

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.10926 of 2019

And

W.M.P.No.11360 of 2019

Alliance Canal Road Residents Welfare
Association Represented by Treasurer:
Mr.C.Babu, S/o.Chengamma Naidu,
Plot No.10, Golden Nagar,
Kolathur,
Chennai-600 009. ... Petitioner

..Vs..

1.The District Manager,
TASMAC,
No.1, Bangalore High Way,
Sembarambakkam,
Thiruvallur East,
Chennai-600 123.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The District Collector,
Chennai District,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
forbearing the respondents from in any manner operating a Retail
Tasmac outlet at Water Canal Road, Santhosh Nagar at Plot No.44,
Survey No.523/ A2-53, Korattur or any other surrounding places
wherein the members of the association are residing.

For Petitioner : Mr.Balasubramaniam for
Mr.P.Singaram

For Respondent-1 : Ms.V.Jayakrithika for
Mr.N.Damodaran,
Standing Counsel for TASMAC.

For Respondents-2&3 : Mr.Prathap Singh,
Government Advocate.

O R D E R

Mr.Balasubramaniam learned counsel representing the counsel on record for writ petitioner is before this Court. Ms.V.Jayakrithika representing Mr.N.Damodaran learned Standing Counsel for 'Tamil Nadu State Marketing Corporation Limited' (hereinafter 'TASMAC' for brevity) is before this Court. Mr.Prathap Singh, learned Government Advocate is before this Court on behalf of respondents 2 and 3.

2. With consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of.

3. Writ petition has been filed by an entity which goes by the name 'Alliance Canal Road Residents Welfare Association'. From the case file placed before this Court, it is clear that the said Association has been registered as a Society under the Tamil Nadu Societies Registration Act, 1975 being Tamil Nadu Act 27 of 1975.

4. Prayer in the writ petition is one seeking Mandamus to forbear respondents from opening a Retail TASMAC outlet at Water Canal Road, Santhosh Nagar at Plot No.44, Survey No.523/A2-53, Korattur (hereinafter 'said location' for brevity) or any other surrounding places wherein the members of the writ petitioner association are residing.

5. One primary difficulty for the writ petitioner is that a Hon'ble Division Bench of this Court has rendered two judgments holding that an Association of this nature cannot file and maintain writ petitions of this nature.

6. As mentioned supra, a Hon'ble Division Bench of this Court has rendered two judgments in this regard. One is Formation of Indian Network Marketing Association Vs. M/s.Apple FMCG Marketing Pvt. Ltd. and others reported in 2005 Writ L.R. 321 and the other is Tamilaga Asiriyar Koottani Vs. The Government of Tamil Nadu and 19 others reported in 2005 Writ L.R. 389. Most relevant paragraphs in Apple FMCG Marketing Pvt. Ltd. case are paragraphs 4, 5, 6 and concluding paragraph 14 which read as follows :

"4.The writ petitioner has not filed this appeal. Instead, it has been filed by an Association which claims to have been formed to redress the grievances of its members which are companies involved in the marketing of products and services using the medium of Multi Level Marketing, otherwise called Net Work Marketing. The association has alleged that it

is registered as a society under the Tamil Nadu Societies Registration Act.

5. In our opinion, this writ appeal is not maintainable as the appellant cannot have any personal grievance in the matter, and at best only its members can have any grievance.

6. It is well settled that ordinarily a writ petition or writ appeal can only be filed by someone who is personally aggrieved.

14. In our view, the appellant in this case has no grievance in the matter. At best, its members could have a grievance. It cannot be said that the members of the appellant - association are so poor that they could not individually file writ appeals. It is also not a case of the nature of environmental pollution or some great hardship caused to the public at large or a disadvantaged section of it (like prisoners, exploited women, children, etc.) regarding which Public Interest Litigation has been permitted by the Supreme Court. Hence, in our considered view, this writ appeal is not maintainable, as the appellant has no locus standi. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected W.A.M.Ps. are also dismissed."

