



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P (MD) No.20063 of 2015
and
WMP (MD) Nos.1 and 2 of 2015

V.Ravichandran
S/o.Vaiyapuri
President,
Kalingapatti Village Panchayat
Tirunelveli District
Tirunelveli

.. Petitioner

vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli

2.The District Manager,
TASMAC
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order made by the 1st respondent in his proceeding in A6/3532/2015 dated 22.08.2015 and quash the same as illegal and consequentially direct the respondents to close down the TASMAC liquor to vending shop (Shop No.10862) in petitioners village within the time that may be stipulated by this Hon'ble Court.

For Petitioner :Mr.M.Ajmal Khan
senior counsel for
Mr.P.Subbaraj

For Respondents :Mr.Aayiram K.Selvakumar
Government Advocate for R1
Mr.M.Muniyasamy for R2

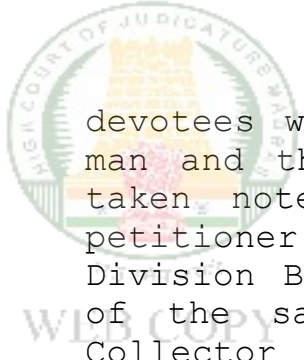
**ORDER**

(Order of the Court was made by S.NAGAMUTHU, J.)

WEB COPY The petitioner, at the time, when he filed the present writ petition, was the President of a Village President known as Kalingapatti Village Panchayat, Tirunelveli District, Tirunelveli. According to him, the said Village consists of people belonging to different communities and drawn from different walks of life. It is alleged that in the year 2002, there was a proposal by the Government to establish a liquor vending shop in Kalingapatti Village. It was not to the liking of the people of the said Village. The people felt that establishing a liquor vending shop in the said village may lead to disharmony among the people. Therefore, the Panchayat passed a unanimous resolution in the year 2002 requesting the Government not to establish any liquor vending shop within the Panchayat limits of the said village. Ignoring the said resolution, the Government established a liquor vending shop on 28.11.2003 in the Village in the building owned by the Cooperative Milk Society. Another resolution was passed thereafter to immediately shift the liquor vending shop from the said place, because it was causing lot of nuisance to the people of the village. But, it was not immediately closed. But on 17.12.2009, the shop was, however, shifted from the said place and located in the present place, which is in the midst of the village and just by the side of the State Highway Road. The shop was functioning from 17.12.2009 in the said place.

2. According to the counter filed by the 1st respondent, it is crystal clear that during the said period, the average sale of liquor from the said shop was around Rs.90,000/-. Thus, the shop was running very profitably. While so, the villagers again agitated. It is stated that the village headed by the brother of the petitioner, who himself is the leader of a Regional political party, staged a peaceful agitation before the said shop. It is alleged that the petitioner also participated in the said agitation, which happened on 01.08.2015 and 02.08.2015. Because of the said agitation indulged in by the villagers in a huge crowd, the respondents immediately closed the shop thereby, suspending the sale of liquor in the said shop. However, this was not done on any order either of the 2nd respondent or of the first respondent. The fact remains that from 02.08.2015, the shop has not been opened and there has been no sale of liquor.

3. It is brought to our notice that on 04.08.2015, the Panchayat passed another unanimous resolution requesting the respondents to close the said shop forthwith, because it has caused lot of hindrance for the school going children, for the

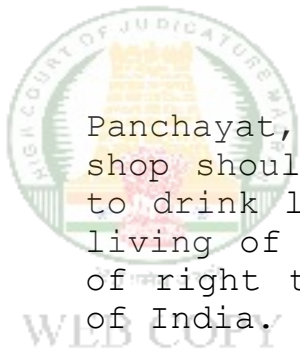


devotees who come in large numbers to the Temple and the common man and the poor of the village. The said resolution was not taken note of seriously by the respondents. Therefore, the petitioner filed W.P.(MD) No.14059/2015 before this Court. A Division Bench of this Court by order dated 13.08.2015, disposed of the said writ petition with a direction to the District Collector to consider the resolution of the Panchayat, to hold appropriate enquiry and to take a decision, whether to shift the shop from the existing place or not. This Court directed that while doing the same, the District Collector, shall consider the provisions of Tamil Nadu Liquor Retail vending (in Shops and Bars) Rules 2003 issued under the Tamil Nadu Prohibition Act.

