



WEB COPY



W.P.No.26624 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.26624 of 2021

and WMP No.28071 of 2021

Kanagachettikulam Makkal Podhunala
Eyakkam, (Reg No.45/2015),
Rep by its Secretary, Mr.N.Soundararajan,
No.28, East Coast Road,
Ganapathichettikulam, Puducherry – 605 014.

.... Petitioner

vs

- 1.Union of India Represented by
The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat, Puducherry – 605 001.
2. The Secretary-cum-Commissioner (Excise),
Government of Puducherry,
Chief Secretariat, Puducherry.
3. The Deputy Commissioner,
Government of Puducherry,
Excise Department,
Thattacnchavadi (Near Govt.Press)
Puducherry.



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4.M/s Premier Enterprises (IMFL-1 Licence No.30)
Rep. by its Licence Holder Mr.C.Subramanian.
Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondent Nos.1 to 3 to consider the representations dated 21.10.2021 and 08.11.2021 submitted by the petitioner and thereby direct them revoke the shifting order issued in favour of the 4th respondent for shifting liquor shop namely M/s Premier Enterprises (IMFL – 1 Licence No.30) from No.207, Kamaraj Salai, Pillai Thottam, Puducherry to R.S.No.162/3, ECR Main Road, Ganapathichettikulam, Puducherry and to relocate the Liquor Shop to its original place or any other place other than Ganapathichettikulam, Kalapet Revenue Village in interest of general public and respecting their sentiments as well as taking into account of locations of very many educational institutions in the area.

For the Petitioner : Mr.Prakash Adiapadam

For the Respondents : Ms.N.Mala
Govt. Pleader (Pondicherry)
* * * * *

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed to seek a direction on the respondent nos.1 to 3 to consider the representations submitted by



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the petitioner not to shift the liquor shop in the name of M/s.Premier Enterprises to an area which is adjacent to a school and a temple and a mosque.

2. A reference to the earlier judgment of this court in reference to the same controversy has been given which was decided by the order dated 21.06.2017 in W.P.No.8558 of 2017. It is submitted that taking into consideration the sentiment of the public, the shop should not have been relocated at the place when it is close to the temple and mosque apart from an educational institution. A distance from it is less than 50 meters and the same is not permissible under the Rules. The learned counsel has given reference to the earlier judgment of this Court dated 21.06.2017 where the recommendations made by the former Chief Ministers of the Union Territory of Puducherry were referred. The direction given by this court in the earlier litigation was to take a decision in reference to the recommendations made by the former Chief Ministers of the Union Territory of Puducherry. The location of the liquor shop should not have been allowed contrary to the order in



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the earlier writ petition.
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3. The learned counsel further submits that without an opportunity of hearing, the relocation has been allowed and now, in the counter-affidavit, the distance of the liquor shop has been shown to be around 150 meters from the educational institution so as the temple and mosque. The distance determined by the respondents is without calling the petitioner and it is not acceptable. In view of the above, the prayer is to direct the respondents not to relocate the liquor shop to the place close to the temple/mosque and the educational institution.

4. The learned counsel for the respondents has referred to the counter-affidavit and the documents submitted along with it to indicate that the area in question falls under the municipality and as per the Puducherry Excise Rules of 1970, the liquor shop can be located at the distance of more than 50 meters from the school and the temple/mosque. The distance of the relocated liquor shop would be more than 150 meters from the temple/mosque and educational



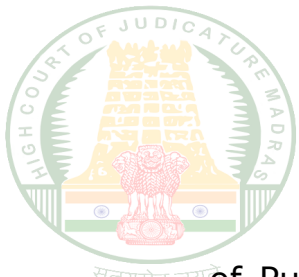
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Institution. In view of the above, the action of the respondents is not in violation of Rules of 1970. The learned counsel further submits that an opportunity of hearing was given to the petitioner by sending notice on 11.09.2021 and the distance has been measured recently pursuant to the direction of this Court. The respondents are not governed by any of the statement or recommendation of the former Chief Ministers of the Union Territory of Puducherry, but by the Rules of 1970. The prayer is accordingly to dismiss the writ petition.

5. We have considered the rival submissions of the parties and perused the records.

6. The writ petition has been filed to challenge shifting of the liquor shop mainly on the ground that it would not only affect the sentiment of the people but is close to the temple/mosque and the educational institution. The reference of the earlier judgment of this court dated 21.06.2017 has been given to show the recommendation of the former Chief Ministers of the Union Territory



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of Puducherry. We have considered the submission aforesaid and find that what is going to govern the issue is the Puducherry Excise Rules of 1970. As per the Rules of 1970, the liquor shop cannot be located within the distance of 50 meters from an educational institution and also temple/mosque. The counter-affidavit submitted by the respondents shows the distance of the liquor shop to be 150 meters from the school and the temple/mosque. In view of the statement aforesaid, the Rules of 1970 have not been violated in re-locating the liquor shop.

7. The question now comes to the sentiment of the people. The reference of the earlier judgment of this Court dated 21.06.2017 has been given therein. The perusal of the judgment shows the reference of the recommendation of the three former Chief Ministers of the Union Territory of Puducherry regarding relocation of the liquor shop. The judgment aforesaid does not make a reference of the Rules of 1970 which otherwise govern the subject matter. If any judgment has been given by the Court without referring to Rules and otherwise going against the Rules,



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then it has to be rendered per incuriam. The Court is required to govern itself by the relevant Act and the Rules and not by the recommendation of the former Chief Ministers. When the Rule permits location of the liquor shop beyond 50 meters to an educational institution and even temple or the mosque, we cannot issue direction contrary to the provision unless it is struck down. The constitutional validity of the Rules is not under challenge. In view of the above and keeping in mind the counter-affidavit filed by the respondents showing the distance of the liquor shop as 150 meters from the temple/mosque as well as the educational institution, we do not find a case in favour of the petitioner. The counter-affidavit was filed with a copy to the counsel for the petitioner who sought time to study it and no rejoinder has been filed to dispute the distance between the liquor shop and the educational institution and also the temple/mosque. In view of the above, we do not find any reason to discard the counter when the respondents have even furnished the sketch map to indicate the location of the shop vis-a-vis the temple and the educational institution.



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In the light of the aforesaid, we do not find a case in favour of the petitioner for grant of the prayer and accordingly, the writ petition is dismissed. No costs. Consequently, W.M.P.No.28071 of 2021 is closed.

(M.N.B., ACJ.) (P.D.A., J.)
04.01.2022

Index : Yes/No

sra

To:

- 1.The Chief Secretary to Government,
Union of India,
Government of Puducherry,
Chief Secretariat,
Puducherry – 605 001.
2. The Secretary-cum-Commissioner (Excise),
Government of Puducherry,
Chief Secretariat,
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M.N.BHANDARI, ACJ.
AND
P.D.AUDIKEVALU, J.
(sra)

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