



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

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WEB COPY

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD) No.499 of 2018

A.Saravanakumar

... Petitioner

-Vs-

1. The District Collector,
Trichy District.

2. The Tahsildar,
Manapparai Taluk,
Trichy District.

3. The Superintendent of Police,
Trichy District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondents to consider the petitioner's representation dated 12.12.2017 within a stipulated time fixed by this Court and to grant permission to run petitioner's tea shop namely Saravana Sweets & Tea, Coffee Bar situated in Vaiyampatti Bus Stop, Madurai-Trichy Main Road in night hours in everyday.

For Petitioner : Mr.R.Manimaran

For Respondents : Mr.N.Shanmuga Selvam,
Additional Government Pleader.

O R D E R

This writ petition has been filed to direct the respondents to consider petitioner's representation, dated 12.12.2017, within stipulated time fixed by this Court and to grant permission to run petitioner's tea shop namely Saravana Sweets & Tea, Coffee Bar situated in Vaiyampatti Bus Stop, Madurai-Trichy Main Road in night hours in everyday.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.



3.The learned counsel for the petitioner has submitted that the petitioner's family has been running a tea shop namely Saravana Sweets & Tea, Coffee Bar for the past 50 years. He further submitted that the shop is situated nearby the Madurai-Trichy National Highway. He further submitted that a Primary Health Center is also situated near the petitioner's shop and therefore, the petitioner is running the tea shop for the help of the public. His tea shop is too helpful to all kind of people especially at night timings. But, the third respondent and his subordinates are compelling the petitioner to close the shop during night hours and hence, the petitioner submitted a representation to the first and second respondents on 05.01.2018, seeking permission to run the shop at night hours. He further submitted that already in W.P.(MD).No.11410 of 2016, this Court by the order dated, 21.03.2017 directed the police not to insist the petitioner in that case to close down his restaurant during night hours and against the said order, the police officials have preferred a writ appeal in W.A(MD).No.547 of 2017 and the same was dismissed on 01.09.2017, confirming the order passed in W.P.(MD).No.11410 of 2016.

4.The learned Additional Government Pleader has reiterated the averments made in the counter affidavit and submitted that the Primary Health Centre is situated two kilometers away from the petitioner's tea shop. The petitioner's tea shop is not nearer to the bus shelter. There are nearly 20 tea shops in Vaiyampatti Village and almost all the tea shops are running from 05.00 a.m., to 08.00 p.m., only. Further, according to the learned Additional Government Pleader, in order to prevent theft only, the respondents directed to close all the tea shops between 11.00 p.m and 04.00 a.m. The petitioner has not obtained any licence and if the petitioner is permitted to continue his business after 10.00 p.m., that will create unnecessary law and order problem in the area.

5.A perusal of the order passed by this Court in W.P.(MD).No.11410 of 2016 shows that one Navaneethakrishnan has filed a writ of mandamus to direct the Police officials to permit him to carry on his hotel business during late night hours. This Court has allowed the said writ petition, directing the police officials not to insist the petitioner to close down his restaurant between 12 midnight and 04.00 a.m. Further, it was ordered that however, if the petitioner makes any encroachment in the public street, the police are entitled to take suitable action against the petitioner and remove the encroachment. Challenging the said order, the police officials have preferred an appeal in W.A.(MD).No.547 of 2017 and the same was disposed of on 01.09.2017. The operative portion of the said judgment reads as follows:



"5. Accordingly, the writ appeal stands disposed of by giving liberty to the appellant to frame any rules, by exercising the power under Section 39 of the Madras City Police Act, 1988. It is made clear that till such rule is brought forth, the activity of the respondent/writ petitioner, as recorded by the learned Single Judge, cannot be curtailed. No costs. Consequently, connected miscellaneous petitions are closed."

6. From the aforesaid decision, it is clear that in the absence of any rule, which can be brought forth by exercising power under Section 39 of the Chennai City Police Act, 1888, it is not open to the police officials to stop the petitioner from doing his lawful business.

7. Admittedly, so far, rules have not been framed by the Commissioner of Police by exercising the power under Section 39 of Chennai City Police Act, 1888 and therefore, the respondents cannot restrain the petitioner from doing his lawful business during night hours.

8. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Trichy District.
2. The Tahsildar,
Manapparai Taluk,
Trichy District.
3. The Superintendent of Police,
Trichy District.

+ 1 cc TO Mr. M. Selvakumar, Advocate in SR No. 53805
+ 1 cc TO The Special Government Pleader in SR No. 53888

cp

AE/SV/SAR3/15.05.2018/3P/6C