

(2007) 08 MAD CK 0055

In the Madras High Court

Case No : Writ Petition (MD) No. 3722 of 2007 and M.P. (MD) No. 1 of 2007

S. Natesan

APPELLANT

Vs

The Commissioner, Prohibition and Excise, The District
Collector, The Superintendent of Police and The Assistant
Commissioner Excise

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2007) 08 MAD CK 0055

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : H. Velavadhas, for the Appellant; R. Manoharan, GA, for the
Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—I have heard the arguments of Mr. H. Velavadhas, learned Counsel appearing for the petitioner and Mr. R. Manoharan,

learned Government Advocate representing the respondents and have perused the records.

2. In this petitioner, the petitioner challenges the order dated 22.9.2004 issued by the Commissioner of Prohibition and Excise confirming the order

dated 08.3.2004 passed by the District Collector, Kanyakumari.

3. The petitioner is having a licence for manufacture of Ayurvedic Medicine and for selling the same and he is having a Drug Licence under Form

25-D. His licence has been periodically renewed. When the petitioner applied for renewal of licence, the second respondent District Collector

rejected the same by order dated 11.6.2002. Thereafter, he filed an appeal before the Commissioner against the said order. The Commissioner,

vide order dated 20.12.2003, remanded the matter to the Collector for fresh disposal after giving opportunity to the petitioner. An enquiry was conducted on 01.3.2004. Thereafter, the second respondent rejected the request for renewal on the ground that the alcohol found in the medicinal preparations by the petitioner was less than 6%. The second respondent further stated that the petitioner had prepared fake ""arishtam"" and sold it as a drug. Therefore, the renewal was refused since he is likely to misuse the said licence. Once again, the petitioner preferred an appeal dated 19.4.2004, to the first respondent. The said appeal was rejected by the first respondent Commissioner, vide proceedings dated 22.9.2004, confirming the order of the District Collector. It was stated that the renewal of licence was rejected by the District Collector based upon the public complaint and Inspection Report of the Excise and Police officials and that the petitioner misused the licence in preparing illicit arishtam and selling it for intoxication and, therefore, he has violated the conditions of licence. It is this order that is under challenge in this writ petition.

4. Notice of motion was ordered on 24.4.2007. The learned Government Advocate was directed to produce the original file in support of the finding recorded by the respondents 1 and 2.

5. It is seen from the records that the petitioner has complete licence for preparing the Ayurvedic Medicine. The Additional Superintendent of Police, in his report dated 07.6.2002, has clearly stated that there is no objection for renewal of L2 licence already granted to him. It is also stated that there was no complaint from the public and the petitioner had not violated any condition. In the original file, against the impugned order dated 11.6.2002, in the reference column, though there is a reference to the report from the Superintendent of Police, Kanyakumari District was mentioned, the same was struck out and the Divisional Excise Officer's report alone is cited. The Divisional Excise Officer, in his report, had not mentioned anything about the complaint received from the public. In paragraph 5 of the report dated 24.4.2002, he has merely stated in a general sense that the Ayurvedic medicinal preparations are used as an intoxicant, which results in the complaints coming from the public. There is no reference to the complaint against the petitioner, being received by the respondents.

6. On the contrary, the entire file does not disclose any complaint from the public. But, the general statement of the Divisional Excise Officer is found to be reflected in the order of the District Collector in a twisted sense and the same thing is found in the order of the appellate authority. He has merely reproduced the order of the District Collector. The entire exercise of the respondents shows that the power given to them under the relevant enactment has been thoroughly misused and the petitioner's licences have not been renewed for untenable reasons. When the appellate authority has passed an order on the ground of the complaints being received from the public about the petitioner selling illegal intoxicant, then there is no basis for such a statement in the original file. On the contrary, the Additional Superintendent of Police, Kanyakumari District, has recommended the case of the petitioner and has specifically stated that there is no such complaint from the public in this regard. It was rather unfortunate that such things are not noted and statutory orders are passed by the respondents 1 and 2. By the orders of the respondents, the petitioner has been prejudiced and put to great loss as his licence not being renewed.

7. In view of the above, the writ petition is allowed and the impugned order passed by the first respondent is set aside and the respondents are directed to renew the licence of the petitioner forthwith subject to other formalities being fulfilled. This exercise shall be undertaken by the respondents within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.