



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P. (MD) No.19248 of 2016

and

WMP (MD) Nos.13895 and 13896 of 2016

P.Murasoli Mani

.. Petitioner

Vs

1.The District Collector,

Madurai District.

2.The Deputy Collector/District Manager,

Tamil nadu State Marketing Corporation Ltd.,

(TASMAC), Madurai North,

Madurai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.0911/2016/H dated 27.09.2016 quash the same and consequently direct the respondents herein to reopen the liquor shop No.5123 with Bar run by the petitioner in Door No.3, Melur Main Road, Opp.Mattuthavani Bus Terminus, Madurai in the wake of Rule 8(1) of Tamil Nadu Liquor Retail Vending (In shops and Bars) Rules, 2003.

For Petitioner	:	Mr.Veerakathiravan, Senior Counsel for Mr.K.Vijaypandiyan
For R1	:	Mr.T.S.Mohammed Mohideen Additional Government Pleader
For R2	:	Mr.M.Muniasamy

O R D E R

The impugned order, of the second respondent, dated 27.09.2016, by which, the TASMAC shop No.5123 was temporarily closed till the availability of an alternative place, is under challenge.

2.The petitioner has also submitted a representation, dated 28.09.2016 to the first respondent requesting him to revoke or set aside the impugned order. The petitioner is a licensee of the bar, which is attached to Liquor shop No.5123. The petitioner has paid license fee of Rs.1,84,734/- by way of Demand Draft. He is a licensee from 01.08.2015. The license is periodically renewed every month. As per Rule 8(1) of the Tamil Nadu Retail Vending (In Shops & Bars) Rules, 2003, for the shops and bars situated in the commercial area, the distance restriction rules will not apply. The Rule 8(1) also provides



that in respect of developments in the location subsequent to the establishment of shops, the provision of this rule will not apply.

3. Therefore, the objection that running of the shop and bar is objectionable to the people, who are residing in quarters, cannot be accepted. So saying this writ petition has been filed.

4. The specific complaint is stated to have been given by the staffs residing in the staff quarters of Madurai Bench of Madras High Court. It is stated by the petitioner that because of the existence of the bar and shop, there is no inconvenience to the staff members and this impugned order has been passed only to facilitate the private recreation club.

5. The order passed by the first respondent is justified by filing the counter affidavit. Challenging the writ petition, the first respondent has stated that the petitioner was provided with license only to collect empty bottles and sell snacks or eatables and this license is associated with the shop and not associated with the place.

6. It is stated that complaints were received from various sectors of the people to the effect that the location of the shop itself causes nuisance and therefore, the order passed by the first respondent is justified.

7. The learned counsel for the respondent has relied upon the Division Bench Judgment of this Court in *G.KANAGA BAI v. THE DISTRICT COLLECTOR, KANYAKUMARI DISTRICT* reported in 2013 (5) CTC 141, wherein it has been held that right to live with human dignity and right to healthy environment, etc. are fundamental rights and under Article 21 of the Constitution of India gives protection of life and personal liberty. He has also relied upon the Division Bench judgment of this Court in *THE TAMIL NADU STATE MARKETING CORPORATION LTD., v. R.M.SHAH* reported in 2010 (2) CWC 337, under which, it has been held that mere fact that liquor shop has been carried on for a long time cannot be put against public when they approached authorities with complaint of nuisance and accompanied with request for shifting shops.

8. So far as the allegation regarding recreation club is concerned, it is submitted that the allegation is baseless.

9. The learned counsel for the respondents has also submitted that after the closure of the shop, proposal has been submitted by the Management of the TASMAL seeking change of place giving a specific location and this representation is dated 28.09.2016 and it is pending consideration before the first respondent.



10. The learned counsel for the petitioner relied upon Section 23 of the Tamil Nadu Prohibition Act, by which the license can neither be cancelled nor be suspended without notice to the affected parties. As per Section 23(3) of the Act, before any licence or permit is cancelled or suspended under sub-section (1) or sub-section (2), the holder of the licence or permit shall be given an opportunity to state his objection within a reasonable time, not ordinarily exceeding fourteen days, and any representation made by him in this behalf shall be duly taken into consideration before final orders are passed.

11. The strenuous contention of the learned counsel for the petitioner is that there is violation of the principles of natural justice and also the statutory provisions under Section 23(3) of the Act and therefore, the order is liable to be set aside.

12. It is sufficient to point out that the first respondent by the impugned order has neither cancelled the license issued to the petitioner nor suspended the license. Still the license is available for being used where ever the TASMAC shop is located/re-located and therefore, the question of invoking Section 23 of the Act, does not arise.

13. Under such circumstances, the first respondent is directed to consider the representation of the petitioner dated 28.09.2016 for shifting of the liquor shop No.5123 to the place as mentioned therein in the representation dated 28.09.2016. The first respondent shall pass orders on the representation on or before 30.11.2016.

14. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.S.I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai District.

2. The Deputy Collector/District Manager,
Tamil nadu State Marketing Corporation Ltd.,
(TASMAC), Madurai North, Madurai District.

+1cc to the Spl.Govt.Pleader in SR No.68847

+1cc to Mr.K.Vijaypandian, Advocate in SR No.68906

W.P. (MD) No.19248 of 2016

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