

In the High Court of Judicature at Madras

Dated : 28.2.2014

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.23072 of 2013 and MP.No.2 of 2014

C.Muthupandian (a) Muthupandi
Hotel Platinum Stars

...Petitioner

Vs

1.The Secretary to Government,
Government of Tamilnadu, Home
Department, Fort.St.George,
Chennai-9.

2.The Commissioner of Police, Chennai
City, Office of the Commissioner of Police
Egmore, Chennai-8.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandmus to call for the records relating to the notice No.Rc.No.E3(1)/01/33915/2013 dated 4.1.2014, quash the same and consequently direct the second respondent to issue public resort licence as requested for in application dated 3.1.2014 (prayer amended as per order dated 17.2.2014 by VRSJ in M.P.No.1 of 2014 in W.P.No.23072/13)

For Petitioner : Mr.G.Rajagopalan, S.C. for Mr.R.Rajesh Kumar
For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

The petitioner has come up with the above writ petition challenging a show cause notice dated 4.1.2014 issued by the second respondent seeking to reject the application of the petitioner for the grant of a public resort licence.

2. Heard Mr.G.Rajagopalan, learned Senior Counsel appearing for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents.

3. The petitioner is the owner of a hotel by name Platinum Stars. It was originally located at No.137, Prakasam Salai, Broadway, Chennai-108. The previous owner of the hotel had a public resort licence to conduct cultural dance programmes every evening in the

hotel, till the year 2004-05. But, the said licence was not renewed thereafter.

4. According to the petitioner, he took the hotel on lease in the year 2005. But since the licence for conducting dance programs was not renewed after 2004-05, the petitioner applied in the year 2011 for renewal of the licence.

5. Since the application was neither allowed nor rejected, the petitioner filed a writ petition in W.P.No.18628 of 2011. The said writ petition was disposed of by an order dated 10.8.2011 directing the petitioner to file a fresh application and further directing the respondents to pass orders within four weeks.

6. Accordingly, the petitioner submitted a fresh application to the second respondent on 26.8.2011, with relevant certificates, which is mandatory. In response to the said application, the second respondent issued a communication dated 15.9.2011 indicating that the place in which the hotel was located, is a congested area and if licence was granted, the place may become a center for anti social activities.

7. In response to the said letter dated 15.9.2011, the petitioner submitted detailed objections on 17.9.2011 claiming that he had made all arrangements for free flow of traffic as well as for parking vehicles and that he had also installed CCTV cameras to prevent any untoward incident.

8. But the second respondent rejected the request by a letter dated 3.11.2011. Challenging the said order, the petitioner filed another writ petition in W.P.No.27094 of 2011. The said writ petition was dismissed by an order dated 8.10.2012 on the ground that the impugned order contained valid reasons with regard to the location of the hotel.

9. Thereafter, the petitioner claims to have shifted the hotel from Broadway to a building at No.100, General Peters Road, Anna Salai, Chennai-2. After shifting, he gave representations dated 25.2.2013 and 26.3.2013. Along with these representations, the petitioner also submitted a no objection certificate from the Public Health Department, a licence from the Fire and Rescue Services Department, a certificate on structural stability of the building from the Corporation of Chennai, a no objection certificate regarding electrical installation from the Corporation, a public liability insurance and a no objection certificate from the owner.

10. But, the second respondent did not pass any orders on the said representations of the petitioner. Therefore, the petitioner came up with the above writ petition, merely seeking a Writ of Mandamus to direct the second respondent to grant a public resort

licence, as per his representation dated 26.3.2013.

11. On 21.8.2013, this Court ordered notice to the respondents and directed the Government Advocate to get instructions. Thereafter, the second respondent appears to have inspected the premises. It was followed by a show cause notice dated 4.1.2014 issued by the second respondent seeking to reject the application of the petitioner for the grant of licence.

12. Therefore, the petitioner came up with M.P.No.1 of 2014, seeking amendment of the prayer. The petition for amendment was allowed by me by an order dated 17.2.2014. Thereafter, the writ petition itself was taken up for hearing, since the respondents filed a counter and the petitioner also filed a reply.

13. Since the petitioner originally came up with a writ petition, seeking only the issue of a Writ of Mandamus and since the second respondent sought to reject the application of the petitioner during the pendency of the writ petition, the writ petition today does not contain the grounds, on which, the impugned notice is challenged. However, the prayer in the writ petition has been amended, so as to seek the relief of quashing the notice dated 4.1.2014. The grounds of challenge to the impugned notice are indicated in the reply filed by the petitioner to the counter affidavit filed by the respondents.

