



WEB COPY



W.P.No.34228 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.34228 of 2022

1. N.Mohan

2. Gopinath

S/o Paramanantham

..

Petitioners

-vs-

1. Additional Chief Secretary

Prohibition and Excise Department

Government of Tamil Nadu

Secretariat, St.George Fort

Chennai 600 009

2. Managing Director

Tamil Nadu State Marketing Corporation Ltd.,

CMDA Tower - II, 4th Floor

Gandhi Irwin Bridge Road

Egmore, Chennai 600 008

..

Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to frame



W.P.No.34228 of 2022

guidelines, rules and regulations with regard to the place for consuming alcohol by the purchasers of liquors after closing time of TASMAL Shop and bars attached thereto at 10 p.m., by considering the petitioners' representations dated 09.12.2022.

For Petitioners :: Mr.K.Sugumaran for M/s S.Senthil

For Respondents :: Mr.R.Shunmugasundaram
Advocate General assisted by
Mrs.R.Anitha
Special Government Pleader for R1
& Mr.K.Sathishkumar for R2

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

W.M.P.No.33678 of 2022 seeking permission to file a single writ petition is ordered as prayed for, as separate Court fee has been paid.

2. Mr.N.Mohan and Mr.P.Gopinath have filed this writ petition seeking for issuance of a mandamus to the Managing Director, Tamil Nadu State Marketing Corporation Limited (TASMAC), the second respondent herein to frame guidelines, rules and regulations with regard to the place for consuming alcohol by the purchasers of liquors after closing time of



W.P.No.34228 of 2022

WEB COPY

TASMAC shop and bars attached thereto at 10.00 P.M., by considering the representations of the petitioners dated 09.12.2022.

3. Learned counsel appearing for the petitioners submitted that the first petitioner is running a fast-food shop and the second petitioner is running a vegetable shop in Vengathur, Tiruvallur District. Pursuant to the G.O.(D) No.113 dated 23.05.2016 passed by the Home, Prohibition and Excise Department, the TASMAC shops and the bars attached thereto are authorized to function from 12.00 Noon to 10.00 P.M. Since they are closing down the TASMAC shops and the bars simultaneously at 10.00 P.M., the grievance of the petitioners is that the last minute purchasers consume alcohol in front of the closed TASMAC shops and the bars and the same is causing pollution and also creating public nuisance, because the last minute purchasers use the roadside and other public places to consume alcohol. In addition thereto, when these people are in intoxicated state, the elderly people who return from work during late hours are made to face the risk of crimes. Therefore, after the TASMAC shop is closed at 10.00 P.M.,



W.P.No.34228 of 2022

WEB COPY

the bar attached thereto should be kept open for some more time, so that this type of public nuisance will not continue to happen. The learned counsel appearing for the petitioners also submitted that once the bars are also closed at 10.00 P.M., the last minute purchasers are forced to use the roadside and the same is causing problems to the other shop owners like the petitioners in this case. Therefore, the petitioners have sent representations to the second respondent on 09.12.2022 requesting them to give reasonable time for closing the bar after the closure of the liquor shop. In addition to the written representation, oral appeals have been made. As there was no response, the petitioners have come to this Court.

4. Referring to Rule 11 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 (G.O.Ms.No.292, Prohibition and Excise (VI) dated 3 November 2003), the learned counsel for the petitioners argued that when the said rule speaks that no business shall be transacted before 8.00 A.M., and after 12.00 Midnight at the shop or bar, subsequently, G.O.(D) No.113, Home, Prohibition and Excise (VI) Department dated 23.05.2016



W.P.No.34228 of 2022

WEB COPY

has been issued fixing the business hours of the TASMAC retail vending liquor shops and the bars attached thereto from 12.00 Noon to 10.00 P.M every day, as against the existing working hours of 10.00 A.M., to 10.00 P.M. Therefore, when G.O.(D) No.113 dated 23.05.2016 says that the TASMAC shops and the bars attached thereto are permitted to work from 12.00 Noon to 10.00 P.M., as against Rule 11 of the aforementioned rules fixing the working hours between 8.00 A.M., and 12.00 Midnight, some reasonable time may be granted after 10.00 P.M., to the last buyer visiting the liquor shop to leave the bar, so that there would not be any public nuisance or pollution created in the public roadside. This apart, even the neighbouring shop owners also would not be put to face any problems.

