



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WEB COPY

W.P (MD) No.22094 of 2019

Ashraf Yusuf
S/o.Yusuf Tayub
Secretary
Tamil Nadu Textile Merchants Association,
68, East Perumal Maistry Street,
Madurai - 625 001. .. Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai - 625 020.
- 2.The Commissioner of Police,
Madurai City,
Madurai - 625 002.
- 3.The Commissioner,
Corporation of Madurai,
Arignar Anna Maaligai,
Madurai - 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to permit the petitioner Association to open their shops in full night on 25.10.2019 and 26.10.2019 in the light of G.O.(Ms). No.60 dated 28.5.2019 on the eve of Deepavali Festival by considering the petitioner's representation dated 01.10.2019.

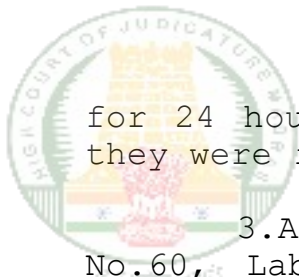
For Petitioner	: Mr.D.Rameshkumar
For Respondents	: Mr.J.Gunaseelan Muthiah Additional Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal at the stage of admission itself.

2.The petitioner is the Secretary of the Tamil Nadu Textile Merchants Association, Madurai. For the ensuing Deepawali festival, they seek permission to open the shops on 25.10.2019 and 26.10.2019

<https://hcservices.ecourts.gov.in/hcservices/>



for 24 hours, by way of giving representation to the police, but, they were instructed to close the shops by 11.00 pm.

3. According to the petitioner, the Government issued G.O. (Ms) No.60, Labour and Employment (K2) Department, dated 28.05.2019, permitting all the shops and establishments to keep open for 24 X 7 all days for a period of three years. Relying upon the said Government Order, the petitioner is before this Court seeking the aforementioned relief.

4. The learned Additional Government Pleader appearing for the respondents would submit that Deepavali, being a very important festival, there will be lot of crowd. The police department is burdened with so much of vigil to prevent all the offences being committed by the habitual offenders. If the shops are kept open throughout night, it will be very difficult for the available force to control the criminal offences, being committed by the unscrupulous elements. Therefore, considering the same, this Court has restricted the time and permitted the persons to keep the shops be opened till 02.00 am vide order dated 23.10.2018 in W.P(MD) No.21718 of 2018 filed by the same petitioner. Therefore, the learned Additional Government Pleader prays that time can be restricted upto 02.00 am, after that, the members of the petitioner association shall have to close the shops.

5. I have considered the rival submissions made on either side.

6. Admittedly, the Government vide G.O. (Ms) No.60, Labour and Employment (K2) Department, dated 28.05.2019 permitted the shops and establishments to keep open the shops for 24 X 7 all days of the area subject to the following conditions:

"(1) Every employee shall be given one day holiday in a week on rotation basis, and the details of every employee shall be provided in 'Form-S' added to the Tamil Nadu Shops and Establishments Rules, 1948, and shall be exhibited by the employer in a conspicuous place in the establishments.

(2) Every employer shall exhibit details of the employees who are on holiday/leave, on daily basis, in a conspicuous place in the establishments.

(3) The wages including overtime wages of the employees shall be credited to their savings bank account.

(4) An employer shall not require or allow any person employed to work therein for more than eight hours in any day and forty eight hours in any week and the period of work including over time shall not exceed ten and a half hours in any day and fifty-seven hours in a week.

(5) If employees are found working on any holiday or after normal duty hours without proper indent of overtime, penal action will be initiated against the employer/manager



as laid down in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948.

(6) Woman employee shall not be required to work beyond 8.00 p.m. on any day in normal circumstances. Provided that the employer after obtaining written consent of a woman employee shall allow her to work between 8.00 pm and 6.00 am subject to providing adequate protection of her dignity, honour and safety.

(7) Transport arrangement shall be provided to the woman employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the establishment indicating the availability of transport.

(8) The employees shall be provided with rest room, wash room, safety lockers and other basic amenities.

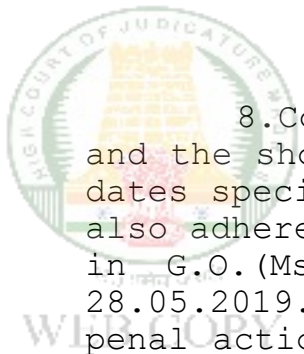
(9) Every employer employing woman employee shall constitute Internal Complaints Committee against sexual harassment of women under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Central Act 14 of 2013) and the said Committee shall be operative.

(10) The above said terms and conditions shall be treated and implemented in addition to those provisions specified in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948.

(11) In the case of violation of any statutory provision or any of the above terms and conditions noticed by the inspector or otherwise, necessary penal action will be initiated against the employer/Manager as laid down in the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the Tamil Nadu Shops and Establishments Rules, 1948."

7. It is true that this notification is issued after consulting all the labour representatives, employers association and State Government through Tripartite Consultation process. Predominantly its object is labour welfare and does not mandate opening of shops 24 X 7. In normal circumstances, the said Government Order can be implemented in letter and spirit. But, during important festivals like Deepavali, Pongal, etc. security of public at large shall also be taken into consideration. Under special circumstances, with the limited man power, the police department cannot be compelled to act as per the above Government Order issued. Therefore, I am of the considered view that the order passed by the learned Judge, permitting the merchants to keep the shops opened upto 02.00 am, is very much reasonable. Further, the contention of the learned Additional Government Pleader with regard to law and order situation and enforcement of the same through

<https://hcdmsteechm.in/hqsewecr> has force.



8.Considering the same, the writ petition is partly allowed and the shop owners can keep their shops open till 02.00 am on the dates specified by them viz., 25.10.2019 and 26.10.2019. They should also adhere to the conditions imposed in the Government Order issued in G.O.(Ms)No.60, Labour and Employment (K2) Department, dated 28.05.2019. If there is any violation of these conditions, strict penal action can be initiated against the shop owners, who violated the conditions. No costs.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

mj

To

1.The District Collector,
Madurai District,
Madurai - 625 020.

2.The Commissioner of Police,
Madurai City,
Madurai - 625 002.

3.The Commissioner,
Corporation of Madurai,
Arignar Anna Maaligai,
Madurai - 625 002.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-92878[F] dated 18/10/2019)

+1 CC to M/s.J.GUNASEELAN MUTHIAH, Advocate (SR-92978[F] dated 18/10/2019)

+1 CC to M/s.SPL GP (SR-93280[F] dated 21/10/2019)

W.P. (MD)No.22094 of 2019
18.10.2019

JM/22.10.2019/4P/7C