14. Mr.G.Rajagopalan, learned Senior Counsel appearing for the petitioner contended that the show cause notice seeking to reject the application of the petitioner for public resort licence is vitiated by arbitrariness and total non application of mind. Even before the petitioner could commence conducting the cultural programmes, the second respondent has presumed that the premises would be misused for immoral trafficking of young girls. The learned Senior Counsel further contended that even before the licence is granted and even before the petitioner started running the hotel, it is impossible for the second respondent to presume that the petitioner would violate the law. There can be no presumption in law that a person would violate the law.

15. In the impugned show cause notice, the second respondent has claimed that discrete enquiries conducted by the second respondent reveal (i) that there is every possibility of the premises being misused for immoral trafficking of young girls, who are made to perform predominantly before a male audience under the guise of cultural dances; (ii) that it is possible for such places, if misused, to push gullible girls into flesh trade by coercing them to deal with customers; (iii) that in any case, there were lot of shortcomings from the point of view of flow of traffic; and (iii) that therefore, it would not be possible to grant licence.

16. The Additional Commissioner of Police (Headquarters) has filed a counter affidavit reiterating the very same objections contained in the impugned show cause notice. He has also stated that there were complaints from the general public about the detrimental effect of allowing such programmes and that there was a possibility of disturbance to public peace and tranquillity.

17. In his reply, the petitioner has relied upon Section 34 of the Chennai City Police Act and a decision of this Court in D.P.Anand Vs. State of Tamilnadu [1997 (2) MLJ 413]. The petitioner has claimed that the cultural dances that he intended to hold in the premises would not affect public peace or order and that the right to carry on business is guaranteed by Article 19(1)(g) of The Constitution.

18. I have carefully considered the pleadings and the submissions of the learned Senior Counsel appearing for the petitioner.

19. The contention of the learned Senior Counsel appearing for the petitioner that an application for the grant of licence to do a business, which is not prohibited by law, cannot normally be refused on the ground that there is a possibility for unlawful activities being carried on by the petitioner or at the place of the petitioner, cannot be rejected outright as wholly unsustainable. If an activity is not prohibited by law, but is only regulated, the Regulatory Authority cannot refuse to grant licence, solely on suspicions, presumptions and surmises. Therefore, at first blush, the contention of the learned Senior Counsel for the petitioner appears to be legally well founded.

20. But unfortunately, the fact that a business is not prohibited by law is no ground for a court to issue a Mandamus to direct the Statutory Authorities to grant a licence and to wait until a violation of law is committed for taking corrective action. The Courts cannot overlook the fact that the police have a duty not only to take corrective action after a crime is committed, but also have a social obligation to take preventive measures. This is why the power to issue orders under Section 144 of the Criminal Procedure Code is also conferred upon the police.

21. The Chennai City Police Act stipulates under Section 34 that no enclosed place or building having a specified area shall be used for public entertainment or as a resort, without a licence from the Commissioner. This does not mean that the Commissioner is invariably obliged to grant a licence. The Commissioner of Police has the powers of the Magistrate under Section 7 of the Act. Therefore, he has both preventive and curative powers, the exercise of which, cannot be dictated by court.

22. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the United Nations General Assembly in 1979. It entered into force as an International Treaty on September 3, 1981, after its ratification by the 20th country. In the introduction to the Convention, it is pointed out that the general thrust of the Convention aims at enlarging our understanding of the concept of human rights. It says that cultural patterns, which defined the public realm as men's world and the domestic sphere as women's domain, are strongly targeted in all the provisions of the Convention. Article 6 of the Convention mandates States Parties to take appropriate measures including legislation to suppress all forms of trafficking and exploitation of women. A careful look at Article 6 would show that legislation is not the only method required to be adopted by States Parties to curtail the menace of trafficking. Therefore, the contention of learned Senior Counsel for the petitioner that so long as there is no legislation, the petitioner's fundamental right cannot be curtailed, goes contrary to Article 6 of the Convention.

23. It is well settled that International Instruments, ratified by India, can be looked into and followed by courts, so long as the municipal law is not in conflict with the mandate contained therein. There is no municipal law in India, which is in conflict with the object and purpose of Article 6 of the CEDAW. Therefore, the Convention has a binding force, in view of the law laid down in various decisions. A useful reference can be made to Ms. Githa Hariharan & Anr. Vs. Reserve Bank of India [AIR 1999 (2) SCC 228].