4. Though the said order was passed on 13.08.2015, even before a copy of the order was made available to the District Collector, he seems to have conducted an enquiry and finally passed an order by his proceedings in No.A6/3532/2015 dated 22.08.2015, wherein, the District Collector has declined to order either for shifting of the TASMAL Shop or for its closure. Not stopping with that, he has gone to the extent of exercising the power under Section 202 (1)(c) of the Tamil Nadu Panchayats Act, (hereinafter referred to as 'the Act'), to cancel the resolution passed by the Panchayat on 04.08.2015. Challenging the said order of the District Collector, the petitioner has come up with this writ petition.

5. Referring to the affidavit filed in support of the petition, the learned senior counsel appearing for the petitioner would submit that the location of the shop at the present place is a great nuisance for the school going children, general public and the devotees, who come to the Temple. He would further submit that the shop is located just by the side of the State Highways, which creates a great nuisance to the road users as well. The learned senior counsel would submit that atleast three orders have been passed by different Division Benches of this Court, where the Division Benches have taken the decision that though the location of the shop may not affect the distance Rule, as provided in the Rules, if the village panchayat, which is a representative body of the villagers has passed a resolution opposing the liquor vending shop, then, respecting the said resolution, the District Collector should pass an order closing the shop or to shift the same to some other suitable place.

6. The learned senior counsel has made reliance on the judgment of a Division Bench of this Court in **TASMAL vs. R.M.Shah** reported in (2010) CWC 337 and another judgment in **T.Paulraj v. District Collector, Virudhunagar** reported in (2013) 6 MLJ 133 and also yet another judgment in **G.Kanaga Bai v. the District Collector, Kanyakumari District** reported in (2013) 5 CTC 141. Thus, according to the learned senior counsel for the petitioner, since the shop has been located much against the wishes of the



Panchayat, which is reflected by the resolution passed, the TASMALC shop should be closed. He would also submit that allowing people to drink liquors at this place results in disturbance to peaceful living of the people of the village and thus, there is violation of right to life guaranteed under Article 21 of the Constitution of India.

7. The first respondent has filed a detailed counter, wherein, he has admitted that the resolution was, in fact, passed by the Panchayat in the year 2002 opposing the move for establishing a liquor vending shop in Kalingapatti Village. But he would submit that despite the said resolution passed, the shop was established as early as on 29.11.2003 and from then, onwards, it was running very peacefully without any complaint of any nuisance caused by the users of the said shop. It is further stated, in the year 2009, the shop was shifted from the building owned by the Cooperative Milk Society to the present place. From 2009 onwards, though the shop has been running in the present location, there has been no report at all from any quarters regarding any kind of nuisance caused by any one. In this regard, the District Collector has stated that the Superintendent of Police, Tirunelveli, in his letter in C.No.227/X/SB/TIN/2015 dated 05.08.2015 has stated that prior to the incident on 02.08.2015, no criminal case was reported in front of TASMALC shop at Kalingapatti during the last two years and no criminal case has been registered at K.V.Nallur Police Station in this regard. He has further stated that no woman harassment or any sort of teasing came to be registered in the police station or Taluk Office or Collector's Office. Thus, according to him, the objection raised by the petitioner for the running of shop in the present location is not out of any bonafide intention, but out of malafide intention, based on some political motive. The District Collector has further stated that the resolution in question, on 04.08.2015 was passed only due to political reasons and not with any good intention. He would further submit that since the said resolution runs counter to the policy of the Government in establishing the District Retail vending shops, as per the Rules, the same was cancelled by the District Collector in exercise of his power under Section 202 of the Panchayats Act.

