

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P.No.10512 of 2018

and

W.M.P.Nos.12478 & 12479 of 2018

S.Gunaraja

... Petitioner

Versus

1.The Commissioner of Police,  
Greater Chennai,  
Commissioner Office Building,  
E.V.K.Sampath Road,  
Vepey, Chennai – 600 007.

2.The Inspector of Police,  
G3-Kilpauk Police Station,  
Poonamallee High Road,  
Kilpauk, Chennai – 600 010.

... Respondents

**PRAYER:-**

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to quash the order dated Nil on the file of the 2<sup>nd</sup> respondent herein and consequentially forbear the respondents herein from interfering with the petitioner's running of his eatery name “Jai Sri Vaishnavaas Fast Food”, functioning at Door Nos.1 & 4/7, Ormes Road, Kilpauk, Chennai – 600 010, during late night hours.

For Petitioner : Mr.Sriram

For Respondents : Mr.M.Shahjahan  
Special Government Pleader  
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**ORDER**

This Writ Petition has been filed by the petitioner, seeking for issuance of a Writ of Certiorarified Mandamus to quash the order dated Nil on the file of the 2<sup>nd</sup> respondent herein and consequentially, forbear the respondents herein from interfering with the petitioner's running of his eatery, by name “Jai Sri Vaishnavaas Fast Food”, functioning at Door Nos.1 & 4/7, Ormes Road, Kilpauk, Chennai – 600 010, during late night hours.

2. It is the case of the petitioner that he has been carrying on business as a Sole Proprietor under the name and style “Jai Sri Vaishnavaas Fast Food”, which is a pure vegetarian eatery functioning at Door Nos.1 & 4/7, Ormes Road, Kilpauk, Chennai – 600 010, for the past 11 years. While so, the grievance of the petitioner is that for the past two years, the petitioner was forced to close his eatery shop by 10.30 p.m. every night by subordinates of the second respondent and they do not permit the petitioner to run his eatery beyond 10.30 p.m.

3. According to the petitioner, the said eatery shop is his only source of income and maximum customers used to visit his shop only during the mid night hours. Therefore, the act of the respondents in insisting the petitioner to close the shop by 10.30 p.m. causes great inconvenience to him and also to many customers, who regularly come to his shop for dinner from various quarters of life. In this regard, the petitioner made a representation, dated 19.02.2016 to the first respondent to consider the same and permit him to run the eatery till 1.30 a.m. every day. Since the respondents did not take any action, the petitioner has filed a Writ Petition in W.P.No.2849 of 2017 before this Court to consider his representation.

4. When the said Writ Petition came up for hearing before this Court on 06.02.2017, it was represented on behalf of the second respondent that he has passed an order rejecting the petitioner's representation and the said order has been dispatched to the petitioner and recording the same, this Court was pleased to dispose of the said Writ Petition granting the petitioner, liberty to challenge the said order passed by the second respondent.

5. Though the second respondent made a statement before this Court that already an order has been passed, even till date, the second respondent did

not serve the said order to the petitioner. Therefore, without any other option, the petitioner has filed this present Writ Petition to protect his right to carry on his business, which is guaranteed under Article 19(1)(g) of the Constitution of India.

6. Mr.Sriram, learned counsel for the petitioner would submit that the subordinates of the first respondent has been constantly inspecting the petitioner shop and compelling the petitioner to close his shop by 10.30 p.m. and at any cost, the petitioner should not run the shop beyond 10.30 p.m. As the petitioner is running a fast food, many customers will come to his shop at late night hours. It is not only the interest of the petitioner business will get affected, but also the interest of the customers who like to have dinner at his shop. Further, he submits that the respondent police does not have any power to come and force the petitioner to close the shop by 10.30 p.m. itself. He pointed out that no provision of law in the Madras City Police Act, 1888, which is now called as 'Chennai City Police Act, 1988 (hereinafter called as 'the Act') enables the respondent police to interfere with the business activities carried on by the persons and as such compelling the petitioner to close petitioner's eatery at the whims and fancies of the respondents, cannot be sustained. The petitioner has obtained necessary license under the provisions of the Tamil

Nadu Shops and Establishment Act, 1947 and running the shop in accordance with the same. Even in terms of the notification issued by the Labour and Employment Department dated 05.06.2019, the petitioner is entitled to open the shop for 24 x 7 on all days of the year. Even otherwise, there was no restrictions to open the eatery. However, without any power, the respondents are frequently disturbing the business of the petitioner and thereby his right to carry on his business as guaranteed under Article 19(1)(g) is getting infringed.

