

WWW.LIVELAW.IN

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.19278 of 2020

M.Thaha Mohamed

... Petitioner

Vs.

1. The District Collector,
Madurai District, Madurai.

2. The Branch Manager,
Tamilnadu State Marketing Corporation,
Madurai.

3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai – 600 008.

... Respondents

*(R3 is suo motu impleaded vide order
dated 21.12.2020)*

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Mandamus, to direct the respondents to remove the TASMALC Shop in Shop No.5422 situated in Thattankulam main road, Madurai, by considering the petitioner's representation dated 12.02.2019.

For Petitioner : M/s.K.Chengiz Khan

WWW.LIVELAW.IN

For Respondents : Mr.M.Muthugeethaiyan,
Special Government Pleader for R1
Mr.H.Arumugam for R2 and R3

ORDER

[Order of the Court was made by **N. KIRUBAKARAN, J.**]

**"Liquor outlet is neither a book stall nor a grocery shop
to be located near a school or a residential area"**

Government never minds flooding of State with liquor as long as revenue flows steadily from booze. About 5300 TASMAC outlets easily earn about Rs.30,000 crores to Tamil Nadu Government every year. Rs.70 crores on normal days, Rs.90 to Rs.100 crores during weekends and Rs.110 to Rs.120 during festival days, TASMAC earns. Rs.465.79 crores was net sale during two days during Deepavali in November 2020.

2.The sad fact is that Government loses mere than Rs.2 in terms of health care expenses and loses productivity, for every rupee the Government gets from alcohol, according to the study made by NIMHANS in Karnataka a few years ago. Annual Income of Rs.30,000 crores from alcohol means that about Rs.90,000 crores has to be spent by the Government towards health care expenses per year. Therefore, the Government loses more than Rs.2 in terms

of health care expenses and loses productivity, for every rupee the Government gets from alcohol, as per the study made by NIMHANS in Karnataka a few years ago.

The following are the details of revenue earned by TASMAC:

Annual Revenue of TASMAC		
Fiscal Year	Revenue in Crores (?)	% Change
2002-03	2,828.09	
2003-04	3,639	28.67%
2004-05	4,872	33.88%
2005-06	6,086.95	24.94%
2006-07	7,300	19.93%
2007-08	8,822	20.85%
2008-09	10,601.5	20.17%
2009-10	12,491	17.82%
2010-11	14,965.42	19.80%
2011-12	18,081.16	20.82%
2012-13	21,680.67	19.91%
2013-14	23,401	7.93%
2014-15	26,188	11.91%
2015-16	25,845.58	-6.76%
2016-17	26,995.25	6.97%
2017-18	26,797.96	-0.73%
2018-19	31,157.83	8.39%

3. It is disheartening to learn from CRISIL Report released in May 2020 that Indian Southern States accounts for half of the country's liquor consumption. 10-15% of these States total revenue especially 15% of Tamil Nadu Revenue is from excise duty on liquor sales. Another shocking but not surprising fact is that Tamil Nadu is the largest consumer of liquor in the

WWW.LIVELAW.IN

country accounting 13% of national sales followed by Karnataka with 12%.

Whether water flows in rivers of the State or not, this special water (liquor) flows in every nook and corner of the State even near places of worship, Schools, Colleges etc., One such location of TASMALC shop near a school is the subject matter of the case.

4.This writ petition has been filed seeking for the issuance of a writ of Mandamus, to direct the respondents to remove the TASMALC Shop No. 5422 situated in Thattankulam Main Road, Madurai, by considering the petitioner's representation, dated 12.02.2019.

5.It is represented that hundreds of houses are located in Thattankulam village near TASMALC shop No.5422 which is located on the road connecting Melur main road and the road leading to Thattankulam. The said shop is always thronged by drunkards apart from two wheelers and cycles having been haphazardly parked on the road obstructing movement of vehicles as well as people. The drunkards often create nuisance by quarrelling as well as fighting among themselves. During evening hours, the drunkards used to purchase the bottles and sit on both sides of the road and consume liquor. The common people especially women folk are afraid to cross the road and therefore, the shop has to be shifted.

