

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM:

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

W.P.No.20312 of 2018
and
W.M.P.No.23861 of 2018

1.S.Israel Durai
2.M.Chandrasekar Petitioners

vs.

1.The District Collector,
Office of the District Collector,
Thiruvallur District.

2.Managing Director,
TASMAC Ltd.,
Thalamuthu Natarajan Maaligai
4th Floor, II Block
Egmore, Chennai 600 008

3.Senior Regional Manager,
TASMAC Ltd.,
Devaneyya Pavaneeyar Building
Anna Salai,
Chennai 600 002.

4.The District Manager, सत्यमेव जयते
TASMAC Ltd.,
No.1 Bangalore Highway,
Chembarampakkam,
Thiruvallur East,
Thirumazhisai 600 123.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents to close down the Shop No.8933 in Door No.78 Old Bank of Baroda Street, Secretariat Colony Ambattur, Chennai 53 based on the representations on various dates.

For Petitioners : M/S.Usha Ramman
: Mr.R.Venkatesulu

For R1 : Mr.S.Kamalesh Kannan
Government Advocate

For R2 to R4 : Mr.P.Arumugarajan
Standing Counsel for TASMAL

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

The instant writ petition is filed for a Writ of Mandamus, directing the respondents to close down the Shop No.8933 in Door No.78 Old Bank of Baroda Street, Secretariat Colony Ambattur, Chennai-53, based on the petitioners' representations, on various dates.

2. Writ petitioners are Advocates having their office opposite to the TASMAL shop in question and they have filed this writ petition in public interest to expose the inconvenience caused to the residents of the Secretariat Colony by the TASMAL shop and to close the proposed TASMAL shop.

3. According to the petitioners, there are hospitals, near the TASMAL shop. It is also contended that a computer centre called as Appollo Educational Institution is also there in the same building. It is further stated that TASMAL shop No.8935 was functioning in the same building viz., No.78, Old Bank of Baroda Street, Ambattur, Chennai and it was closed and therefore the liquor shop should not be permitted to be opened at shop No.8933 in the very same address.

4. It is further stated that the present shop namely No.8933 which was also in the same place i.e .No.78, Old Bank of Baroda Street, Secretariat Colony, Ambattur, Chennai, was also closed but the respondents are now trying to open this shop.

5. Material on record discloses that the representations 09.04.2018 and 27.06.2018 were given by the Residents of Welfare Association, Ambattur, dated to the Managing Director, TASMAL Limited, Chennai, opposing the opening of proposed TASMAL shop.

6. The material portion of the representation dated 09.04.2018 highlighting the grievances of the welfare

association reads as under:-

"On the same street, there are apartments and educational institutions. Near to this on the school road, there is Ramasamy Mudaliar School and the Flats. The people who are consuming alcohol in this bar and going through that way, are criticizing the aged people, pregnant ladies, coming to the hospitals, school students, and the public in a manner of harassing them, and also they have been uttering obscene words and also passing urine on the street, and due to their toxic state, they have been falling down in the residential and hospital area are occurring daily. The complaints were lodged in this connection, on several occasions.

In this circumstance, in March, 2017, this TASMAC shop was closed. Thereafter this shop was shifted to door No.82/9, Annasalai, Ambattur, Vijalakshmipuram in Ambattur area.

In this circumstance, we understood that the shop in tried to be opened again in the same place. In the place where in this shop functioned earlier, in one portion Apollo Computer Education Centre was started and several students are learning. We object for the opening of the shop at a distance of about 150 feet from M.T.H. Road once again.

Therefore, public, hospitals, residential areas, educational institution and the school students and that of the public, we would humbly request you to stop the opening of TASMAC shop in this place."

7. Similarly, the relevant portion of representation dated 27.06.2018 of the Welfare Association of Ambattur, reads as under:-

"On the same street, there are apartments and educational institutions. Near to this on the school road, there is Ramasamy Mudaliar School and the Flats. The people who are consuming alcohol in this bar and going through that way, are criticizing the aged people, pregnant ladies, coming to the hospitals, school students, and the public in a manner of harassing them, and also they have been uttering obscene words and also passing urine on the street, and due to their toxic state, they have been falling down in the residential and hospital area are occurring daily. The complaints were lodged in this connection, on several occasions.

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Therefore, public, hospitals, residential areas, educational institution and the school students and that of the public, we would humbly request you to stop the opening of TASMAC shop in this place."

8. Notice was issued to the respondents and they were directed to produce the files. Counter affidavit has also been filed by the first respondent herein.

