

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

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

W.P.No.19181 of 2017

G.Kavitha Thirumugam

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Prohibition and Excise
Ezhilagam Building, Kamaraj Salai
Chepauk, Chennai - 600 005.
 3. The District Collector
Thiruvallur.
 4. The Managing Director
Tamil Nadu State Marketing Corporation
CMDA Tower II, IV Floor
Gandhi Irwin Bridge Road
Egmore, Chennai - 600 008.
 5. The District Managing Director
Tamil Nadu State Marketing Corporation
Kakalur, Thiruvallur District.
- .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of declaration, declaring that the object and aim of imposing restrictions under Rule 8(1) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, made under the Tamil Nadu Prohibition Act, 1937, for the location of the retail vending liquor shops and bars in the municipalities and the municipal corporations, by stipulating the distance in metres for the educational institutions and the place of worship, the public buildings, to protect the fundamental right to life and personal liberty of the citizens is applicable not only

for the educational institutions and the place of worship, the public buildings, but also for the private residential buildings in the streets of the residential area, and consequential direction to not to locate the retail vending liquor shops and bars within 1000 metres from the streets of the private residential buildings, the residential area, or desist permanently from issuing the license to locate the shop and bars inside the residential area.

For Petitioner : Mr.S.Makesh

For Respondents : Mrs.Vasudha Thiagarajan
Addl. Government Pleader
for respondents 1 to 3

Mr.B.Nedunchezhiyan
for respondents 4 and 5

ORDER

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

In this writ petition, the petitioner has sought orders restraining the respondents from setting up wine shop and bar No.8785 at Annanur Railway Station Road, Sivasakthi Nagar, Annanur, Thiruvallur District. The writ petitioner has also sought a declaration that the restrictions under Rule 8(1) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 (hereinafter referred to as "2003 Rules") should apply not only to educational institutions and places of worship, but also to public buildings and private residential buildings.

2. In exercise of power conferred by Sections 17-C, 17-D, 21, 22-D and 54 of the Tamil Nadu Prohibition Act, 1937, the Governor of Tamil Nadu has framed the 2003 Rules. Rule 8 of the 2003 Rules is set out herein below for convenience:

"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 pucca 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."

3. Rule 8(1) of the 2003 Rules prohibits the establishment of a liquor shop within a distance of 50 Metres from any place of worship or educational institution in case of Municipal Corporations and Municipalities and in other areas, within a distance of 100 Metres from any place of worship or educational institution. The first proviso to Rule 8(1) of the 2003 Rules excludes the distance restriction from areas designated as "commercial" or "industrial" by the Development or Town Planning Authorities. The second proviso to Rule 8(1) of the 2003 Rules prohibits the establishment of a liquor shop within the premises of any hotel. The third proviso to Rule 8(1) of the 2003 Rules excludes the application of Rule 8(1) to places of worship and educational institutions which come into existence after establishment of the liquor shop. The fourth proviso prohibits the establishment of liquor shops in any tribal areas covered under the Integrated Tribal Development Project and Hill Area Development Project in the hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari districts. Under sub-rules (2) and (3) to Rule 8 of the 2003 Rules, shops are to be housed in pucca buildings and no part of it should be thatched whether on the sides or on the roof, and the shop is to be set up in a location approved by the Collector before commencement of business.

4. On a perusal of the Rule, it is patently clear that residential buildings are not covered by the restrictions in Rule 8(1) of the 2003 Rules. This Court cannot legislate. It

is not for this Court to amend the subordinate legislation. The object of a statute may be relied upon to interpret the statute when the substantive part of the statute is ambiguous and/or is capable of more meanings than one. However, when a statutory rule is framed, the object of the law-making body is to be ascertained from the language of the statute. In this case, there is no ambiguity in Rule 8(1) of the 2003 Rules, which only restricts establishment of liquor shops within certain distance in case of places of worship and educational institutions and also in tribal areas covered under the Integrated Tribal Development Project and Hill Area Development Project as specified in fourth proviso to Rule 8(1) of the 2003 Rules.

5. Needless to mention that all liquor/wine shops are required to be set up in strict compliance of Rule 8 of the 2003 Rules as also judgments and orders of the Supreme Court which have the force of law under Article 141 of the Constitution of India and are binding on all throughout the country. The interpretation of the law as made by the jurisdictional High Court is also binding on authorities within the area in which the High Court exercises jurisdiction.

6. The writ petition does not disclose contravention of Rule 8(1) of the 2003 Rules or of any judgment and order of the Supreme Court or this Court or for that matter any other Court of Law. The interference of this Court is not warranted. It is for the Government, being the authority to frame Rules, to consider the representation of the petitioner regarding amendment of Rule 8(1) of the 2003 Rules.

7. The respondents shall ensure that the TASMAC shop in question or for that matter all TASMAC shops are set up in strict compliance with the existing law, including 2003 Rules, and judicial pronouncements which have the force of law.

The writ petition is disposed of with the above observations. No costs. Consequently, W.M.P.No.20719 of 2017 is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To:

1. The Secretary
State of Tamil Nadu
Home, Prohibition and Excise Department
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 2. The Commissioner of Prohibition and Excise
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 5. The District Managing Director
Tamil Nadu State Marketing Corporation
Kakalur, Thiruvallur District.
- + 1 cc to Mr.B.Nedunchezhiyan, Advocate,SR.54071
- + 1 cc to M/s.Makesh, Advocate,SR.53917
- + 1 cc to The Govt.Pleader, SR.54320

W.P.No.19181 of 2017

NR 28/08/2017

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