WWW.LIVELAW.IN

6.Mr.H.Arumugam, learned counsel for the respondents 2 and 3 would oppose the Writ Petition initially, contending that the location of the shop is as per law. More over, the shop is there for many years and its location does not affect the peace in the area. Hence, he seeks dismissal of the Writ Petition.

7.Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules, 2003, prescribe distance restrictions with regard to location of TASMAC shops (liquor shop) near Schools, places of worship, residential colonies. However, TASMAC hardly follows the rules resulting in filing of many cases before this Court regularly to remove or relocate the TASMAC shops which have been located violating the existing rules. Inspite of many orders passed by this Court, TASMAC shops are being established contrary to Rules. It seems Government is interested in generating revenue from liquor shops rather than safety and security of the people and peace.

8.It is evident that the TASMAC Shop No.5422 is situated at Thattankulam Main Road, opposite to Madurai Bench of Madras High Court and near “Model Government Girls Higher Secondary School”, Othakadai in which more than two thousand girl students are studying and a tennis training

WWW.LIVELAW.IN

ground is also located in that area. A shopping centre is there. Since the safety of the girl students and women is involved, when drunkards are throwing bottles inside the School premises and causing nuisance, the respondents have to shift the shop. The picture painted by the petitioner is that drunkards are consuming liquor sitting on both sides of the road leading to Thattankulam village and causing nuisance in that area. Villagers especially women and children are afraid to cross that area, as drunkards create nuisance fighting and quarrelling among themselves. The liquor shop business is from 12 noon to 10 O' clock in the night attracting liquor customers. School area has to be peaceful so that study of the students is not affected. Hence, this Court is of the view that TASMAC shop No.5422 has to be shifted far away from the present location. Mr.H.Arumugam, learned counsel for the respondents 2 and 3 would submit that respondents require, at least, two months' time to shift the TASMAC shop No.5422. In view of the above plea, this Court directed the second respondent in the previous hearing to file an undertaking affidavit to shift the shop so that the order passed by this Court to shift the shop is complied with properly.

9.An affidavit by the Branch Manger, TASMAC, Madurai/the 2nd respondent is filed, giving an undertaking that the TASMAC Shop No.5422 presently running on Thattankulam Main Road, Madurai, would be closed and

WWW.LIVELAW.IN

shifted to some other place by 28.02.2021. Para-4 of the affidavit reads as follows:

“4. I submit that accordingly, I file this undertaking affidavit that the TASMAC Shop No.5422 presently running in Thattankulam Main Road, Madurai, would be closed and shifted to some other place on or before 28.02.2021.”

From the above, it is clear that pursuant to the direction given by this Court, the second respondent has taken a decision to shift the TASMAC Shop No. 5422 presently running at Thattankulam Main Road, Madurai, to some other place **on or before 28.02.2021** and from 01.03.2021, the said shop shall not function. However, it is made clear that the said shop should not be relocated anywhere near or in the vicinity of the present location. The Commissioner of Police shall ensure the compliance of this Order.

10.Hence there shall be a direction to shift TASMAC shop No.5422 presently running at Thattankulam Main Road, Madurai to some other place far away from the present place on or before 28.02.2021.

11.Since the issue involved in this case is shifting of TASMAC outlet due to objection and it is a Public Interest Litigation, this Court not only issues direction in this particular case but also likes to give further direction regarding which objections have been raised by general public in Tamil Nadu.

Many cases are coming up before this Court regarding location of TASMAC outlet on the ground that it is located near residential area, place of worship, schools, etc., and many objections are pending with various authorities including the 3rd respondent/TASMAC. Wherever objections are raised regarding location of TASMAC shop, the same shall be decided on or before 28.02.2021 and the 3rd respondent shall file a compliance report giving the following details:

- a.Number of TASMAC outlets in Tamil Nadu.
- b.Number of shops regarding which objections have been raised regarding the location.
- c.Number of shops relocated based on the objections.
- d.Number of objections rejected regarding location of shops.