8. The learned Government Advocate for the first respondent would submit that it is true that the shop has been kept closed from 02.08.2015 and the same could not be opened to avoid any commotion. He would further submit that the respondents have not opened the same only due to the pendency of the present writ petition. The learned Government Advocate, referring to the said counter, would reiterate that the shop in question is not a hindrance or nuisance to the people in any manner and therefore, the District Collector had to take a decision rejecting the request of the petitioner for shifting the shop. The learned counsel for the 2nd respondent Mr.M.Muniyasamy, would also support



the arguments advanced by Mr.Aayiram K.Selvakumar and he would also pray for dismissal of the writ petition.

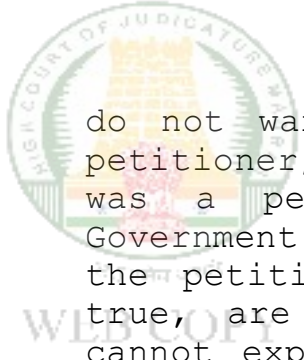
9. We have considered the above submissions.

10. Of course, it is true that the present location of the shop has not violated the distance Rule as prescribed in the Tamil Nadu Retail Vending Rules. But the crux of the argument of the learned senior counsel for the petitioner is that the present location of the shop causes great nuisance to the people of that area infringing upon the right to peaceful life thereby violating Article 21 of the Constitution of India. We find force in the said argument.

11. It is a common knowledge that the people, due to over drunkenness would quite naturally lose their control over the mental faculty and behave in a disorderly manner. Because of the said misconduct, he may behave rudely towards others. This disorderly behaviour of the drunkards, who use the shop, is undoubtedly a nuisance for the people. Though, as we have already stated that the present location has not been in violation of the provisions of the liquor vending rules, in our considered view, going by the facts of the case, we have got every reason to hold that it violates the right to have dignified and peaceful life, which is guaranteed under Article 21 of the Constitution of India.

12. But the learned Government Advocate would submit that as per the report of the Superintendent of Police, there was no complaint of any kind whatsoever reporting about any eve-teasing or teasing or even nuisance. Simply because no one, who were the victims of disorderly behaviour of the drunkards, dared to come forward with the complaint to the police, it cannot be concluded safely that there was no incident at all in that area. If really, there was no nuisance at all to the people of the Village, there would have been no occasion for a majority of the villagers to gather in front of the shop on 02.08.2015 and to stage a Dharna. It is admitted that because of the said Dharna, the shop was closed on 02.08.2015 and the sale has been continuously suspended. This agitation made by the people in a peaceful manner, is indicative of the fact that the shop is actually causing nuisance to the people in that locality.

13. The learned Government Advocate would further submit that it was not a peaceful agitation on 02.08.2015 and 04.08.2015, as it is projected by the learned senior counsel for the petitioner. According to him, on those two days, the petitioner and his brother, who himself is a party to the agitation, out of political motive brought people in large numbers and indulged in violence and committed various offences. In respect of the same, criminal cases have been registered. The learned Government Advocate would submit that thus, only by force and showing the might, the petitioner has forced the shop to be closed. In this regard, we



do not want to express any opinion, because, according to the petitioner, what was done before the shop on those two occasions, was a peaceful agitation. But, according to the learned Government Advocate, it was a rioting. Whether the statement of the petitioner is true or the allegation of the respondent is true, are all matters for investigation by the police and we cannot express any opinion about the same as it would certainly amount to interference with the investigation. In our considered view, at this stage, it would not be proper for us to express any such opinion, thereby interfering with the investigation done by the investigating officer. Therefore, we decline to go into the said issue.