24. The reliance placed by the learned Senior Counsel for the petitioner upon the decision of this Court in D.P. Anand may be of no assistance, in view of the fact that the said decision does not take note of certain substantial issues. Moreover, much water has flown after the said decision in the sphere of emancipation of women.

25. The decision in D.P. Anand did not take note of even the provisions of the Indecent Representation of Women (Prohibition) Act, 1986. Section 2 of the said Act defines "indecent representation of women" to mean depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating women or is likely to deprave, corrupt or injure the public morality or morals. It is interesting to note that the definition includes even "a likelihood of depravation or injury to the public morality or morals". Therefore, the contention of the learned Senior Counsel for the petitioner that even before the grant of a licence, there cannot be a presumption of any illegality, does not hold water. Section 3 of the said Act prohibits even the publication of any advertisement, which contains indecent representation of women in any form. Section 4 prohibits the production, sale and distribution or circulation of any book, pamphlet, etc., which contains indecent representation of women

in any form. Therefore, even if there is a likelihood of a person making an indecent representation, the same is prohibited by the said Act. It is needless to point out that the likelihood of depravation, corruption or injury to public morality stands on a different footing than the actual depravation, corruption or injury.

26. If the very likelihood of commission of some act is prevented by a statute, the Licensing Authority is obliged to look into the possibility of the commission of such act, before granting the license. This is what the second respondent has done. After all, every decision taken by any person is always based upon past experiences. Every new learning is normally a product of past experiences. Therefore, if the Licensing Authority, on the basis of past experiences, comes to the conclusion that the grant of licence is likely to result in depravation or injury to public morality, the same cannot be found fault with by the Court especially under Article 226.

27. The decision of the Supreme Court in *State of Maharashtra Vs. Indian Hotel and Restaurants Association* [2013 (8) SCC 519], relied upon by the learned Senior Counsel for the petitioner, arose under completely different circumstances. What happened in that case was that the State Government framed a set of rules in exercise of the powers conferred by Section 33 of the Bombay Police Act, 1951 for regulating places of public amusement and entertainment. Under the Rules, orchestra and dances were permitted in hotels from 1986. When the State Government noticed several complaints of violation of the terms and conditions of the licences, they came up with an amendment to the Bombay Police Act, 1951. Under the Amendment Act 35 of 2005, Sections 33A and 33B were inserted in the Act. By Section 33A, holding of a performance of dance of any kind or type in any eating house, permit room or beer bar was prohibited and all performance licences were cancelled. But, under Section 33B, it was declared that the provisions of Section 33A will not apply to the holding of a dance programme in a drama theatre, cinema theatre, auditorium, sports club, gymkhana or hotels with three stars and above or in any other establishment permitted by the State Government, having regard to the tourism policy and cultural activity promoted by the State. These provisions were challenged on the ground that they were discriminatory in nature and that about 75,000 persons lost employment all of a sudden due to the said provision. The Court observed that "the judicial conscience of the Court cannot give credence to the notion that high morals and decent behaviour is the exclusive domain of the upper classes, whereas vulgarity and depravity are limited to the lower classes."

28. Therefore, the decision in the said case will not apply to the case on hand for the simple reason that no one is said to have lost employment on account of the refusal of the licence to the petitioner. He has not pleaded as to how many persons were in

employment till 2004-2005 and as to whether their right to life and livelihood was affected. The petitioner does not even project the case from the point of view of the right to livelihood of those persons in terms of Article 21. Rather, he is projecting only his own fundamental right under Article 19(1)(g). Therefore, the said decision cannot be invoked by the petitioner to his advantage.

29. Moreover, the respondents have not permitted any of the hotels to hold such dances in the city of Chennai. Therefore, the case on hand does not fall under the category of hostile discrimination. The elitist presumption on the part of the State of Maharashtra, which was condemned by the Supreme Court in that case, is also not found in the case on hand. Therefore, the said case is of no assistance to the petitioner.

30. Therefore, the writ petition deserves to be dismissed. Accordingly, it is dismissed. No costs. Consequently, the above MP is also dismissed.

Sd/
Asst.Registrar

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Sub.Asst.Registrar

To

1.The Secretary to Government of Tamilnadu, Home Department,
Fort.St.George, Chennai-9.

2.The Commissioner of Police, Chennai City, Office of the
Commissioner of
Police, Egmore, Chennai-8.

+1 cc to Mr.R.Rajesh Kumar,Advocate, SR. No.10038

W.P.No.23072 of 2013
& MP.No.2 of 2014

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