



WP(MD)No.12828 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.12.2023
PRONOUNCED ON:05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

WP (MD) No.12828 of 2023
and
WMP (MD) No.10861 of 2023

Thangaraju ... Petitioner

Vs

- 1.The District Collector,
Ramanathapuram District.
- 2.The Managing Director,
Tamil Nadu State
Marketing Corporation Limited,
Chennai.
- 3.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Ramanathapuram.
- 4.The Tahsildar,
Paramakudi,
Ramanathapuram District.
- 5.Aatham
- 6.Usmaan
- 7.Kani
- 8.Manitha Neya Makkal Katchi
Represented by its
District President,
Sheik Abdullah



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9. The Commissioner of
Prohibition and Excise Department,
Chennai - 5.

[R-9 is *suo motu* impleaded vide
order dated 30.10.2023]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of writ of
mandamus forbearing the respondents 1 to 4 from
closing down or shifting the TASMACH Shop.No.6933
without complying with the order dated 24.01.2023
passed in WP(MD)No.21949 of 2022 by this Court.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.M.Ramesh

No.1 Government Advocate

For Respondent : Mr.S.Sivanesan

Nos.2 and 3

For Respondent : Mr.Krishnamoorthy

Nos.5 to 7 for Mr.T.Bashyam

For Respondent : Mr.D.S.Haroon Rasheed

No.8

ORDER

The petitioner Thangaraj was a licensee to sell
snacks and collect empty bottles from the bar



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attached to TASMAL Shop No.6933, which is situated in SPM.Theatre lane, Paramakudi on Madurai - Ramanathapuram Road.

2.The petitioner has approached this Court with a grievance that at the instigation of respondents 5 to 7, who are running a recreation club and a lodge in the name of SMY Lodge and Lucky Recreation Club, a decision has been taken by the District Administration to shift the TASMAL Shop No.6933 to some other place.

3.According to the petitioner this TASMAL Shop is situated just opposite to the said lodge and recreation club belonging to the respondents 5 to 7. The respondents 5 to 7 thinking that this TASMAL shop is affecting their business, had instigated the 8th respondent / a politician to file a public interest litigation. The 8th respondent the office bearer of a political party has filed a writ petition in WP(MD)No.21949 of 2022 that the TASMAL Shop No.6933 is functioning as against the guidelines and



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therefore, it needs to be shifted. This Court disposed that writ petition without expressing any opinion on the merits of the representation, directing the District Collector, Ramanathapuram District to consider the representation of 8th respondent and to take a decision within a stipulated time by providing opportunity of hearing to the parties concerned. Pursuant to the order, the District Collector has also issued notice to the TASMAL Manager and to this petitioner on 23.03.2023 for conducting enquiry on 30.03.2023. Therefore, the petitioner has filed this writ petition seeking a writ of mandamus not to shift the TASMAL Shop without complying with the orders of this Court in WP(MD)No.21949 of 2022, dated 24.01.2023.

4. In the meantime one Rajinikanth owner of the premises filed a writ petition before this Court in WP(MD)No.3171 of 2023 as against the proceedings of the District Collector, Ramanathapuram in Na.Ka.No.PP4/51610/2022, dated 07.11.2022. The said writ petition was disposed considering the



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alternative remedy available under Rule 9A of the Tamil Nadu Liquor Retail Vending (In Shops and Bar) Rules, 2003, [herein shall be referred to as 'the Rules'] permitting the petitioner to file an appeal before the appellate authority.

5.The Commissioner has filed a status report that the said Rajinikanth has already filed an appeal under Rule of the Rules and the same is posted for enquiry.

6.Since the petitioner has raised several objections that at the instance of respondents 5 to 7, who are having a lodge and bar with FL3 license, the 8th respondent / a political person has filed the earlier writ petition to shift the TASMAL Shop.

7.This Court based on the request of the petitioner during the course of argument has appointed an Advocate Commissioner to ascertain whether there is any violation of norms prescribed.

