

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAC V. B.Ramkumar Adityan and 4 others]

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.M.P.No.8928 of 2020 in W.P.No.7578 of 2020,
W.M.P.No.8929 of 2020 in W.P.No.7589 of 2020,
and W.P.Nos.7589 to 7593, 7595, 7599 & 7600 of 2020
and WMP Nos.8910, 8911, 8916, 8929, 8931 & 8932 of 2020

WMP No.8928/2020 in WP No.7578/2020 :

The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower-II, 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-8. .. Petitioner

Vs.

1. B.Ramkumar Adityan .. Respondent/Writ Petitioner
2. Chief Secretary,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-600 009.
3. Additional Chief Secretary,
Prohibition and Excise Department,
Government of Tami Nadu,
Secretariat, St. George Fort,
Chennai-600 009.
4. Principal Secretary,
Health and Family Welfare Department,

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAL V. B.Ramkumar Adityan and 4 others]

Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-600 009.

5. Director General of Police,
Tamil Nadu Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

.. Respondents/Respondents

WMP No.8929/2020 in WP No.7589/2020 :

G.Rajesh

.. Petitioner/Writ Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Chief Secretary,
Secretariat, Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2. Chairman-cum-Managing Director,
Tamil Nadu State Marketing Corporation Limited,
CMDA Tower-II, 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-8.

.. Respondents/Respondents

* * * *

Prayer in WP No.7578 of 2020 : Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the respondents 1 and 2 in respect of the Press Notification No.311 dated 04.05.2020 and quash the same as illegal and consequently, direct the respondents 1 and 2 to open the fifth respondent Retail Liquor Selling Shops once Tamil Nadu become COVID-19 free State.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAC V. B.Ramkumar Adityan and 4 others]

WMP No.8928 of 2020 : Petition filed praying to relax the conditions in paragraph 15(ii)(b) and 15(iii), (iv), (v) and (vi) of order dated 06.05.2020 made in W.P.No.7578 of 2020 for the time being and permit the petitioner to carry on business as per the guidelines of TASMAC and other conditions imposed.

Prayer in WP No.7588 of 2020 : Petition under Article 226 of the Constitution of India praying for a writ of Mandamus restraining the respondents from opening the state-run liquor outlets (TASMAC outlets) in the State of Tamil Nadu till such time the COVID-19 Lockdown is in force.

Prayer in WMP No.8929 of 2020 : Petition file praying to grant an interim order directing the respondents therein to close the TASMAC shops across the State of Tamil nadu until online sale/e-coupon systems are implemented by the second respondent/TASMAC, to avoid overcrowding at the liquor shops as directed by this Court at clause 15(iv) in the order dated 06.05.2020.

* * * *

For Petitioner in :
WMP No.8928/2020
in WP No.7578/2020
and Respondents 2
to 5 in WP No.7578/
2020 and Respondents
1 and 2 in WP
No.7589/2020
For Respondents/State
of TN in other WPs

Mr.Vijay Narayan,
Advocate General
Mr.S.R.Rajagopal,
Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader for State of
Tamil Nadu and Mr.Sathish for
TASMAC

For Petitioner in :
WP No.7599/2020

Mr.AR.L.Sundaresan, Senior Counsel
for Mr.K.S.Karthik Raja

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAL V. B.Ramkumar Adityan and 4 others]

For Petitioner in : Mr.S.Ilamuhil
WP No.7600/2020

For Petitioner in : Mr.Jimraj Milton
WP No.7595/2020

For Petitioner in : Ms.Y.Kavitha
WP Nos.7589-7593/
2020

For Respondent 1 : Mr.B.Ramkumar Adityan
in WMP No.8928/2020/ Party-in-Person
Petitioner in WP 7578/2020

COMMON ORDER

(Order of the Court was made by Pushpa Sathyanarayana, J.)

The Court was held by Video Conference, in terms of the Resolution of the Full Court dated 30.04.2020, by Judges from their respective residence offices, where minimum staff made available and the counsel, staff of the Court appearing from their respective residences.

2. On 06.05.2020, we have passed a detailed order in W.P.No.7578 of 2020 with respect to the opening of Retail Liquor Selling Shops run by the Tamil Nadu State Marketing Corporation Limited (in short, "TASMAC") on 07.05.2020, in and by which, we had directed the

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

State to follow the guidelines and restrictions stipulated in the notification issued by the State Government in G.O.(Ms)No.223, Revenue and Disaster Management (DM II) Department, dated 05.05.2020 and further guidelines issued by the Managing Director, TASMACH in Rc.No.R3/2093/2020, of even date. In addition to the above conditions, this Court also had issued a few guidelines and restrictions for the reopening of the TASMACH shops on 07.05.2020.