12.The 3rd respondent shall hereafter decide about the objections regarding location/shifting of TASMAC shops within a period of four weeks from the date of receipt of a copy of the same and shall inform the applicant/objector about the decision, so that the parties would know about the fate of their complaints.

13.Though the case relates to shifting of TASMAC shop, considering the fact, Alcohol is being sold to the public through these shops, this Court would like to go into the problems of liquor consumption. While

WWW.LIVELAW.IN

dealing with an appeal arising out of Motor Accident Claims for the death of a motorist who allegedly drove under the influence of alcohol in *Manvizhi and others Vs. Managing Director, Metropolitan Transport Corporation* reported in *2015(1) TN MAC 427*, one of us (N.Kirubakaran, J) observed as follows:

“11.Framers of our Constitution included prohibition in one of the Directive Principles of State Policy and the relevant Article 47 reads as follows:

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”.

Therefore, it is the bounden duty of the Governments to eradicate the evil of drinking by total prohibition which will be in the interest of the citizens, families and consequently, the society. After all the father of our nation was against liquor and he said “Drugs and Drink are the two arms of the devil with which he strikes his helpless slaves into stupefaction and intoxication”. There are many dangerous consequences of drinking including commission of many crimes. Drunken driving is on such evil consequence.

12. Many families are shattered because of drinking. Health, Wealth, Peace of Mind are lost due to alcohol, and mostly sufferers are women and children and they are affected physically, physiologically, economically. More people including juveniles are increasingly becoming addicts. It has become very dangerous problem and it

WWW.LIVELAW.IN

should be fought jointly by Policy makers, bureaucrats, Non-governmental organizations, political parties and people involving Women. New methods have to be found out to deter the people from taking liquor. It is also reported that juveniles are taking liquor and becoming addicts. It is alleged that some of the Government Servants are coming to the office after consuming liquor and thereby Government functions are stated to be affected.”

Further following queries were raised in para 15 of the order by this Court in the interest of public and to persuade the policy makers to bring prohibition.

"(a) How can the States open Liquor Shops/Bars resulting in drunken driving by the consumers of liquor, when Section 185 of the Motor Vehicles Act prohibits driving by drunken person or the person under the influence of drugs?

(b) Is the Policy decision to allow Liquor Shops/Bars not violative of Article 21 of the Constitution of India (Protection of life and personal liberty) and the provisions of Motor Vehicles Act, 1988?

(c) Whether, in the opinion of the Governments, the alcohol money derived from Liquor Shops outweighs the right to protection of life enshrined in the Constitution of India?

(d) Why have the respective Governments (Central & States) not considered implementation of total prohibition in consonance with Article 47 of the Constitution to protect the people from the evils of liquor?

(e) Why have not the Government found out alternate source of revenue to promulgate prohibition?

(f) Whether data with regard to alcohol induced crimes/offences committed including drunken driving are periodically collected and documented for the purpose of strategy management?

WWW.LIVELAW.IN

(g) *Is it not necessary to teach the children about the evils of alcohol in schools as juveniles are also stated to be taking liquor and becoming addicts?*

(h) *Why not the Governments and their instrumentalities check their servants to verify consumption of alcohol at the time of reporting to duty and if found positive, not to allow for the duty and initiate Departmental proceedings, as it is alleged some of them are stated to be reporting duty under the influence of alcohol?*

(i) *Why not the Government through effective methods, including publicity campaign by roping in celebrities to discourage consumption of alcohol and drunken driving?*

(j) *Why not Government establish more Counsellings Centers in every talk as more and more people are becoming addicts to liquor?*

(k) *Why not the Governments atleast close down the bars at least to prevent accidents and loss of lives due to drunken driving, which are increasing every year as there is close connection and proximity between drunken driving and accidents?*

(m) *Why not the Central Government amend the law to make drunken driving as non-bailable offence as dangerous consequences including fatalities are inevitable?*

(n) *Why not the law enforcing agencies regularly check drunken driving in all the roads more particularly in the Highways every day to prevent accidents?*

(o) *Why not the Government establish mobile labs and mobile Courts in the highways to check drunken driving regularly and try those cases speedily and convict the offenders?*

(p) *Why not the police arrest drunk drivers for the offence under Section 185 of the M.V. Act under Section 202 of Act, instead of fining?*

WWW.LIVELAW.IN

(q) *Why not, as an interim measure restrict liquor shops/bar timing from 12 hours (10.00 a.m. to 10.00 p.m.) to 8 hours (12.00 a.m. to 8.00 p.m.)?"*

However, later, the queries raised by this Court were closed by the First Bench observing that prohibition is a policy decision of the State Government.

