



WEB COPY



W.P.(MD) No.11559 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM:

THE HONOURABLE MR.D.KRISHNAKUMAR,

THE ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.11559 of 2017

P.Prabakaran

... Petitioner

-Vs-

1.The State of Tamil Nadu,

Rep. by its Chief Secretary,

Secretariat,

St. George Fort, Chennai.

2.The State of Tamil Nadu,

Rep. by its Principal Secretary,

Department of Excise and Prohibition,

Secretariat,

St. George Fort, Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the words in Rule 8(1) of Tamil Nadu Liquor Retail Vending (in shops and Bars) Rules, 2003 ie., “Municipal Corporations and



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Municipalities within a distance of 50 (fifty) metres and in other areas” and the words “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” as ultra vires to the Preamble, Articles 14, 15(1), 15(2), 19(1) (d), 21, 21-A, 30(1), 39(f), 45 and 47 of the Constitution of India and contrary to Sections 3, 8, 9 and 29 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule 4 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011.

For Petitioner : Mr.S.M.Anantha Murugan
For Respondents : Mr.P.Thilak Kumar,
Government Pleader

ORDER

[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]

The prayer sought for in this Writ Petition is for a Writ of Declaration, declaring the words in Rule 8(1) of “Tamil Nadu Liquor Retail Vending (in shops and Bars) Rules, 2003” [in short “the Rules”] ie., “Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas” and the words “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” as ultra vires to the Preamble, Articles 14, 15(1), 15(2), 19(1)



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(d), 21, 21-A, 30(1), 39(f), 45 and 47 of the Constitution of India and contrary to Sections 3, 8, 9 and 29 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule 4 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011.

2.The aforesaid proviso appending the Rule is under challenge before this Court.

3.The learned Counsel for the petitioner submitted before this Court that the said proviso to the Rule states that no school shall be established within 50 metres from the TASMAC shops which have been established by the TASMAC, by which the right of the establishment of the schools will be infringed under Articles 14, 15(1), 15(2), 19(1)(d), 21, 21-A, 30(1), 39(f), 45 and 47 of the Constitution of India and also under Sections 3, 8, 9 and 29 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule 4 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011. He further submitted that this aspect has not been considered by the respondents while framing the aforesaid proviso to the said Rules. In such circumstances, learned Counsel seeks indulgence of this Court by declaring the said proviso as null and void.



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4.No counter affidavit has been filed in the present case. When a Rule has been challenged before this Court, the Government ought to have filed a counter affidavit. Even nearly after 7 years of filing the present writ petition and eventhough the matter has been taken up for consideration on several occasions, the Government has not chosen to file any counter affidavit. Hence, we have no hesitation to impose a cost of Rs.10,000/- to the second respondent. The second respondent is directed to pay a sum of Rs.10,000/- as cost to the Chief Justice Relief Fund (payable in Accounts Sections of the High Court Registry).

5.According to the petitioner, the aforesaid proviso to the Rule requires reconsideration at the hands of the Government.

6.In such circumstances, since counter affidavit has not been filed by the respondents and considering the fact that there is some force in the contention of the petitioner that if any educational institutions are established within the prescribed distance of 50 metres after the establishment of the shop, then that cannot be a ground for shifting the said shops running within the prohibited distance in the interest of the said institutions as well as in the interest of the student community, when such permission is granted by the Government for a minority or non-minority institution, the authorities concerned shall make



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necessary steps for shifting the TASMACH shops within the prohibited distance as the shifting of the shops will not be a prejudice caused to the respondent Corporation since the interest of the institution as well as the students community and safety of the students are all of more concern for the Government.

7. Therefore, we are of the opinion that the said proviso requires to be re-looked by the Government by considering the petitioner's representation and by taking into account the aforesaid reasons and the Government shall take appropriate decision as early as possible within a period of twelve [12] weeks from the date of receipt of a copy of this order.

8. With the aforesaid observations and direction, this Writ Petition stands disposed of. There shall be no order as to costs.

[D.K.K., A.C.J.] & [R.V., J.]

26.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MR



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To

1.The Chief Secretary,
State of Tamil Nadu,
Secretariat,
St. George Fort, Chennai.

2.The Principal Secretary,
State of Tamil Nadu,
Department of Excise and Prohibition,
Secretariat,
St. George Fort, Chennai.



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D.KRISHNAKUMAR, A.C.J.

AND

R.VIJAYAKUMAR, J.

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