
(1993) 09 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No. 10080 and W.M.P. No. 15493 of 1993

V. Uthirayamuthu

APPELLANT

Vs

District Collector Kanyakumari District and others

RESPONDENT

Date of Decision : 06-09-1993

Acts Referred:

Madras Prohibition Act, 1937 — Section 20A

Penal Code, 1860 (IPC) — Section 482, 483, 484, 485, 486

Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 14

Citation : AIR 1994 Mad 240

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : R. Gandhi, M/s. N. Paulvasanthakumar, K. Ravichandra Babu and T.S. Sivagnanam, for the Appellant; P. Chandrasekaran, Addl. Govt. Pleader, for the Respondent

Judgement

Janarthanam, J.—V. Uthiyamuthu (petitioner) was the licensee of IMFL Shop No. 1, Villukury, Kalkulam Taluk under Licence No.

16/KAL/92-93. The licence period was to expire on 31-5-1993. He, it is said, filed an application for renewal on 30-4-1993 to the Assistant

Commissioner (Excise), Nagercoil, Kanyakumari district (second respondent), after duly remitting a sum of Rs. 1,55,250/-towards the privilege

amount, which is 15% more than the existing amount, the licence fee of Rs.2,500/- and Rs. 100/- towards application fee, in accordance with the

provisions adumbrated under sub-clause (1) of Rule 14 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (for short "the Rules").

2. The second respondent, on receipt of the renewal application, it is said, was stated to have issued a notice to him on 8-5-1993 directing him to

show cause why the grant of renewal should not be withheld within seven days

from the date of receipt of the said notice besides directing him to appear for an enquiry on 17-5-1993 at 3 PM alleging certain accusations as below;

(1) Certain criminal cases were stated to have been pending against him, as reported by the Superintendent of Police, Kanyakumari District at

Nagercoil (third respondent);

(2) He was responsible for the communal clashes that took place in Villukury.

3. Apart from accusations as above, the inspection stated to have been made by the second respondent of his shop on 17-4-1993 revealed certain

irregularities as under.

(1) Non-submission of monthly report as respects the month of February-March, 1993.

(2) Non-writing of daily chitta subsequent to 6-4-1993.

(3) Non-writing of the stock register, subsequent to 13-4-1993.

(4) Purchases made on 13-4-1993 not duly accounted for in the stock register.

(5) Non-production of the Bar Register for the purpose of inspection, and

(6) No bills were prepared for sale subsequent to 6-4-1993.

4. Pursuant to the said notice, he submitted his explanation and also appeared for the enquiry as scheduled and after taking into consideration, the

explanation so filed in respect of levelling of the accusations and other refractions or violations, he had made, the second respondent passed an

order in his proceedings Ma.5/26187/93 dated 17-5-1993 rejecting the renewal prayed for.

5. Aggrieved by the said, order, he appeared to have preferred an appeal before the District Collector, Kanyakumari District at Nagercoil (first

respondent) and the same appeared to have been returned on the ground of his not filing of the order impugned, giving him time of 15 days for

such compliance.

6. The petitioner did not make such compliance at all and consequently the appeal so filed had been rejected. He did not even further agitate the

matter before the competent authorities as prescribed under the Rules. But what he did was that he resorted to the present action praying for issue

of a writ of certiorarified mandamus to quash the order of the second respondent and direct him to grant the renewal of licence for the said shop in

his favour for the period from 1-6-1993 to 31-5-1994.

7. Along with the writ petition, he also filed WMP No. 15493 of 1993 and this Court on 25-5-1993 ordered notice returnable in two weeks.

8. On service of notice, learned Additional Government Pleader represented the respondents 1 to 3 and the WMP came up for orders on various

dates. When the WMP was taken up for hearing on 3-9-1993, both learned counsel for the petitioner as well as learned Additional Government

Pleader (Excise) agreed for the disposal of the main writ petition itself and consequently, arguments were heard on the main writ petition.

9. Mr. R. Gandhi, learned senior counsel appearing for the petitioner would press into service the following points for consideration :

(1) The petitioner, though was listed as a habitual offender previous to the year 1976, yet, he was removed from such list by the issuance of a

General Notification No. C2/5712/76 by the District Collector and District Magistrate, Kanyakumari District at Nagercoil (first respondent)

cancelling the earlier notification and therefore, the fact that he was in the list of habitual offenders earlier to 1976 is of no consequence for the grant

of renewal of licence in his favour.

(2) There is no prohibition or restriction either under the Rules or under the Tamil Nadu Prohibition Act, 1987 (for short "the Act") as respects

grant of licence or renewal of licence in favour of a person accused of an offence and in that view of the matter, the pendency of criminal cases as

against him can, by no stretch of imagination, be stated to be a ground for the rejection of renewal of licence.