14. This Court is aware that drinking habit has been there for centuries together in India as picturised in research article "***Drinking habits in ancient India***" by ***Ottilingam Somasundaram, D.Vijaya Raghavan, and A.G.Tejus Murthy*** reported in *Indian Journal of Psychiatry* 2016 Jan-Mar; 58(1): 93-96 and a few portions of the paper are extracted as follows:

"RIG VEDA

Of all the multifaceted problems in India, the drink evil is the oldest one and indeed steeped in antiquity. The discovery and art of manufacturing some kind of intoxicating liquor are a corollary of settled habits and wandering savages have generally been found ignorant of it. This proves the fact that we had a settled and advanced civilization. Such habits were prevalent in the earlier Egyptian, Babylonian, and Greco-Roman civilizations. It may be stated that, except for gambling, the greatest vice of the Aryan race in India was drinking. Rig Veda is the most ancient and extant literature available to us on this subject. According to historians, both Western and Indian, these hymns in the praise of the various Aryan gods such as Indra, Varuna, and Agni were collated by various sages such as Angiras, Brihaspati, Bharadvaja, Vashistha, and Gautama during 1500-1000 BC. There are innumerable passages in ancient Sanskrit literature that

WWW.LIVELAW.IN
prove conclusively this weakness of our ancestors, and the Rig Veda Samhita has a hymn which shows that "soma (wine) was kept in leather bottles, and freely sold to all comers." It may be added that soma was freely consumed. Passages after passages in the Rig Veda are given to the praise of soma, the liquor, which was afterward incorporated with the worship of soma – the moon god. Elaborate rules for the preparation of this intoxicating liquor are still to be found, which show the hold that the liquor had on the elite – if not the common people.

...

THE GREAT EPICS

Both in Mahabharata and Ramayana one finds frequent references to drinking, which show that the habit was not uncommon, and the inquisitive one may find that "Baladev and Krishna and Arjuna indulged in drink in the company of their wives, daughters, and sisters," that the sage Bharadvaja offered in his hospitality wine to Bharata and his soldiers, and that Sita while crossing the Yamuna offered that Goddess "a 1000 jars of arrack and cooked flesh-meat." However, there are no references to any woman drinking, and the probability is that by that time drinking was never indulged in by women of rank at least and only on rare occasions by women in general."

From the above, it is clear that from vedic period and period of Mahabaratha, drinking has been continuing.

15. Further **WHO's global status report released in September**

2018 states that alcohol kills 2.6 lakh Indians every year. Almost one lakh

deaths that occur on India's roads every year are indirectly related to alcohol abuse. An article "*Alcohol consumption in India - an Epidemiological Review*", authored by Dr.V.M.Anantha Eashwar, Dr.R.Umadevi, Dr.S.Gopalakrishnan, reported in **Journal of Family Medicine and Primary Care, Vol 9, Issue 1, Year 2020, Page 49-55**, describes about the burden of alcohol consumption in context with its various harmful effects on the mind and body with a note on the alcohol policies in the Country. The various medical complications developed due to alcohol consumption are mentioned under:

- 1.Gastrointestinal (GI) complications;
- 2.Cancer;
- 3.Changes in the genitourinary system;
- 4.Muscular change;
- 5.Neurological complications, etc.,

The conclusion of the Article reads as follows:

"Alcohol consumption is emerging as a major public health problem in India. Multi-centric scientific community-based research studies have to be conducted in various individual states to understand the problem better. Various policymakers, media, professionals and society have to be educated about the consequences of chronic alcohol through sensitisation programmes and health education campaigns. There is a dire need for rational alcohol control policy with specific objectives like alcohol taxation, production and promotion policy."

