

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/8/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5184 of 2018

Venkatesan

...Petitioner

Vs

1. The District Collector
Tiruvallur.
2. The District Collector
Chennai.
3. The Managing Director
Tamil Nadu State Marketing Corporation
Thalamuthu Natarajan Maligai
Egmore
Chennai 600 008.
4. The Principal General Manager
(Retails & Lending)
Tamil Nadu State Marketing Corporation
Thalamuthu Natarajan Maligai
Egmore
Chennai 600 008.

...Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus to direct the respondents forthwith not to open the proposed TSMAC shop No.8816 or being any other number in No.3 Secretariat Officers Colony, Masillamani Nagar, Madhavaram, Chennai 600 060 by considering and passing orders on the representation of the petitioner, dated 2/2/2018 and 15/2/2018.

For petitioner ... Mr.A.Raja Mohamed
for Mr.A.K.Rajaraman

For Respondents... Mr.M.Sricharan Rangarajan
Additional Government Pleader
for R.R.1 and 2.

Mr.P.Arumugarajan
for R.R.3 and 4.

O R D E R

(Order of the Court was made by Subramonium Prasad, J)

Instant writ petition is for a writ of mandamus, directing the respondents not to open the proposed Tasmac shop No.8816 or being any other number, in No.3 Secretariat Officers Colony, Masillamani Nagar, Madhavaram, Chennai 600 060.

2. Averments made in the writ petition are that the Managing Director, TASMAC, Chennai, third respondent herein is proposing to open a liquor shop, at No.3 Secretariat Officers Colony, Masillamani Nagar, Madhavaram, Chennai 600 060. Petitioner has contended that at Manjampakkam, there is a truck terminal, for lorry and truck drivers, for their convenience for taking rest, in the night, and that this liquor shop is being opened, only for the purpose of the truck drivers and cleaners, which will be detrimental to the residents of the locality.

3. Second submission of the petitioner is that there is a welfare Hostel for Backward students, located at 150 feet away, from the proposed shop, and opening of the liquor shop, would entice students to go the liquor shop to purchase liquor.

4. District Manager, Tamil Nadu State Marketing Corporation, Thiruvallur (East) District has filed a reply. For the sake of brevity, paragraph Nos.4 to 7 of the reply are reproduced hereunder:-

"4. I submit that No.3, Secretariat Officers Colony, Masilamani Nagar, Madhavaram, Chennai 600 060 was identified and the same was inspected and verified by the above said team of officers and found that there were no violations. It is pertinent to point out here that the shop is located within the limits of the Chennai Corporation and the area is a commercial zone.

5. I submit that all the relevant facts including the guidelines stipulated in Rule 8 (1) Tamil Nadu Liquor Retail Vending (in shops or Bar), 2003 and submitted a proposal to the District Collector. As per the above Rules, the shop shall not be located within 50 meters from an educational institution and place of worship in respect of corporation and Municipalities and within 100 meters in respect of other places. There is no school or place of worship within the 50 meter radius. The student hostel mentioned in the petition was taken note of and the shortest distance from the shop to the hostel was measured and found 147 metres and this route is not used by the students to commute to the hostel. The District Collector after careful

perusal of all the relevant records and facts placed before him, came to an independent conclusion and approved the place as suitable for a proposed new TASMAC shop.

6. I submit that State Highways SH111 is situated 450 meters away from the said place and the District Collector, considering the fact that the proposed place is within the limits of the Corporation limits had dealt the nature of the highway in detail and passed an order placing reliance on G.O.Ms.No.32, Prohibition and Excise (VI) Department, dated 21/5/2018 and the order of the Hon'ble Apex Court, dated 23/2/2018.

7. I submit that the above proposed location is not in violation to any of the norms laid down by the Hon'ble Supreme Court of India or any rules stipulated in Rule 8 (1) of Tamil Nadu Vending (in shops and Bars) Rules, 2003, framed under Tamil Nadu Prohibition Act, 1937."

5. Heard the learned counsel for the parties.

6. Permission to open a liquor shop by the competent authority, can be granted if only the conditions laid down in Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 are followed. Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, reads thus:-

"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."

