

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/6/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17982 of 2019

R. Sampath ... Petitioner

Vs

1. The District Collector
Kanchipuram District Collector's Office
Kanchipuram.
2. The Assistant Commissioner of Excise
Kanchipuram District Collectorate
Kanchipuram.
3. The District Assistant Manager
TASMAC Office
Kanchipuram. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus, directing the respondents herein to consider the petitioner's representation dated 12/6/2019 and temporarily close the TASMAC shop situated at Shop Nos.4027, 4030, 4040, 4037, 4039, 4043, 4044, 4052 and 4188.

For petitioner ... Mr.A.Saranraj

For respondents ... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 and 2.
Mr.P.Arumugarajan
Standing Counsel
For TASMAC/R.3.

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner has sought for a writ of mandamus, directing the the District Collector, Kanchipuram; the Assistant Commissioner

of Excise, Kanchipuram and the District Assistant Manager, TASMAC Office, Kanchipuram, respondents 1 to 3, respectively, to consider the petitioner's representation, dated 12/6/2019 and temporarily close the TASMAC shop, situated at Shop Nos.4027, 4030, 4040, 4037, 4039, 4043, 4044, 4052 and 4188.

2. According to the petitioner, in Arulmigu Devarajaswamy temple, once in every 40 years, Athi Varadhar ceremony will take place, at Kanchipuram. Accordingly, ceremony is scheduled to be held, between 1/7/2019 and 17/8/2019. Petitioner has contended that out of 11 TASMAC liquor shops, operating in Kanchipuram, only two shops, bearing Nos.4055 and 4034 have been closed. The remaining nine shops bearing Nos.4027, 4030, 4040, 4037, 4039, 4043, 4044, 4052 and 4188, have not been closed. Hence the petitioner has made representation, dated 12/6/2019, to the District Collector, Kanchipuram; the Assistant Commissioner of Excise, Kanchipuram and the District Assistant Manager, TASMAC Office, Kanchipuram, respondents 1 to 3 respectively, to temporarily close down TASMAC shop Nos. 4027, 4030, 4040, 4037, 4039, 4043, 4044, 4052 and 4188. Contending further that the said representation has not been responded, petitioner has sought for the relief as stated supra.

3. On the above averments, Mr.A.Saranraj, learned counsel for the petitioner made submissions.

4. In exercise of the powers conferred, under Sections 17 - C, 17 - D, 21, 22 - D and 54 of the Tamil Nadu Prohibition Act, 1937, (Tamil Nadu Act X Government of Tamil Nadu have framed Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

5. Rule 12 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, reads as under:-

"Closure of shops - (1) The shops shall remain closed on Thiruvallur Day falling in January, Gandhi Jayanthi Day on the 2nd October, Mahavir Jayanthi Day, Birthday eve of Nabigal Nayagam, Vadalur Ramalingar Ninaivu Naal, Independence Day, Republic day and May day and there shall be no sale of liquor in the shops on the aforesaid days.

(2). The shop shall also be closed as per the directions issued by the Government, the Commissioner of Prohibition and Excise or the Collector.

6. Government of Tamil Nadu, have issued, G.O.Ms.No.1, dated 3/1/2012, which reads thus:-

Home, Prohibition and Excise VII Department

G.O.(Ms) No.1

Dated: 3/1/2012

1. From the Commissioner of Prohibition and Excise (i/c), Letter No.P & E 2 (1)/3648/2011, dated 19/9/2011.
2. From the Managing Director, Tasmac Letter No.R2/7864/2011, dated 20/9/2011
3. From the Commissioner of Prohibition and Excise, Letter No.P & E 9 (2)/14879/2011, dated 12/10/2011.

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O R D E R

During reply to the Demand No.37 Prohibition and Excise department, on 8/9/2011, it was announced among others, that there will be no sale of liquor on independence day, Republic day and May day in addition to five days, already declared as "dry days" and henceforth, there will be no sale of liquor on 8 days in a year.