WWW.LIVELAW.IN

16.This Court cannot lose sight of what is happening in the society due to drinking habits of the people. Drinking is the root cause for many evils. Innumerable offences are committed daily due to alcohol consumption especially against women and children. Many families are shattered and the victims are women and children whose right to life guaranteed under Article 21 of the Constitution of India is violated due to liquor. Drunken driving is responsible for loss of number of precious lives and injuries of many. It is stated that 19 Indians die daily due to drunken driving in India and it proves that drunken driving is one of the deadliest causes of accidents. It is strange that almost, outside every TASMAL outlet and bar, there is a two wheeler parking stand and it is not understandable as to how drunken people are allowed to ride two wheeler, especially when drunken driving is an offence under Section 185 of the Motor Vehicles Act. The data provided by the Ministry of Road Transport and Highways in the Rajya Sabha in September 2020, states that drunken driving related accidents increased in 2019, compared to 2018. 12,256 road accidents occurred in 2019 due to drunken driving where as 12,000 accidents occurred in 2018. NCRB data states that 2% of the total accidents is due to drunken driving. The above data cannot reflect the actual position, as many drunken driving accidents are not shown correctly by the concerned to safeguard the rights of the victims to make

insurance claims. Therefore, the number of accidents shown are only a fraction of total accidents due to drunken driving. Though it is a difficult task, still every endeavour has to be made to discourage the people to drink and appeal to the Government to stop selling liquor.

17. Therefore, this Court appeals to the State Government to bring prohibition in the State in a phased manner to wipe out the tears of women and children thereby safeguarding their rights under Article 21 of the Constitution of India. It is not only the appeal of this Court but the collective voice of suffering of housewives, children and the entire society. If prohibition is brought in consonance with Article 41 of the Constitution of India, definitely,

- Offences would steeply decrease;
- Income of Individual would certainly increase;
- Drunkards would become healthy;
- Domestic violence would go down considerably;
- Families income would increase so also happiness of the families;
- Drunken driving will not be there;
- Deaths due to drunken driving would be reduced;
- The society would be more peaceful;
- Dream of Father of the Nation would be realised etc.,

Will the Government listen to this Court?

WWW.LIVELAW.IN

18. With the above directions and observations, the Writ Petition is disposed of. No costs.

Call the matter for filing compliance report on 01.03.2021.

[N.K.K.J.] & [B.P.J]
23.12.2020

Index : Yes / No
Internet : Yes / No

ogy

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

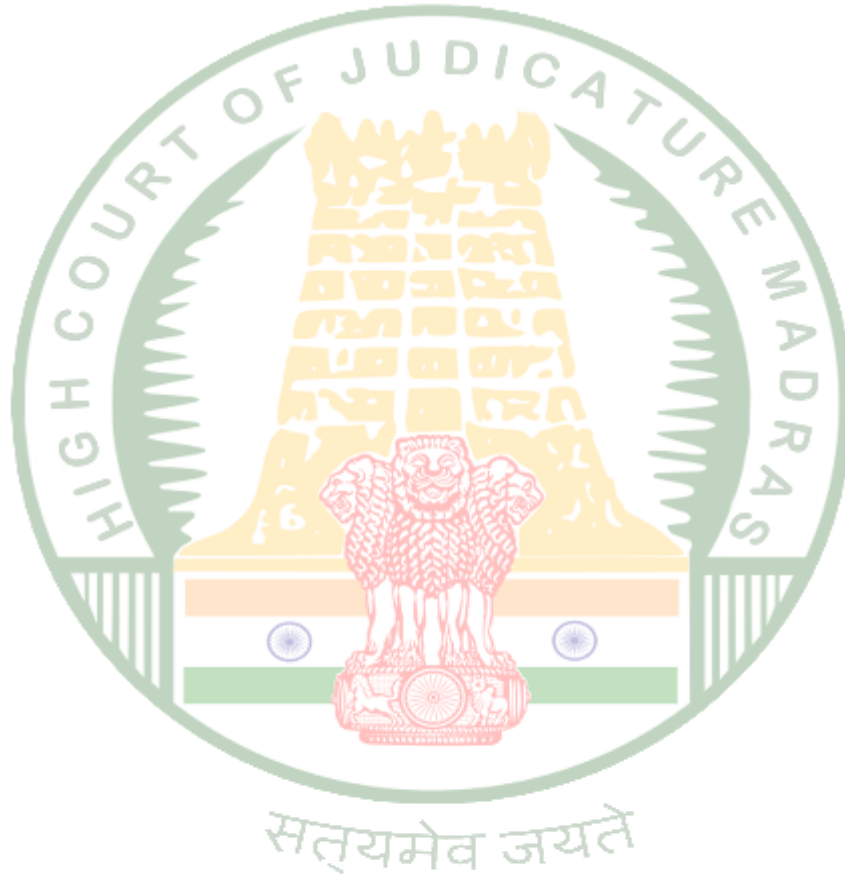
Copy to: The Commissioner of Police,
Madurai City.
(For ensuring the compliance of
this Order)