7. The learned counsel for the petitioner has also referred to the judgment rendered by the Hon'ble Division Bench of this Court in W.A.(MD).No.547 of 2017, wherein, the Hon'ble Division Bench of this Court has clearly held that the police cannot interfere in the running of the business and as such the police does not have any power to fix time limits for eateries and therefore, he seeks to issue proper direction against the respondents not to disturb the petitioner from carrying on his business.

8. On the other hand, Mr.M.Shahjahan, learned Special Government Pleader, while referring to the counter affidavit filed on behalf of the respondents, would submit that the respondents have not passed any written order, directing the petitioner to close the shop, but instructed orally to close

the shop by 10.30 p.m. keeping in mind that there would arise law and order problem due to opening of the shop beyond 10.30 p.m. till midnight. That apart, there are residences situated around the petitioner's eatery. Therefore, allowing the petitioner to run his shop beyond 10.30 p.m. will cause inconvenience to the residences around the eatery. Hence, he would submit that for the purpose of public interest and safety of the public only, they have instructed the petitioner to close eatery by 10.30 p.m. and not for anything else. Therefore, he prayed for dismissal of this Writ Petition.

**9.** I have given due deliberation to the submissions made by the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on records.

**10.** The grievance of the petitioner is that the second respondent police has been frequently visiting his eatery shop and insisting him to close the shop by 10.30 p.m. and preventing him to run his eatery shop beyond 10.30 p.m. According to the second respondent Police, running eatery shop by the petitioner beyond 10.30 p.m., would create law and order problem and therefore, in order to maintain law and order problem, the police can interfere with the running of the eatery shops/hotels/restaurants at late hours and can

very well fix the opening and closing timings.

11. The core issue that arises for consideration in this Writ Petition, is that whether the Police authorities can interfere with the business activities of eatery shops/hotels/restaurants and fix the opening and closing timings of the said establishments?

12. Before dealing with the issues, it is worthwhile to refer Section 39 of the Act, which empowers the Police Commissioner to make rules for ensuring order and decency and for the public safety at all places of public entrainment and for regulating the times during which the places referred to in Sections 34 and 35 shall be allowed to be opened. Section 39 of the Act reads as under:

**39. Power to make rules.-** The Commissioner may make rules for ensuring order and decency and for the public safety at all places of public entertainment or resort, and for regulating the times during which the places referred to in sections 34 and 35 shall be allowed to be opened or used and from time to time may rescind or alter such rules; and in case of breach of any such rules or of the conditions of the licence granted under

section 36, may order such places to be closed, and while such order is in force, such places so ordered to be closed shall be deemed to be unlicensed places.

13. A perusal of the above, it is clear that the Police Commissioner can make rules for regulating the closure and opening timings in respect of the places referred to the original Sections 34 and 35 of the Act. Section 34 of the Act refers to the places of public resort and Section 35 of the Act refers to the places which are mentioned as under:

**“35. Eating houses, hotels, wine shops, fencing schools, etc. to be licensed.-** No enclosed place or building shall be used as an eating house, boardinghouse, lodging-house, hotel, gymnasium or fencing school, without a licence obtained from the Commissioner.

Provided that nothing in this section shall apply to any gymnasium or fencing school of any educational institution controlled or recognised by the State Government.”

14. Subsequently, by Tamil Nadu Act 43/2007, the Chennai City Police (Amendment) Act, 2007 came into force with effect from 08.09.2007, wherein,



Section 35 has been amended to the following effect:

**“35. Fencing-schools and gymnasium to be licensed;-**

(1) No enclosed place or building shall be used as a fencing-school or gymnasium without a licence obtained from the Commissioner:

Provided that nothing in this section shall apply to any fencing-school or gymnasium of any educational institution controlled or recognized by the State Government.

(2) No enclosed place or building shall be used as an eating-house, boarding-house, lodging-house or hotel without obtaining a no objection certificate from the Commissioner in regard to traffic clearance by the Municipal Corporation for the grant of a licence, for the first time, under the relevant City Municipal Corporation Act.”

**15.** A perusal of the Section 35 prior to its amendment, creates an embargo that **without obtaining a licence** from the Commissioner, no enclosed place or building shall be used as an eating house, boarding house, lodging-house, hotel, gymnasium or fencing school. However, subsequently, the said embargo was done away by virtue of the Chennai City Police (Amendment) Act, 2007 with effect from 08.09.2007 since 'the places to be licensed' mentioned in

Section 35 (prior to amendment), viz., “**Eating houses, hotels, wine shops, fencing schools, etc.**” were removed and substituted with 'the places to be licensed', viz., “**Fencing-schools and gymnasium**”, and thereby made it clear that no enclosed place or building shall be used as an eating-house, boarding-house, lodging-house or hotel without obtaining a **no objection certificate** from the Commissioner in regard to traffic clearance. Thus, in order to use any enclosed place or building as an eating house, boarding house or hotel, No objection Certificate has to be obtained from the Commissioner only with regard to traffic clearance and therefore, interference of the police and fixing the time limits that too during night hours when usually no much traffic is there, cannot be sustained.

