

W.P.(MD)No.14523 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 03.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.(MD)No.14523 of 2024

and

W.M.P.(MD)No.12752 of 2024

D.Prabhu

: Petitioner

Vs.

1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai.

2.The District Collector,
Trichy District,
Trichy.

3.The Superintendent of Police,
Trichy District,
Trichy.

4.The Inspector of Police,
Woraiyur Police Station,
Woraiyur Taluk,
Trichy District.



W.P.(MD)No.14523 of 2024

WEB COPY

5.S.S.Manamahil Mandram,

Represented by its Secretary,

No.2, Thambi Garden, Lingam Nagar,

Kulumani Main Road,

Nearby Fish Market,

Woraiyur,

Trichy – 3.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to forbear the official respondents from opening / establishing the recreation club of the fifth respondent herein and its bar situated at No.2, Thambi Garden, Lingam Nagar, Kulumani Main Road, Nearby Fish Market, Woraiyur, Trichy – 3 and by considering the petitioner's representation dated 22.04.2024, within the period stipulated by this Court.

For Petitioner : Mr.M.Mohamed Zamil
for M/s.Ajmal Associates

For Respondents 1 & 2 : Mr.P.Thilak Kumar
Government Pleader

For Respondents 3 & 4 : Mr.T.Senthil Kumar
Additional Public Prosecutor



WEB COPY

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

The prayer sought for herein is for Writ of Mandamus, seeking to forbear the official respondents from opening / establishing the recreation club of the fifth respondent herein and its bar situated at No.2, Thambi Garden, Lingam Nagar, Kulumani Main Road, Nearby Fish Market, Woraiyur, Trichy - 3, by considering the petitioner's representation dated 22.04.2024.

2.The petitioner has filed the present writ petition as a Public Interest Litigation, as he claims that he is a public spirited person. It is his concern on behalf of the public in the locality at Thambi Garden, Lingam Nagar, Kulumani Main Road, Nearby Fish Market, Woraiyur, Trichy, that so far in that locality there has been no TASMAL shop or any club selling the IMFL by getting F.L.2 licence. When that being so, some people have made arrangements to open a recreation club in the name of S.S.Manamahil Madram, in the locality and within a week or two they may open the recreation club, where if the F.L.2 license is given that would become only a liquor selling place for which main purpose only such recreation club is established. Therefore, the petitioner on behalf of the public



W.P.(MD)No.14523 of 2024

in that locality had already given objections to the first respondent as well as the second respondent. Though such an objection had been given that was neither considered or even if it is considered nor decided in favour of the public by rejecting the claim of the fifth respondent for providing any F.L.2 license to sell liquor. Therefore, at this juncture, the petitioner having no other option on behalf of the local public has moved the present petition with the aforesaid prayer as a Public Interest Litigation.

3. Heard the learned Counsel for the petitioner who would submit that, under Rule 8(1) of “the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003” [hereinafter referred to as “2003 Rules”, for the sake of brevity], though it has been stated that within the Municipal Corporation and Municipalities, no liquor license shall be permitted, if any temple or educational institution is located within the 50 meters radius, as there is a temple which is located nearby but not within 50 meters, but within 100 meters that was taken as an advantage by the authorities concerned including the second respondent and they intended to give such license to the fifth respondent.

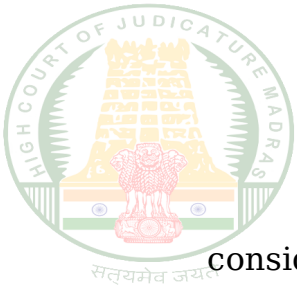


WEB COPY

4.In this context, learned Counsel would further submit that whenever such application is made for getting license for selling liquor, while considering such applications for granting license to any shop or club, the public opinion and public concern must be considered predominantly by the authorities concerned and if the majority of the public opposes the coming up of a new shop or club for selling IMFL, the authorities shall restrain themselves from issuing license. This is the basis for which the petitioner though had made an attempt before the authorities to stop the grant of license, having failed in the said attempt has approached this Court and seeks indulgence of this Court by filing a Writ of Mandamus, he contended.

5.We have heard Mr.P.Thilak Kumar, learned Government Pleader appearing for the respondents 1 & 2 and Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the respondents 3 & 4.

6.Learned Government Pleader has brought to our notice that whatever the objection that had been given by the petitioner or any third party on behalf of the public had already been



W.P.(MD)No.14523 of 2024

considered by the second respondent / District Collector, at the instance of the first respondent and having considered the said objections, the second respondent / District Collector who is the authority to consider such objection within the meaning of Section 8(1) of the Rules, has rejected the same by his letter dated 10.06.2024.

