

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

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

Writ Petition No.23101 of 2019
W.M.P.No.22818 of 2019

R.Karthick

...Petitioner

Vs

1. The District Collector,
Greater Chennai Corporation,
Chennai.
 2. The Commissioner of Police,
Chennai City, Chennai.
 3. The Managing Director,
Tamil Nadu State Marketing Corporation (Tasmac),
CMDA Tower -2, 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
- ...Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to immediate closure of the TASMAL shops bearing No.1002, 913 and 682 situated at Ward No.123, Madavara Garden, Mylapore, Chennai and to consider petitioner's representation dated 09.05.2019 within a time stipulated by this Court.

For Petitioner : Mr.Vignesh P.N.
For Respondents: Mr.Akil Akbar Ali,
Government Advocate for R1 and R2.
Mr.Arumugarajan,
Standing Counsel for R3

O R D E R
[Order was delivered by S.MANIKUMAR, J.]

The petitioner, resident of Madavara Garden, Mylapore, Chennai, has sought for a writ of Mandamus, directing respondents 1 to 3 to close the TASMAL shop, bearing Nos.1002, 913 and 682, situated at Ward No.123, Madavara Garden, Mylapore, Chennai, by considering his representation, dated 09.05.2019.

2. Supporting the prayer sought for, Mr.P.N.Vignesh, learned counsel for the petitioner invited the attention of this Court to paragraphs Nos.4 and 5 of the order, made in W.P.8701 of 2017, dated 18.04.2017, for the relief stated supra. Said paragraphs are extracted hereunder:

"4. Needless to mention that the liquor shop shall only be relocated in accordance with law and in particular the Tamil Nadu Liquor Retail Vending (Inshops and Bars) Rules, 2003 framed under the Tamil Nadu Prohibition Act, 1937, taking into consideration the judgments of the Supreme Court of India and of this Court in this regard.

5. Even though under Rule 8 of the Tamil Nadu Liquor Retail vending (Inshops and Bars) Rules, 2003 there is no specific mention of an old-age home, having regard to the objects for which distance is required to be maintained from places of worship, educational institutions and the like, we are of the view that distance should also be maintained from an old-age home, particularly, an old-age home where the majority of the inhabitants are women and are under care of Psychiatrists."

3. Mr.Akil Akbar Ali, learned Government Advocate, takes notice for the District Collector, Greater Chennai Corporation, Chennai/first respondent and the Commissioner of Police, Chennai City, Chennai/second respondent and made submissions.

Heard the learned counsel for the parties and perused the materials available on record.

4. Residents of Madhav Rao Gardens, Mylapore, Chennai have addressed a letter, dated 28.08.2013, to the then Hon'ble Chief Minister of Tamil Nadu, which reads thus:-

"People residing in Madhav Rao Garden area are suffering a lot because of two TASMAL shops No.1002 and No.915 which are adjacent and very near to Mylapore Electricity Board Office. In this matter we humbly request The Hon'ble Chief Minister to take necessary action for the betterment of people residing

in that locality. It is also humbly submitted that photocopies of Signatures of the residents who has supported for closure of the TASMAC is attached below."

5. Representations of the Member of Legislative Assembly, Mylapore addressed to the Hon'ble Minister for Electricity, Prohibition & Excise, Government of Tamil Nadu, Chennai, dated 25.01.2018 & 06.03.2018, are reproduced herein:-

Our ref : MM/568/17-18

Thursday, 25 January 2018

Honourable Thiru.P.Thangamani,
Honourable Minister for Electricity, Prohibition & Excise,
Government of Tamil Nadu,
Fort. St. George,
Chennai - 600 009.

Honourable Minister,

Sub: Immediate closure of TASMAC Shops in
Mylapore Constituency - shops No.1002 and
915 and

Thiruvalluvar Street Shop No. 894.

Ref:This Office Letter dated 01 Mar17 and
MM/326/16-

17 dated March 17, 2017, MM/026/16-17 dated
17th April 2017 and MM/275/17-18, dated
26Jul17, MM/301/17-18 dated
01sep17 and MM/392/17-18
dated 06 oct 17.

I refer to the subject above. People are coming regularly complaining about their suffering. I have also represented to the Honourable Minister for closing the shops.

The shops mentioned next to each other is against the rules are still functioning and leading to anxiety and anger by the public.

Kingly take expeditious action for closing them.

Yours faithfully,

R.NATARAJ, I.P.S., D.G.P. (Retd.,)
Member of the Legislative Assembly, Mylapore.