9. Mr.S.Kamalesh Kannan, learned Government Advocate, contended that TASMAC shop No.8935 was closed on 01.04.2017, in view of the order dated 15.12.2016 and 31.03.2017 passed by the Hon'ble Supreme Court of India, in Civil Appeal Nos.12164 to 12166 of 2018. Earlier the Supreme Court directed that no TASMAC shop should be opened within 500 meters of any State High way. The said order was modified on 23.05.2018 and the distance of 500 meters was reduced to 220 meters for Municipalities, with population less than 20000. By another order dated 11.07.2017, earlier orders were further modified to reads as under:-

"The purpose of the directions contained in the order dated 15 December, 2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, towns and villages. The order does not prohibit licensed establishments within municipal area. This clarification shall govern order municipal areas as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs, before the Court."

10. It is also stated that pursuant to the order of the Hon'ble Supreme Court, the State Government have passed the Government Order viz., G.O.(Ms)No.32 Home, Prohibition and Excise (VI) Department, dated 21.05.2018, the same extracted hereunder:-

Order:

The Hon'ble Supreme Court of India in its order dated 15.12.2016 in T.P.(C) Nos. 739-741 of 2016 in SLP (Civil) Nos. 12164-12173 of 2016 issued the following directions:-

(i) All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along National and State highways.

(ii) The prohibition contained in Para 29.1 above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1-4-2017;

(iv) All signage and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on National and State highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or State highway; (ii) directly accessible from a national or State highway; and (iii) situated within a distance of 500 m of the outer edge of the national or State highway or of a service lane along the highway.

(vi) All States and Union Territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of Police shall within one month chalk out a plan for enforcement in consultation with the State Revenue and Home Departments. Responsibility shall be assigned, inter alia, to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution.

2. In a Modification Petition filed by the State of Tamil Nadu, the Hon'ble Supreme Court of India, by order dated 31.03.2017 in IA Nos.4-42 in Civil Appeal Nos. 12164-12166 of 2016 has modified the direction (v) above as follows:

"In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres".

3. In this connection, in his letter ninth read above, the Commissioner of Prohibition and Excise (i/c) has stated that, pursuant to the directions of the Hon'ble Supreme Court, all District Collectors were instructed to close the FL1, FL2, FL3, FL3A, FL3AA and FL11 licenses located within a distance of 500/220 metres (as the case may be) from the outer edge of National / State Highways / service lane along the highways with effect from 01.04.2017. The compliance reports have also been received in this regard.

.....
5. In view of the order of the Hon'ble Supreme Court dated 11.07.2017 in SLP (Civil) No.10243/2017 and based on the legal opinion received from the Advocate General of Tamil Nadu, appropriate instructions were issued by the Commissioner of Prohibition and Excise to the District Collectors vide letter No.P&E 2(4)/12740/2016, dated 01.09.2017 to permit all FL1 to FL11 licensed establishments which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect.

.....
17. The Commissioner of Prohibition and Excise has further stated that FL1 and FL11 licenses are issued for retail vending of liquor in shops. He has requested the Government to issue instructions to the District Collectors that wherever the shops are located / proposed to be located within the municipal areas (i.e., Municipal Corporations, Municipalities and Town Panchayats) and areas mentioned in Para 15 above, the District Collectors can grant approval for location of the retail vending liquor shops on a case by case basis after causing filed inspection, if they are in accordance with Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. They must also ensure that these shops (which are in the highways or within such distance from the highways as laid down by the Hon'ble Supreme Court in its orders dated 15.12.2016 and 31.03.2017) should fall in any one of the following categories:-

a) Where By-passes for Municipal area (i.e., Municipal Corporations, Municipalities and Town Panchayats) and areas mentioned in Para 15 above have been constructed, long distance travelers take the by-pass road while commuting from one city/town/village to another city/town/village. Even though by-passes have been constructed, the stretches of Highways passing within such areas continue to be classified as Highways for the purpose of maintenance from the maintenance allotment of Government funds. These stretches of roads essentially provide connectivity within the local self-governing body. There are a number of traffic regulations and speed regulations within these areas. In cities, heavy vehicles like trucks are not allowed to enter the city limits during the day time. Hence, wherever by-passes have been constructed for a municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above, the roads classified as Highways and passing within such local self-governing body can be considered for location of shops.

b) There are roads classified as Highways which originate and terminate within the limits of a local self-governing body or a Statutory Development Authority. These are short stretches of road which essentially provide connectivity within the local self-governing body or the Statutory Development Authority. These stretches of road are subject to traffic regulations and speed regulations like any other city/town road. They do not connect one city/town with another city/town. Hence, in a municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above, wherever the highways road originates and terminates within the local self-governing body or the statutory development authority, applications for new/renewal of licenses can be considered on these roads.

