

In the High Court of Judicature at Madras

Dated : 05.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.31467 of 2017

K.Manikandan

...Petitioner

Vs

- 1.The State of Tamil Nadu, rep.by
its Secretary, Prohibition & Excise
Department, Secretariat, Chennai-9.
- 2.The Managing Director, Tamil Nadu
State Marketing Corporation (TASMAC),
4th Floor, CMDA Towers, Gandhi Irwin
Bridge, Salem.
- 3.The District Collector, Coimbatore
District, Coimbatore.
- 4.The Senior Regional Manager, TASMAC,
Coimbatore Region, Coimbatore.
- 5.The District Manager, TASMAC,
Coimbatore District (North), Coimbatore.
- 6.S.Santhosh

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing respondents 1 to 5 to consider the representation of the petitioner dated 25.9.2017 in the light of the directions in W.P.No.18793 of 2017 dated 24.7.2017, W.A.No.1002 of 2017 dated 23.8.2017 and M.P.No.24766 of 2017 in W.P.No.18793 of 2017 dated 05.9.2017 and to order for restoring TASMAC Shop No.1611 in its original place at Door No.23, Devi & Co. Lane, Gopalapuram, Coimbatore Town.

For Petitioner : Mr.D.Rajagopal

For Respondents 1 & 3 : Mr.R.Rajeswaran, SGP

For Respondents 2, 4 & 5 : Mr.K.Sathiskumar

ORDER

Mr.R.Rajeswaran, learned Special Government Pleader accepts notice for respondents 1 and 3. Mr.K.Sathishkumar, learned Standing Counsel accepts notice for respondents 2, 4 and 5. Heard both. In view of the order this Court proposes to pass in this writ petition, notice to the sixth respondent is dispensed with.

2. The petitioner is before this Court for the third time ventilating the very same grievance. The petitioner was granted a licence to sell eatables and collect empty bottles in TASMAC retail vending shop No.1611. However, with regard to the location of the shop, because of the objections of the public, which were directed to be considered in the order passed in W.P.No. 11442 of 2017 dated 01.6.2017 filed by the owner of the premises, in which, the shop was located, the Tamil Nadu State Marketing Corporation had to closed down the shop. The petitioner, being a person, who was granted licence to sell eatables and collect empty bottles in the bar attached to the shop, rushed to this Court and filed W.P.No.18793 of 2017. However, it was dismissed by order dated 24.7.2017.

3. While dismissing W.P.No.18793 of 2017 by order dated 24.7.2017, this Court noted that the petitioner's apprehension was that on shifting of the TASMAC retail vending shop and the bar, his right to sell eatables and collect empty bottles and cartons from the TASMAC shop in the new location would be affected. Therefore, this Court made an observation that in the re-located place, the Authorities should permit the petitioner to operate his licence till tenders are called for, for grant of licence.

4. The petitioner, not satisfied with the said observation, filed an appeal before the Hon'ble Division Bench of this Court in W.A.No.1002 of 2017. However, on 23.8.2017, the said writ appeal was dismissed as withdrawn with certain observations, which paved way for the petitioner to file a miscellaneous petition before this Court in WMP.No.24766 of 2017 seeking modification of the order dated 24.7.2017. This Court heard the learned counsel for the petitioner in the said miscellaneous petition and passed an order on 05.9.2017. The relevant portions of the order dated 05.9.2017 read thus :

"3. The petitioner, not being satisfied with the relief granted by this Court, the petitioner preferred a writ appeal before the Hon'ble Division Bench in W.A.No.1002 of 2017. The Hon'ble Division Bench was not inclined to interfere with the order passed in the said writ petition, but made an observation that it would be appropriate for the petitioner to approach the Writ Court by way of a suitable petition in respect of the

directions contained in the writ petition pertaining to the licence. On such observation being made, the petitioner withdrew the appeal and the same was dismissed as withdrawn by judgment dated 23.8.2017 with the aforementioned observation. This is how the petitioner is before this Court by way of this petition.

4. As rightly pointed out by the learned Standing Counsel appearing for respondents 2, 4 and 5, the petitioner does not have a vested right to claim that he is entitled to be granted a licence. The indulgence granted by this Court in the order dated 24.7.2017 by stating that the licence will be granted to the petitioner on monthly basis in the new location is only to safeguard the interests of the petitioner, so that his rights are not prejudiced. However, if the District Collector does not approve of any new location for re-locating shop No.1611, then nothing accrues in favour of the petitioner, as the petitioner can enjoy a licence only if a shop is located. Equally, if the respondent Corporation decides not to reopen the shop or not to relocate shop No.1611, then also, the petitioner also would not be entitled for any vested right to claim for grant of licence.

5. Accordingly, the above petition is dismissed.

6. It is needless to state that in the event the District Collector approves for re-location of shop No.1611, the petitioner's application for the grant of licence to sell eatables and collect empty bottles in the bar attached to the said shop shall be considered on merits and in accordance with law."

5. While dismissing the said miscellaneous petition on 05.9.2017, one more observation was made by this Court indicating that in the event the District Collector approves for re-location of shop No.1611, the petitioner's application for the grant of licence to sell eatables and collect empty bottles in the bar attached to the said shop shall be considered on merits and in accordance with law. Pursuant to that, the petitioner submitted a representation on 25.9.2017 requesting the District Collector to locate the shop in the very same location from where it was shifted. Now stating that the said representation has not yet been considered, once again the

petitioner is before this Court by way of this writ petition.

6. In my considered view, the present attempt of the petitioner is a clear abuse of process of court. Even on the earlier occasion, on 05.9.2017, this Court, while dismissing WMP.No.24766 of 2017 seeking modification, made it clear that in the event the District Collector approves relocation of the shop, the petitioner does not have any independent right, but his application would be considered on merits and in accordance with law.

7. The learned Standing Counsel appearing for the Tamil Nadu State Marketing Corporation submits that on account of the objections raised, a decision has been taken not to relocate shop No.1611, that no protection has been granted by the District Collector and that for such a reason, the tender calling for offers for running a bar attached to shop No.1611 was deleted in the tender notification. In the light of the fact that since a decision has been taken not to relocate shop No.1611, the question of granting the relief as prayed for in the writ petition by calling upon the authorities to locate the shop in the old place is not tenable and this Court deprecates the manner, in which, the petitioner has been repeatedly approaching this Court. This Court would have been justified in imposing heavy costs on the petitioner, but refrains from doing so, in the light of the submissions made by the learned counsel for the petitioner. For all the above reasons, this Court is of the view that the present attempt of the petitioner is vexatious and that no relief can be granted to the petitioner.

8. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

To

- 1.The Secretary to Government of Tamil Nadu, Prohibition & Excise Department, Secretariat, Chennai-9.
- 2.The Managing Director, Tamil Nadu State Marketing Corporation (TASMAC),
4th Floor, CMDA Towers, Gandhi Irwin Bridge, Salem.
- 3.The District Collector, Coimbatore District, Coimbatore.

4.The Senior Regional Manager, TASMAC, Coimbatore Region,
Coimbatore.

5.The District Manager, TASMAC, Coimbatore District (North),
Coimbatore.

+ 1 cc to Mr.K.Sathiskumar Advocate,SR.85968

+ 1 cc to Mr.D.Rajagopal Advocate,SR.85978

+ 1 cc to The Govt.Pleader, SR.86278

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