

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/8/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.11158 of 2018

R.Jayanthi

Petitioner

Vs

1. The Managing Director
Tamil Nadu State Marketing Corporation Limited
CMDA Tower - II
IV Floor, Gandhi Irwin Bridge Road
Egmore
Chennai 8.
 2. The Principal Secretary
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George
Chennai 9.
 3. The Additional Director General of Police
Prohibition
Dr. Radhakrishnan Salai
Mylapore
Chennai 4.
 4. The District Collector
Cuddalore District
Cuddalore.
 5. The District Manager
Tamil Nadu State Marketing Corporation Limited
(TASMAC)
Cuddalore District
Cuddalore.
 6. The Manager
Tamil Nadu State Marketing Corporation Limited
(TASMAC)
Shop No.2674 Panayanthur Village
Tittakudi Taluk
Cuddalore District.
- ... 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 to take appropriate action on the petitioner's representation dated 23/4/2018 of the general public at large and conduct an enquiry into the petitioner's representation and take action in accordance with law and thereby to remove the TASMAC Shop No.2674 from the village of Panayanthur Village, Tittakudi Taluk, Cuddalore District, within a time fixed by this Court.

For petitioner ... Mr.G.Ilamurugu

For respondents ... Mr.B.Nedunchezhiyan
for R.R.1, 5 and 6

Mr.S.Kamalesh Kannan
Government Advocate
for R.R.2 to 4.

- - - - -

O R D E R

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

Claiming herself to be a public interest litigant, petitioner has filed the instant public interest litigation, for a direction to the respondents, to take appropriate action, for removing TASMAC shop No.2674, in Panayanthur Village, Tittakudi Taluk, Cuddalore District, based on her representation, dated 23/4/2018.

2. Petitioner is the head of "Magalir Suya Udhavi Kuzhu" of Panayanthur Village, Tittakudi Taluk, Cuddalore District. She states that liquor shop is being opened in her village. In the affidavit filed in support of the writ petition, Selliamman temple is situated within 90 meters; Ayyanar temple is situated within 150 meters; Ayyappan temple is situated within 320 meters; Mariamman temple is situated within 330 meters; Murugan temple is situated within 325 meters, Sivan temple is situated within 500 meters from the liquor shop. Apart from the above, the Government Higher Secondary School is situated within 450 meters, from the liquor shop.

3. It is stated that the said shop is being opened against the will and wish of the people and when people protested, a case has been registered against the general public, in Crime No.349, at Ramanathapuram Police Station, under Sections 147, 148, 294 (b), 427, 353 and 506 (ii) of the Indian Penal Code.

4. It is the contention of the petitioner that a representation, dated 27/11/2017, was given in the Public Grievance Cell of the District Collector, Cuddalore. But no action has been taken. Hence, on 23/4/2018, the petitioner has sent another representation, to the District Collector, Cuddalore. Contending that the said representations have not been considered, petitioner has come forward with the instant writ petition.

5. Manager of the State Marketing Corporation Limited, TASMAL has filed a counter affidavit, contending that there is no temple within 100 meters, from the liquor shop and that there is no school, within the prohibited distance.

6. Typed set of papers has also been filed, which includes a proceeding, recording the Minutes of the Meeting, conducted between the members of the public and the officers. Proceedings of the Meeting, dated 4/4/2018, is reproduced hereunder:-

"Pursuant to the complaints and objections received from public of the Panaiyanthur Village, pertaining to the liquor retail shop No.2674 in Panaiyanthur Village, in Thirrakudi Taluk, the retail shop was closed with effect from 22/4/2018. A meeting for peace to operate the retail shop in the same place was conducted in the office of Vriddhachalam Revenue Divisional Officer (4.4.2018) today at 2.00 p.m. In this meeting Assistant Commissioner (Excise) Cuddalore, District Manager, Tamil Nadu State Commercial Corporation, Cuddalore, Revenue Tahsildar, Thittakudi, Divisional Excise Officer and Sub-Inspector of Police, Ramanatham, other Government Official and the general public participated.

Opinions/remarks expressed by the persons who held the view that the retail shop No.2674 should not be operated in the same place.

1. Within a distance of 150 meters from the place, where the retail shop operates are present many temples, viz., Draupadi Amman Temple, Selliamman Temple, Mariamman Temple, Ayyanar Temple, Sivan Temple. Also human habitations are also present within a distance of 100 meters.