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8.The learned Advocate Commissioner has filed his status report that the TASMAL Shop No.6933 is 302.5 metres from away from Ramalinga School and 288 metres away from KJEM School. There are mosque and church at a distance of 127 metres and 186 metres respectively.

9.Rule 8 of the Rules prescribes certain conditions on the location of any TASMAL Shop and the same is extracted hereunder:

"8.Location of shop.- (1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50(fifty) metres and in other areas 100 (hundred) metres from any place of worship or education institutions:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:



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Provided also that if any place of worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this rule shall not apply: Provided also that no liquor shops shall be established in any tribal areas covered under Integrated Tribal Development Project and Hill Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari districts.

(2) Every shop shall be housed in pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3) The shop shall be in the location approved by the Collector before commencing the business in the shops."

10. From the report of the learned Advocate Commissioner there is no violation of Rule 8 of the Rules. The petitioner has taken a specific ground that when there is a bar functioning opposite to the TASMAC shop, the 8th respondent/ a political party has



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filed the previous writ petition as against the TASMAC shop alone in WP(MD)No.21949 of 2022 at the instance of the respondents 5 to 7, who are running the said lodge and bar. From the report of the learned Advocate Commissioner it appears that respondents 5 to 7 are having a bar with FL3 license in the same lane, where the TASMAS is also located. The condition laid down for the grant of FL3 license in the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 are as follows:

"Rule. 2

(xvi) "Star Hotel" includes a beach resort hotel which satisfies the following criteria and is certified as such by the Director of Tourism of the State Government—

(a) that it has twenty lettable bedrooms and forty beds with attached bathrooms;

(b) that it has separate dining room and restaurant; (c) that it has good quality cuisining both Indian and Continental;

(d) that it has clean kitchen and washing facilities; (e) that it has well



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trained staff with uniform; (f) that it has special facilities like conference hall, recreation facilities (indoor games) and the like; and

(g) that it has adequate parking space.

19. Conditions to be satisfied before a privilege is granted and the licence is issued and the procedure to be followed in dealing with applications:-

(A) On receipt of the application, the licensing authority shall verify the particulars furnished in the application. In the case of application of all kinds, he shall satisfy himself in general after due enquiry:

(i) that the local needs justify the grant of the licence;

(ii) that public interest shall not suffer by the grant of the licence applied for and that the privilege is not likely to be misused.



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(B) In the case of applications of particular kinds mentioned below, the licensing authority shall in addition, satisfy himself after due enquiry that the following additional conditions are satisfied, namely

(2) In the case of an application for a licence in Form F.L.2.-

(i) that the club in respect of which the licence has been applied for is of a non-proprietary character functioning for more than 3 years and

(ii) that atleast 50 of the members of the club have signified their willingness to obtain liquor from the said club or that the club should have functioned with a bar in the pre-prohibition days and have on its rolls not less than 50 persons.

(3) In the case of an application for a licence in Form F.L.3 the Star Hotel



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*in respect of which the licence is applied
for is run on western style."*

11.FL3 license was given to respondents 5 to 7.
In this regard the status report of the Assistant
Commissioner [Excise], Ramanathapuram dated
15.12.2023 is extracted as under:

*"The FL.3 licence No.19/2013-2014
granted to SMY.Lodge has been renewed for
the year 2023-204, the licenced premises
has been located at a distance of
2km from Madurai - Dhanuskodi National
Highway (NH-49) and the location of the
licenced premises is as per GO(Ms)No.32,
Home, Prohibition and Excise (VI)
Department, dated 21.05.2018 and Tamil
Nadu Liquor (Licence and Permit) Rules,
1981. During Inspection no one was
consuming liquor in the Bar. Liquor Stocks
were as per Stock register and the
accounts are maintained properly. There is
no violation condition."*

12.The basic requirement for grant of FL.3
licence is that it must be a star hotel that