16. A conjoint reading of the above, it is explicit that in exercise of power under Section 39, the Police Commissioner is empowered to make rules only in respect of places of public resorts, Fencing-schools and gymnasium, etc., since these places cannot be used as public entertainment without obtaining license from the Commissioner. Therefore, this Court has no hesitation to hold that the Commissioner is not empowered to make rules in respect of places, viz., Eating houses, hotels or restaurants and as such, the State Police cannot interfere with the business activities of the eating houses, hotels and restaurants and compel the owners to follow opening and closing

timings fixed by them either orally or written.

17. It is brought to the notice of this Court a decision of a Division Bench of this Court in W.A.(MD) No.547 of 2017 dated 01.09.2017, wherein, the Bench has observed that the Commissioner has power to make rules by virtue of Section 39 of the Act and as such, given liberty to the appellant therein, to frame rules. The relevant portion reads as follows :-

“Writ Petition, W.P(MD)No.11410 of 2016 was filed seeking a direction to the respondent therein, to permit the Writ Petitioner to carry on his business during late night hours. The learned Single Judge by taking into account, the undertaking given by the respondent/Writ Petitioner accordingly, allowed the writ petition. Challenging the same the present appeal is filed.

2.The learned Government Pleader appearing for the appellants would submit that the running of the hotel by the respondent causes law and order problem. It is not as if entire business is stopped, but it is only regulated between 12.00 midnight to 4.00 a.m. It is also submitted that as per section 69 of the Madras City Police Act, 1888, the Commissioner of Police, Madurai City, can regulate it by way of rules.

3.The learned counsel appearing for the respondent/writ petitioner would submit that in the absence of any rule, by such exercise of power under Section 39 of the Madras City Police Act, 1888, it is not open to the appellants to stop the respondent from doing his lawful

business.

4.As long as power is available to the Commissioner of Police, Madurai City, the same can be exercised as per law. However, in the absence of any rule, which can be brought forth by exercising power under Section 39 of the Madras City Police Act, 1888, running of business cannot be curtailed.

5.Accordingly, the writ appeal stands disposed of by giving liberty to the appellant to frame any rules, by exercising the power under Section 39 of the Madras City Police Act, 1988. It is made clear that till such rule is brought forth, the activity of the respondent/writ petitioner, as recorded by the learned single Judge, cannot be curtailed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

18. A perusal of the above order, it appears that the Division Bench has only stated that as long as power is available to the Commissioner of Police, the same can be exercised as per law. Further, the Bench has stated that in the absence of any rule which can be brought forth by exercising power under Section 39 of the Madras City Police Act, 1988, running of business cannot be curtailed. However, as discussed above, by virtue of the Chennai City Police (Amendment) Act, 2007, the power of the Commissioner to issue licence in respect of eating houses, hotels, etc., was taken away and made the Municipal Corporation to grant licence, however, subject to producing no objection

certificate from the Commissioner in regard to traffic clearance. Therefore, by virtue of amendment of Section 35 of the Act, except issuing no objection certificate in regard to traffic clearance for the purpose of licence being granted by the Municipal Corporation in respect of eating houses, hotels, etc., the Commissioner has no power to regulate the opening and closing timings of the said establishments and as such, the police authorities have no role to interfere with the business activities of the same and fix the timings. However, at the time of passing the above judgment by the Division Bench, the Chennai City Police (Amendment) Act, 2007 was not brought to the notice of the Division Bench. Therefore, this Court is ventured upon to pass orders taking into consideration of the Amendment Act and G.O.Ms.No.60 Labour and Employment (K2), dated 28.5.2019.

19. It is pertinent to note that by G.O.Ms.No.60 Labour and Employment (K2), dated 28.5.2019 published in Tamil Nadu Gazettee vide Notification dated 15.06.2019, the State Government has permitted all Shops and Establishments to keep Open for 24x7 all days of the year initially for a period of three years from the date of the Notification under the Tamil Nadu Shops and Establishments Act, 1947.

20. The term 'establishment' defined under Section 2 (6) of the Tamil Nadu and Establishments Act, 1947 as under:

“(6) ‘establishment’ means a shop. commercial establishment, **restaurant, eating-house, residential hotel,** theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this Act”

21. It is also pertinent to note that by virtue of Section 13 of the Tamil Nadu and Establishments Act, 1947, the State Government is empowered to fix closing and opening of the shops and establishments, which reads as under:

“13. Opening and closing hours of shops – (1) Save as provided by or under any other enactment for the time being in force, no establishment shall be opened earlier or closed later than such hours as may be fixed by the State Government, by a general or special order in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the house fixed for the closing may be served during the quarter of an hour immediately following such hour.