2. The persons who come to this shop for drinking alcohol throw the alcohol bottles near the human habitation

localities. Also, they give nuisance to the residents of these localities.

3. The villagers state that the liquor shop should not be started in the same place. They did not have any objections for operating liquor shop in any other location.

4. The women and the old people residing in the place near the shop feel themselves to be in unprotected places. They are not able to freely move about in those places.

5. They intimated that there were often cases of theft in these places. Hence they reside in this locality with fear.

Persons who held the opposite view, expressed their view as follows:-

1. In the same place, 4 years ago, a liquor shop was operating but there was no incident of theft, or any incident which was likely to create fear in the people's hearts. There was no occasion to point out that any indecent incident ever took place in this locality. No complaint was ever registered in the police station. The shop was operating without any problem in this locality.

2. Only after getting oral approval of those who now show their antagonism, the liquor shop was started in this place.

3. The owner of this locality has assured that, taking into account the views of the objectors, it has been decided to plant fence of thorns around this place. The owner also has assured to take necessary precautionary steps to prevent any disturbance to the public in this locality.

4. They have informed that unlicensed illicit liquor is being sold in this locality, which sometimes result in fatal incidents. It is therefore, necessary to start and operator liquor shops in order to prevent such tragic incidents. Hence this group wanted permission to a liquor shop in this area.

It was submitted on the part of the Assistant Commissioner (Excise) and Sub-Inspector of Police as follows:-

1. In the period of 4 years, when the liquor shop was operating in this area, no complaints allegations were received by the Department.

2. In the light of objections received from a group of public, it has been decided by the Police to patrol this area and to have a watchful eye on this locality.

3. Finally, it has been decided as a matter of policy decision of Government to open and operate a retail TASMALC liquor shop in order to prevent the illicit liquor and also to prevent the loss of unnecessary deaths in this locality. It is therefore, requested that the public should give their unstinted support to run the shop.

4. It has been intimation that the retail liquor shop will be closed one hour before the scheduled time fixed by the Government i.e., before 9 p.m.

In conclusion, after considering views of all groups, it was advised by the Revenue Divisional Officer, that in the event of any harm or injury suffered by the public of Panaiyanthur Village, the retail shop will be relocated within two months. This view was accepted by the owner group. The opposite party did not accept this view. They disbursed and went away from the meeting."

7. Heard the learned counsel for the parties.

8. 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."

9. The Minutes of the meeting would show that the view of the public, the assurance of the owner and the statement of the Assistant Commissioner, Excise and Sub-Inspector of Police have been recorded. The Minutes disclose that the owner of the shop has assured that, adequate steps have been taken to prevent disturbances to the public. The Minutes also show that even in the members of the public, there is a division and one group wants the liquor shop in the locality. The Minutes also shows that there were no serious complaints of disturbances which had been received.

10. The Police have given an assurance that they will have a watchful eye on the locality. The liquor shop would be closed one hour before the scheduled time. What is more important is that the Revenue Divisional Officer has advised that, in the event of any disturbances, the retail shop will be re-located within two months, a view, which has been accepted by the owners. In view of the fact that, the shop is not located within prohibited distance from any place of worship or educational institutions and of the fact that the State Government is fully aware and alive to the problems of the residents. The writ petition is being dismissed. No costs.

Sd/-

Assistant Registrar(CSix)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Managing Director
Tamil Nadu State Marketing Corporation Limited
CMDA Tower - II
IV Floor, Gandhi Irwin Bridge Road
Egmore
Chennai 8.
2. The Principal Secretary
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George
Chennai 9.
3. The Additional Director General of Police
Prohibition
Dr. Radhakrishnan Salai
Mylapore
Chennai 4.
4. The District Collector
Cuddalore District
Cuddalore.
5. The District Manager
Tamil Nadu State Marketing Corporation Limited
(TASMAC)
Cuddalore District
Cuddalore.
6. The Manager
Tamil Nadu State Marketing Corporation Limited
(TASMAC)
Shop No.2674 Panayanthur Village
Tittakudi Taluk
Cuddalore District.

+1cc to Mr.G.Ilamurugu , Advocate SR.No.58936

+1 CC TO GOVERNMENT PLEADER SR.NO. 58801

+1cc to Mr.B.Nedunchezhiyan , Advocate SR.No. 58457

W.P.No.11158 of 2018

ASK(24/09/2018)