Our ref :

MM/642/17-18

Thursday, 06 March 2018

Honourable Thiru.P.Thangamani,
Honourable Minister for Electricity, Prohibition & Excise,
Government of Tamil Nadu,
Fort. St. George,
Chennai - 600 009.

Honourable Minister,

Sub: Immediate closure of TASMAL Shops in
Mylapore
Constituency - shops No.1002 and 915 and
Thiruvalluvar Street Shop No. 894.

Ref: This Office Letter dated 01Mar17, MM/326/16-
17
dated 17th March 2017, MM/026/16-17 dated 17th
April
2017 MM/275/17-18 dated 26Jul17, MM/301/17-18
dated 01sep17 MM/392/17-18 dated 06oct17
MM/568/17-18 dated 25Jan18 and MM/613/17-18
dated 13Feb18.

This is in continuation of my earlier letters
regarding closure of TASMAL Shop Nos.1002, 915 and
894.

Kindly ensure that these shops are included in
the closure list for this year and that these Shop
Nos.1002, 915 and 894 are closed.

Yours faithfully,

R.NATARAJ, I.P.S., D.G.P. (Retd.,)

Member of the Legislative Assembly, Mylapore.

6. The Tamil Nadu Liquor Retail Vending (In shops and Bars)
Rules, 2003 (G.O.Ms.No.292, Prohibition and Excise (VI), dated
the 3rd November 2003) deals with liquor vending licence. Rule
8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules,
2003, stipulates the distance criteria, which reads as under:

"8. 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."

7. Rule 9 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, deals with shifting of shop, which states that there shall be no change in the location of shops except with the previous permission of the Collector. Rule 10 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, stipulates the location of bar, which reads as under:

(1) The bar shall lie within the shop or adjoining the shop.

(2) The bar shall have minimum plinth area of (fifteen) square metres. The requirement of plinth area for any bar exceeding fifteen square metres shall be decided by the Collector.

(3) Every bar shall be housed in pukka building and no part of the bar shall be thatched either on the sides or on the roof. The bar room shall be sufficiently screened so that consumption of liquor is not visible from outside and shall also be provided with fans. Sufficient number of tables and chairs for the consumers to conveniently sit and consume liquor shall be provided. Such room shall not be used as a club or recreation room or for any other purpose whatsoever. No gambling or any kind of disorderly conduct in the shop shall be permitted.

(4) Facilities such as drinking water and wash basin within the surroundings of each shop premises shall be provided and the shop, its premises and surroundings shall be always kept clean, hygienic and well lit.

(5) Every shop shall have a signboard in Tamil in front of the shop showing the number of the shop and details regarding authorization issued by the Corporation for the shop, the price of liquor in different sizes of bottles sold in the shop shall also be displayed. There shall also be displayed on the signboard the following slogans in bold letters about the evils of drinking and such other slogans as may be

approved by the Commissioner."

8. 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."

9. Perusal of the rules stated supra, makes it clear that there is no prohibition for locating more than one IMFL shop at a place. As per rule 8, 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. Though a Hon'ble Division Bench in W.P.8701 of 2017, dated 18.04.2017, has observed that, "Even though under Rule 8 of the Tamil Nadu Liquor Retail vending (Inshops and Bars) Rules, 2003 there is no specific mention of an old-age home, having regard to the objects for which distance is required to be maintained from places of worship, educational institutions and the like, we are of the view that distance should also be maintained from an old-age home, particularly, an old-age home where the majority of the inhabitants are women and are under care of Psychiatrists" and that therefore, location of IMFL should be with reference to above said decision, with due respect, this Court is of the view that the said order cannot be made applicable to the facts of the instant case, for the reason that in the said case, the observation was with reference to the location of the TASMAL shop and old age homes. Statute does not prohibit such location of more than one shop at a place and therefore, mandamus sought for cannot be granted.