3. The fifth respondent in the said writ petition filed W.M.P.No.8928 of 2020 seeking to relax the conditions in paragraph 15(ii)(b) and 15(iii), (iv), (v) and (vi) of the order dated 06.05.2020 passed therein for the time being and permit the petitioner/TASMACH to carry on business as per the guidelines of TASMACH.

4. Yet another petition in W.P.No.7589 of 2020 was filed by one Mr.G.Rajesh, which stood adjourned to 14.05.2020. The petitioner therein filed W.M.P.No.8929 of 2020 seeking to grant an interim order directing the respondents therein to close the TASMACH shops across the State of Tamil nadu until online sale/e-coupon systems are implemented by the second respondent therein, viz., TASMACH, to avoid overcrowding at the

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAL V. B.Ramkumar Adityan and 4 others]

liquor shops as directed by this Court at clause 15(iv) in the order dated 06.05.2020.

5. A Third Party, viz., HIP Bar Privated Limited filed W.M.P.No.8916 of 2020 in W.P.No.7578 of 2020 praying to permit them to intervene in the main writ petition to put forth facts pertaining to the said issue and to consequently propose viable alternatives to opening of the TASMAL liquor shops to the public in the form of technology assisted home delivery. The said miscellaneous petition also stood adjourned to the next date of hearing, i.e., 14.05.2020. However, the said third party is represented by Mr.Anirudh Krishnan today.

6. In all these petitions, notices were mutually served and the counsels were permitted to make their submissions.

7. Heard Mr.Vijay Narayan, learned Advocate General, Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.V.Jayaprakash Narayanan, learned Government Pleader, Mr.Sathish, learned Standing Counsel for TASMAL and the counsels for the petitioners and perused the materials placed before this Court.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAL V. B.Ramkumar Adityan and 4 others]

8. Mr.R.Kirloskar Kumar, I.A.S., Managing Director of TASMAL, is also present throughout the Video-conference hearing.

9. The first and foremost grievance of the petitioner in WMP No.8928 of 2020 (in short, TASMAL) is with respect to the issuance of bill for sale after noting down the name, address and Aadhar card number of the vendee, as has been mandated by this Court with a rider that if any sale is found to be made in violation of the said direction, that shop in question will be immediately closed and will not be allowed to be reopened, until further orders from this Court. The learned Advocate General submitted that there is a difficulty in implementation of the said restriction, as the collection of the Aadhar card number for an ordinary commercial transaction amounts to violation of Right to Privacy and many consumers found it difficult to procure liquor. Besides the above, preserving such data would be an onerous task at this point of time. thus, the learned Advocate General sought for dispensing with the said condition.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAC V. B.Ramkumar Adityan and 4 others]

10. Surprisingly, the TASMAC had not even produced a single counterfoil of the sale receipt made on 07.05.2020. Admittedly, none of the shops have computerized billing mechanism and such bills were issued only manually. The reason for seeking such dispensation was that it was taking minimum of 5 to 10 minutes for each of the buyer for billing. We fail to understand that in addition to the bill or receipt that may normally be issued, this Court has only asked them to note the name, address and Aadhar card number, which should not be very difficult for the sale persons to handle. The above restriction was imposed only to avoid repeated purchase of liquor by any individual buyer in a day and week.

11. The next objection was with respect to the digital payment facility for purchase of liquor. Though the said facility is said to be available within the city limits, implementing the same with immediate effect to the entire State is said to be difficult. It is also stated that for creation of the digital payment facility certain devices and software are required to be installed in all the retail vending shops throughout the State. The same also attracts monthly rental charges and Merchant Discount Rates (MDR Charges). As the said facility is yet to be

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

introduced, it has necessitated that the said condition may also be relaxed.

12. The MD, TASMACH, specifically mentioned that the sealed tenders from scheduled and Commercial Banks/System Providers for supply and installation of Point of sale machines and facilitation of electronic modes of payment are called for. Though the last date for submission of bids was fixed on 07.04.2020, the same has been extended till 08.06.2020, due to the prevailing COVID-19 lockdown situation in the State. It is specifically pointed out as per Section 3(1) of the Tamil Nadu Transparency in Tenders Act, 1998, "no procurement shall be made by the procuring entity except by tender". Hence, the TASMACH is unable to provide the said facility immediately.

