

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9/10/2018

C O R A M

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

Writ Petition No.26198 of 2018

C.Subivarnan

...Petitioner

Vs

1. The District Collector
Collectorate Office
Coimbatore District.
2. The Managing Director
Tamil Nadu State Marketing Corporation Ltd
TASMAC
Chennai.
3. The District Manager
The District Manager Office (Coimbatore South)
Tamil Nadu State Marketing Corporation Ltd
Coimbatore.
4. The Senior Regional Manager
Tamil Nadu State Marketing Corporation Ltd
Coimbatore.
5. The District Commissioner of Excise
and Prohibition
The District Commissioner of Excise
and Prohibition Office
Coimbatore District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the file of the third respondent relating to Na.Ka.No.944/2018/RV2 dated 20/9/2018 and to quash the same and consequently, forbearing the respondents from opening the liquor vending Shop No.1818 at S.No.568/A5, Chettipalayam Road, Malumichampatti Village, Madukkarai Taluk, Coimbatore District or any other place in and around the said locality in contra to Rule 8, 9 and 10 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

For petitioner ... Ms.S.P.Arthi

For respondents ... Mr.A.Zakir Hussain
Government Advocate
for R.1.

O R D E R

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

Claiming himself to be a public interest litigant, petitioner has filed the instant public interest litigation, to quash the order, passed by the third respondent, relating to Na.Ka.No.944/2018/RV2, dated 20/9/2018 and consequently, to restrain the respondents, from opening the liquor vending Shop No.1818, at S.No.568/A5, Chettipalayam Road, Malumichampatti Village, Madukkarai Taluk, Coimbatore District or any other place, in and around the said locality, in contra to Rule 8, 9 and 10 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

2. Earlier, the writ petitioner had filed W.P.No.20587 of 2018, for the issuance of a writ of mandamus, forbearing the respondents, from putting up a TASMALC shop, at Balaji Nagar, Podhanur-Chettipalayam road, Coimbatore District, or in and around the locality, in contra to Rule 8, 9 and 10 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, by considering the petitioner's representation, dated 7/7/2018 and 31/7/2018.

3. The District Manager/Deputy Collector, TASMALC Ltd., Coimbatore South/third respondent has filed a counter affidavit. Relevant paragraphs are extracted hereunder:-

"4. It is submitted that the proposed shop is having total extent of 160 sq.ft., situated at S.No.568/A5, 21/2, Chettipalayam Road, Malumichampatti Village, owned by one Mr.N.Vijayakumar, S/o. Nachimuthu, gave letter, dated 2/7/2018 by giving consent to run the TASMALC shop. Based upon the consent, inspection was taken place on 19/7/2018 by the Deputy Commissioner (Excise), Coimbatore and detailed report was furnished before the first respondent for opening of shop. After examining the proposal sent by this respondent as well as Deputy Commissioner, the first respondent passed an order in Na.Ka.No.447 ()/2018 kel, dated --/7/2018 and granted permission for opening the Shop No.1818 in the said place.

5. It is submitted that the proposed place already there was a TASMALC Shop No.1601 functioned for more than 5 years and the same was closed on

31/3/2017, pursuant to the orders of this Hon'ble Court in W.P.No.23974 of 2017. Subsequently, as per G.O.Ms.No.32, Home Prohibition and Excise (VI) Department, dated 21/5/2018, this respondent sent a proposal for opening the TASMAL Shop No.1818 in the very same place. As per the inspection report one Vinayagar Temple is situated 750 meters away on the Northern side of the shop and Carmal Matriculation School was situated 1800 meters away from the shop. Therefore, the shop is not violated any of the Rules, more particularly Rule 8 (1) of the aforesaid Rules, 2003. The proposed shop is going to be located in 32 meters away from the right side of the State Highways No.162 and the said Highways originate the Corporation limits and terminate within the local self governing body.

6. It is further submitted that the writ petitioner made a representations dated 7/7/2018 and 31/7/2018 without any specific allegation or any rule violation and he has filed a writ petition before this Hon'ble Court in W.P.No.20587 of 2018 and the Division Bench of this Hon'ble Court, by its order dated 10/8/2018 disposed of the writ petition by directing the authority to do the needful, if necessary after hearing the parties concerned within a period of 8 weeks. That being so, in order to comply the directions issued by this Hon'ble Court, this respondent issued letters dated 4/9/2018, 7/9/2018 and 20/9/2018, calling upon the petitioner to appear before enquiry, however, the petitioner appeared only on the last enquiry held on 20/9/2018 and gave written objection. This respondent considered those objection and rejected the same by his order in Na.Ka.No.944/2018/R.V2 dated 20/9/2018.

7. It is submitted that the allegations made in the representation dated 7/7/2018 is vague one and during enquiry, the petitioner gave an objection dated 20/9/2018 stating that there are temple, Church bus stop and hospital nearby the place where the TASMAL is proposed to be opened. This respondent denied all the above said allegations and as per Rule 8 (1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

4. A perusal of the counter affidavit would show that directions, passed by this Court, in W.P.No.20587 of 2018, have been carried out. Hearing was conducted. Representation of the

petitioner has been considered.

5. 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."

6. There is no educational institution or place of worship within the prohibited distance. In view of the fact that, the shop is not located within prohibited distance from any place of worship or educational institution, the instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Coimbatore District.

+1 CC to Mr.K. Sathish Kumar, Advocate sr 69598.

+1 CC to M/s.S.P. Aarthi, Advocate sr 69985

+1 CC to Govt. Pleader sr 69847.

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SAI(CO)
SP(19/12/2018)

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