



W.P(MD).No.24940 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.24940 of 2022

and

W.M.P(MD).Nos.19034, 19036 and 19039 of 2022

N.Arun

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.Aneesh Sekar,
The District Collector,
Madurai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st Respondent in his proceedings Na.Ka.No. 31606/2022/MD3, dated 19.10.2022 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.Veerakathiravan
Additional Advocate General-III
Assisted by Mr.T.Amjad Khan
Government Advocate



ORDER

The writ petition is filed challenging the order, dated 19.10.2022 issued by the 1st Respondent.

2. This is the second round of litigation. Earlier, W.P.(MD)No.21697 of 2022 was filed to challenge the order, dated 18.08.2022 on the premise that the Petitioner's objections has not been considered and mandate of Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 has not been applied. This Court was pleased to issue the following directions:

“3. It was submitted that the impugned order made without passing any order on the objections of the Petitioner submitted vide letters dated 13.06.2022, 26.08.2022 and 25.07.2022 is contrary to Rule 9 of the Rules. In this regard, it may be relevant to extract Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, which reads as under:

“9.Shifting of shop- There shall be no change in the location of shops except with the previous permission of the Collector.

(Provided that no such permission shall be given by the Collector unless representation received, if any, objecting to the change in location of the shop, is considered and orders passed thereon)”

A reading of the above Rule, which has been substituted vide G.O(Ms)No.17, Home, Prohibition and Excise Department (VI), dated 13.02.2022 would show that “no permission shall be given” unless representation / objection received, is considered and orders passed “thereon”. The expression “thereon” would indicate that if objections are made, orders must be passed with reference to the representation / objection received. Admittedly, there has been no orders passed on the representation / objection



made by the Petitioner. It was, thus, submitted that the impugned proceeding is made contrary to the mandate in the Proviso to Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. This Court finds that the failure to comply with Rule 9 may prove fatal to the validity of the proceedings and thus the impugned order cannot be sustained and is liable to be set aside.

4. In view of the same, the writ petition stands disposed of, with the direction to the District Collector, Madurai District, not to pass any orders granting permission for change of location of shop, unless orders are passed on the representations of the Petitioner, dated 13.06.2022, 25.07.2022 and 26.08.2022 in terms of Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.”

3. Pursuant to the above directions of this Court, the impugned order has been passed and it is the subject matter of challenge in the present writ petition. The present writ petition has been filed challenging the impugned order *inter alia* on the following grounds:

(a) The impugned order is made by the 1st Respondent by simply adopting the recommendations of the Assistant Commissioner (Excise) and District Manager, TASMAC and not applied his mind independently. Thus, the impugned orders suffers from vice of abdication of authority.

(b) The impugned order has been passed with a pre-determinant mind as would be evident from the fact that impugned order stated that the objections of the Petitioner have been considered earlier and this is also re-stated in the counter filed by the 1st Respondent.



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(c) There are specific allegations made by the Petitioner against the Respondents of abdication of authority. The counter filed by the Respondent in official and his personal capacity does not in any manner traverse the allegations of abdication of authority made by the Petitioner in his affidavit.

(d) The order of this Court, dated 14.10.2022 made it clear that the TASMACH shop would not be operated until orders are passed on the representation of the Petitioner. It is submitted that the TASMACH shop continue to operate.

(e) Admittedly, the inspection report of the Assistant Commissioner (Excise) and the District Manager, TASMACH was submitted by the Respondent on 19.10.2022. On the very same date, the impugned order has been made. It is submitted that impugned order is possibly bad for having been made in greater haste.

4. To the contrary, the learned Additional Advocate General for the Respondents submits the following:

(a) One cannot expect the District Collector to inspect all TASMACH shops personally and therefore, one cannot find fault with the Respondents taking into account the report filed by the Assistant Commissioner (Excise) and District Manager, TASMACH.



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(b) The Petitioner may not have *locus standi* to file a representation in terms of Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

(c) It is submitted that the report submitted by the District Manager, TASMAL would show that location of the TASMAL shop does not violate any of the conditions prescribed in terms of Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules 2003.

5. Heard both sides and perused the materials on record.

6. This Court finds that the impugned order suffers from the following infirmities:

(a) The impugned order has been made on the basis of the alleged inspection report obtained from the Assistant Commissioner (Excise) and the District Manager, TASMAL. It appears that the impugned order does not contain expression of opinion by the District Collector, who has been vested with the authority to pass order in terms of Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. It may be true that it is open to the Respondents to call for reports from his subordinates / authorities. However, it may be necessary for the Respondents to apply his mind



independently and arrive at a conclusion.

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(b) Further, the allegations of abdication has not been addressed in the counter. In the absence of the same being traverse, it may be difficult to accept the arguments of the learned counsel for the Respondents that the Respondents had not abdicated his authority instead applied his mind to the material, which was submitted in the form of inspection report by the Assistant Commissioner (Excise), District Manager, TASMAL. In this regard, reliance was sought to be placed on the judgment in the case of ***Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs Director General of Civil Aviation and others*** reported in (2011) 5 SCC 435, wherein, it was reiterated that quasi judicial authorities must exercise its power without being influenced or acting at the behest by an external body.

Relevant portion reads as under:

“26.In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (vide Purtabpore Co, Ltd. Vs. Cane Commr. Of Bihar, Chandrika Jha Vs State of Bihar, Tarlochan Dev Sharma Vs. State of Punjab and Manohar Lal Vs Ugrasen).

27. Similar view has been reiterated by this Court in Commr. of Police Vs. Gordhandas Bhanji, Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M.Kamalia and Pancham Chand Vs State of H.P



observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.”

(c) Finally, it also appears that the impugned order has been made in the very same day when the alleged inspection report has been obtained, which again would show that there has been great haste in passing the impugned order. Haste tends to arbitrariness and would vitiate the proceeding. In this regard, it may be relevant to refer to the following judgment:

7. It appears that there is also merit in the submission of the Petitioner that the impugned order has been made with pre-determinant mind. The very purpose of remitting the matter back was for the Respondents to apply his minds independently irrespective of any action that has been taken or not prior to the directions of this Court. The fact that reference is sought to be made to the rejections earlier is indicative of the fact that the impugned order apparently suffers from vice of pre-determination.

8. For all the above reasons, the impugned order, dated 19.10.2022 is set aside. This Court does not preclude the Respondents from passing fresh order after considering and setting out reasons for rejecting the Petitioner's objections. Taking into account the fact that this is a second round of



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litigation without examining whether Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules 2003 does contemplate personal hearing to be sought for as a matter of right. It appears that to put a closure to the above issue, the personal hearing, if sought for, may be granted to the Petitioner. It is made clear that the above grant of personal hearing is not to be treated as precedent as to the scope of hearing contemplated under Rule 9 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules 2003.

9. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2022

Index : Yes / No
Internet : Yes/ No
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To
The District Collector,
Madurai District,
Madurai.



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MOHAMMED SHAFFIQ, J.

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