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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.[MD].No.18682 of 2016

and

W.M.P. (MD) .No.13510 of 2016

K.K.C.Balaganesan

: Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Chief Secretary,
Secretariat, St. George Fort,
Chennai.
- 2.The State of Tamil Nadu,
rep. by its Principal Secretary,
Department of Excise and Prohibition,
Secretariat, St. George Fort,
Chennai.
- 3.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower - II,
Egmore, Chennai - 600 008.
- 4.The District Collector,
Virudhunagar District,
Virudhunagar.
- 5.The Revenue Divisional Officer,
Sivakasi Revenue Division,
Sivakasi, Virudhunagar District.
- 6.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Plot No.29-34,
SIDCO Industrial Estate,
Soolakkarai,
Virudhunagar District.
- 7.The Correspondent,
SHNV Boys Higher Secondary School,
Sivakasi, Virudhunagar District.



8.The Correspondent,
SHN Girls Higher Secondary School,
Sivakasi, Virudhunagar District.

: Respondents

(R1, R7 and R8 were deleted, vide order of the Court, dated 28.09.2016, in W.P.(MD).No.18682/2016)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring the words in Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, ie., "in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas" and the words "provided also that if any place of worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this rule shall not apply" as ultra vires to the Preamble, Articles 14, 15(1), 15(2), 19(1)(d), 21, 21-A, 30(1), 39(f), 45 and 47 of the Constitution of India and contrary to Sections 3, 8, 9, and 29 of the Right to Children to Free and Compulsory Education Act, 2009 and Rule 4 of the Tamil Nadu Right of Education of Children to Free and Compulsory Education Rules, 2011 and consequently direct the respondent Nos.4 and 6 to shift or close the TASMAL Shop No.11850 situated in New Road, Sivakasi Town, Shop No.11846 situated in South Car Street, Sivakasi Town and Shop No.11843 situated in West Car Street, Sivakasi Town, Virudhunagar District.

For Petitioner : Mr.S.M.Anantha Murugan

For respondents : Mr.T.R.Janarthanam,
2 to 5 Addl. Government Pleader

For 6th respondent : Mr.M.Muniyasamy

O R D E R

[Order of the Court was made by **S.NAGAMUTHU, J.**]

The petitioner has come up with this Public Interest Litigation, seeking a direction to the respondents to forthwith remove the TASMAL Shop Nos.11850, 11846 and 11843 at Sivakasi Town, Virudhunagar District. The petitioner has also challenged relevant Rules of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, on the ground of unconstitutionality.

2.In the Writ Petition, it is alleged that these three shops are located within the prohibited distance of Schools, Churches and Temples. Therefore, according to the petitioner, these shops should, immediately, be either closed or shifted.



3. In order to verify the correctness of these allegations made in the affidavit, by order dated 28.09.2016, we directed the District Collector, Virudhunagar, to make inspection of the three shops and nearby area in the presence of the District Manager of the TASMAL and to submit a report. Today, the District Collector, Virudhunagar District submitted a report, wherein in Paragraph Nos.3 to 6, he has stated as follows;

"3. I submit that, on 04.10.2016 I have made an inspection along with the Assistant Commissioner (Excise), Virudhunagar, District Manager (TASMAL), Virudhunagar, Divisional Excise Officer, Sivakasi and Town Surveyor, Sivakasi to the TASMAL shop No.1843 situated in Parasakthi Colony, Shop No.11846 situated in South Car Street, Shop No.11850 situated in New Road Street and Shop No.11893 situated in West Car Street in Sivakasi.

4. I submit that, the TASMAL Shop No.11843 is located in the Sivakasi Town in the road towards south-north direction in Parasakthi Colony, Sivakasi. A school VSKD Boys Matriculation School is situated in the next street and the distance from the main gate of the school is 170 metres and from the back side of the compound wall is 55 metres and Pathirakaliammal Kovil is situated in the distance of 110 metres from the shop.

5. I submit that, the TASMAL shop No.11846 is located in Sivakasi Town in the road towards east-west direction in South Car Street, Sivakasi. A school SHNV Boys Higher Secondary School is situated in the west side and distance from the main gate of the school is 126 metres and from the compound wall is 90 metres and SHN Girls Higher Secondary School is situated in the distance of 144 metres from the shop.

6. I submit that, the TASMAL Shop No.11850 is located in the Sivakasi Town in the new road towards Carnation Colony, Sivakasi, A Roman Catholic Church is situated northern side of the shop in the distance from the main gate of the church is 58 metres."



these three shops are not located within the prohibited distance.

4. The report of the District Collector is seriously disputed by the petitioner and the petitioner wanted to file objection to the same. Even today, the learned counsel for the petitioner maintained that the location of these shops is within the prohibited distance.

5. Having heard the learned counsel for the petitioner and having gone through the report of the District Collector, when we pointed out to the District Manager that though, technically, it may be correct that the shops are situated little beyond the prohibited distance, still it may cause disturbance to the Girl students, who are thousand in number studying in a school known as SHN Girls Higher Secondary School and also the boy students, who are thousand in number studying in a school known as VSKD Boys Matriculation School and also the people, who are going to the Roman Catholic Church, the District Manager, taking a very compassionate view, submitted to the Court that irrespective of the rival contentions raised before this Court, he would shift all the three shops to some other suitable places within a period of four months. The said statement made by Mr. Ravi Chandran, District Manager, TASMACH, Virudhunagar District, is appreciated, because he has taken such a stand on considering the welfare of the students community. The same is recorded.

6. In view of the said stand taken by the District Manager, TASMACH, Virudhunagar District, we do not go into the disputed questions of law. Accordingly, the Writ Petition stands disposed of recording the undertaking given by the District Manager, TASMACH, Virudhunagar District, for shifting the shops in question to some other suitable place within a period of four months from the date of receipt of a copy of this order. The parties to this proceedings shall be bound by the above undertakings. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Department of Excise and Prohibition,
Secretariat, St. George Fort,
Chennai.



2.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower - II,
Egmore, Chennai - 600 008.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Revenue Divisional Officer,
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5.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Plot No.29-34,
SIDCO Industrial Estate,
Soolakkarai,
Virudhunagar District.

+1 cc to the Spl.Govt.Pleader in SR No.59848

Order made in
W.P.[MD].No.18682 of 2016
05.10.2016

GCG
ANR/EM-MPA/08.11.2016/5P/7C