7. Subsequently, referring to Apple FMCG Marketing Pvt. Ltd., Tamilaga Asiriyar Koottani case was rendered.

8. In both these judgments, a long line of authorities pertaining to locus standi qua Article 226 have been alluded to. Without burdening this order and making it verbose by referring to the long line of authorities, suffice to extract concluding paragraph 15 of Tamilaga Asiriyar Koottani case, which reads as follows :

"15. In our opinion, if any educational institution or Head Master or Teacher is aggrieved by the impugned G.O.Ms.No.13 dated 9.2.2005 they can file a writ petition in this Court challenging the same, but the appellant - association had no locus standi in the matter. It cannot be said that the educational institutions or Head Masters are so poor that they are unable to approach this Court. If any particular educational institution or Head Master has a grievance against the impugned G.O.Ms.No.13 dated 9.2.2005 it is for such person to file a writ petition or writ appeal, and not for any association.

The writ appeal is dismissed on the ground of lack of locus standi. The writ petition is dismissed for the same reason. W.A.M.P.No.1384 of 2005 is dismissed."

9. In the light of the aforesaid undisputed obtaining legal position, this writ petition is liable to be dismissed on this short ground alone. However, this Court albeit on a demurer deems it appropriate to notice that there is one more hurdle for the writ petitioner.

10. A Hon'ble Division Bench of this Court vide order dated 13.6.2017 made in WP No.14466 of 2017 [U.Vignesh Vs. Commissioner Prohibition and Excise Department and others] held that in the absence of any allegation of contravention of any statutory rule or Regulation, interference of Writ Court is not warranted in cases pertaining to location of retail outlets of TASMAC.

11. With regard to cases pertaining to location of TASMAC shops (retail outlets), the same is governed by 'The Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003' (hereinafter 'Liquor Vending Rules' for brevity).

12. In the instant case, though there are some generic averments regarding the said location being objectionable, there is no pointed submission with regard to how the said location is objectionable under the Liquor Vending Rules.

13. There are provisions which clearly set out with clarity and specificity the places where TASMAC shops can be and cannot be located. Notwithstanding such provisions, there is no specific submission with regard to which Rule under aforesaid Liquor Vending Rules is being violated in the instant case.

14. Per contra, learned counsel for respondents pointed out that such said location is not objectionable and it does not violate any provision of Liquor Vending Rules.

15. To be noted, in the aforesaid Division Bench judgment dated 13.6.2017, there was a reference to V.Ravichandran vs. The District Collector, Tirunelveli and another (Order dated 16.11.2016 in W.P. (MD) No.20063 of 2015) and the Hon'ble Division Bench had held that there cannot be any proposition that a liquor shop can under no circumstances be set up if there is an objection from the residents. This is articulated in paragraph-6 of the order which reads as under:

"6. Learned counsel appearing on behalf of the petitioner has cited a Division Bench judgment of this Court in V.Ravichandran vs.

The District Collector, Tirunelveli and another (Order dated 16.11.2016 in W.P. (MD) No.20063 of 2015). This judgment was rendered having regard to the particular facts of the case. The judgment is not an authority for the proposition that a liquor shop can in no circumstances be set up if there is an objection from the residents or a resolution of Panchayat Grama Sabha to that effect."

(Underlining made by this Court to supply emphasis and highlight)

16. Therefore, even if the writ petitioner crosses the first hurdle, there is no way writ petitioner will be able to cross the second hurdle.

17. Owing to all that have been set out supra, instant writ petition is both not maintainable as well as bereft of merits. In other words, writ petition is dismissed as not maintainable and in any event on a demurer though being bereft of merits, writ petition cannot but fail. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The District Manager, सत्यमेव जयते
TASMAC,
No.1, Bangalore High Way,
Sembarambakkam,
Thiruvallur East,
Chennai-600 123.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The District Collector,
Chennai District,
Chennai.

+1cc to Mr.P.Singaram, Advocate, S.R.No.56774
+1cc to Mr.N.Damodaran, Advocate, S.R.No. 56194
+1cc to the Government Pleader, S.R.No. 56888

WP 10926 of 2019

RSI (CO)
GN(16/08/2019)



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