7. Contention of the petitioner that the proposed wine shop is located behind the welfare hostel for backward students and situated at a distance less than 150 feet from the compound wall of the building and therefore, is violative of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, cannot be accepted, for the reason that petitioner has calculated the distance of 150 feet from the back side compound wall of the hostel. Records do not disclose that there is any access from the back side of the compound wall, to the TASMAC shop. Further, fact that there is no access from the rear side compound wall has not been disputed by the learned counsel for the petitioner. Distance has to be calculated only from the gate of the hostel. Distance is more than 50 meters, as stipulated in the Rules.

8. Whether a hostel is the educational institution is also debatable. However, we are not entering into the said aspect. But the fact is that distance between the gate of the hostel and TASMAC shop is more than 50 meters. Contention that the liquor shop is near a truck terminal and that the same has been opened only for the purpose of truck drivers and therefore, detrimental to the residents, cannot be accepted. Motive cannot be attributed to the State Government, that the shop has been opened only for the benefit of truck drivers. Judicial review under Article 226 of the Constitution of India postulates that whether Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, has been violated or not.

9. Perusal of the records submitted by Mr.M.Sricharan Rangarajan, Additional Government Pleader, would show that the liquor shop is at a distance, more than the prohibited distance, mentioned in the Rules.

10. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

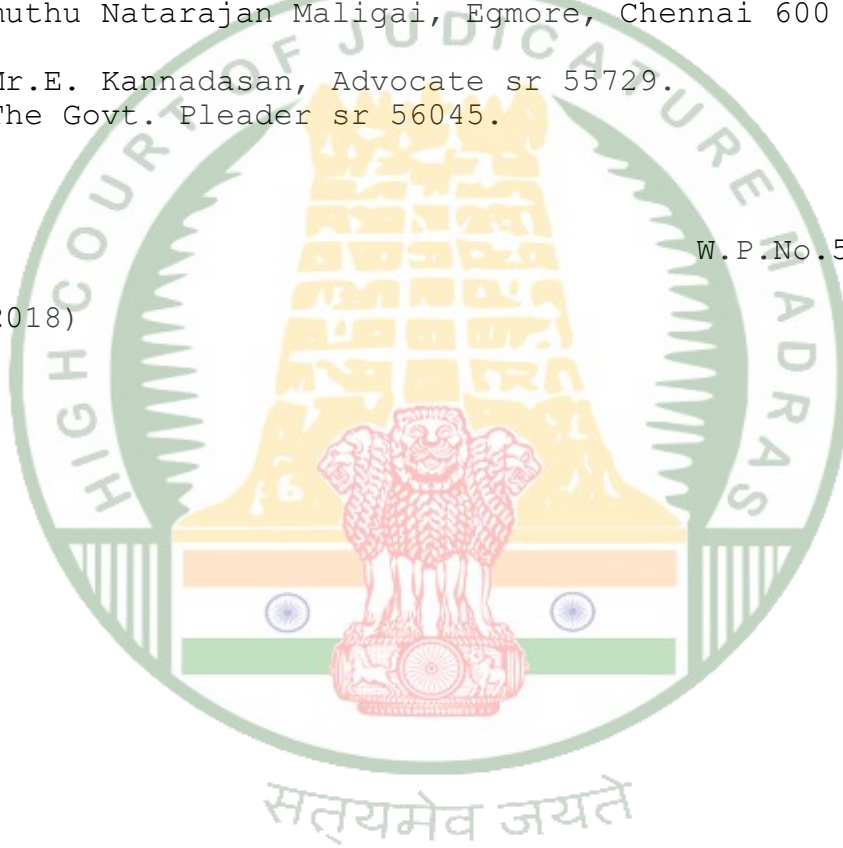
Sub-Assistant Registrar

To

1. The District Collector, Tiruvallur.
 2. The District Collector , Chennai.
 3. The Managing Director
Tamil Nadu State Marketing Corporation
Thalamuthu Natarajan Maligai, Egmore , Chennai 600 008.
 4. The Principal General Manager(Retails & Lending)
Tamil Nadu State Marketing Corporation
Thalamuthu Natarajan Maligai, Egmore, Chennai 600 008.
- +1 CC to Mr.E. Kannadasan, Advocate sr 55729.
+1 CC to The Govt. Pleader sr 56045.

W.P.No.5184 of 2018

SP(19/09/2018)



WEB COPY