



WP(MD) No.6737 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **20.03.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

W.P.(MD) No.6737 of 2024

Mohammed Azarudeen

... Petitioner

/vs./

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Inspector of Police,
Mattuthavani Police Station,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forbear the Respondents herein from interfering with the Petitioner's peaceful running of his hotel/eatery in the name of "Azar Biryani" functioning at 24, Fruit Market Complex, Mattuthavani, Melur Main Road, Madurai during late night hours.

For Petitioner : Mr.K.Bharathi

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)



WP(MD) No.6737 of 2024

ORDER

WEB COPY

The learned Counsel for the Petitioner submitted that the Petitioner had filed this petition for issuance of Writ of Mandamus, forbearing the Respondents herein from interfering with the Petitioner's peaceful running of his hotel/eatery in the name of "Azar Biriyani" functioning at 24, Fruit Market Complex, Mattuthavani, Melur Main Road, Madurai during late night hours.

2. It is the contention of the learned Counsel for the Petitioner that the Petitioner was running hotel in the name and style of "Azar Biriyani" at No.24, Fruit Market Complex, Mattuthavani, Melur Main Road, Madurai and the Petitioner's business hours are 1.00 p.m to 5.00 a.m., every day. While so, the grievance of the Petitioner is that he was forced to close his eatery shop by 10.30 pm., every night by the Respondent Police and they do not permit the Petitioner to run his eatery shop beyond 10.30 p.m.. According to the petitioner, the said eatery shop is his only source of income and maximum customers used to visit his shop only during the mid night hours. Therefore, the act of the respondents in insisting the petitioner to close the shop by 10.30 p.m. causes great inconvenience to him and also to many customers, who regularly come to his shop for dinner from various quarters of life. In this regard, the petitioner preferred a representation, dated 29.02.2024 to the first respondent to consider



WP(MD) No.6737 of 2024

the same and permit him to run the eatery till 4.00 a.m. every day. Since the respondents did not take any action, the petitioner approached this Court by way of filing this petition.

3. The learned Counsel for the Petitioner also relied on the order of this Court *dated 03.02.2022* passed in *W.P.No.10512 of 2018* in the case of *S.Gunaraja Vs The Commissioner of Police, Greater Chennai, Commissioner Office Building, E.V.K.Sampath Road, Vepery, Chennai – 600 007* and the relevant portion of the order is extracted hereunder:

43. In the the light of the above discussion, this Court would like to hold/issue the following directions, viz.,

1. that by virtue of amendment of Section 35 vide Chennai City Police (Amendment) Act, 2007, the Commissioner of Police is not empowered to make any rules under Section 39, in the matter of regulating the timings of opening and closing of the eatery shops/hotels/restaurants and thus, the police authorities are not having any authority or power to dictate the opening and closing timings of the eatery shops/hotels/restaurants either orally or written instructions;

2. the police authorities shall not interfere with the business activities of the eatery shops/hotels/restaurants and disturb their peaceful functioning under the guise of law and order problem and even in which case, it is bounden duty of the



WEB COPY



WP(MD) No.6737 of 2024

police authorities to provide appropriate protection to the eatery shops/hotels/restaurants;

3. that by virtue of G.O.Ms.No.60 Labour and Employment (K2), dated 28.5.2019 vide Notification published in Tamil Nadu Gazettee, dated 15.06.2019 since the State Government permitted all the shops and establishments to keep Open for 24x7 all days of the year, the owners of the eatery shops/hotels/restaurants are at liberty to fix closing timings on their own depending upon their convenience and arrival of customers subject to the compliance of the conditions prescribed in the Notification until further orders by the Government or otherwise, as per the terms and conditions of the License/permits issued by the State Government/Municipal Corporation/Licensing Authorities,

4. that the State Government alone is empowered to fix opening and closing timings of eatery shops/hotels/restaurants and to make rules thereof;

5. that the State Government shall ensure smooth functioning of the eatery shops/hotels/restaurants during the night hours so that the private employees, watchmen and guards, taxi drivers who drive Ola, Uber and other cabs, young delivery boys working in swiggy, zomato and other delivery agencies, night shift employees and others can get food at odd hours.

6. that the police authorities shall be vigilant and take earnest safety measures at all times and ensure that no law



WEB COPY



WP(MD) No.6737 of 2024

and problem would arise so that the eatery shops/hotels/restaurants can function peacefully without any interruption; and

7. that it is needless to state that the police authorities can take action in accordance with law in the event of owners of the eatery shops/hotels/restaurants indulge in any illegal or prohibited activities.

44. Accordingly, this Writ Petition is allowed and the impugned order of the second respondent is set aside. No costs. Consequently, connected W.M.Ps are closed”.

4. Also, the learned Counsel for the Petitioner submitted that similar issue regarding interference with the timings of the hotels/restaurants by the State Police, has come up for consideration before the Division Bench of this Court in the case of ***R.Ganesh Prabhu Vs State of Tamil Nadu, represented by its Secretary, Home Department (W.P.No.5361 of 2018 and 3937 of 2019, dated 10.06.2019).***

5. The learned Government Advocate (Criminal Side) submitted that there is violation of G.O.Ms.No.61 Labour Welfare and Skill Development (K2) dated 02.06.2022. For violation of the said Government Order, it is for the authorities under the Shops and Establishments Act to pass appropriate orders



WP(MD) No.6737 of 2024

even sealing the shop of the Petitioner. The Police cannot *suo motu* act against the Government Order which had guaranteed the shop owners particularly, eaters to run 24 x 7 with conditions that it should employ more than 10 persons and the workers shall be granted one day leave in a week. The Petitioner is directed to follow strictly as per G.O.Ms.No.61 Labour Welfare and Skill Development (K2) dated 02.06.2022.

6. In the light of the G.O.Ms.No.61 Labour Welfare and Skill Development (K2) dated 02.06.2022 and in the light of the order passed in W.P.No.10512 of 2018 dated 03.02.2022, the Respondents are directed not to interfere with the Petitioner's peaceful running of his hotel/eatery in the name of "Azar Biriyani" functioning at 24, Fruit Market Complex, Mattuthavani, Melur Main Road, Madurai during late night hours.

7. In view of the above, this Writ Petition is allowed. No costs.

20.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Nsr



WP(MD) No.6737 of 2024

TO:

WEB COPY

- 1.The Commissioner of Police,
Madurai City,
Madurai.
- 2.The Inspector of Police,
Mattuthavani Police Station,
Madurai.



WEB COPY



WP(MD) No.6737 of 2024

SATHI KUMAR SUKUMARA KURUP, J.

Nsr

Order made in
W.P.(MD)No.6737 of 2024

Dated:
20.03.2024