

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.20593 of 2009
and
M.P.No.1 of 2009

Saritha K.K ... Petitioner

Vs

1.The Commissioner of Police,
Egmore,
Chennai - 600 008.

2.The Inspector of Police,
Koyambedu Police Station,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents or their men, agents not to interfere with the peaceful conduct of business in "Vinaya Ayur Care" at No.2/100, Brindavan Nagar, Koyambedu, Chennai.

For Petitioner : Mr.K.Devaprasad

For Respondents : Mr.J.Ramesh,
Additional Government Pleader

ORDER

The prayer made in this writ petition is to direct the respondents not to interfere with the peaceful conduct of the business by the petitioner.

2. According to the petitioner, she is conducting Ayurvedic Centre, including Massage Therapy under the name and style of "Vinaya Ayur Care" in accordance with law. While so, the Police officials are frequently visiting her business place under the guise of inspection and interfering with her business activities, thereby, causing hardship to her customers. Hence,

the petitioner made a representation dated 28.09.2009 to the first respondent, a copy of which was sent to the second respondent and the said representation is pending, without any consideration. Therefore, she is before this Court.

3. The learned counsel for the petitioner submitted that this Court, in similar circumstances, following the ratio laid down by this Court in Masti Health and Beauty Private limited & Others V. The Commissioner of Police, Chennai City [2015(1) MLJ 308], by order dated 14.03.2016, disposed of the writ petition in W.P.No.9380 of 2016, directing the respondents therein to comply with the directions/conditions imposed in paragraph 67 of the order in Masti Health and Beauty Private limited (supra) and also directing the petitioner not to indulge in any unlawful or illegal activities detrimental to law and order or public order, under the guise of carrying on business activity. For better appreciation, para 67 of the said order is reproduced hereunder:

"67. In the light of the above, all the writ petitions are disposed of to the following effect :

(i) The respondents shall not, as a matter of routine and without any basis, conduct any raids and interfere with the business carried on by the petitioners;

(ii) In specific cases where the police have reasonable grounds to believe that an offence punishable under the Immoral Traffic (Prevention) Act has been or is being committed, it is open to the police to take action, after scrupulously following all the steps indicated in Section 15 of the said Act. The steps to be followed are narrated by me in paragraph 28 above; and

(iii) the respondents may take appropriate steps for bringing in either a new legislation or a subordinate legislation in terms of the provisions of the Chennai City Municipal Corporation Act or the Chennai City Police Act, so that public order, decency and morality, which can form the basis for a regulatory law under Article 19(2) of The Constitution, are taken care of. The Government shall file a report on or before 31.3.2015, before this Court, about the decision taken. No costs. Consequently, all connected pending MPs are closed."

Therefore, the learned counsel sought a similar order in this writ petition as well.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner is running massage centre, without any licence/registration certificate and skilled

therapist. He further submitted that based on the complaint received, the respondent police have conducted enquiry and hence, they have no intention to interfere with the business of the petitioner.

5. Heard both sides and perused the records.

6. In this writ petition, the petitioner has sought appropriate direction to the respondents, alleging that the respondent - police are frequently interfering with the spa/massage business of the petitioner, under the guise of enquiry, whereas, the stand taken by the respondent police is that they are just carrying out their statutory obligation to ensure that no premises is used for any unlawful activity and their intention is not to close down these business entities, but, only to ensure that the petitioner does not carry on any activity, which is prohibited by law, within her four walls.

7. On a perusal of the documents produced before this Court, it is evident that the petitioner has not obtained any licence/registration certificate for running her business, but, has merely addressed a representation to the respondents, requesting that her business activities should not be interfered with, except by due process of law.

8. With regard to the issue involved herein, this Court has passed a detailed order dated 02.11.2018, in W.P.No.19641 of 2017 etc. batch of cases, giving certain directions to the respondent authorities, the operative portion of which, reads as follows:

"8. Hence, this Court, in the interests of justice, directs the respondent- authorities to comply with the following directions, within a period of three months, from the date of receipt of a copy of this order:

(i) The petitioners must appear, along with the required documents, such as, educational certificate, trade certificate, etc. before the respondent - police, having territorial jurisdiction. Such notice for their appearance be issued within a period of three weeks.

(ii) The petitioners shall not advertise anything, which attracts penal action under the Immoral Traffic (Prevention) Act.

(iii) Certificates of the persons involved / employed in the Spas are to be verified by the police / competent authorities.

(iv) Spot verification / inspection of the Spas is to be done by the police authorities, only when concrete material is available.

(v) If the Spas fail to produce licence when demanded or continue to run their activities without licence, action shall be taken for their closure immediately.

(vi) Draft Rules qua running of Spas, be notified/implemented by the authority concerned within a period of three months.

However, it is made clear that the petitioners, under the guise of carrying on their business activities, shall not indulge in any unlawful or illegal activities opposed to law or public order. It is also made clear that those who have not filed writ petitions shall produce the above certificates within a time frame, upon due notice issued by the respondents.

9. All the writ petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed."

9. In such circumstances, this Court is of the view that the ends of justice would be met by directing the respondents to consider and pass appropriate orders on the petitioner's representation dated 28.09.2009 in accordance with law and also in line with the aforesaid order of this Court, within a period of four weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Egmore,
Chennai - 600 008.

2.The Inspector of Police,
Koyambedu Police Station,
Chennai.

+1cc to the Government Pleader Sr.82275

W.P.No.20593 of 2009

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srg 31/01/2019



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