

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.26254 of 2017

A.Bharathiraja

... Petitioner

Vs.

1. The District Collector
Villupuram District
Villupuram.
2. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.
Chennai.
3. The District Manager
Tamil Nadu State Marketing Corporation Ltd
Warehousing Corporation-59A
Chennai Trunk Road
Villupuram.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct the respondents to shift the TASMAL liquor shop in Shop No.11419 situated at Salem Main Road, Near Chinnasalem Police Station, Chinnasalem and to relocate the said liquor shop to some other location after considering the petitioner's representation dated 07.09.2017.

For Petitioner : Mr.P.Pandiyaraj

For Respondents : Ms.Vasudha Thiagarajan
Additional Government Pleader
for 1st respondent

Mr.B.Nedunchezian
for respondents 2 and 3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, by way of public interest litigation, has been filed seeking orders of this Court to shift the TASMAL (Tamil Nadu State Marketing Corporation Limited) Shop, being Shop No.11419, at Salem Main Road, Near Chinnasalem Police Station, Chinnasalem and relocate the same to some other location upon consideration of the petitioner's representation dated 7.9.2017.

2. In the affidavit in support of the writ petition, it is stated that the liquor shop No.11419 is located 100 metres away from the Government Elementary School, Chinnasalem. The shop, according to the petitioner, is located in an exclusively residential area within the prohibitory distance from a temple and Government Elementary School. It is also stated that the general public as also parents of school going children have objected to the setting up of the liquor shop in question.

3. It is pleaded "the petitioner submits that as per Rule 8 of the Tamil Nadu Liquors (Retailing/Vending) Rules 2003, no liquor shops has been set up in and around the educational construction and worship place. But the respondents violated the above said rules and set up the present liquor shops".

4. Rule 8 of the Tamil Nadu Liquor Retail Vending (In Shops and bars) Rules, 2003 provides as follows:

"Rule 8. Location of shop.-

(1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions:

Provided that the distance restriction shall not apply in areas designated as 'Commercial' or 'Industrial' by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:

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:

Provided also that no liquor shops shall be established in any tribal areas covered under Integrated Tribal Development Project and

Hill Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari districts.

(2) Every shop shall be housed in a pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3) The shop shall be in the location approved by the Collector before commencing the business in the shops."

5. From the averments in the affidavit in support of the writ petition, there does not appear to be any contravention of Rule 8. Setting up of a liquor shop 100 Metres away from an educational institution is apparently permitted by the Rules. There is also only a vague averment that the shop in question is within prohibited distance from a temple.

6. Our attention has also been drawn to the representation dated 7.9.2017, included in the typed set of documents filed along with the writ petition. In the representation, it is stated that the TASMAL Shop No.11419 is located 60 Metres from the Government Elementary School. The averment is clearly contrary to the affidavit in support of the writ petition and this Court cannot possibly give greater credence to the contents of an unverified letter than an affidavit on oath.

7. Significantly, in the representation there is an averment that Shop No.11706 is situated 100 Metres away from a Church. As per Rule 8 of the Tamil Nadu Liquor Retail Vending (In Shops and bars) Rules, 2003, opening of a liquor shop within 100 Metres from a place of worship is not permitted. Significantly, in the representation, there is no reference to any temple in the vicinity of the shop/shops. We, however, proceed on the basis that by using the expression "temple" in the affidavit in support of the writ petition, the petitioner has referred to a place of worship and a church is very much a place of worship. However, having regard to the averments in the affidavit in support of the writ petition read with the representation, the locations do not appear to be within prohibited distance of any school or any place of worship.

8. It is not for this Court to run the administration or to decide the appropriateness of the location for setting up of liquor/TASMAL shops. A public interest litigation may be filed by any citizen to secure the rights of members of the public at large or any marginalized section of people who are unable to fight for their own rights. When infringement of a right is made out, the Court intervenes to restore such right irrespective of locus standi of the writ petitioner. Public

interest litigations are often initiated by Courts even suo motu having regard to newspaper reports, etc., or even upon judicial notice being taken of any illegality which is brought to or comes to the notice of the Court. However, public interest litigation does not enable the Court to travel beyond the four corners of law. The Court does not ordinarily interfere with policy decisions and in particular routine policy decisions, unless such policy decisions are patently arbitrary, violative of constitutional rights and/or human rights and/or any statute.

9. It is reiterated that in this case no definite case has been made out of infringement of law.

The writ petition is not entertained and the same is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector
Villupuram District
Villupuram.
2. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.
Chennai.
3. The District Manager
Tamil Nadu State Marketing Corporation Ltd
Warehousing Corporation-59A
Chennai Trunk Road
Villupuram.

+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.72253
+1cc to Mr.P.Pandiya Raj, Advocate, S.R.No.72395
+1cc to the Government Pleader, S.R.No.72340

W.P.No.26254 of 2017

PPA (CO)
CA(01/11/2017)