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includes, a beach resort hotel, which shall satisfy certain criteria, which needs to be certified by the Director of Tourism Department. The Commissioner's report discloses that the Lucky Bar is not having required certificate from the Director of Tourism Department. The license was issued based on the recommendation of the Assistant Commissioner, [Excise], Ramanathapuram without the required certificate of the Director of Tourism Department. The purpose for which FL.3 licence has been provided is to serve liquor for the inmates of the hotel. However the FL.2 and FL.3 licences are issued in a mechanical manner. By referring to the provisions under Rule 17(A) Tamil Nadu Liquor Retail Vending (In Shops and Bar) Rules, 2003, this Court has passed the order on 07.12.2023 as under:

"12.From the report of the learned Advocate Commissioner, it appears that there is no violation of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and the location of the subject TASMAL Shop.



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However, the District Collector has taken a decision in a mechanical manner without ascertaining that whether it violates the rules or not. This Court has also noticed the manner in which, FL 3 License was provided to the respondents 5 to 7. FL 3 license was provided for consumption of liquor as per the Tamil Nadu Liquor (License and permit) Rules, 1981 as per 17(a) of the Rules, which is extracted as under:

"F.L.3 - Licence for possession of liquor by the Star Hotels for supply to foreign tourists and foreigners resident in India holding personal permits and also citizens of India holding personal permits for consumption within the license room of the Hotel or for renewal to their private rooms in the same hotel in which they stay for consumption there.

13.From the appearance and the materials placed before this Court, it could be seen that the Bar run by the respondents 5 to 7 is not a star hotel, eligible for F.L.3 Licence. Despite the same, F.L.3 licence has been provided to the respondents 5 to 7 and it is not known under what circumstances, the licence has



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been granted to them.

14. One Mr. Sivasubramaniam, Assistant Commissioner (Excise) is present before this Court at the time of hearing. This Court has raised a question to the officer under what provisions F.L.3 Licence was granted to the respondents 5 to 7. It is unfortunate that the Assistant Commissioner is not aware of the provisions of law.

15. This Court by order dated 20.07.2023, directed the District Collector to conduct a proper enquiry by issuing notice to all the parties. Though the District Collector claims that he has conducted an enquiry on 07.08.2023, it is regret to mention that he did not find any violation in granting F.L.3 Licence to the respondents 5 to 7 during the enquiry proceedings. Moreover, though there is no violation as per the statute, the District Collector has recommended for removal of the TASMACH Shop No.6933 without looking into the other affairs of the F.L.3 Bar.

16. In view of the above, this Court directs the Commissioner of Prohibition and Excise Department, Chennai to review the licences granted under F.L.2 and F.L.3



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and ascertain as to whether the licences have been granted in accordance with the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and file a report before this Court on the next date of hearing.

List on 20.12.2023."

13.After this order, the Assistant Commissioner [Excise], Ramanathapuram has inspected the SMY Lodge and Lucky Bar on 15.12.2023 and has submitted a report to the Commissioner and the Commissioner in his status report has stated as follows:

"The District Collector, Ramanathapuram furnished a report and recommended to grant fresh FL.3 licence to the applicant. Further the inspection report of the Assistant Commissioner [Excise], Ramanathapuram, recommending for the issuance of FL.3 licence to SMY.Lodge, Paramakudi as per Tamil Nadu Liquor[Licence and Permi] Rules, 1981 was also enclosed.



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Further the District Collector, Ramanathapuram in his report has furnished copies of the following documents in support of his recommendation for the grant of FL.3 licence to SMY.Lodge,

(i) Building licence No.123/2012, dated 19.12.2012 in Form-D issued by the Tahsildar, Paramakudi.

(ii) No Objection certificate issued by the Fire and Rescue Department, Ramanathapuram, dated 29.11.2023.

(iii) Police clearance certificate issued by the Sub-Inspector of Police, Emaneshwaran Police Station, Ramanathapuram, dated 04.03.2013.

