

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. No.20942 of 2015

Varaaki

... Petitioner

Versus

1.The Principal Secretary
Government of Tamilnadu
Home, Prohibition and Excise Department
Fort St.George, Chennai -9.

2.The Tamil Nadu State Marketing Corporation(TASMAC)
represented by its Managing Director,
CMDA Towers, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration to declare the impugned rule of the "Tamil NaduLiquor Retail Vending(in Shops and Bars) Rules 2003 " as ultravirus, against the Constitution of India and public policy.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.S.T.S.Murthy
Government Pleader
assisted by Mr.V.Shanmughasundar
for R.1
Mr.S.Muthuraj for R.2

O R D E R

(Judgment of Court was made by The Honourable The Chief Justice)

The petitioner claiming to be a journalist has filed the present writ petition as a Public Interest Litigation seeking a writ of declaration to declare the impugned rules of the Tamil Nadu

Liquor Retail Vending (in Shops and Bars) Rules, 2003, as ultra vires, against the Constitution of India and Public Policy.

2. It is the case of the petitioner that the State Government is a welfare state and the elected representatives are duty bound to implement the constitutional mandate especially as contained in Article 47 of the Constitution of India which forms part of Chapter IV of the Directive Principles of State Policy. Article 47 reads as under:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health:-- The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drug which are injurious to health."

3. The emphasis of the petitioner is thus on the latter portion of the Article which is to the effect that the State shall propagate Prohibition of consumption of liquor. It is stated that initially, total prohibition had been brought into force in the year 1937.

4. The real grievance made in respect of the TASMAL shop which were introduced after the Prohibition was lifted in 2001. The sale of liquor began through the TASMAL shops as the system through private vendors did not succeed and thus in October, 2003, the Government passed an amendment to the Tamil Nadu Prohibition Act, 1937, making TASMAL, the sole retail vendor of the liquor in the State and all private outlets were shut down. This policy has thus continued over the last 12 years in the State. The petitioner seeks to rely upon certain surveys and finding which show increased alcohol consumption especially among people of younger age group and seeks to highlight the instance where a two year old baby was encouraged to consume alcohol qua which now FIR has been filed. The petitioner claims that in order to garner funds, liquor sale should not be made as an instrument, which in turn causes family problems, school drop outs, road accidents, health problems etc., especially at a socio-economic level, where essential funds are diverted towards liquor consumption. It is alleged that there are more than 10,000 liquor shops in the State.

5. As far as the grounds of challenge are concerned, the rules are sought to be impugned as against Article 47 of the Constitution of India, as also Article 39(f), thus alleging that there was

creation of rules against the Constitution of India.

6. We did put to learned counsel for the petitioner as to how the rules in toto can be challenged, unless it is pointed out how the rules violated any provisions of the principal act, which a challenge is not laid. Similarly, while prohibition may be something which the Constitutional framers sought to encourage by incorporating it in the Directive Principles of State Policy, but the hard reality is that a number of States have not implemented the same. If one may take an example, it is like a Uniform Civil Code where despite encouragement from the highest court, the same has not been found feasible.

7. Learned counsel sought to rely upon certain observations made in different judgments which have been referred to by the Division Bench of this Court in Hotel and Bar (FL.3) Association of Tamil Nadu (HOBAT) Vs. The Secretary to Government, Commercial Taxes Department and another (CDJ 2015 MHC 2306). The said case dealt with the taxation issue of Tamil Nadu Value Added Tax, 2006, and the sale of liquor in hotels where an amendment of a levy of third point sale has been introduced, which was upheld.

8. The learned counsel also seeks to rely upon the observation of Dr. Walter C. Reckless, a criminologist of international repute who had worked in India for years and his observations had been quoted in P.N. Kaushal and others vs. Union of India and others and connected matters (1978) 3 SCC 558, where in paragraph-9, it is stated as under:

"9. Dr. Walter C. Reckless, a criminologist of international repute who had worked in India for years has in "The Crime Problem" rightly stressed:

Of all the problems in human society, there is probably none which is as closely related to criminal behaviour as is drunkenness. It is hard to say whether this close relationship is a chemical one, a psychological one, or a situational one. Several different levels of relationship between ingestion of alcohol and behaviour apparently exist. A recent statement by the National Council on Crime and Delinquency quite succinctly describes the effect of alcohol on behaviour: Alcohol acts as a depressant; it inhibits self-control before it curtails the ability to act; and an individual's personality and related social and cultural factors assert themselves during drunken behaviour.... Although its dangers are not commonly understood or accepted by the public, ethyl alcohol can have perhaps the most serious consequences

of any mind-and-body-altering drug. It causes addiction in chronic alcoholics, who suffer consequences just as serious, if not more serious than opiate addicts. It is by far the most dangerous and the most widely used of any drug. (emphasis added)."

