

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.03.2018
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.5917 of 2018

G.Kavitha Thirumugam

.. Petitioner

vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
 - 2.The Commissioner of Prohibition and Excise,
Ezhilagam Building,
Kamaraj Salai,
Chepauk,
Chennai - 600 005.
 - 3.The District Collector,
Thiruvallur.
 - 4.The Managing Director,
Tamil Nadu State Marketing Corporation,
CMDA Tower II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
 - 5.The District Managing Director,
Tamil Nadu State Marketing Corporation,
Kakalur,
Thiruvallur District.
- .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of directing the respondents to consider the representation of the petitioner dated 28.8.2017 and to issue appropriate orders on the same.

For Petitioner : Mr.S.Makesh

For Respondents : Mr.E.Manoharan
Addl. Government Pleader
for respondent Nos.1 & 3

Mr.Arumugarajan
for respondent Nos.2, 4 & 5

ORDER

(Made by Ms.Indira Banerjee, Chief Justice)

This writ petition has been filed seeking a writ of mandamus directing the respondents to consider the representation of the petitioner dated 28.8.2017 and to issue appropriate orders on the same.

2. A copy of the representation dated 28.8.2017 is annexed to the typed set of papers at page 73 filed with the writ petition. The representation has been made requesting the respondent authorities to amend Rule 8(1) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 made under the Tamil Nadu Prohibition Act, 1937 by incorporating restrictions on the issue of license for opening and operation of retail liquor vending shops and bars by TASMAL in residential areas.

3. The writ petition has been filed in public interest. Personally, we may be of the same view as the writ petitioner that liquor shops should not be opened indiscriminately in residential areas and for that matter not at all be opened in residential areas. Many of us may personally be of the view that total prohibition should be imposed.

4. The question is whether we can pass orders as prayed for in this writ petition. In this context, it would perhaps be pertinent to refer to the decision of the Supreme Court in Union of India and another v. Ashok Kumar Aggarwal, reported in (2013) 16 SCC 147 where the Supreme Court held that a representation may be considered by the competent authority only if it is so provided under the statutory provisions and the Court should not pass an order directing any authority to decide the representation.

5. Where, in public interest litigation, attention of the Court is drawn to an illegality and determination of whether there is, in fact, an illegality involves adjudication of disputed questions, the Court directs authorities concerned to consider the representation, cause an inspection and take a decision in accordance with law - for example, in cases of unauthorized construction, unauthorized encroachment etc.

6. This writ petition seems to be a sequel to an earlier writ petition filed by the same writ petitioner being W.P.No.19181 of 2017, which was disposed of by an order dated 28.07.2017. This Court observed that in the absence of any restriction under Rule 8(1), the Court could not direct removal of an existing liquor shop or prevent setting up of a new liquor shop.

7. In the light of our decision, the petitioner has now prayed for amendment of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 and in particular Rule 8(1) thereof.

8. Framing of Rules is essentially a function of the State. There is no provision of law, which provides for objections of citizens or for hearing of citizens for the purpose of framing of Rules.

9. Public interest litigation dilutes the concept of locus standi. Any public spirited citizen can draw the attention of the Court to an illegality or to an infringement of a right. The Court intervenes irrespective of whether the person, who approaches the Court personally has a cause of action or not. However, just because the litigation is filed as public interest litigation, the Court cannot pass an order which it could not have passed even on the application of a person affected.

10. The writ petition cannot be entertained and the same is dismissed. Needless to mention that it is always open to the State authorities to consider representation of the citizens in accordance with law and to redress their genuine grievances. No costs.

Sd/-
Assistant Registrar(CS II)
//True Copy//
Sub Assistant Registrar

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To:

- 1.The Secretary,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
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- 5.The District Managing Director,
Tamil Nadu State Marketing Corporation,
Kakalur, Thiruvallur District.

+1 cc to Mr.Magesh Advocate sr 20579
+1 cc to Mr.P.Arumugarajan Advocate sr 20013
+1 cc to the Govt Pleader sr 20051

W.P.No.5917 of 2018

sr(co)
aa17/04/2018

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