

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8558 of 2017

Kanagachettikulam Makkal Podunala Eyakkam
(Reg.No.45/2015), Rep. by its Secretary
N.Soundararajan, at No.28, East Coast Road
Ganapathichettikulam
Puducherry - 605 014. ... Petitioner

Vs.

1. Union of India
rep. by the Chief Secretary to
Government (Excise)
Government of Puducherry
Secretariat, Beach Road
Puducherry - 605 001.
2. The Commissioner (Excise)
Government of Puducherry
Office of the Excise Commissioner
Secretariat, Puducherry - 605 001.
3. The Deputy Commissioner (Excise)
Government of Puducherry
Excise Department
Thattanchavadi (Near Govt. Press)
Puducherry. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct respondents 1 to 3 to consider and take appropriate action on the petitioner's representations dated 19.1.2017 and 1.2.2017 and thereby direct them not to issue any new licence or transfer/shifting of IMFL for opening liquor retail, wholesale and tourism bar outlets and expansion of existing licenses anywhere at the location of Kalapet Revenue Village, Ganapathichettikulam Village, Puducherry in the interest of students, patients and general public.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.A.Gandhirajan
Government Pleader
(Puducherry)

ORDER

(Order of the Court was made by M.Sathyannarayanan,J.)

By consent, the writ petition is taken up for final disposal.

2. The deponent of the affidavit is the Secretary of petitioner association and claims that he is a social worker and an inhabitant of Ganapathichettikulam Village, Kalapet Revenue Village, Puducherry. The petitioner would aver that the said village is situate along the most important road, namely East Coast Road (ECR), leading to Puducherry and in his village, Pondicherry Institute of Medical Science (PIMS) is located and there are lot of public temples such as Arulmigu Sri Balamurugan Temple and Sri Saibaba Temple. That apart, Dr.B.R.Ambedkar Government Law College, Pondicherry University, Pondicherry Engineering College, Seveliar Chellan Government Higher Secondary School, Jothi Vallalar Higher Secondary School, Government Deaf and Dumb School, the Study International School, Navodiya School, etc., are also located.

3. The grievance expressed by the petitioner is that there are already two liquor shops in the said village and in the light of the judgment rendered by the Hon'ble Supreme Court of India in State of Tamil Nadu, rep. by its Secretary, Home, Prohibition and Excise Department v. K.Balu, (2017) 2 SCC 281, and order dated 31.3.2017 in I.A.Nos.4-6, 7-9 etc. of 2017 in Civil Appeal Nos.12164 to 12166 of 2016, prohibiting the location of liquor shops within 500 Metres from National/State Highways, the respondents, under the guise of re-locating the liquor shops, intend to open more liquor shops in the village contrary to distance norms and in this regard, he had also submitted representations dated 29.7.2016, 19.1.2017 and 1.2.2017 to the authorities concerned as well as to Her Excellency, the Lieutenant Governor of Puducherry. It is submitted that despite receipt and acknowledgment of the said representations, no proper response is forthcoming and respondents 2 and 3 are taking urgent steps to open more liquor shops in the village and hence, prays for appropriate orders.

4. The learned counsel for the petitioner has drawn the attention of this Court to a representation dated 1.12.1996 sent by the Hon'ble Chief Minister of the Union Territory of

Puducherry, while he was a Member of Parliament (Rajya Sabha), to Her Excellency the Lieutenant Governor of Puducherry, pointing out that there are number of educational institutions located in the said area and if additional liquor shops are set up, it will cause great hardship to the people concerned and, therefore, requested for appropriate action.

5. The learned counsel for the petitioner has further drawn attention of this Court to a letter dated 20.12.1996 of the Former Chief Minister of Union Territory of Puducherry, namely, Mr.V.Vaithilingam, as well as the letter dated 24.12.1996 of Mr.M.O.H.Farook, Member of Parliament (Lok Sabha), and would submit that the elected representatives had also sent representations to the authorities concerned requesting them not to open any additional liquor shops or re-locate liquor shops and inspite of it, respondents 2 and 3 are taking emergent steps to open additional liquor shops and, therefore, they should be restrained from doing so.

6. Per contra, the learned Government Pleader (Puducherry) appearing for the respondents invited the attention of the court to the counter affidavit filed by the third respondent, which is adopted by respondents 1 and 2, and would submit that the Excise Department is the second largest revenue contributor to the Government exchequer and in the Union Territory of Puducherry, totally 464 liquor shops are located and on account of the orders passed by the Hon'ble Supreme Court of India, referred supra, the respondents are constrained to re-locate the liquor shops and the re-location will be done strictly in compliance of Rule 113(2) of the Puducherry Excise Rules, 1970.

7. It is the further submission of the learned Government Pleader appearing for the respondents that the petitioner is also having an effective alternative remedy in the form of an appeal under Section 60(3) of the Puducherry Excise Act, 1970 and on that ground, the writ petition is not maintainable and prays for dismissal of the writ petition.