c) As per G.O.Ms.No.451, Transport Department, dated 12.04.1984, whenever a by-pass is formed or if there is an re-alignment of National Highways, the old National Highways stretches which are abandoned are handed over to the State Highways Department for maintenance and re-classified as State Highways (Urban stretches). These are essentially roads which have been abandoned by the National Highways after formation of by-pass/re-alignment. These roads are of very

short length, most of them are below 20 kilometers. Long distance travelers and heavy vehicles do not use these roads for travel. These roads provide connectivity within a city/town. These roads have been classified as State Highways (Urban stretches) for the purpose of maintenance from the maintenance allotment of State funds. Hence, applications for location of a shop in a State Highways (Urban Stretches) road in a municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above can be considered for locations of shops.

d) Areas within a Municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above, which are classified as 'Commercial' in an approved Development plan can be considered for grant of licenses, since these are commercial centres and market places essentially catering to the needs of the residents of the nearby areas of the concerned local self-governing body.

18. The Commissioner of Prohibition and Excise has further suggested that, in the case of FL1 and FL11 (retail vending shops) licensees who are not located in a municipal area or an area mentioned in Para 15 above, the distance criteria on/from the Highways, laid down by the Hon'ble Supreme Court in its orders dated 15.12.2016 and 31.03.2017 needs to be followed."

11. Having regard to the subsequent orders and G.O.(Ms) No.32 Home, Prohibition and Excise (VI) Department, dated 21.05.2018, issued by the State Government, the proposed TASMAC shop No.8933 has to be re-opened at D.No.78, Old-Bank of Baroda Street, Secretariat Colony, Ambattur, Chennai.

12. Heard both sides and perused all the materials available on record.

13. The area in which is proposed shop to be opened is in a commercial area.

14. The learned counsel for the petitioners would rely on the Judgment of the Division Bench of this Court, in the Tamil Nadu State Marketing Corporation Limited Vs. R.M.Shah and others, reported in 2011-1-LW(Crl)346, wherein it has been held that if there are objections by the residents, for opening of TASMAC shop in a residential area, then such objections raised by the respondents have to be considered. The Division Bench of

this Court, rejected the contention of the State Government that no direction would be issued to shift the liquor shop, if the shop is beyond the proposed distance in Rule 8(3) of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003. Paragraph No.19 of the abovesaid Judgment held as follows:-

"19. There is no static measure of nuisance which can be applied to all situations alike. It is for the court to decide on the basis of materials as to whether the extent of nuisance was sufficient to direct the closure of liquor shop located in a particular area."

15. Perusal of the material on record, does not disclose any specific complaints of nuisance, raised before the Authorities or before the Police. Bald averments regarding nuisance cannot be taken into account and Mandamus cannot be issued to change the location of the proposed TASMAC shop, especially when the distance provided in Rule 8(3) of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003, has not been violated.

16. The petitioner would contend that an Educational Institution namely Apollo Educational Institution is operating very close to TASMAC shop and it is within the prohibited distance, as mentioned in Rules 8 of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003.

17. The files produced by the respondents would suggest that the Appollo Computer Education Centre cannot not be treated as an Educational Institution. Rule 2(j) of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003, which defines Educational Institutions, reads as under:-

"2(j) educational institution" means a place where there is regular conduct of classes and includes Schools, Polytechnics, Industrial Training Institutes and Colleges but does not include tutorial institutes; There is no material as to the nature of educational centre, the age group of students coming to the centre or number of students studying in the centre. In the absence of any material regarding the nature of the educational centre and it cannot be held that the Apollo Computer Centre, would come within the definition of educational Institution, which is defined Rule 2(j) of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003.

18. In view of G.O.(Ms)No.32 Home, Prohibition and Excise (VI) Department, dated 21.05.2018, and more particularly, when perusal of the files produced by the respondents, shows no specific complaint has been placed on record, about the nuisance caused, due to the location of liquor shop, and in complete absence of materials, regarding the nature to Appollo Computer

Centre. Writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
Office of the District Collector,
Thiruvallur District.

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Thirumazhisai 600 123.

+1cc to Mr.P.Arumugarajan, Advocate SR.No.60261

+1cc to Government Pleader SR.No.60727

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W.P.No.20312 of 2018
and
W.M.P.No.23861 of 2018

GMV (26/09/2018)