

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.3585 of 2019
and
W.M.P.No.3930 of 2019

D.S.Murugesan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Home Department,
Fort St.George,
Chennai - 9.

2.The District Collector,
Tiruppur District, Tiruppur.

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

4.The Deputy Superintendent of Police,
Dharapuram,
Tiruppur District.

5.The Inspector of Police (Law and Order)
Dharapuram Police Station,
Dharapuram,
Tiruppur District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from restraining the petitioner to carry on his business activity namely Surya Bakery business in Dharapuram, Tiruppur District during at night hours.

For Petitioner : Mr.S.Saravanan
For Respondents : Mr.S.Soundararajan,
Government Advocate

O R D E R

This writ petition is filed seeking for a Mandamus, forbearing the respondents from restraining the petitioner from carrying on his business activity, namely Surya Bakery business

in Dharapuram, Tiruppur District, during night hours.

2. When the matter was taken up for admission on 06.02.2019, the learned Government Advocate took notice for the respondents and sought time to get instructions. Accordingly, the matter is listed today for further hearing.

3. The learned counsel for the petitioner after inviting this Court's attention to an order passed by the Division Bench in W.A.(MD) No.547 of 2017 dated 01.09.2017 followed by the Writ Court in W.P.(MD) No.18787 of 2017 dated 02.03.2018, submitted that the respondents are not entitled to prevent the petitioner from running the business during night hours in the absence of any rules framed to that effect.

4. The order of the Division Bench made in W.A.(MD) No.547 of 2017 dated 01.09.2017 reads as follows:

Writ Petition, W.P(MD)No.11410 of 2016 was filed seeking a direction to the respondent therein, to permit the Writ Petitioner to carry on his business during late night hours. The learned Single Judge by taking into account, the undertaking given by the respondent/Writ Petitioner accordingly, allowed the writ petition. Challenging the same the present appeal is filed.

2.The learned Government Pleader appearing for the appellants would submit that the running of the hotel by the respondent causes law and order problem. It is not as if entire business is stopped, but it is only regulated between 12.00 midnight to 4.00 a.m. It is also submitted that as per section 69 of the Madras City Police Act, 1888, the Commissioner of Police, Madurai City, can regulate it by way of rules.

3.The learned counsel appearing for the respondent/writ petitioner would submit that in the absence of any rule, by such exercise of power under Section 39 of the Madras City Police Act, 1888, it is not open to the appellants to stop the respondent from doing his lawful business.

4.As long as power is available to the Commissioner of Police, Madurai City, the same can be exercised as per law. However, in the absence of any rule, which can be brought forth by exercising power under Section 39 of the Madras City Police Act, 1888, running of business cannot be curtailed.

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.

5. Perusal of the above said order would show that the police is not entitled to curtail the business hours, unless specific rule is framed by exercising the power under Section 39 of the Madras City Police Act, 1988.

6. The learned Government Advocate is not placing any rule framed to that effect, so far. Therefore, this Court is of the view that the respondents are not entitled to prevent the petitioner from running the bakery during the night hours, unless there is any other legal impediment against the petitioner to run such business.

7. Accordingly, this Writ Petition is allowed and the respondents are directed not to interfere with the petitioner's business activity viz., running Surya Bakery in Dharapuram, Tiruppur District, merely because the petitioner is running the said bakery during night hours as well. It is made clear that if the respondents come across any other reason against the petitioner in running such business which is found to be unlawful, it is open to them to take action in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

1. The Secretary to the Government,
Home Department,
Fort St. George, Chennai - 9.

WEB COPY

- 2.The District Collector,
Tiruppur District, Tiruppur.
- 3.The Superintendent of Police,
Tiruppur District, Tiruppur.
- 4.The Deputy Superintendent of Police,
Dharapuram, Tiruppur District.
- 5.The Inspector of Police (Law and Order)
Dharapuram Police Station,
Dharapuram, Tiruppur District.

+1cc to Mr. S.Saravanan, Advocate, S.R.No. 15954

W.P.No.3585 of 2019

VBA (CO)
GN(11/03/2019)



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