

(2012) 09 MAD CK 0028

In the Madras High Court

Case No : Writ Petition (MD) No. 12043 of 2012 and M.P. (MD) No. 1 of 2012

Sri Andal Boarding and Lodging

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Citation : (2013) 2 MLJ 53

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : B.S. Meltiue, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner prays for the issuance of a writ in the nature of certiorari to quash the impugned order of temporary

suspension of licence of the petitioner, vide Pro. No. P&E(2(1)/4297/2012, dated 17.8.2012. The impugned order reads as follows:

Order:

On scrutinizing the reports received from the Assistant Commissioner (Excise) of Sivaganga District who conducted joint inspection with police

TASMAC and officials on 4.8.2012 and 5.8.2012 in the FL2/FL3 licensed premises in Virudhunagar District, it is observed that the FL3 licence

No. 1/99-2000 holder of the hotel Tvl. Hotel Sree Andal has committed the following irregularities that thereby causing loss of revenue to the

Government.

1. The Licensee has failed to raise proper bill and issue the to the consumers.
2. The licensee has failed to charge 14.5% VAT from the consumers and not

remitted the same to the CT dept., and there by causing loss of revenue to the Government.

For the above irregularities in exercise of the powers conferred on the licensing authority under Rule 22(2) of the Tamil Nadu

Liquor (Licence and Permit) Rules, 1981, the licence in FL3 No. 1/99-2000 granted to Tvl. Hotel Sree Andal, Virudhunagar District is hereby temporarily suspended.

The Assistant Commissioner (Excise) Virudhunagar is requested to take immediate action to give effect to this order of suspension of the licence

by freezing the stock of IMFS/Beer immediately and keep the bar sealed till further orders and report compliance.

This order of suspension takes immediate effect.

Sd/- M. Malik Feroze Khan

Commissioner. (P&E)

2. The petitioner is the proprietor of Sri Andal Boarding and Lodging situated at Bye-pass Road, Srivilliputhur, Virudhunagar District. The

petitioner applied for grant of FL-3 licence under the provisions of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, with all required

documents and necessary payment.

3. The Director of Tourism, Chennai, has recommended for the grant of FL-3 licence to the petitioner. On recommendation of the Director of

Tourism, Chennai and also the District Collector of Virudhunagar District, the petitioner was granted FL-3 licence bearing No. 1/99-2000, which

was valid upto 31.3.2000. The licence was regularly renewed from time to time. It is submitted that the impugned order has been passed without

any notice to the petitioner.

4. The impugned order is challenged by the petitioner on the ground, that it has passed in violation of principles of natural justice, as no notice was

issued to the petitioner before passing the order of temporary suspension.

5. In support of the contention that order of temporary suspension without show cause notice cannot be sustained in law, the learned counsel has

placed reliance on the judgment of this Court in Hotel Soorya International Vs. The Secretary to Government, Home, Prohibition and Excise,

Chennai 600009, The Commissioner, Prohibition and Excise, Chepauk, Chennai

600005 and The Deputy Commissioner, Prohibition and Excise, Collectorate, Coimbatore, . This judgment has no application to the facts of the present case, as in the said case the licence of the Hotel was permanently cancelled without following the procedure laid down in Rule 22 of the Tamil Nadu Liquor (Licence & Permit) Rule, 1981.

6. The learned counsel for the petitioner also placed reliance on the judgment of this Court in a batch of Writ Petitions in W.P. No. 23376, 23377, 23378, 23558, 23412, 23413, 23562 and 23909 of 2012, dated 31.8.2012, wherein it has been held as follows:

Heard the learned counsels appearing for the petitioners and the learned counsels appearing on behalf of the respondents.

2. At this stage of the hearing of these writ petitions, it has been submitted on behalf of the respondents concerned that the impugned orders

suspending the licences issued in favour of the petitioners may be set aside. However, the petitioners may be directed to participate in the enquiry

to be conducted by the respondents concerned, pursuant to the notices issued to them, as per the procedures prescribed under Rule 22(1) of The

Tamil Nadu Liquor (Licence & Permit) Rules, 1981.

