

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 08.11.2017

CORAM:

WEB COPY

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE**AND****THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P (MD) No.16956 of 2017

and

W.M.P. (MD) .No.13524 of 2017 and

16101 and 16102 of 2017

Balraj

... Petitioner

Vs.

1.The District Collector,
District Collectorate Complex,
Tiruchirappalli District.

2.The Assistant Commissioner (Excise),
District Collectorate Complex,
Tiruchirappalli District.

3.The District Manager,
TASMAC, Thuvakudi,
Tiruchirappalli District.

4.Kokila
(R.4 is impleaded vide Court order dated
21.09.2017 in WMP (MD) No.14439/17)

5.Velusamy

6.Rajagopalan

7.Venkatraj

8.Vairamani

9.Gandhimathi

10.Rani Jothi

11.Selvaraj

12.Liyakath Ali

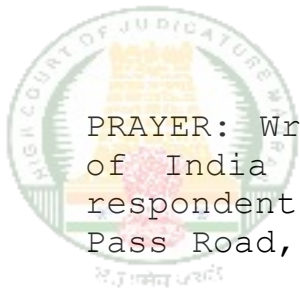
13.Mohammed Isaak

(R.5 to R.13 are impleaded vide
Court order dated 08.11.2017 in
WMP (MD) .No.16101/17)

14.S.Syed Ibrahim

... Respondents

(R.14 is impleaded vide Court
order dated 08.11.2017 in
WMP (MD) .No.16102/17)



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus restraining the respondents from opening the TASMAC shop and bar at 7/2, Karur Bye Pass Road, Trichy-620002.

WEB COPY

For Petitioner : Ms. Maria Roseline
For R.1&2 : Mr. A.K. Baskarapandiyan
Spl. Government Pleader
For R.3 : Mr. B. Jameelarasu
For R.4 : Mr. N. Anandakumar
For R.5 to 13 : Ms. Amala
For R.14 : Mr. Meenakshisundaram
* * * * *

ORDER

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

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

2. This writ petition has been filed by way of 'Public Interest Litigation' seeking a Writ of Mandamus restraining the respondents from opening the TASMAC shop and bar at 7/2, Karur Bye Pass Road, Tiruchirappalli-620002.

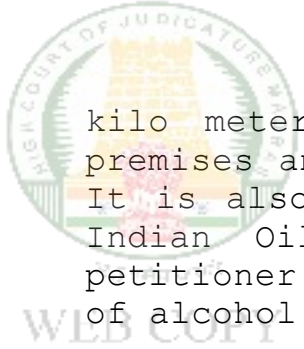
3. According to the petitioner, he is filing this 'Public Interest Litigation' on behalf of the residents of Ramamoorthy Nagar, Mela Chinthamani, Trichirappalli, who are aggrieved by the proposal to reopen the TASMAC shop and bar adjacent to Pasupatheeswarar Temple at Karur By-pass road, Tiruchirappalli.

4. According to the petitioner, the TASMAC shop and bar which were in existence adjacent to the Pasupatheeswarar Temple at Karur Bye-Pass Road, Tiruchirappalli, were all along a cause of great nuisance to the residents. According to him, the customers of TASMAC shop used to squat on the road and in front of the road under the influence of the alcohol and abuse women worshippers who visited the adjacent Pasupatheeswarar Temple. It is also stated that the customers of TASMAC Shop created nuisance by attending to nature's call in an inebriated state on the road and in front of the shop causing nuisance.

5. It is alleged that the residents had all along been making representations for closure of the shop. It is alleged that many of the customers parked their cars in adjacent vacant plots and virtually converted their cars into mini bars, consuming alcohol in the cars, after which, there would be scuffles and fights causing serious law and order problems.

<https://hcservices.ecourts.gov.in/hcservices/>

6. According to the petitioner, there is an educational institution in the name of "NR IAS Academy" at a distance of 200



kilo meters and the academy has residential hostel within its premises and about 2000 students are studying in the said academy. It is also stated that the TASMAC shop is located in between an Indian Oil Petroleum Bunk and Pasupatheeswarar Temple. The petitioner apprehends risk of fire in view of inflammatory nature of alcohol.

7. According to the petitioner, after the judgment and order dated 15.12.2016 in the **State of Tamil Nadu Vs. K.Balu**, reported in **(2017) 2 SCC 281**, TASMAC shop was shut down in March 2017. However, the shop is once again going to be reopened.

8. According to the third respondent, in view of the order of the Supreme Court dated 11.07.2017 in **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another, (Special Leave Petition (Civil) No.10243 of 2017)**, there is no bar to the setting up of the TASMAC shop in question.

9. The District Collector, Tiruchirappalli, has submitted a Report, wherein, it is stated that the temple in question is situated on the patta land of an individual and it is not a public temple. A tomb/memorial like structure is situated behind the said Pasupatheeswarar Temple.

10. Rule 8 of the Tamil Nadu Liquor Retail Vending (In shops and Bars) Rules, 2003, hereinafter referred to as 'the Rules', is set out herein below for convenience:

"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."

