

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P(MD)No.12893 of 2018

R.Ganesan

... Petitioner

VS.

- 1.The District Collector,
Theni District,
Theni.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC),
Anna Nagar,
Madurai.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC),
Theni.
- 4.The Assistant Commissioner,
Prohibition and Excise,
Theni.
- 5.The Superintendent of Police,
Theni, Theni District.

6.The Commissioner,
Theni Municipality,
Theni.

... 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 consider the representation of the petitioner, dated 19.03.2018 and close the TASMAL shops with bar situated in Theni District bearing TASMAL Shop Nos.8528, 8530, 8531, 8537, 8538, 8542, 8543, 8553, 8555, 8567, 8568, 8575, 8576, 8577, 8603, 8609, 8615 and 8633 which are running without complying with the norms prescribed under the Tamil Nadu Liquor Retail Vending Shops Rules such as building approval, building stability certificate, No Objection Certificate from fire and rescue Department and Police Department.

For Petitioner	: Mr.K.Gokul
For RR 1 & 4	: Mr.S.P.Maharajan Special Government Pleader
For RR 2 & 3	: Mr.H.Arumugam
For R – 5	: Mr.T.Senthil Kumar Additional Public Prosecutor

ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

The prayer made in this Writ Petition is to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner, dated 19.03.2018 and close the TASMALC shops with bar situated in and around Theni District bearing Nos.8528, 8530, 8531, 8537, 8538, 8542, 8543, 8553, 8555, 8567, 8568, 8575, 8576, 8577, 8603, 8609, 8615 and 8633.

2.According to the learned counsel for the petitioner, in Theni District, Periyakulam, Bodi, Chinnamannur and other surrounded villages, the liquor shops are running, without complying with the norms prescribed under the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, such as building approval, building stability certificate, No Objection Certificate from fire and rescue Department and Police Department, etc. It is further alleged that the shops with bars were running 24 hours and the officials did not take any action against the same. In this regard, the petitioner made a representation dated 19.03.2018 to the respondent

authorities, which is pending without any progress. Therefore, this writ petition.

3.On the other hand, the learned Special Government Pleader appearing for the respondents 1 and 4, on instructions, submitted that out of 20 shops, 7 shops were shifted and one shop was closed. In respect of the remaining shops, the respondent authorities would take action, in accordance with law.

4.This Court considered the submissions made by the learned counsel on either side. This is a case, wherein the petitioner sought a writ of Mandamus to the respondent authorities to close the TASMAL shops for the alleged violation of the norms prescribed under the Rules, 2003. Such a prayer cannot be entertained under Article 226 of the Constitution of India, when the statute explicitly provides for the remedy of appeal to the parties. In an identical case in WP.No.16848 of 2022, a Co-ordinate Bench of this Court, by order dated 04.07.2022 in the case of *P.Rajendiran v. Government of Tamil Nadu and others*, while dismissing the said case, has observed as follows:

"2.The remedy of appeal is available to the petitioner, if according to the petitioner, the licence to the Tasmac shop has been issued in violation of rules. But without availing the remedy aforesaid, where factual issue about the location of the shop can also be determined, i.e., as to whether it is licensed in violation of the rules or not, the present writ petition has been preferred. The extraordinary remedy under Article 226 of the Constitution of India would not be open for determining the factual issues, which includes the location of Tasmac shop and as to whether it is in violation of rules or not. All these factual issues can easily be determined in the appeal. Therefore, we do not the writ petition of any exceptional nature where it can be maintained without taking the remedy of appeal. It is more so while there is no pleading in the writ petition to show that the remedy of appeal would not be efficacious."

5. Therefore, this Court is of the opinion that the relief sought in this writ petition cannot be straight away granted to the petitioner, without examining the factual matrix of the case in the light of the material evidence.

6. At this juncture, the learned counsel for the petitioner sought liberty to the petitioner to approach the appellate authority by preferring an appeal, in accordance with law, in respect of the remaining shops to be closed, for which, there is no objection on the side of the respondent authorities.

7.In view of the above submissions made on either side, this Court permits the petitioner to file an appeal before the appellate authority within a period of two weeks from the date of receipt of a copy of this order. On such filing, the appellate authority shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to all the parties, within a period of 60 days thereafter.

8.The Writ Petition is disposed of with the above directions. No costs.

[R.M.D.,J.] & [J.S.N.P.,J.]
12.09.2022

Index : Yes / No
Internet : Yes
ps

To

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and

J.SATHYA NARAYANA PRASAD,J.

ps

**ORDER MADE IN
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