To

1. The District Collector,
Madurai District, Madurai.
2. The Branch Manager,
Tamilnadu State Marketing Corporation,
Madurai.

WEB COPY

3. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai – 600 008.



WEB COPY

W.P.(MD)No.19278 of 2020

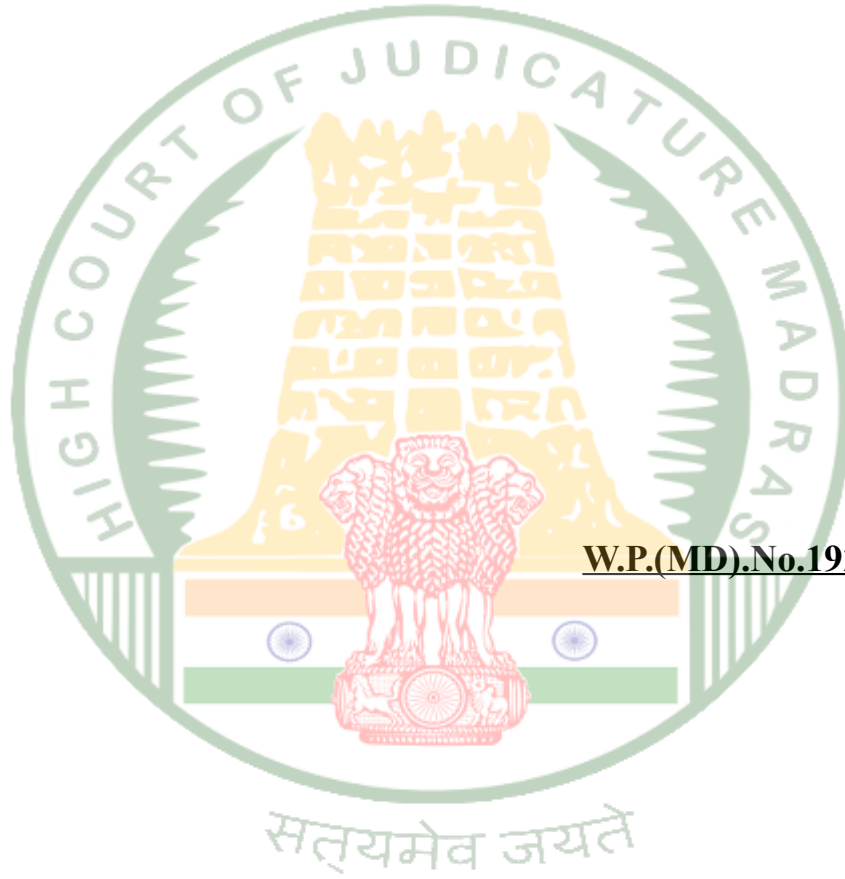
N. KIRUBAKARAN, J.

AND

B.PUGALENDHI, J.

WWW.LIVELAW.IN

ogy



W.P.(MD).No.19278 of 2020

WEB COPY

Dated : 23.12.2020