

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.29863 of 2016
& W.M.P.No.25853 of 2016

- 1 M/s.All India Youth
C.P.Athithanar Welfare Association District
Rep. by its President
Mr. G.S.Badri Narayanan
No.5, Bazaar Street,
Arakkonam Taluk
Vellore District. .. Petitioner
- Vs.
- 1 The Principal Secretary to Government
Government of Tamil Nadu
Fort St. George
Secretariat, Chennai-9.
- 2 Tamil Nadu State Marketing
Corporation Ltd (TASMAC)
Rep. By its Managing Director
CMDA Tower-II
Gandhi Irwin Bridge Road
Egmore, Chennai-8.
- 3 The District Collector
Vellore District
- 4 The District Manager
Tamil Nadu State Marketing Corporation Ltd
Arakkonam Taluk
Vellore District .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus to call for the entire records relating to the proceedings in Na.Ka.No.A5/138/C.V/2016 dated 9.7.2016 of the 4th respondent and quash the same as illegal and contrary to records and consequently direct the respondents to shift the Shop No.11007 situated at Bazaar Street, Arakkonam, Arakkonam Taluk, Vellore District within the period as fixed by this Honourable Court.

For Petitioner : Mr.N.Nithinandam

For Respondents : Mr.C.Kasi Rajan

O R D E R

Heard Mr.N.Nithianandam, learned counsel for the petitioner and Mr.C.Kasirajan, learned counsel, who accepts notice on behalf of the respondents and with the consent of either party, the writ petition itself is taken up for final disposal.

2. The petitioner, claiming himself to be the President of a Welfare Association, has come forward with this writ petition, challenging the order passed by the fourth respondent, who is the District Manager, Tamil Nadu State Marketing Corporation Limited (hereinafter referred to as 'TASMAC' in short) stating that the retail liquor vending shop No.11007 is situated within the prohibited distance, as mentioned under the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules 2003 (hereinafter referred to as 'the Rules' in short), more particularly, Rule 8. The petitioner would state that there is a Girls School located within a prohibited distance and it is a very busy area. The shop is located opposite to the police station, near the railway station and causing great nuisance.

3. The learned Standing counsel appearing for the TASMAC would submit that the representation is pending before the District Collector. But, in the meantime the Tahsildar has conducted an inspection and submitted a report, which shows that the shop is situated at a distance of 89 meters from the Girls School and since the area is a commercial area, the prohibited distance is only 50 meters. In this regard, the learned counsel referred to Rule 8 of the said Rules and also the rough sketch prepared by the Tahsildar and placed the same for the consideration of this Court.

4. The learned counsel for the petitioner has produced photographs to show that though it is stated that the shop does not have a bar attached to it, people are openly consuming liquor in front of the shop and plastic tumblers, water packets, empty bottles are strewn in front of the shop. This is evident from the five photographs produced by the petitioner. Therefore, this Court rejects the stand taken by the fourth respondent that there is no consumption of liquor allowed near the shop. That apart, the other photographs produced would show that there is a Girls School, which according to the petitioner, is situated within 40 meters. Apart from that, a market complex, named after the Father of the Nation, with a statue of the Father of the Nation, is situated within 25 meters. The shop appears to be located inside a small lane and it is seen

that the loading and off loading of the liquor bottles from the trucks is done by parking the truck on the main road.

5. Thus, it is prima facie clear that the shop is under the clear visibility of the general public and the school children. In my view, the distance Rules, as stipulated under Rule 8 of the Rules, has to be interpreted in such a manner that it sub-serves public interest. Admittedly, no person has got a fundamental right to trade in liquor. The Tamil Nadu Government has enacted Tamil Nadu Prohibition Act, 1937 and the sale of liquor is regulated under the Rules. If that be so, the Rules should be given a proper interpretation and the question of applying mathematic precision, while calculating the distance Rule, cannot be adopted. The issue which should be borne in mind is 'the nuisance' that would be caused to the public in the area.

6. In the instant case, there are two schools, places of worship etc., situated in the near vicinity of the said shop. Therefore, the District Administration should take a pragmatic view in the matter, especially, when the Tamil Nadu Government has now taken a policy decision to reduce the number of liquor shops and also reduce the working period, during which the shops should be open. If such is the policy taken by the Government and announced by the Hon'ble Chief Minister, soon after they came to the power, then the District Administration should tune up their procedures to act in consonance with the policy of the Government. Therefore, this Court rejects the stand taken by the Tahsildar and the report submitted by the Tahsildar stands scrapped.

7. It is stated that the issue is now pending before the District Collector, Vellore.

8. In the light of the above, the District Collector, Vellore, is directed to authorise a senior officer to conduct a surprise inspection of the shop and it can be more than one inspection also, and taking note of the observations made by this Court and bearing in mind the policy of the Government, take a pragmatic decision in the matter. This Court is of the opinion that the District Collector, while acting as an independent authority, shall bear in mind that he is heading the District administration and has a constitutional duty to act for the welfare of the public. The above direction shall be complied with by the District Collector, Vellore District, within a period of three weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

- 1 The Principal Secretary to Government
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Vellore District.

+1cc to M/s.C. Kasirajan, Advocate, S.R.No.50005
+1cc to Mr.N. Nithiyanthan, Advocate, S.R.No.50103

SAI (CO)
EU(22/09/2016)

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