8. This Court paid it's best attention to the rival submissions and perused the materials placed before it.

9. Mr.V.Narayanasamy, Hon'ble Chief Minister of the Union Territory of Puducherry, as a Member of Parliament (Rajya Sabha), has sent a representation dated 1.12.1996 to Her Excellency the Lieutenant Governor of Puducherry, pointing out the location of very many educational institutions and also requested to take appropriate action not to locate any additional liquor shops in the village concerned.

10. Mr.V.Vaithilingam, Former Chief Minister of the Union Territory of Puducherry, as the Leader of Opposition, also sent a similar representation on 20.12.1996 to Her Excellency the Lieutenant Governor of the Union Territory of Puducherry.

11. Mr.M.O.H.Farook, Member of Parliament (Lok Sabha), also sent a representation dated 24.12.1996 to Her Excellency the Lieutenant Governor of the Union Territory of Puducherry, pointing out about the location of very many educational institutions and also made a request not to locate any additional liquor shops.

12. It is the primordial submission of the learned Government Pleader appearing for the respondents that since the Excise Department is the second largest revenue contributor to the Government Exchequer and on account of the orders passed by the Hon'ble Supreme Court of India, referred supra, the Government is under compulsion to re-locate the liquor shops and they are left with no other option except to do the said exercise and it will be done strictly in accordance with Rule 113(2) of the Puducherry Excise Rules, 1970.

13. The respondents, while doing so, shall take note of the above said representations sent by the Hon'ble Chief Minister of the Union Territory of Puducherry, while he was a Member of Parliament (Rajya Sabha); Mr.V.Vaithilingam, Former Chief Minister of the Union Territory of Puducherry, as the Leader of Opposition; and Mr.M.O.H.Farook, Member of Parliament (Lok Sabha), and further take note of the location of very many educational institutions in the said village; pass appropriate orders and take appropriate steps.

14. This Court is issuing the above said direction on account of the representations submitted by the above said dignitaries and also taking into consideration the peculiar facts and circumstances of the present case in the light of the said representations. The respondents shall also take note of the public sentiments before taking any decision.

The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.9357 of 2017 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sasi

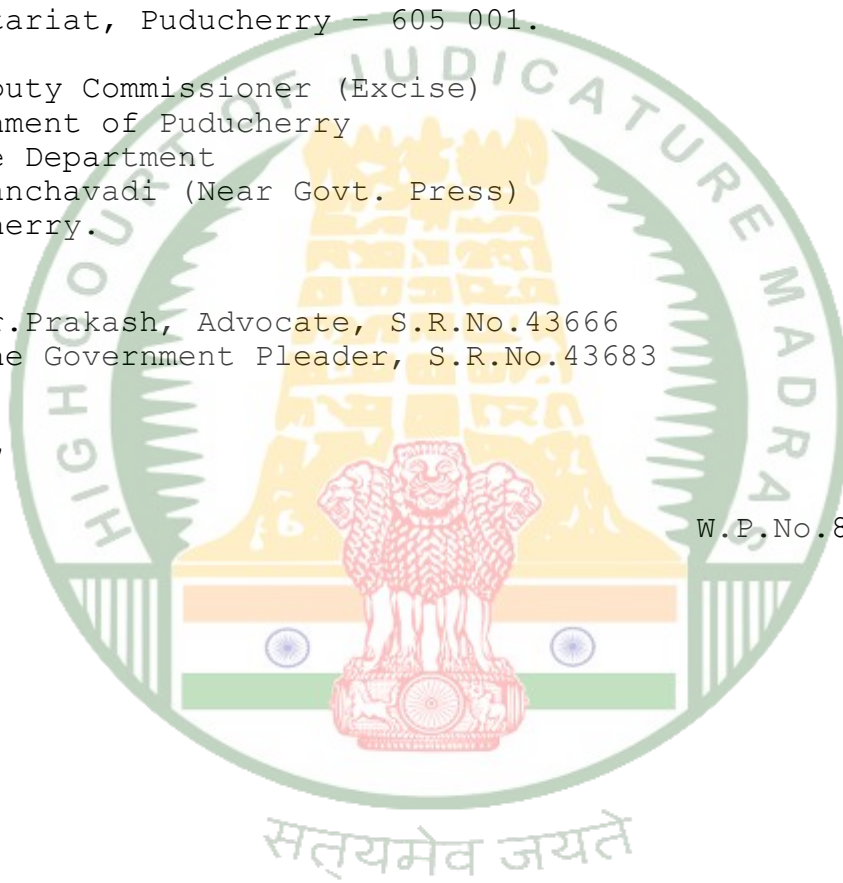
To:

1. The Chief Secretary to Government (Excise)
Union of India
Government of Puducherry
Secretariat, Beach Road
Puducherry - 605 001.
2. The Commissioner (Excise)
Government of Puducherry
Office of the Excise Commissioner
Secretariat, Puducherry - 605 001.
3. The Deputy Commissioner (Excise)
Government of Puducherry
Excise Department
Thattanchavadi (Near Govt. Press)
Puducherry.

+1cc to Mr.Prakash, Advocate, S.R.No.43666
+1cc to the Government Pleader, S.R.No.43683

AD(CO)
EU 30.6.17

W.P.No.8558 of 2017



WEB COPY