



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2017

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THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P. (MD) No.11410 of 2016

and

WMP (MD) No.1082 of 2017

E.Navaneethakrishnan

... Petitioner

-vs-

1. The Commissioner of Police,
Alagarkoil Road, Pudur,
Madurai-7.
2. The Inspector of Police (L&O),
B-1, Vilakkuthoon Police Station,
Madurai-1.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus, directing the respondents to permit the petitioner to carry on his Rajeswari Hotel Business, situated at 61, 62, Yanaikkal, Madurai Town, during late night hours.

For Petitioner : Mr.PT.S.Narendra Vasan

For Respondents : Mr.T.S.Mohammed Mohideen,
Addl. Govt. Pleader

O R D E R

This writ petition has been filed for a direction to the respondents to permit the petitioner to carry on his Rajeswari Hotel Business, situated at 61, 62, Yanaikkal, Madurai Town during late night hours.

2. The petitioner is running an Evening Mutton Stall in the name of Rajeswari Hotel in Yanaikkal area, Madurai. It is his grievance that Police are asking him to shut down the shop between 10pm and 4am. The Police have filed a counter, wherein it has been stated that night offenders are on prowl between 12 midnight and



4am and if the restaurant of the petitioner is kept open, Police will find it very difficult to provide protection to the petitioner.

3. Learned Additional Government Pleader submitted a list showing the cases that have been registered between 07.04.2016 and 17.06.2016 for the occurrence that had taken place between 12 midnight and 4am, which is indeed very alarming. In Paragraph No.15 of the counter affidavit, the Police have stated as follows:

"15. I humbly submit that, since the yanaikal area is very crowded at late hours by the lorry drivers and load men, it is practically impossible to allow or permit the petitioner to run his hotel business in the road side corner area, where actually all heavy vehicle has to take their turn. If the hotel is allowed to run in midnight till morning, the entire vehicles which are crossing the yanaikal road will be stopped in total and huge traffic jam will occur."

4. According to the Police, the place in which the petitioner is having restaurant is a crowded area and the petitioner is placing his Thawa and other cooking gadgets on the platform abutting his restaurant, which is causing disturbance to pedestrians and vehicular movement. Of course, Police are perfectly entitled to prevent the petitioner from keeping his Thawa and stove by encroaching into the street.

5. The petitioner has filed an undertaking affidavit, wherein it is stated as follows:

"2) It is submitted that the petitioner herein is running a Evening Mutton Stall in the name of Rajeswari Hotel for the past several years in a busy locality namely Yanaikkal at Madurai. The petitioner has been running the hotel for the past several years and there is no complaint against the petitioner till date. The petitioner is running the hotel with proper license issued by the Madurai Corporation. The petitioner has been paying the license fees periodically along with the restaurant fees also. Further, the petitioner had set up the kitchen and other food preparation in the 1st floor and the petitioner never installed or kept temporarily any kitchen materials like oven extra beyond the petitioner's premises i.e., in the platform used by the public. Further, the petitioner also undertakes that he will not use the public pathway namely the platform for preparing any food items by keeping the kitchen materials. As directed by this Hon'ble Court, the petitioner herein is filing this undertaking affidavit and further states that the petitioner will strictly follow the same."



6. From the above, it is seen that the petitioner is running the restaurant after obtaining license from Madurai Corporation and therefore, it cannot be said that he is unauthorizedly running the same. The Police cannot be heard to say that they cannot give protection to a common man, when he is in pursuit of his lawful business, as that would amount to violation of his fundamental right guaranteed by Article 19(1)(g) of the Constitution of India.

7. Hence, the respondent police are directed not to insist upon the petitioner to close down his restaurant between 12midnight and 4am. However, if the petitioner makes any encroachment in the public street, Police are entitled to take suitable action against the petitioner and remove the encroachment.

8. With the above direction, this petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Commissioner of Police,
Alagarkoil Road, Pudur,
Madurai-7.
2. The Inspector of Police (L&O),
B-1, Vilakkuthoon Police Station,
Madurai-1.

+1cc to Mr.PT.S.Narendra Vasan, Advocate Sr.No.16426

+1cc to Spl.Government Pleader Sr.No.16629

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VB/JC/SAR2/11.04.2017/3P/5C

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