9. On the basis of the submissions of learned counsel for the petitioner, it thus appears that the challenge in effect is not really so much to the rules as the desirability of enforcing prohibition. Unfortunately, this is a decision on which the court opinion cannot be called for and the same is a policy decision to be taken by the Government and the State Legislature. There is really nothing per se unconstitutional about the rules.

10. Learned Government Pleader submits that the State policy continues to discourage consumption of liquor. The tax on liquor is stated to be one of the highest in the country and from 7800 outlets in the year 2003, these outlets have been reduced to 6800 in 2015. He also submits that while earlier the vending shops opened from 8.00a.m to 12.00p.m., they are now opened from 10.00a.m to 10.00p.m., reducing the purchase period by four hours a day. It is also his submission that a warning on the undesirability of liquor consumption is being printed on the bottles as well as the shops to the effect "Liquor - Ruins Family and Country" as prescribed in Rule-10 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

11. Learned counsel has also drawn our attention to the fact that in pursuance to various orders passed by the Court, the liquor shops existing close to the National Highways, which are contrary to the regulations and on the advice of the National Highways Authorities of India, in some cases, recently even qua State Highways, these shops have been shifted, though the issue of implementation qua State Highways is still pending before the Hon'ble Supreme Court.

12. We are thus of the view that we are really not able to issue any direction in the form of a mandamus by this Court.

13. The writ petition accordingly stands closed. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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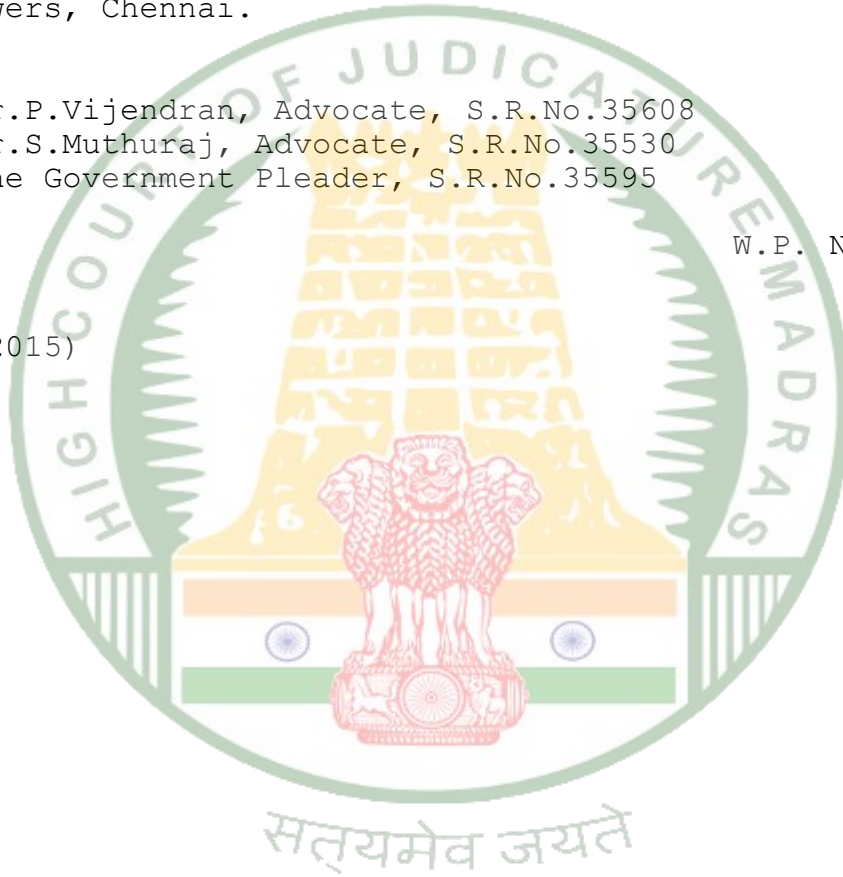
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+1cc to Mr.P.Vijendran, Advocate, S.R.No.35608
+1cc to Mr.S.Muthuraj, Advocate, S.R.No.35530
+1cc to the Government Pleader, S.R.No.35595

W.P. Nos.20942 of 2015

RJ(CO)
CA(31/07/2015)



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