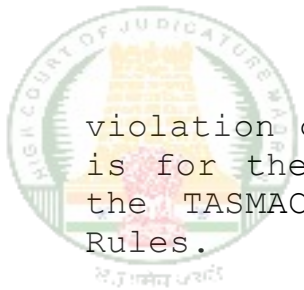
11. Under Rule 8 of the Rules, no shop is to be established in Municipal Corporations and Municipalities within a distance of 50 mtrs and in other areas 100 meters from any place of worship or educational institutions. The first proviso also clarifies that the distance restriction is not to apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities. The third proviso provides that if any place of worship or any educational institution comes into existence subsequent to the establishment of the shop, the bar imposed by the Rule would not apply.

12. From the material on record, it appears that the Tasmac Shop in question was initially set up in the year 2007 and continued till March 2017, when it was closed down pursuant to the judgment and order dated 16.12.2016 of the Supreme Court referred to herein above. The Supreme Court, *inter alia*, directed removal of all liquor shops located within 500 meters of all National Highways and State Highways.

13. The argument of the learned counsel appearing on behalf of the third respondent that there was no violation of Rule 8 in setting up the TASMAC shop is perhaps correct. It is stated that the temple is in patta land and it is not a public temple, but, a place of family worship with tomb/memorial behind it.

14. In our view, educational institution in Rule 8 contemplates recognised educational institutions such as Schools, Colleges, Universities, including recognised technical institution like Medical Colleges, Engineering Colleges, etc., However, we have a serious doubt as to whether coaching centres or unrecognised institutions would come within the meaning of 'educational institutions' under Rule 8 of the Rules. Furthermore, as observed above, the third proviso clearly excludes institutions which came into existence after establishment of the TASMAC Shop. In this case, there is no whisper as to when NR IAS Academy was established. The fact that there was no challenge to the establishment so far on the ground of its location near an educational institution suggests that there was no impediment to setting up of the TASMAC shop at the location in question at the material point of time when the TASMAC shop was set up, that is, in 2007. It may be presumed that NR IAS Academy was either established after the TASMAC was opened in the year 2007 or it is not an institution within the meaning of 'educational institution' in Rule 8 of the Rules.

<https://hcservices.courts.gov.in/hcservices/> 15. It is well settled that the onus lies on the person who alleges violation of any provision of law, to substantiate his allegation. If the petitioner alleges that there has been



violation of Rule 8 of the Rules in setting up the TAMMAC Shop, it is for the petitioner to discharge the onus of establishing that the TASMAC shop was set up in contravention of Rule 8 of the Rules.

16. 'Public Interest Litigation' is a new class of litigation which dilutes the concept of *locus standi*. In earlier times, Courts entertained Litigations only if a person aggrieved came to the Court. Today, when the attention of the Supreme Court or the High Courts is drawn to any patent illegality, which affects the public in general or any particular group and/or groups of people, the Courts intervene irrespective of the *locus standi* of the petitioner to initiate the proceedings. However 'Public Interest Litigation' does not empower the Court to take over the functions of the Executive. The Court has to adjudicate and decide if there is any patent illegality in any action or inaction on the part of the respondents-authorities. If such action or inaction contravenes the human rights and/or constitutional rights and/or legal rights of any class of persons, particularly, persons who may not be able to approach the Courts, then the Courts step in. However, interference is restricted to the existence of an illegality in any action or inaction.

17. We may personally be of the view that a liquor shop should not be set up anywhere near any place of worship or any residential area or any institution recognised or not, but, that is inconsequential. Some of us may even be in favour of imposition of total prohibition.

18. Even though there may not have been any contravention of Rule 8, the location of the shop in question was apparently within the prohibited distance from a Highway as laid down in the **State of Tamil Nadu Vs. K.Balu (supra)** i.e. within 500 meters.

19. When the matter was taken up for hearing, we requested the learned counsel appearing on behalf of the respondents 1 and 2 to obtain instructions as to whether the bye-pass in question was a National Highway or a State Highway. We are informed that it is a State Highway.

20. Learned counsel appearing on behalf of the respondents-authorities as also the learned counsel appearing on behalf of the third respondent submits that the initial judgment and order of the Supreme Court in the **State of Tamil Nadu vs. Balu (supra)** has been modified and now clarified by the order of the Supreme Court in **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another (supra)**. According to the third respondent, municipal areas have been exempted from the restrictions on the ground of licence for the sale of liquor along National and State Highways.



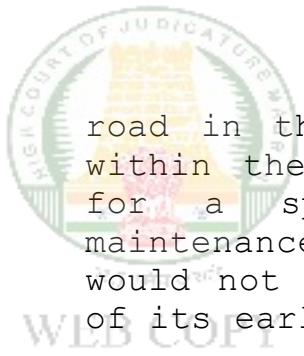
21. In **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another (supra)**, what was in issue was the action of the Union Territory of Chandigarh in denotifying certain roads which were earlier categorised as State Highways. The Supreme Court found that those roads categorised as V1, V2 and V3 are essentially roads within the city. They had been categorised as Highways by an administrative decision of 21.10.2005 primarily with a view to ensure their maintenance and development by availing of funds available from the Central Road Fund.