7.The learned Government Pleader has relied upon the reasoning given by the second respondent in rejecting the said plea of the petitioner and others in his proceedings dated 10.06.2024 which reads thus:

“*அதன்படி பார்வை 4 இல் காணும் இவ்வலுவலக கடிதத்தின் படி தொடர்புடைய மனுதாரரை உதவி ஆணையர் (கலால்) முன்பாக 17.05.2024 அன்று ஆஜராகி அறிவிப்பு அனுப்பப்பட்டதின் பேரில், தொடர்புடைய மனுதாரர் ஆஜராகி மேற்கண்ட மனுவில் தெரிவித்துள்ளக் கருத்துக்களினை தெரிவித்தார்.*

இதன்படி, பார்வை 6 இல் காணும் இட ஆய்வுக் குறிப்பில், திருச்சிராப்பள்ளி உதவி ஆணையர் (கலால்) கடந்த 06.06.2024 அன்று இட மேற்கொள்ளப்பட்டதில், திருச்சிராப்பள்ளி மேற்கு வட்டம், பாண்டமங்கலம் கிராமம், உறையூர் குபமணி மெயின் ரோடு காதலிலக்கம் எண்.161/1 இடமானது திருச்சிராப்பள்ளி மாநகராட்சி, அபிஹேகபுரம் கோட்டம் எல்லைக்குட்பட்டதாகும் எனவும், இக்கட்டிடத்தினைக்கற்றி



WEB COPY



W.P.(MD)No.14523 of 2024

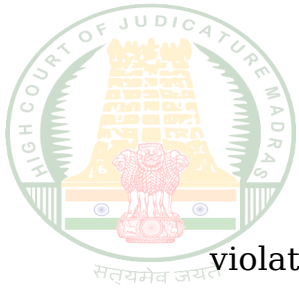
50 மீட்டர் சுற்றளவில் பள்ளிக் கூடமோ, வழிபாட்டு தலங்களோ ஏதுமில்லை எனவும், தமிழ்நாடு (மதுபானக் கடைகள் மற்றும் மதுக் கூடங்கள்) விதிகள் 2003 விதி 8(1) இன்படி உள்ள நிபந்தனைகளை நிறைவு செய்வதாக உள்ளது. எனவே புகார் மனுதாரர்கள் தெரிவித்துள்ள தகவல்கள் அனைத்தும் அரசு மதுபான விதிகளுக்கு ஏற்புடையதாக இல்லை என்பதால் மனுதாரர்களின் மனுக்களின் நிராகரிக்கலாம் என தெரிவித்துள்ளார்.

மேலும் பாண்டமங்கலம் கிராம நிர்வாக அலுவலர், மேற்படி இடத்தில் 50 மீட்டர் சுற்றளவில் பள்ளிக்கூடமோ, வழிபாட்டு தலங்களோ ஏதுமில்லை என புல விசாரணையில் தெரிவதாக சான்று அளித்துள்ளார்.

ஏனவே, மேற்படி இடத்தில் 50 மீட்டர் சுற்றளவில் பள்ளிக் கூடமோ, வழிபாட்டு தலங்களோ ஏதுமில்லை எனவும், தமிழ்நாடு (மதுபானக் கடைகள் மற்றும் மதுக் கூடங்கள்) விதிகள் 2003 விதி 8(1) இன்படி உள்ள நிபந்தனைகளை நிறைவு செய்வதாக உள்ளது. எனவே, புகார் மனுதாரர்கள் தெரிவித்துள்ள தகவல்கள் அனைத்தும் அரசு மதுபான விதிகளுக்கு ஏற்புடையதாக இல்லை என்பதால் மனுதாரர்களின் மனுக்கள் நிராகரிக்கப்படுகிறது.

மாவட்ட ஆட்சியருக்காக,
திருச்சிராப்பள்ளி.”

8. Therefore, the learned Government Pleader would submit that as per the 2003 Rules, the location of the shop, how it should be located has been provided in Rule 8 and incase of any



W.P.(MD)No.14523 of 2024

violation of the said Rule only, these kind of objections being raised by the individual or general public would be considered and here no such Rule since has been violated with regard to the locality for the proposed recreation club, the objection raised by the petitioner and others was liable to be rejected and accordingly, it is rejected. Therefore, at this juncture, the prayer sought for by the petitioner to issue a Writ of Mandamus cannot be granted, learned Government Pleader contended.

9.We have considered the submissions made by the learned Counsel on either side.

10.Insofar as the location of a TASMAL shop or Bar or a Recreation Club for selling the IMFL by getting F.L.2 license, the relevant Rule is Rule 8 under the heading "Location of Shop", which reads thus:

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 within 100 (hundred) metres] from any place of worship or educational institutions:*

Provided that the distance restriction shall not apply in areas designated as



WEB COPY



W.P.(MD)No.14523 of 2024

“Commercial” or “Industrial” by the Development or Town Planning Authorities:

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

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.”

