



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on :20.02.2018

Order Pronounced on :02.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD) No.18787 of 2017

and

W.M.P. (MD) .No.15161 of 2017

Anna Perundhu Nellaya Vattara Viyabarigal
Nalla Sangam, rep. by its President,
N.K.Annarajan
regn. No.101/2006,
118/1, Palayamkottai Main Road,
Anna Perundhu Nillayam,
Thoothukudi.

... Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary to the Government
Home Department
St. George Fort, Chennai.
2. The District Collector,
Thoothukudi District,
Thoothukudi.
3. The Supeintendent of Police,
Thoothukudi District,
Thoothukudi.
4. The Additional Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus forbearing the respondent from restraining the shop keepers, traders and businessmen in Thoothukudi District from doing their business activities at night hours.

For Petitioner

: Mr.G.Prabhu Rajadurai
for Pethu Rajesh

For Respondents

: Mr.N.Shanmugaselvam
Addl. Govt. Pleader

**ORDER**

This writ petition has been filed to forbear the respondents from restraining the shop keepers, traders and businessmen in Thoothukudi District from doing their business activities at night hours.

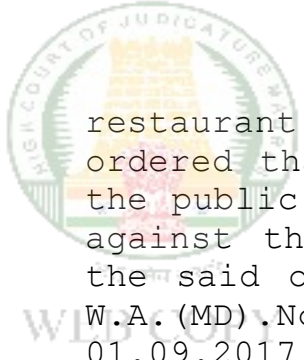
2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner has submitted that the petitioner is the President of Anna Perunthu Nilaya Vattara Viyabarigal Nala Sangam and the said Sangam has been registered under the Tamil Nadu Societies Registration Act, 1975. He further submitted that there are more than 100 members in the said Association and they are doing various businesses lawfully in a peaceful manner in and around Thoothukudi without causing any hindrance to any one. He further submitted that Thoothukudi is a well-known Industrial city and the labourers, after completing their night shift or going to night shift are utilizing the services of the night shops. But for the past few years, the Police officials are restraining the shop keepers from doing their trade, profession and businesses during night hours, more particularly after 11.00 p.m. He further submitted that doing trade, profession and business are the fundamental rights. 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 submitted that the individual shop owners have to file writ petitions and instead of that, the petitioner as a President of the association cannot file writ petition.

5. According to the petitioner, it is an association, registered under the Societies Registration Act. Therefore, the said Association is entitled to file writ petition for the welfare of its members.

6. 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."

7. 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 members of the petitioner Association from doing their lawful business.

8. 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 members of the petitioner Association from doing their lawful businesses during night hours.

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

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
State of Tamil Nadu
Home Department
St. George Fort, Chennai.

2. The District Collector,
Thoothukudi District,
Thoothukudi.

3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.



4. The Additional Superintendent of Police,
Thoothukudi District,
Thoothukudi.

+1cc to Mr.P.Pethu Rajesh, Advocate Sr.No.52789
+1cc to Spl.Government Pleader Sr.No.53020

VS

VB/KK/SAR4/22.03.2018/4P/7C

Order made in
W.P (MD) No.18787 of 2017
02.03.2018