14. The learned senior counsel, as we have already pointed out, has made reliance on three judgments of three Division Benches, wherein, the Division Benches have taken a consistent view in similar circumstances, that if the Panchayat has passed the resolution to close the liquor vending shop, respecting the said resolution, the shop should be closed by the authorities. We fully fall in line with the said view expressed by the Division Benches. The Village Panchayat is a representative body of the entire villagers. It represents the sentiments of the people of the village. The said local body is concerned with peace, tranquility and well being of the people of the village. When the said representative body, respecting the sentiments of the people and considering the woes and difficulties experienced by them, because of the location of the shop in the place in question, has passed the resolution, in our considered view, the 2nd respondent ought to have respected the same, as held by the Division Benches on earlier occasions and to have closed the same. But, instead of doing that, the District Collector has gone to the extent of cancelling the resolution dated 02.08.2015 purportedly in exercise of his power under Section 202 of the Panchayats Act. Though, being the Inspector of panchayats, the District Collector has been empowered to cancel the resolution, in this case, he has violated the procedure contemplated under the Act itself. The enquiry, in this case, which culminated in the impugned order, was in pursuance of the direction issued by the Division Bench of this Court only to decide the issue as to whether the shop in question should be shifted or it should be allowed to be run in the same place. This Court did not give any direction to go into the validity of the resolution passed by the Panchayat. But, while holding enquiry, as directed by this Court, to decide the above issue, the District Collector has exceeded the scope of enquiry and has cancelled the resolution under Section 202 of the Act. This, in our considered view, cannot be appreciated.

15. The learned Government Advocate would submit that if that is the case, the remedy of the petitioner, then, the remedy for him should have been to file a revision challenging the cancellation of the resolution. Instead of doing that the petitioner has filed



the present writ petition challenging the cancellation of the resolution passed by the Panchayat, he contended. The scope of the writ petition is only in respect of the location of the shop. In our considered view, the order cancelling the resolution is for beyond the enquiry ordered by this Court, the same cannot be allowed to be sustained for the following reasons also.

16. It is indicated in the order that there was no opportunity whatsoever given to the Panchayat before cancelling the resolution as required under Section 202(1)(a) and (b) of the Act. But the order indicates that it was passed purportedly under Clause (c) of (1) of 202, which reads as follows:

"202. (3) the power conferred on the Inspector under Clause (c) of sub section (1) may be exercised by the Collector in accordance with the provisions of that clause."

16.1. Clause (c) reads as follows:

(c) the execution of such resolution or order, or that continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray;

17. It is only in those circumstances, even without notice to the Panchayat, the Inspector of Panchayat could cancel the resolution. But, here, the resolution passed by the Panchayat on 04.08.2015 would not be in any manner dangerous to human life, health or safety and the same also would not lead to any riot or affray. Thus, the District Collector has passed the impugned order ignoring the statutory mandates. Therefore, the said order cancelling the resolution also deserves to be set aside.

18. The District Collector ought to have respected the sentiments and the feelings of the people of the village, and the difficulties experienced by them. When the people have gathered in front of the shop and expressed their displeasure over the running of the shop in that place, we cannot allow the shop to run in the said place. As a matter of fact, we have already stated that the shop has kept closed from 02.08.2015 onwards. Therefore, we only direct permanent closure of the shop in the said location.

19. In the result, the writ petition is allowed; the impugned order is set aside and we direct the respondents 1 and 2 to permanently close the TASMACH shop No.10862 located in Kalingapatti Village in Tirunelveli District. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)



To

1.The District Collector,
Tirunelveli District, Tirunelveli

2.The District Manager,
TASMAC, Tirunelveli District.

+1 cc to MR.P.SUBBARAJ, Advocate Sr.NO.69420

+1 cc to MR.M.MUNIASAMY, Advocate Sr.No.69894

+1 cc to M/S.Special Government Pleader Sr.No.69781

W.P. (MD) No.20063 of 2015
and M.P.Nos.1 and 2 of 2015
16.11.2016

SMA/KP/AR-CS2/24.11.2016:8P/6C