

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.17019 of 2015
and M.P.No.1 of 2015

M/s.Dhanalakshmi Bottles Supplies.
Rep. by its Proprietrix
Mrs.Vilvathri Sampath
No.66/139 Appu Chetty Street
Shevapet Chennai-636 002.

[Petitioner]

Vs

1 The State of Tamil Nadu
Rep. by its Secretary
Prohibition Department
Fort St. George Chennai.

2 The Deputy Superintendent of Police
Prohibition and Enforcement Wing
Hosur.

[Respondents]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents from any way preventing the petitioner from selling and transporting the Empty Beer Bottles duly collected inside the State of Tamil Nadu by the petitioner and to sell and transport outside the State of Tamil Nadu as such action would be unconstitutional and violative of Articles 19(1)(g) and Article 301 of the Constitution of India.

For Petitioner: Mr. K.C.S.K.Balaji

For Respondents: Mr.M.S.Ramesh, AGP

O R D E R

This writ petition has been filed by M/s.Dhanalakshmi Bottles Supplies, represented by its Proprietrix Mrs.Vilvathri Sampath under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondent from any way preventing the petitioner from selling and transporting the empty beer bottles duly collected inside the State of Tamil Nadu by the petitioner and to sell and transport outside the State of Tamil Nadu as the action of the respondents are unconstitutional and violative of Article 19(1)(g) and Article 301 of the Constitution of India.

2. The learned counsel appearing for the petitioner would submit that the petitioner company is registered under Tamil Nadu VAT as well as Central Sale Tax Act and they are employing directly about 25 persons and indirectly about 75 persons and its turnover is about Rs.40 lakhs per annum. That apart, the petitioner company is also paying huge sales tax to the State. The petitioner company, by purchasing the empty beer bottles at the rate of Rs.2.50 per bottle, has been selling the same to distilleries inside and outside the State of Tamil Nadu, however, all of a sudden on 18.12.2014, the one lorry loaded with empty beer bottles owned by the petitioner company and some other persons vehicles in similar trade were stopped by the second respondent, the Deputy Superintendent of Police, Prohibition Enforcement Wing, Hosur Near Hosur check post on the way to Madhya Pradesh. They have seized the empty beer bottles and also arrested the drivers and cleaners and they have been released on bail and the petitioner had also applied for anticipatory bail and he was also released on bail by this Court. On this background, it was contended that the unfounded apprehension of the second respondent that the petitioner company would sell the empty beer bottles only to unauthorized distilleries at Madhya Pradesh is wholly untenable and unconstitutional since Article 19(1)(g) of the Constitution of India guarantees right to carry on business freely in this Country and Article 301 also guarantees Inter State Trade and Commerce. Since no instance of such misuse have been detected by the respondent, they cannot wrongly presume that the purchasers will misuse of the empty bottles. That apart so long as the petitioner is entitled to carry on lawfull business as guaranteed under Article 19(1)(g) r/w 301 of the Constitution of India which also guarantees Inter State Trade and commerce, the prevention of movement of empty beer bottles by way of an executive action without legislative authority is invalid. On this basis, learned Counsel appearing for the petitioner prayed for allowing this writ petition by issuing a specific direction forbearing the respondent from preventing the petitioner company from selling and transporting the empty beer bottles duly collected inside the State of Tamil Nadu.

3. Counter affidavit has been filed by the respondent. Taking the stand in the counter affidavit, Mr.M.S.Ramesh, learned Additional Government Pleader appearing for the respondents would contend that on interrogation with the driver of the petitioner lorry, no reasonable explanation was received for the transportation of the said empty beer bottles of Tamil Nadu based breweries to the State of Madhya Pradesh Breweries Companies, therefore, the Assistant Commissioner of Excise, Krishnagiri District had lodged a complaint in writing stating that the Department of Prohibition & Excise has conducted a survey with regard to the sudden decline of beer of sales in Tamil Nadu for the past 5 months and it was further ascertained that the breweries of other States have conspired with the bottle suppliers of Tamil Nadu for purchasing empty bottles which will carry the imprint "For Sale only in Tamil Nadu" and other bottles bearing

the name and symbol of companies operating in inside the State of Tamil Nadu with an intention to gain wrongfully and also to cause wrongfull loss to the State of Tamil Nadu particularly to the Department of Tamil Nadu Prohibition and Excise. On this basis, the learned additional Government Pleader further contended that in the preliminary investigation conducted by Dr.T.Kannan, Inspector of Police, PEW, Krishnagiri at Indore (Madhya Pradesh) it was noticed that the beer bottles belonging to Tamil Nadu Breweries with their company Name and Trade mark embedded as "For Sale in Tamil Nadu only" are used for refilling purposes and again circulated in Madhya Pradesh State. Since the preliminary investigation conducted by Dr.T.Kannan, Inspector of Police, PEW, Krishnagiri at Indore (Madhya Pradesh) had disclosed a startling regulation that the embedded beer bottles belonging to Tamil Nadu Breweries with their company name and trade mark imprinted as "For sale in Tamil Nadu only" are invariably used for refilling purposes and also circulation purposes in Madhyapradesh State, the respondent has taken adequate steps to prevent the movement of empty beer bottles.

