

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/4/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11455 of 2019

V. Manikandan

...

Petitioner

Vs

1. The Commissioner (Excise)
Government of Puducherry
Puducherry.

2. The Deputy Commissioner of Excise
Government of Puducherry
Puducherry.

3. M/s. Balaji Enterprises
No.101 R.S.No.4/1 and 4/2
Mailam Road
Sedurapet
Puducherry.

...

Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari to call for the records of the second respondent in its No.3605/DCE/S2/FL.1/2003-04/Vol.II dated 5/3/2019 in so far as it permits the third respondent to shift the wine shop and bar from Mailam Road Sedurapet, Puducherry to Door No.213 Sardar Vallabhai Patel Road, Puducherry and quash the same.

For petitioner

...

Mr.V. Vijay Shankar

For Respondents

....

Ms.Usha

Additional Government Pleader
for R.R.1 and 2.

O R D E R

(Order of the Court was made by Subramonium Prasad, J)

Instant writ petition is to quash the order, passed by the Deputy Commissioner of Excise, Government of Puducherry, second respondent in its Letter

No.3605/DCE/S2/FL.1/2003-04/Vol.II, dated 5/3/2019 in so far as it permits M/s. Balaji Enterprises, Puducherry, third respondent, to shift the wine shop and bar, from Mailam Road Sedurapet, Puducherry to Door No.213 Sardar Vallabhai Patel Road, Puducherry.

2. Petitioner is an elected member of the Legislative Assembly of Puducherry, representing Muthialpet Constituency. It is stated in the petition that the third respondent has FL 1 licencee, for running wine shop and bar, at Mailam Road, Sedurapet, Puducherry, which is about 20 kms away from Puducherry Town. Third respondent wanted to shift the wine shop and bar from Mailam Road Sedurapet, Puducherry to Door No.213, Sardar Vallabhai Patel Road, Puducherry and hence made an application, to the Deputy Commissioner of Excise, Government of Puducherry, Puducherry/second respondent. Vide, order, dated 5/3/2019, second respondent has shifted the shop to Door No.213 Sardar Vallabhai Patel Road, Puducherry. Pursuant to the said order, the third respondent is taking hectic steps to start the wine shop. Hence the petitioner has filed the instant writ petition.

3. Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Ms.Usha, learned Additional Government Pleader for the respondents 1 and 2.

4. Mr.V.Vijay Shankar, learned counsel for the petitioner submits that there is a women's College situated within 250 meters and there are currently eleven licensed bars and wine shops operating within 100 meters of the new locality. Hence there is absolutely no need for another wine shop. He would further submit that already the said area is a very congested one and traffic jams occur very frequently.

5. Permission to open a liquor shop by the competent authority, can be granted if only the conditions laid down in Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 are followed. Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, reads thus:-

"Location of shop: (1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:

Provided also that if any place of

worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this rule shall not apply:

Provided also that no liquor shops shall be established in any tribal areas covered under Integrated Tribal Development Project and Hill Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari Districts.

(2). Every shop shall be housed in a pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3). The shop shall be in the location approved by the Collector before commencing the business in the shops."

6. Contention of the petitioner is that there is violative of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, cannot be accepted, for the reason that there is nothing in the petition to show that any of the conditions given in Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, has been violated. Judicial review under Article 226 of the Constitution of India postulates that whether Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, has been violated or not.

7. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

//True Copy//

सत्यमेव जयते

Sub Asst. Registrar

To

1. The Commissioner (Excise)
Government of Puducherry
Puducherry.
2. The Deputy Commissioner of Excise
Government of Puducherry
Puducherry.

+1 CC to Mr.V.VIJAY SHANKAR Advocate SR.NO.37409
+1 CC to the Government pleader SR.NO.37115

W.P.No.11455 of 2019

CO (RSV)

VC (08/06/2019)

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