5. A counter affidavit has been filed by the second respondent. The learned Advocate General appearing for the respondents submitted that when there are thousands of liquor shops functioning all over the State of Tamil Nadu, only in some of the liquor shops, attached bar facilities have been provided. Therefore, the statement made by the learned counsel



W.P.No.34228 of 2022

WEB COPY

appearing for the petitioners that the buyers coming to the TASMAC shop at the closing hours, namely, 10.00 P.M., are deprived of using the bar concerned, as the same is also closed at 10.00 P.M., is untenable and unacceptable. Secondly, selling of liquor is purely a policy decision of the State Government. As per Section 17C(1A)(a) and 17C(1B)(b) of the Tamil Nadu Prohibition Act, 1937, the second respondent Corporation has got the exclusive privilege of supplying liquor by wholesale or retail of the Indian Made Foreign Spirit (IMFS) for the whole of Tamil Nadu. Therefore, the timings for opening and closing of liquor retail vending shops are governed under the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, therefore, the petitioners cannot have any grievance for regulating the timing from 12.00 Noon to 10.00 P.M. Moreover, the representation of the petitioners dated 09.12.2022 received by the respondents on 16.12.2022 is pending for consideration.

6. Heard both sides.



W.P.No.34228 of 2022

WEB COPY

7. Rule 11 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 is extracted hereunder:-

"11. Working hours of shops.--No business shall be transacted before 8 a.m., and after 12.00 midnight at the shop or bar."

A reading of the above rule shows that in respect of a TASMAL shop run by the second respondent with attached bar, no business shall commence before 8.00 A.M., and continue after 12.00 Midnight. This has been amended by G.O.(D) No.113, Home, Prohibition and Excise (VI) Department dated 23.05.2016 and the relevant portion of the order is extracted hereunder:-

"The Hon'ble Chief Minister, as a first step towards achieving total prohibition, has ordered that the working hours of TASMAL retail vending liquor shops and the bars attached thereto be reduced and from 24.05.2016 onwards, the working hours of TASMAL retail vending liquor shops and the bars attached thereto would be from 12 noon to 10 pm every day as against the existing working hours of 10 am to 10 pm....."



W.P.No.34228 of 2022

WEB COPY

8. Since the above Government Order allows the TASMACH retail vending liquor shops and the bars attached thereto to work from 12.00 Noon to 10.00 P.M. every day on and from 24.05.2016 onwards, due to simultaneous closing of the TASMACH shops and the bars attached thereto at 10.00 P.M., the last minute purchasers have no law regulated place to consume alcohol and this has led to alcohol consumption in the public places by the purchasers of liquor from the TASMACH shop. Even at the late hours after closure of the TASMACH shop and the bar, the purchasers used to consume alcohol in front of the closed TASMACH shop and bar, because both the liquor shop and the bar are closed at the same time at 10.00 P.M. Some of the liquor consumers who drink after 10.00 P.M., used to come to the roadside and assemble at the other public places, as there is no other place to consume alcohol, because the bars and the liquor shops are closed at the same time. They also sometimes indulge in various crimes causing public nuisance to the road users, apart from the older people, women and people returning from work at late hours are prone to face the risk of crimes, because the liquor purchasers not only just consume alcohol



W.P.No.34228 of 2022

WEB COPY

in the public places, but they, in the intoxicated state, urinate and vomit in the same place and leave the glass bottles and paper cups as it is. Moreover, Section 4 and 4A of the Tamil Nadu Prohibition Act declares consuming alcohol in public places as a punishable offence. Though Rule 11 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 enables the functioning of the liquor shops from 8.00 A.M., to 12.00 midnight, the State Government have issued G.O.(D) No.113, Home, Prohibition and Excise (VI) Department dated 23.05.2016 enabling the functioning of the TASMALC shops and bars attached thereto to remain open from 12.00 Noon to 10.00 P.M., whereas in respect of FL2 and FL3 license holders, the timing for operation of the bar is extended on payment of privilege fees and usually run from 11.00 A.M., till 12.00 midnight, therefore, the timing for operation of the bar is not uniformly implemented across the State in all the liquor vending shops. When FL2 and FL3 license holders are granted license for operation of the bar on payment of privilege fees from 11.00 A.M., till 12.00 midnight, to avoid the public nuisance, as highlighted above, we direct the respondents to fix the working hours of the TASMALC



W.P.No.34228 of 2022

WEB COPY

retail vending liquor shops from 12.00 Noon to 9.30 P.M., and also allow the bars attached thereto to function till 10.30 P.M., everyday, after the closure of the liquor shops, so that the public road will be free from the public nuisance and will also enable the police personnel to enforce the public order on the road side without any law and order problem. With this observation, the writ petition stands disposed of. There shall be no order as to costs.

Speaking order

(T.R.,A.C.J.) (D.B.C.,J.)

Index : yes

24.02.2023

Issue copy today (30.03.2023)
ss

To

1. The Additional Chief Secretary
Prohibition and Excise Department
Government of Tamil Nadu
Secretariat, St.George Fort
Chennai 600 009
2. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower - II, 4th Floor
Gandhi Irwin Bridge Road
Egmore, Chennai 600 008



WEB COPY



W.P.No.34228 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

SS

W.P.No.34228 of 2022

24.02.2023