

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.10448 of 2019

G.Renganathan

... Petitioner

Vs

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

2. Deputy Commissioner of Police,
Law & Order,
Triplicane,
Chennai - 5.

3. Inspector of Police
(Law & Order),
F2 Police Station,
Egmore,
Chennai - 8.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from interfering the petitioner hotel business activities at night hours till 03.00 a.m. at Hotel Vasantha Bhavan and Vasantha Bhavan Fast Food at Door Nos.23/10 & 8/15, Gandhi Irwin Road, Egmore , Chennai-8.

For Petitioner

: Mr. Palaniswamy M.S.

For Respondents

: Mr.S.N.Parthasarathy
Government Advocate

O R D E R

Mr.S.N.Parthasarathy, learned Government Advocate takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for a Mandamus forbearing the respondents from interfering with the petitioner hotel business activities at night hours till 03.00 a.m. At Hotel Vasantha Bhavan and Vasantha Bhavan Fast Food at Door Nos.23/10 & 8/15, Gandhi Irwin Road, Egmore , Chennai-8.

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

The petitioner is the Proprietor of Hotel Vasantha Bhavan situated at Door No.23/10 and 8/15, Gandhi Irwin Road, Egmore, Chennai-8 and he has been running the Hotel for the past 15 years. Every day, the petitioner opens the hotel at about 6.00 a.m. and closes at 02.00 a.m. on the next day morning. The petitioner had obtained necessary permission from Revenue Department, Greater Chennai Corporation, Government of Tamil Nadu Food Safety and Drugs Administration Department and also Labour Department to run the said hotel and hence, the respondent-Police cannot refrain or curtail the petitioner's business, inspect the same or lay rules and regulations for running the same. The Government of Tamil Nadu under G.O.Ms.No.53 Labour and Employment (K2) dated 22.03.2017 passed an order permitting the Tamilnadu Shops and Establishment Act to keep open on all 365 days initially for one year and the same period was further extended to three years with effect from 23.03.2017 by the above said G.O. The Tamilnadu Catering Establishment Act, 1958 also does not prescribe any restriction on the business hours of hotels. The timings for running the hotel does not come under Madras City Police Act. However, the 3rd respondent police threatens the Manager and servants of the Petitioner to close the hotel before 11.00 p.m. Hence, the present writ petition is filed seeking the relief as stated supra.

4.Heard both sides.

5. 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.

6. 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.

7. 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.

8. 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 hotel business during night hours, unless there is any other legal impediment against the petitioner to run such business.

9. 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 and Vasantha Bhavan Fast Food at Door Nos.23/10 & 8/15, Gandhi Irwin Road, Egmore , Chennai-8, merely, because the petitioner is running the said hotels 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

vsi/gsi

To

1. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 8.
2. Deputy Commissioner of Police,
Law & Order, Triplicane,
Chennai - 5.
3. Inspector of Police
(Law & Order),
F2 Police Station, Egmore,
Chennai - 8.

+1 cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.34541, 33253

+1 cc to the Government Pleader, S.R.No.34682

W.P.No.10448 of 2019

SKV(CO)
SSM(09/05/2019).

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