13. The difference drawn in number of bottles TO BE sold for online payment for purchase of liquor and for the purchase by tendering cash is also unacceptable to the State, as there is no online sales as of now.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAC V. B.Ramkumar Adityan and 4 others]

14. During the course of hearing, an order passed by the Hon'ble Supreme Court was brought to the knowledge of this Court that in an identical matter dealt with by the Hon'ble Supreme Court, which was filed under Article 32 of the Constitution, wherein, it was specifically stated by the Hon'ble Supreme Court that the States must effectuate social distancing, while selling liquor, by considering the other viable options. It was also specifically stated that the States should consider indirect sale or Home Delivery of liquor to maintain social distancing. In the above matter, the petitioner had sought for direction for prohibition of sale of liquor for human consumption at liquor vends/shops through direct contact sales during the lockdown period, to prevent the spread of COVID 19 in India.

15. The National Disaster Management Authority or the Central Government has been taking effective steps to make India COVID-19 free country and the guidelines issued in that regard, repeatedly and specifically highlighted that social and physical distancing should be maintained and physical contact should be avoided, besides washing of hands with soaps or sanitizers, etc. While that being the case, the State Government had issued the notification to open the TASMAC shops in the

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

State of Tamil Nadu from 07.05.2020, by issuing notification referred to above in G.O.(Ms)No.223, dated 05.05.2020 and the guidelines issued by the MD, TASMACH.

16. After the order was passed by this Court on 06.05.2020, the TASMACH Retail shops were opened on 07.05.2020, whereupon, all those instructions issued by the MD, TASMACH as well as by this Court have been thrown into air. The State had already witnessed the mad rush to Koyambedu Wholesale Market, which has housed the wholesale shops for the sale of vegetables, fruits and flowers, when the lockdown was announced. The Social and Physical distancing norms were violated and the ramifications of the same were realized only after three-four days. In such circumstances, the State Government thought it fit to close down the said market in its original location and have temporary makeshift market in three different places outside the city of Chennai. While so, when this Court passed the order including the above changed conditions, before opening of the TASMACH shops, the said conditions were flouted, breaching the norms prescribed by the Disaster Management authorities also. The Newspaper and Visual Media reports would also go to show that the mad rush to the TASMACH shops reminded one of the similar rush to

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

the Koyambedu Market, which resulted in the closure of the same, after spreading of the novel Corona Virus to many number of persons.

17. Be that as it may, the TASMACH has now approached this Court for relaxation of some of the conditions, despite flouting all the conditions that were imposed by this Court, unmindful of the repercussions it may bring in.

18. Admittedly, the petitioner in W.M.P.No.8929 of 2020 in W.P.No.7589 of 2020 has also attached the photographs and also videographs reported in newspapers and visual media, which are really startling to see. Besides there were also reports in the newspapers about the share of TASMACH in bringing in domestic violence and also death of four people.

19. Even though the learned Advocate General claimed that casuarina barricades have been placed and social distancing were maintained by the police personnel, he fairly admitted that being the first day of the reopening of the shops, after a gap of 41 days, there were mad rush by the liquor lovers, which was beyond their control.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
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20. Now what worries this Court is this mad rush for the liquor, where thousands of people without following any of the norms prescribed by the State, TASMACH authorities or by this Court, would only lead to witnessing the form of surge of new clusters, as opined by the Epidemiologists and Public Health Experts. It has been warned by the Public Health Experts that the next 7 days will witness doubling rate for COVID-19, for which reason, the lockdown has been stated to be announced.

21. The video clippings and the Newspaper reports clearly go to prove that COVID-19 pandemic preventive norms, like Physical distancing and wearing of masks, etc. were thrown into air making serious concerns about the spread of the virus. There were also further reports about protests held in several places against the reopening of the liquor shops before the lockdown is lifted creating law and order problems. Despite the police personnel having been deployed, the State machinery could not control the crowding tipplers even on day one. The suggestion given by this Court to vend or sale online was also not heeded to.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
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22. It is brought to the notice of this Court that about 3850 shops across the State were opened, and there was a record sale of Rs.175 Crores. The above scenario reported after the day one of the reopening of the TASMACH shops only go to show that the State machinery is out of control either in disciplining the crowd or even in the process of sales. It is also reported that the number of police personnel being infected with COVID-19 disease is also on the rise and deploying them for controlling the crowded tipplers before the TASMACH shops would also put their life at risk, besides preventing them from discharging their duties in places, where their services are really required.

23. Though there has been a direction given by this Court for sale of the liquor online, admittedly, the said direction was not even put to test by the State on the pretext that there is no infrastructure in place as on date.