3. It had been further submitted that the respondents concerned would consider the objections filed by the petitioners, if any, and pass appropriate

orders thereon, based on the enquiry, on merits and in accordance with law, after giving an opportunity of hearing to the petitioners.

4. It had been further submitted that it would be open to the petitioners to run the bars in question, by following the procedures established by law

and as per the licence conditions.

5. In view of the above, the impugned orders, suspending the licences issued in favour of the petitioners, are set aside. The petitioners are directed

to participate in the enquiry to be conducted by the respondents concerned, pursuant to the notices issued to them. The enquiry shall be

conducted, as per the procedures prescribed under Rule 22(1) of The Tamil Nadu Liquor (Licence & Permit) Rules, 1981. The respondents

concerned shall conduct the enquiry and pass appropriate orders thereon, as expeditiously as possible, not later than four months from the date of

receipt of a copy of this order. The authorities concerned shall enable the petitioners to run the bars in question, by removing the seals, which have

been put up by them, pursuant to the passing of the impugned orders.

These writ petitions are ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed.

7. At this point, it is necessary to reproduce Rule 22 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981:

22. Cancellation or suspension of licences: (1) The licensing authority may, after giving in writing to the licence holder an opportunity to show cause

within a reasonable time not exceeding fourteen days against the action proposed to be taken or order proposed to be issued, stating the reasons

therefor, by an order in writing specifying the reasons, cancel the licence under these Rules or suspend it for such period as it thinks fit, if in its

opinion, the licence holder has failed to comply with any of the conditions of the licence or of any of the provisions of the Act or the Rules made

thereunder.

(2) Notwithstanding anything contained in sub-rule (1), the licensing authority may temporarily suspend the licence for a period not exceeding

ninety days pending framing of charges for violation or irregularities noticed. In such a case, the reason for suspension shall be communicated to the

licence holder within five days from the date of suspension.

(3) When a licence is cancelled or suspended or temporarily suspended or is not renewed after its expiry the licence holder shall not sell, use or

otherwise dispose of any of the stock of liquor or medicated wine held by him under the licence at the time of such cancellation, suspension,

temporary suspension or expiry and shall abide the orders of the licensing authority regarding the disposal of such stock. The licence holder shall

not also be entitled to claim any compensation on account of cancellation, suspension, temporary suspension or non-renewal of the licence.

8. The impugned order has been passed under Rule 22(2) of the Rules referred to above, which clearly stipulates that for ordering temporary

suspension, no notice is required. The only stipulation is that the order along with the grounds for suspension is to be served on the petitioner within

five days of passing of the order. The contention of the learned counsel for the petitioner is that the impugned order was dispatched only after five

days, therefore, the order is bad, also cannot be accepted, as admittedly the petitioner has been served with the order, mere delay in service can

not be fatal to the order of temporary suspension.

9. The judgment of this Court passed in batch of writ petitions in W.P. No. 23376 of 2012, dated 31.8.2012 and connected writ petitions, cannot

be said to be laying down a binding precedent, firstly for the reason that the judgment has been passed without taking note of the statutory Rule

22(2) of the Rules, which does not stipulate the issuance of any show cause notice before passing temporary order of suspension.

10. The judgment otherwise also cannot be said to be precedent, as it has not decided the question whether the issuance of notice is a pre-

requisite for temporary suspension of the licence in exercise of power under Rule 22(2) of the said Rules, but the order was passed in concession

by the State counsel.

11. The Honourable Supreme Court has laid down that any judgment, which is passed without considering statutory rules or Acts is only per

incuriam and not a binding precedent.

12. The petitioner therefore cannot draw any advantage from the said judgments of this Court, on which reliance has been placed.

13. The petitioner has already been issued with a show-cause notice u/s 22(1), for issuance of order of temporary suspension. The respondents

will be bound to follow the procedures contemplated under Rule 22(1) of the Rules referred to above for deciding whether the licence of the

petitioner is to be cancelled or not. No ground is made out to interfere with the impugned order of temporary suspension of licence passed in

exercise of powers under Rule 22(2) of the Rules. No merits. ""Dismissed"".

No costs. Connected miscellaneous petition closed.