2. Based on the above announcement, the Commissioner of Prohibition & Excise in the reference third read above, has sent proposal to amend Rule 12 and condition No.8 in Form - I in the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 as indicated below:-

Existing	Proposal
12: Closure of shops: (1). The shop shall remain closed on Thiruvallurvar day falling in January, Gandhi Jayanthi day, on the 2 nd October, Mahavir Jayanthi day, birthday eve of Nabigal Nayagam and Vadalur Ramalingam Nainaivu naal and there shall be no sale of liquor in the shops on the aforesaid days	12. Closure of shops: (1). The shop shall remain closed on Thiruvallurvar day falling in January, Gandhi Jayanthi day, on the 2 nd October, Mahavir Jayanthi day, birthday eve of Nabigal Nayagam and Vadalur Ramalingam Nainaivu naal, Independence day, Republic day and May day and there shall be no sale of liquor in the shops on the aforesaid days

Existing	Proposal
Condition No.8 of Licence in Form - 1: 8. No sale of liquor shall be made under the licence on Gandhi Jayanthi day, viz. The 2 nd October, Thiruvallurvar day falling in January, Mahaveer Jayanthi day and Birthday eve of Nabigal Nayagam and Vadalur Ramalingar Ninaivu Naal.	Condition No.8 of Licence in Form - 1: 8. No sale of liquor shall be made under the licence on Gandhi Jayanthi day, viz. the 2 nd October, Thiruvallurvar day falling in January, Mahaveer Jayanthi day, Birthday eve of Nabigal Nayagam, Vadalur Ramalingar Ninaivu Naal, Independence day, Republic day and May day.

3. The Government, after careful examination accept the proposal of Commissioner of Prohibition and Excise in para 2 above. Accordingly, following Notification will be issued in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by Sections 17 C, 17 D and 21 read with Section 54 of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937), the Governor of Tamil Nadu, hereby makes the following amendments to the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003.

AMENDMENTS

In the said Rules -

(1). In Rule 12, for sub-rule (1), the following sub-rule shall be substituted, namely -

"(1). The shops shall remain closed on Thiruvallurvar day falling in January, Gandhi Jayanthi Day on the 2nd October, Mahavir Jayanthi Day, Birthday Eve of Nabigal Nayagam, Vadalur Ramalingar Ninaivu Naal, Independence Day and May day and there shall be no sale of liquor in the shops on the aforesaid days."

(2). In Form I, for Condition No.8, the following condition shall be substituted, namely :-

"8. No sale of liquor shall be made under the licence on Gandhi Jayanthi Day, viz., the 2nd October, Thiruvallurvar Day falling in January, Mahaveer Jayanthi Day, Birthday eve of Nabigal

Nayagam, Vadalur Ramalingar Ninaivu Naal,
Independence day, Republic day and May day."

7. Thus, the statutory rules and the Government order issued, deal only with closure of shops on the above days only. Government alone is empowered to decide as to whether the shops should be remained closed and accordingly, G.O issued.

8. In the light of the statutory provisions and G.O., we direct the District Collector, Kanchipuram, to take a decision, on the representation of the petitioner, dated 12/6/2019, on merits and in accordance with law.

9. With the above direction, writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The District Collector
Kanchipuram District Collector's Office
Kanchipuram.
2. The Assistant Commissioner of Excise
Kanchipuram District Collectorate
Kanchipuram.
3. The District Assistant Manager,
TASMAC Office, Kancheepuram.

+1 cc to Mr.P.Arumugarajan, Advocate, S.R.No.54289

+1 cc to the Government Pleader, S.R.No.54543

+1 cc to Mr.A.Saranraj, Advocate, S.R.No.53940 (02/07/2019)

W.P.No.17982 of 2019

VBA (CO)
SSM(01/07/2019)
SSM(02/07/2019)