(iv) Structural Stability issued by the Chartered Engineer

(v) Trade licence fee receipt issued by Paramakudi Municipality;

8. Further the District Collector has informed that the applicant remitted following fees for grant of FL.3 licence to SMY.Lodge. The fee remitted was for non-star category;



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S.No	Nature of Fee	Amount (Rs)
1	Privilege fees	3,00,000
2	Licence fees	5,000
3	Application fees	1,000

It is submitted that the District Collector has reported that there were 30 rooms with 54 beds available in the SMY.Lodge and area of the restaurant and dining hall was 1200 Sq.Ft area of the kitchen 400 Sq.ft and a conference hall with an area of 1400 Sq.ft in which 75 people can be accommodated. There was a parking area of 500 Sq.ft in which 5 number of four wheelers and 20 number of two wheelers can be parked and 15 employees are working in the hotel.

Based on the recommendation of Assistant Commissioner [Excise] and the District Collector, Ramanathapuram, FL.3 licence No.19/2013-2014 was granted to the SMY.Lodge, Paramakudi as per the proceedings of the Commissioner of Prohibition and Excise in Office No.P & E 2(1)/5903/2013, dated 23.10.2013."



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14. Even after the specific reference in the earlier order 07.12.2023, the inspection reports have been made by the Assistant Commissioner that this Lucky Bar has fulfilled the conditions as required for FL3 license. It appears that they have also extended the lease from the year 2023-2024. From the report of the Commissioner, it appears that the certificate from the Director of Tourism Department that the hotel falls under star category and it has basic requirements for a star hotel are not at all available. None of the official respondents, who are responsible to ascertain the same has come forward to accept the same. This is how the FL2 and FL3 license are issued. The licence has been issued without complying with the requirements mandated in the Rules and officials are not inclined to correct their mistakes, even if it is pointed out.

15. In this case though there is no violation in respect of Rule 8 for the TASMACH Shop No.6933, order has been passed by the District Collector to



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shift the TASMAC Shop. Challenging the same, one Rajinikanth has filed an appeal before the Commissioner. The petitioner has been a lessee for the TASMAC Bar upto 12.12.2023 and the period is also already over.

16.In view of the pendency of the appeal before the Commissioner, this writ petition is disposed of with liberty to the parties to work out their remedy before the Commissioner in the pending appeal. The Commissioner, Prohibition and Excise Department, while deciding the appeal shall also look into the averment of the business rivalry raised by the petitioner.

17.The fact remains that respondents 5 to 7 are also having a bar with FL3 license. The photographs placed by the learned Advocate Commissioner reveals that SMY lodge and recreation Club, may not fall under the star hotel category. Apparently it is not having the certificate from the Director of Tourism Department. Reports have been created as if this



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hotel is having a conference hall with 1400 sq.ft, in which 75 people can be accommodated and there is a parking space of 1500 Sq.Ft, where 5 four wheelers and 20 two wheelers can be parked. The photographs show that there is no sufficient space available for parking the vehicles. However licence has been granted in the year 2013 and it has been renewed from 2023-2024.

18.The Commissioner with the photographs placed before this Court by the learned Advocate Commissioner, shall ascertain whether this SMY Lodge has been issued with the certificate of the Director of Tourism Department, whether this hotel complies with the conditions contemplated for grant of FL3 license under Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and shall review the licence, based on his findings shall pass necessary orders in accordance with law.

19.The Commissioner is also expected to ascertain whether all other FL.2 and FL.3 licences,

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do comply with the conditions for grant of FL.2 and FL.3 licence under Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

20.With the above directions, this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

05.03.2024

DSK

To

- 1.The District Collector,
Ramanathapuram District.
- 2.The Commissioner of
Prohibition and Excise Department,
Chennai - 5.
- 3.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
Chennai.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Ramanathapuram.
- 5.The Tahsildar,
Paramakudi.



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