(3) Circular stated to have been issued by the first respondent on 6-4-1993 as respects the methodologies prescribed for the renewal of licence

had not at all been served on the petitioner and consequently to put against him and of the circular instructions, namely, obtaining of the approval of

the Divisional Excise Officer and his counter-signature before ever the renewal application is filed is of no consequence.

10. Learned Additional Government Pleader (Excise) would, however, repel all those submissions.

11. The fact that the petitioner had been removed from the list of habitual offenders is beyond any pale of controversy, as seen from the notification

issued by the first respondent which had been produced for perusal of this Court.

True it is also that there are no specific provisions adumbrated either under the Rules or under the Act restricting or prohibiting the grant of licence in favour of persons against whom pendency of criminal cases having been reported. The petitioner, though did not raise any ground as to the non-serving of the circular of the first respondent dated 6-4-1993, yet it is admitted during the course of arguments by learned Additional Government Pleader (Excise) that the said circular had not been served upon the petitioner. In such a circumstance, it goes without saying that the enforcement of the requirement of the previous approval and counter-signature of the Divisional Excise Commissioner, before ever the petitioner filed his application for renewal, is of no consequence. The moot question, in such a circumstance that arises for consideration, is as to whether the rejection of the renewal of the licence in favour of the petitioner is sustainable, for the other reasons stated therein.

12. For appreciating the tenability or otherwise of those reasons, as penned down in the said order, better it is, I think to make a reference to certain statutory provisions, in the shape of the Rules and Sections, adumbrated in the Rules and the Act. Rule 14(3) of the Rules read as under:--

If the licensing authority decides not to renew the licence, he may refuse renewal by an order recording the reasons for refusal;

Provided that the licensing authority shall give a reasonable opportunity of being heard to the licensee before such refusal.

13. Section 20-A of the Act dealing with matters to be taken into consideration by the Licensing Authority runs as under:--

Subject to the provisions of S. 20-B in considering an application for the grant of a licence or permit under this Act, the authority competent to

grant such licence or permit, as the case may be, shall have regard to the following matters, namely,

(a) the suitability of the applicant for the grant of licence or permit, as the case may be;

Notes : Clause (b) omitted by Act 42 of 1982;

(c) such other matters as may be prescribed;

Explanation:-- It is hereby declared that, in judging the suitability of the applicant for the grant of licence or permit, as the case may be, the

authority competent to grant such licence or permit, shall have regard to the

following factors, namely :

(a) solvency of the applicant;

(b) whether the applicant has contravened any of the provisions of this Act or of any rule, notification or order made thereunder or has committed

the breach of any of the terms and conditions of any licence or permit granted under the provisions of this Act or of any rule made thereunder;

(c) whether the applicant has been convicted of any offence punishable under this Act or of any cognizable and non-bailable offence under the

Dangerous Drugs Act, 1930 (Central Act 11 of 1930) or under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958) or under

Ss. 482 to 489 of the Indian Penal Code (Central Act XLV of 1960);

(d) whether the applicant carries on any other business which is likely to prevent him from giving his due attention to the purpose for which the

licence or permit under this Act is sought for;

(e) whether the applicant was a defaulter in payment of any amount due to the State Government under this Act or the rules made thereunder or of

any taxes or other amounts due to the State Government;

(f) any other matter relevant to the purpose for which the licence or permit under this Act is sought for;

14. A conjoint reading of the provisions, extracted, as above, makes it crystal clear that the authority competent to grant licence or permit may

take into account the suitability of the applicant for the grant of licence or permit and for deciding the suitability, various factors, as enumerated

under clauses (a) to (f) to the Explanation appended to Sec. 20-A have to be duly taken into consideration. So far as the case on hand is

concerned, as already indicated, the petitioner, though was removed from the list of habitual offender and also not having any convictions to his

credit, yet he had been involved in a number of criminal cases now pending against him, apart from Himself indulging in communal clashes in the

area, besides violations or infractions having been committed, as respects the maintenance of accounts, registers etc., relating to the shop, in

respect of which licence had been granted to him for the year 1992-93. Violation or infraction of any rule or provision of the Act or notification

made thereunder can be construed to serve as a ground sufficient and adequate enough to refuse to grant the licence or renew the licence. That

apart, his indulgence in participating in communal clashes and committing offences under the Indian Penal Code may be taken also, as relevant

grounds, falling under clause (f) of the Explanation to S. 20-A of the Act either for the rejection or for the renewal of the licence. The impugned

order, as already stated, had catalogued various violations or refractions of the Rule and also the other relevant grounds for rejecting the renewal of

the licence applied for by him.

15. For the reasons above, the writ petition deserves to be dismissed and is accordingly dismissed. Rule Nisi issued shall stand discharged. As a

consequence, WMP is also dismissed. There shall, however, be no order as to costs, in the circumstances.

16. Petition dismissed.