to the selection of the site and permitted the Petitioner to locate his shop at AB-127, Ground Floor, Flat No. 37. Anna

Nagar, Chennai -40.

10. Rule 14 deals with the renewal of the licence. Sub-rule (2) of Rule 14 requires the licensee to apply for the renewal for the third year, 60 days

prior to the date of expiry of the licence.

11. Sub-rule (3) of Rule 14 empowers the licensing authority not to renew the licence by recording the reasons for refusal, after giving a reasonable

opportunity of being heard to the licensee. Of course there is no guidelines in Sub-rule (3) as to on what ground, the renewal can be rejected.

12. Now the fact remains that the renewal of the licence of the Petitioner had been rejected only on the ground of the objections from the residents

of the area.

13. In a case where shifting was ordered on the ground of objections from the public, when such direction of shifting was challenged before this

Court, in the case of Murugesan v. The Assistant Commissioner. (Excise), Coimbatore 1998 (II) CTC 661 this Court has held as follows:

The other ground on which the Petitioner has been directed to shift the shop is, that the general public has given a representation and the local

M.L.A. has also recommended the Authorities to look into the matter and it is also a nuisance. I do not think that any of these grounds could be

looked into, when the statute a shop is provided in Rule 18. Once Rule 18 has no application and the Petitioner has obtained licence for running a

shop, and the Authorities have also identified the shop as suitable for conducting the business, I do not think that the Petitioner can be directed to

shift the same from that place.

14. The Learned Counsel for the Respondents relied upon the judgment in

Lakshmana Perumal v. The District Collector. Kancheepuram W.P.414

of 2000 dated 19.1.2000) where the shifting was ordered due to the law and order problem. In that case, the shop was located within three feet

from the statue of a national leader and this gave rise to the objection which may lead to law and order problem,. That objection was upheld and

the shifting was sustained.

15. The learned Government Pleader also relied upon another unreported judgment in Chinniah v. The Special Commissioner and Commissioner

(Prohibition and Excise) (W.P.17492 of 1998 dt.26.11.98). In the said case also the learned Judge had observed that regarding the location of the

shop or for shifting of the shop, the statutory rule provides satisfaction of certain conditions. Having observed, in the concluding portion, the

learned judge has held as follows:

Even though Rule 18 only says that the shop shall not be established within a particular distance of place of worship or educational institution, it

does not follow the authorities should not consider other relevant factors while considering the suitability. In this case, it has been found that there

will be law and order problem, public meetings are being held close to the proposed shop and that will be a hindrance to the members of public.

These are also relevant factors, which authorities have taken into consideration for rejecting the application of Petitioner. The same cannot be said

as irrelevant.

From the above conclusion it is clear that in the above case the location was objected on the ground that it was situated very near to the place

where the public meetings are held.

16. I have no hesitation in agreeing with the conclusion that the learned Judges, depending upon the location of the shop is concerned. In the case

on hand, the shop has been located in the place permitted by the licensing authorities. It has to be seen that even though it is a residential area,

whether any other commercial activities had been permitted or not in the same area. If any other commercial activities had been permitted, then

there cannot be any objection for the location of the IMFL shop in question. The licence is issued for the trade only to sell the IMFL bottles. If any

other contravention or violation of the licence conditions or the Rules and the Regulations is involved, it is always open to the authorities to take

action as provided under the statute. If the Petitioner is engaging himself only in selling the IFML bottles, then it is not open to the authorities to refuse the renewal of the licence on the ground that the residents are objecting. One should not forget that this trade is also like any other shop carrying on the commercial activities. The collector notifies the area of location within which the shop is to be located before ever the shops were auctioned. Only on the basis of the area of location of the shops, the participants in the auction, offer their bid. When the location is specified, thereafter it is for the successful bidder to select the site, subject to the restrictions imposed under Rule 18 of the above said Rules. If such conditions are complied with and the licensing authorities satisfied with regard to the location of the shop then the licensing authorities have no other option except to grant a licence. When other commercial activities are allowed to go on, there cannot be any objection for this trade alone on the ground that the shops should not be located in the residential area. If such an objection is to be entertained, then it may lead to a situation where the licensee may not be permitted to run the shop at all. The authorities also should take into consideration the bid amount paid by the licensee for getting such licence. If the lawful trade of the licensee is to be interfered with by some vested quarters, that also to be taken note of before ever any decision is taken by the licensing authority.

Merely on the ground that the Law and order problem may arise, the licensing authority cannot refuse the renewal of licence or the shifting of the shop. Once a licence has been granted, the licensee has got a right to carry on the trade so long as it is lawful and the same cannot be interfered with for any flimsy reasons. If the licensee is carrying on the trade in accordance the licence conditions and in compliance of the Rules and Regulations, then it is for the authorities to give protection to the licensee to carry on the trade. At the instance of the few who may have some vested interest or the personal animosity, the authorities also cannot join hands with them and interfere with the licensed trade of the Petitioner.

17. In this case, admittedly the third Respondent inspected the place only on the representation of the residents, alleging that the Petitioner is running the shop in contravention of the licence conditions as well as the Rules and Regulations. But the third Respondent in his Report clearly

stated that the allegations made by the residents is not true. But, however, the licence of the Petitioner had been suspended only on the technical ground of non-exhibition of the statutory warning and the price list which has no relevance to the objection raised by the residents. Further, the authorities have totally failed to consider as to whether any other commercial activities are being permitted in the nearby areas of the Shop under dispute. If such commercial activities are already permitted, then the objection raised by the residents cannot be a valid ground for refusing the renewal of the licence. As already mentioned when licence is granted for the 1MFL shop, then the running of the trade is quite legal, of course, subject to the licence conditions. If no other commercial activities had been permitted in that area then the authorities may consider the location of the shop under dispute is objectionable. As this vital factor was not taken into consideration, the impugned orders of the Respondents are set aside and the matter is remitted back to the third Respondent for fresh enquiry. The third Respondent is directed to dispose of the matter within two weeks from the date of receipt or production of the copy of this order in the light of the above observation. With the above direction, the writ petition is disposed of.