4. Replying to the above objection, the learned Counsel appearing for the petitioner would submit that the imprinted words viz., "For Sale only in Tamil Nadu" shown in the beer bottles are applicable only to the stuff filled in the bottles, but the same cannot be made applicable to the empty beer bottles. He further submitted that although the second respondent has filed a detailed counter, nowhere they have stated against the petitioner about any specific complaint relating to the misuse of the empty beer bottles proposed to be sold outside the State of Tamil Nadu. Only on presumption and untenable assumption, they have no right whatsoever to interfere with the petitioner's right to carry on business either inside the State or outside the State as they have every right to carry on business under Article 19(1)(g) of the Constitution of India and also under Article 301 of the Constitution of India which guarantees Inter State Trade and Commerce to take place without any hindrance. In other words, Article 19(1)(g) of the Constitution of India guarantees, to all citizens the right to practice any profession or to carry on any occupation trade or business subject to reasonable restrictions imposed by this State under Article 19(6) of the Constitution of India. Thus, when the Constitution has guaranteed every citizen right to carry on any business whether rich or poor it is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution of India, without which, on the basis of a circular, the respondent cannot interfere with the petitioner's right to carry on business.

5. In similar circumstances, this Court in W.P.No.9368 of 2015 by order dated 27.04.2015 has allowed the said writ petition and the relevant portions of the order are extracted below:-

" 5. This Court fully agrees with the said submission made by the learned counsel appearing for the petitioner. The petitioner being a registered dealer both under the Tamil Nadu GST and Central Sale Tax Act has been carrying on the business on large scale with the turnover about Rs.25 Crores per annum. The Petitioner company, after purchasing the empty beer bottles at the rate of about Rs.2.50 per bottle, has been selling the same to distilleries both inside and outside the State of Tamil Nadu. While doing so, all of a sudden on 18.12.2014, while four of his lorries carrying empty beer bottles passed through Hosur Check post on the way to Madhya Pradesh Via., Karnataka, the second respondent stopping all the four vehicles seized the empty beer bottles and arrested the drivers and cleaners who were subsequently released on bail. Apprehending problem, the petitioner also obtained anticipatory bail.

6. Now the only issue needs consideration is whether the stoppage of the petitioner's lorry carrying empty beer bottles at Hosur Check post on 18.12.2014 on the premise that the empty beer bottles carried in their lorries would be misused can be a basis for doing so? In the counter affidavit filed by the respondent nowhere the respondent has thrown any light against any such misuse committed by the petitioners. Even as per the counter affidavit, it could be seen that only preliminary investigation has been conducted by Dr.T.Kannan, Inspector of Police, PEW, Krishnagiri at Indore (Madhya Pradesh), he had not supported the inference that the empty beer bottles belonging to Tamil Nadu Breweries are being misused in Madhya Pradesh State. When the respondents have not produced any document showing the registration of complaint against any person belonging to the petitioner's company showing that the empty beer bottles purchased from Tamil Nadu have been illegally misused, in the absence of such document produced before this Court, the action of the respondent cannot be espoused. Besides, a mere prevention of movement of empty beer bottles by way of an executive action without legislative authority is invalid, since such an action infringes the fundamental right of the petitioner to carry on business, for it is guaranteed under Article 19(1)(g) of the

Constitution of India and also under Article 301 of the Constitution of India.

7. For the above said reasons, the Writ Petition stands allowed. The respondents are restrained from preventing the petitioner company from selling and transporting the empty beer bottles collected from inside the State of Tamil Nadu. No costs. Consequently, connected miscellaneous petition is closed".

6. Following the said order dated 27.04.2015 passed in W.P.No.9368 of 2015, this writ petition also stands allowed. The respondents are restrained from preventing the petitioner company from selling and transporting the empty beer bottles collected from inside the State of Tamil Nadu. No costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Prohibition Department,
Fort St.George, Chennai.
2. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Hosur.

+ 1 cc to M/s.K.C.S.R.Balaji, Advocate SR 45015

+ 1 cc to Govt.Pleader, High Court, Madras SR 45410

rsk(co)
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W.P.No.17019 of 2015