24. The learned counsel for the petitioner in WMP No.8916 of 2020 Mr.Anirudh Krishnan submitted that there is an arrangement between the said petitioner and the TASMACH for e-wallet facility and an agreement is in force. However, the MD, TASMACH, said that it is only for

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAL V. B.Ramkumar Adityan and 4 others]

the elite public, who purchase from TASMAL by using this facility and it is prevalent in certain districts only. Once this facility of e-wallet is extended to other districts and is made mandatory only to go through the same Service Providers, the liquor lovers will obviously switch over to the said mode. Mr.Anirudh, learned counsel submitted that the petitioner is willing to extend their services free of cost, so far as the TASMAL is concerned. While this Court is not recommending the services of the petitioners to be utilised by the TASMAL for the present, it is open to the TASMAL to choose anyone of the Service Providers to meet the situation to supply the liquor to the buyers online. If there is no such online system in place, it is for the State and the TASMAL to make all arrangements before they decided to reopen the retail outlet shops.

25. it is also relevant to note that Tamil Nadu Liquor (License and Permit) Rules, 1981 does not provide for online sales. There is currently no legal provision for home deliveries of alcohol in the entire country, except West Bengal and Punjab, which started recently. The State of Tamil nadu also has to make appropriate amendments to the T.N. Liquor (License and Permit) Rules, 1981, to have the technology enabled home delivery to promote responsible consumption of alcohol.

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

The challenge of the State is to ensure revenue from alcohol. In the COVID-19 locked down period to maintain the social distancing protocol and also boost the State revenue, it is imperative that the Government of Tamil Nadu should look at option of online sale and home delivery.

26. Learned Advocate General also submitted that at least 15 days is required even for any of the Banks to arrange for the online vending. It is relevant to state that the before deciding to reopen the retail outlets, the State and the TASMACH should have made arrangements for the online sales, considering the guidelines and restrictions imposed on them for maintaining social distancing.

27. In view of the above discussion, the relief sought for by the TASMACH in this miscellaneous petition is not viable for the following reasons : (i) the online sale recommended by this Court was not even put to test ; (ii) the social or physical distancing norms, wearing of masks, etc. were not followed ; (iii) number of bottles to be sold to each buyer, as restricted by this Court was also flouted ; (iv) the selling conditions based on age, as mentioned in the guidelines were also not followed ; and (v) the Hon'ble Supreme Court today observed that the States should

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMAC V. B.Ramkumar Adityan and 4 others]

consider home delivery of liquor/indirect sale during lockdown.

28. Consequently, we are inclined to modify the order dated 06.05.2020 and the TASMAC is directed to close all of its shops/outlets, which were opened on 07.05.2020 and 08.05.2020 with immediate effect and no shops shall be kept open till the lockdown imposed by the Central/State Government is lifted/modified in accordance with law.

29. However, it is open to the State and the TASMAC to resort to only home delivery of the liquor by indirect sale during this lockdown period, viz., online booking of order for liquor and by putting the required system in place in the manner in which, they can sell the liquor and make home delivery in the above manner. As it is stated that there are 30,000 contractual employees available with the TASMAC, we are of the opinion that there cannot be any difficulty in undertaking the above exercise of indirect sales and home delivery either through their own employees or by outsourcing such supplies of liquor. While ordering so, it is made clear that the TASMAC shall ensure that the persons undertaking the delivery work have undergone necessary safety medical tests and they are complying with all the protocols for the prevention of spreading of COVID-

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
[The MD, TASMACH V. B.Ramkumar Adityan and 4 others]

19, and they should put into necessary medical tests at regular intervals.

30. In view of the above modifications in paragraph 15 of the order dated 06.05.2020, W.M.P.No.8928 of 2020 preferred by the TASMACH is disposed of and W.M.P.No.8929 of 2020 is allowed.

31. The other conditions and restrictions in Government Notification dated 05.05.2020 and Court order dated 06.05.2020 shall continue to be operative in accordance with this order and this order is in addition and modification of the previous order dated 06.05.2020 in W.P.No.7578 of 2020, to the extent indicated above.

32. Post all the remaining connected writ petitions and miscellaneous petitions before this Court on **14.05.2020**.

(V.K., J.) (P.S.N., J.)
08.05.2020

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Index : Yes / No
Internet: Yes

Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
in WP No.7578 and 7589/2020 and other WPs
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Order dt. 08.05.2020 in WMP Nos.8928 & 8929/2020
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08.05.2020