10. Though Mr.P.N.Vignesh, learned counsel for the petitioner requested this Court to make some observation on the above aspect, i.e., with regard to the distance between the shops, it is trite law that Courts cannot legislate. As regards distance between one shop and another, further interpretation to Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, as pleaded by the learned counsel for the petitioner, cannot be accepted, as it would be amounting to adding words to the said Rules. It is well settled that interpretation of rule should be only literal and Court cannot

add or substitute or delete words. It is worthwhile to consider few decisions on the said aspect,

(i) In CIT v. Badhraj and Company reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that the object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In Dadi Jagannadham v. Jammulu Ramulu reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(iii) In Nasiruddin v. Sita Ram Agarwal reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to

whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(iv) In *Institute of C.A. of India v. Ajit Kumar Iddya* reported in AIR 2003 Kant. 187, the Karnataka High Court held that,

"So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(v) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Karnataka High Court held that,

"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken

from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(vi) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See *Frankfurter: "Some Reflections on the Reading of Statutes"* in *Essays on Jurisprudence*, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529] (All ER at p. 542c-d):

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation."

(vii) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

54. Thus, in *Surjit Singh Kalra v. Union of India*, this Court has observed that sometimes courts can supply words which have been accidentally omitted.

55. In *G.P. Singh's Principles of Statutory Interpretation*, 9th Edn., 2004 at pp. 71-74 several decisions of this Court and foreign courts have been referred to where the court has added words to a statute (though cautioning that normally this should not be done).

56. Hence we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174

and Section 175."

(viii) In Phool Patti v. Ram Singh reported in (2009) 13 SCC 22, the Supreme Court held that,

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(ix) In Mohd. Shahabuddin v. State of Bihar, reported in (2010) 4 SCC 653, the Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

11. In view of the discussion and decisions considered, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dpq/skm

To

1. The District Collector,
Greater Chennai Corporation,
Chennai.
2. The Commissioner of Police,
Chennai City, Chennai.
3. The Managing Director,
Tamil Nadu State Marketing Corporation (Tasmac),
CMDA Tower -2, 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.

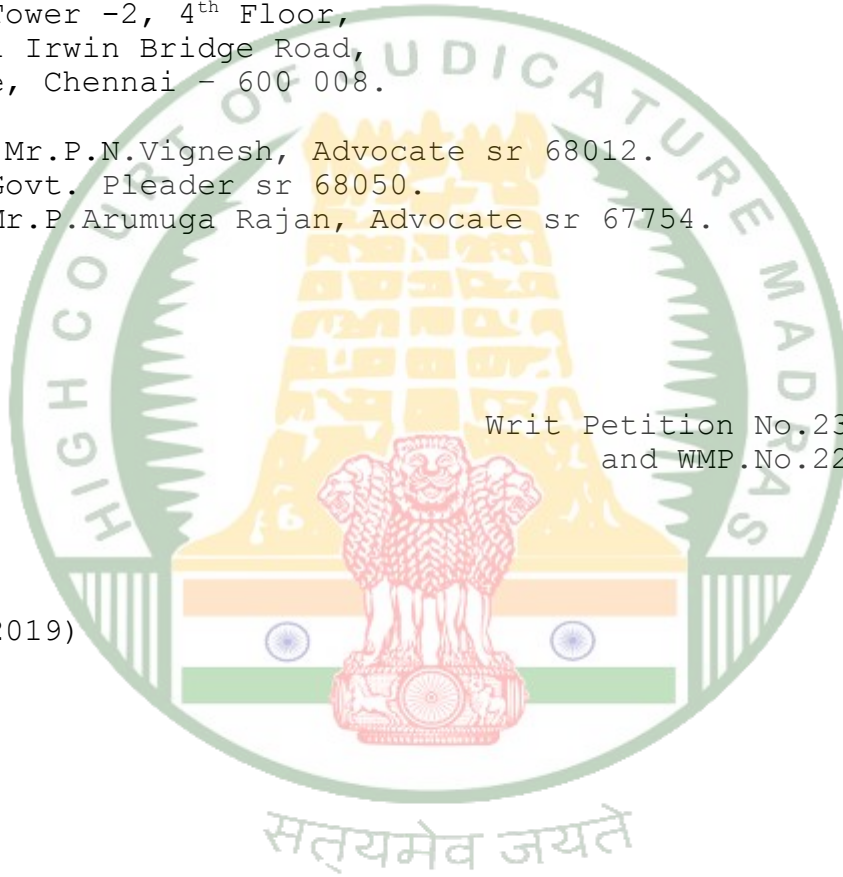
+2 Ccs to Mr.P.N.Vignesh, Advocate sr 68012.

+1 CC to Govt. Pleader sr 68050.

+1 CC to Mr.P.Arumuga Rajan, Advocate sr 67754.

Writ Petition No.23101 of 2019
and WMP.No.22818 of 2019

VSNI (CO)
SP(16/09/2019)



WEB COPY