

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.6636 of 2019

G.Renganathan

... Petitioner

Vs.

1.The Commissioner of Police
Greater Chennai, Egmore
Chennai - 8.

2.Deputy Commissioner of Police
Law & Order, Adyar, Chennai-20.

3.Inspector of Police (Law&Order)
J2 Police Station
Adyar, Chennai - 20.

4.Inspector of Police (Law & Order)
J5 Police Station
Sasthri Nagar, Chennai - 20.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from interfering the petitioner hotel business activities at night hours till 02.00 a.m. At Hotel Vasantha Bhavan, No.10, Dr.Muthulakshmi Street, Adyar, Chennai - 20 and POT LUCK, No.10, TNHB Complex, L.B.Road, Adyar, Chennai -20.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.E.Balamurugan [R1 to R4]
Special Government Pleader

ORDER

This writ petition is filed seeking for a Mandamus, forbearing the respondents from interfering the petitioner hotel business activities at night hours till 02.00 a.m. at Hotel Vasantha Bhavan, No.10, Dr.Muthulakshmi Street, Adyar, Chennai - 20 and POT LUCK, No.10, TNHB Complex, L.B.Road, Adyar, Chennai -20.

2.The case of the petitioner is as follows:-

The petitioner is the Proprietor of Hotel Vasantha Bhavan

situated at Door No.10, Dr.Muthulakshmi Street, Adyar, Chennai - 20 and Pot Luck at Door No.10, TNHB Complex, L.B.Road, Adyar, Chennai 20, for the past 10 years and everyday, it is opening at 06.00 a.m. and closing at 02.00 a.m. on the next day morning. The petitioner had obtained necessary permission from Revenue Department, Greater Chennai Corporation, District Fire and Rescue Service Department, Chennai, Government of Tamil Nadu Food Safety and Drugs Administration Department and also Labour Department to run the said hotel and hence, the respondent-Police have no right or authority to interfere with their lawful business. However, the respondents-Police enter into the petitioner's hotel premises and caution him that severe action will be taken against him for keeping the hotel open after 10.00 p.m. On 21.01.2019 and 19.02.2019, the respondents-Police had forcibly taken the manager and the servants of the hotel to the police station and insisted not to open the hotel after 10.00 p.m. and then, they were let off. Feeling aggrieved by the same, the present writ petition is filed by the petitioner.

3. When the matter was taken up for admission on 07.03.2019, the learned Special Government Pleader took notice for the respondents and sought time to get instructions. Accordingly, the matter is listed today for further hearing.

4. 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 hotel business during night hours in the absence of any rules framed to that effect.

5. 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.

6. 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, 1888.

7. The learned Special Government Pleader 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 hotel business during night hours, unless there is any other legal impediment against the petitioner to run such business.

8. Accordingly, this Writ Petition is allowed and the respondents are directed not to interfere with the petitioner's hotel business activities at Hotel Vasantha Bhavan, No.10, Dr.Muthulakshmi Street, Adyar, Chennai - 20 and POT LUCK, No.10, TNHB Complex, L.B.Road, Adyar, Chennai -20 merely, because the

petitioner is running the said hotel 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.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

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+1cc to Mr.MS.Palanichamy, Advocate SR.No.24054

+1cc to Government Pleader SR.No.24736

KAN (CO)
GMY (27/03/2019)

सत्यमेव जयते

W.P.No.6636 of 2019

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