22. The Supreme Court further observed that alteration in the nomenclature of certain roads, by the subsequent notification dated 16 March 2017, had left unaffected National Highway No.21 which passes through the city and Madhya Marg which connects the States of Haryana and Punjab. In the afore-said factual matrix, where roads categorised as V1, V2 and V3, which were essentially roads within the city which connected different sectors, but categorised as Highways for administrative convenience and adjustment of funds, were de-notified and de-classified.

23. The Supreme Court further observed that the judgment and order dated 15.12.2016 prohibited the grant of licences for the sale of liquor along and in proximity of the National and State Highways, including those falling within the limits of municipal corporations, cities, towns or local authorities and the directions (i) and (ii) contained in the order of the Supreme Court dated 15.12.2016 did not prevent the administration from reclassifying inter-sectoral roads within the city from State Highways to major district roads. The exercise carried out by Chandigarh Administration does not breach the directions issued by the Supreme Court.

24. Elaborating on this aspect, the Supreme Court said that the purpose of the directions contained in the order dated 15.12.2016 was to stop the sale of liquor along and in proximity of the National and State Highways, which provide connectivity between cities, towns and villages, as properly understood. The Order does not prohibit licensed establishments within municipal areas. This clarification issued by the Supreme Court would govern other Municipal areas as well.

25. In our view, the judgment of the Supreme Court in **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another (supra)**, does not permit and/or allow liquor shops along or in proximity of National and State Highways passing through the limits of Municipal corporations, cities, towns or local authorities. What was in issue before the Supreme Court was the denotification of a road from a State Highway to a District



road in the facts of the case where the roads were essentially within the city connecting sectors but categorised as a Highway for a specific purpose, i.e., utilisation of funds for maintenance. The Supreme Court was of the view that such roads would not attract the bar of setting up of liquor shops in terms of its earlier order and judgment dated 15.12.2016.

26. If a Highway were to run from one city to another passing through many other towns and cities on the way, the particular Highway running through cities and towns would not, in our view, be free from the bar of setting up liquor shops. The Supreme Court in paragraph No.6 made it clear that the judgment dated 15.12.2016 prohibited the grant of licence of sale of liquor along and in proximity of the National and State Highways, including those falling within the limits of Municipal Corporations, Cities/Towns or local authorities. The judgment and order dated 11.07.2017 does not say that National and the State Highways that run through the limits of municipal Corporations/Cities/Towns or local authorities would be exempted from the restrictions relating to liquor shops imposed in the judgment of the Supreme court in **State of Tamil Nadu Vs. K.Balu (supra)**. The Karur bye-pass road which connects Coimbatore, Karur and Trichy is, in our view, a Highway as properly understood which provides connectivity between cities, towns and villages.

27. Learned counsel appearing for the third respondent submits that there is no direct access from the Highway. However, learned counsel is unable to explain how the shop is accessed, if it has no access from the Highway. Moreover, if it had not been hit by the restraint in the order dated 15.12.2016, the shop would not have been closed down.

28. In any case, a shop is not to be (i) visible from a National or State Highway (ii) directly accessible from a National or State Highway (iii) situated within the distance of 500 meters of the outer edge of the National or State Highway or of a service lane along the Highways. In our view, the TASMACH Shop in question is hit by the judgment and order dated 15.12.2016 in **State of Tamil Nadu Vs. K.Balu** as well as the judgment and order dated 11.07.2017 in **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another (supra)**.

29. The writ petition is thus allowed. We also allow the impleading petitions. There will be an order restraining the respondents from opening and/or keeping open the TASMACH Shop and Bar at 7/2, Karur Bye-pass, Trichy-620 002. Consequently, the connected miscellaneous petition in W.M.P.No.13524 of 2017 is closed. No costs.

<https://hcservices.ecourts.gov.in/hcservices/>

30. We may, however, take judicial notice of the submission



that had been made before one of the Division Benches in the Principal Seat by the learned Advocate General that an application has been filed by the Government of Tamil Nadu in the Supreme Court for clarification of the judgment and order in **Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh and another (supra)** and the matter is going to be mentioned for early hearing. Needless to mention, our order allowing the writ petition and directing closure of the TASMACH Shop at 7/2, Karur Bye-pass Road, Trichy, would abide by the order of the Supreme Court.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Collector,
District Collectorate Complex,
Tiruchirappalli District.
- 2.The Assistant Commissioner (Excise),
District Collectorate Complex,
Tiruchirappalli District.
- 3.The District Manager,
TASMACH, Thuvakudi,
Tiruchirappalli District.

+ 1 cc TO M/S.Maria Roseline , Advocate in SR No. 85955
+ 1 cc TO Mr.V.Meenakshisundaram , Advocate in SR No. 86056
+ 1 cc TO Mr.B.Jameelarasu , Advocate in SR No. 86038
+ 1 cc TO The Special Government Pleader in SR No. 86286

ssm/jikr
AE/MR KKR/SAR1/21.11.2017/8P/8C

ORDER MADE IN
W.P(MD)No.16956 of 2017
08.11.2017