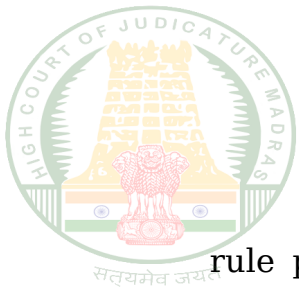
11.Further, under Rule 4, license can be granted by the authority concerned and before issuance of such license, the location of the shop or bar or recreation club which requires F.L.2 license to be verified by having a spot inspection. Rule 8(1) states that no shop shall be established in Municipal Corporation and Municipalities within a distance of 50 meters and in other areas within 100 metres from any place of worship or educational institutions.



WEB COPY

12.Therefore, insofar as the municipal area, the prohibited distance is only 50 meters within which if educational institution or temple or any place of worship is located, license cannot be granted for locating the shop or bar. The prohibited distance is 100 meters in respect of other areas than the Municipal areas. Here in the case on hand, the proposed location of the fifth respondent recreation club is in the municipal area. Therefore, only the 50 meters Rule would apply. It is also an admitted case on the part of the petitioner that within 50 meters no place of worship or educational institution is located. This has been specifically stated by the second respondent / District Collector in his order dated 10.06.2024. Therefore, according to the second respondent, by applying Rule 8 of the 2003 Rules, after verifying the distance since it is not in violation of the Rules, especially Rule 8(1), with regard to the distance of the location of the licensee, the objection that has been raised by the public has to be rejected and accordingly, he has rejected.

13.To that extent, the decision taken by the second respondent / District Collector in rejecting the objection given by the petitioner cannot be found fault in *stricto sensu* because of the



W.P.(MD)No.14523 of 2024

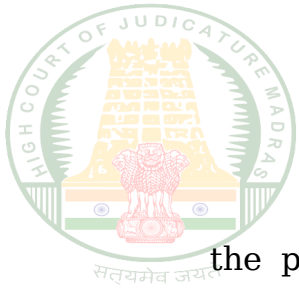
rule position. Making the Rule is in the exclusive domain of the Government as a subordinate legislation within the power vested with them within the Act. If it is the wisdom of the Government to have a Rule like Rule 8, where in the Municipal areas, it is beyond 50 meters of the location of an educational institution and place of worship, such kind of license can be provided being a policy decision, Court would not express any view against such a decision taken by the administrators. But at the same time, in common knowledge one can understand that 50 meters distance is not a vast distance, where if a place of worship or educational institution is located in the 51st and 52nd meter of a TASMAL shop or liquor vending place, it is the decision of the administration that, that will not in any way harm the public in the locality including the young children who are attending schools and educational institutions. If that is the logic or decision taken by the administrators, the people for whom the governance is made may feel otherwise.

14. Of late, we come across many such cases where people in the locality oppose the move of the authorities to locate the TASMAL shop or IMFL shop or license for selling such IMFL and in respect of those objections given by the public, especially the women folk, the answer given by the authorities is that it does not



W.P.(MD)No.14523 of 2024

cover under the Rule, which means the Rule is not violated. The Rule, especially Rule 8 of the 2003 Rules, should be made to protect the welfare of the people in various localities in the State from the menace of people thronging in these kind of liquor vending shops which create almost everyday law and order problem. But here, the Rule appears to have been made to protect these kind of TASMAL retail vending shops or IMFL retail vending shops or clubs or bars which aim to enhance the selling of these intoxicating materials which will go a long way to affect the society at large, i.e., the people in Tamil Nadu. Therefore, the high time has come to re-think and re-visit the liquor policy of the Government, where, based on the public opinion, which could be created by political parties, NGOs and any other groups in the interest of society, the Government can take a conscious decision. Taking of such decision may not be an easy task for the people in the government for variety of reasons. But that would not justify the action on the part of the government to support the liquor policy presently being undertaken, whereby the society, especially the younger generation are put in peril, as, such of cases are reported almost daily in innumerable numbers. Therefore, this Court makes a request to the Government of Tamil Nadu to re-visit their policy of liquor in the State of Tamil Nadu for the welfare of



W.P.(MD)No.14523 of 2024

the people in Tamil Nadu, especially the younger generation as they would be the pillars of the tomorrow society. Except making these observations and request, we are not in a position to give any relief to the petitioner in the present writ petition.

15.With these observations, the writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]

03.07.2024

Neutral Citation : Yes/No

Index : Yes

Internet : Yes

MR

Note: Issue a copy of this order by 03.07.2024.



WEB COPY

To

1.The Commissioner of Prohibition and Excise,
Chepauk,
Chennai.

2.The District Collector,
Trichy District,
Trichy.

3.The Superintendent of Police,
Trichy District,
Trichy.

4.The Inspector of Police,
Woraiyur Police Station,
Woraiyur Taluk,
Trichy District.



WEB COPY

VERDICTUM.IN



W.P.(MD)No.14523 of 2024

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

MR

ORDER MADE IN
W.P.(MD)No.14523 of 2024

03.07.2024