(2) Before passing an order under sub-Section (1), the Government shall make an inquiry in the prescribed manner.

(3) The Government may, for the purposes of this Section, fix different hours for different establishments or for different areas or for different times of the year.”

22. In fact, a similar issue regarding interference with the timings of the hotels/restaurants by the State police, has come up for consideration before a Division Bench of this Court in ***“R.Ganesh Prabhu versus State of Tamil Nadu, rep. by its Secretary, Home Department”*** (W.P.No.5361 of 2018 and 3937 of 2019, dated 10.06.2019), wherein, while dealing with a contention was raised that the Government also cannot frame Rules, under the Tamil Nadu Shops and Establishments Act, 1947, for the reason that Tamil Nadu Catering Establishments Act, 1958 specifically excludes the applicability of the Tamil Nadu Shops and Establishment Act, 1947, to eateries, the Division Bench of this Court has held as under:

“18. Mr.Sathish Parasaran, learned counsel appearing for the petitioner in W.P.No.3937 of 2019, would also contend that the Government also cannot frame Rules, under the Tamil Nadu Shops and [Establishments Act](#), 1947, for the reason that Tamil Nadu Catering Establishments Act, 1958 specifically excludes the applicability of the Tamil Nadu Shops and [Establishments Act](#), 1947, to eateries.

19. We cannot agree with the contention of Mr.Sathish Parasaran. Tamil Nadu Shops and [Establishments Act](#), 1947, was enacted, for regulation of shops and establishments, in State of Tamil Nadu.

20. “Establishment” has been defined, under [Section 2](#) (6) of the Tamil Nadu Shops and [Establishments Act](#), 1947, reads as under:-

“Establishment” means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such

establishment as the State Government may by Notification declare to be an establishment for the purposes of this Act. (emphasis supplied)

21. Section 13 of the Tamil Nadu Shops and [Establishments Act](#), 1947, reads as under:-

“13. Opening and closing hours of shops – (1) Save as provided by or under any other enactment for the time being in force, no establishment shall be opened earlier or closed later than such hours as may be fixed by the State Government, by a general or special order in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the house fixed for the closing may be served during the quarter of an hour immediately following such hour.

(2) Before passing an order under sub-Section (1), the Government shall make an inquiry in the prescribed manner.

(3) The Government may, for the purposes of this Section, fix different hours for different establishments or for different areas or for different times of the year.”

22. A reading of the above, would make it clear that Section 13 of the Tamil Nadu Shops and [Establishments Act](#), 1947, gives the power to the Government, to fix the opening and closing hours of shops.

23. Tamil Nadu Catering Establishments Act, 1958, was brought into force to provide for regulation of conditions of work in catering establishments. [This Act](#), therefore, cannot be applied for closing and working hours of shops and establishments which includes restaurants and eateries.

24. Section 39 of the Tamil Nadu Catering Establishments Act, 1958, extracted supra, excludes the applicability of Tamil Nadu Shops and [Establishments Act](#), 1947, for catering units and can be made



applicable only to such of those provisions, which are related to conditions of work, in the Tamil Nadu Catering Establishments Act, 1958. [Both Acts](#), therefore, operative in their respective fields. The applicability of the Tamil Nadu Shops and [Establishment Act](#) is not fully excluded in all respects for catering establishment.

25. Since [Section 2](#) (6) of the Tamil Nadu Shops and [Establishments Act](#), 1947, specifically includes restaurant and eating houses. All the provisions of the Tamil Nadu Shops and [Establishments Act](#), 1947 would be made applicable to restaurants and eating houses, except those clauses which deals with the conditions of work (of an employee), which are specifically covered, under the Tamil Nadu Catering Establishments Act, 1958. If the argument of Mr.Sathish Parasaran is accepted, then the words “restaurant”, eating houses, residential hotel, in the definition of establishment, as given in [Section 2](#) (6) of the Tamil Nadu Shops and [Establishments Act](#), 1947, would become odious. [Section 13](#) gives the power to the Government to regulate the timings for restaurants and eateries.”

23. While holding so, the Division Bench of this Court has made clear that insofar as power to fix the time, for opening and closing hours of shops is concerned, power exists with the Government, under the Tamil Nadu Shops and [Establishments Act](#), 1947, and those power can be exercised, for ensuring order and public safety.

24. Therefore, by virtue of the above Notification issued by the Labour and Employment Department dated 05.06.2019, the petitioner is entitled to

keep his eatery shop open for 24x7 on all the days of the year with effect from 05.06.2019. However, the learned counsel for the petitioner fairly submits that the petitioner has filed an affidavit of undertaking to the extent that he would run the shop only up to 01.30 a.m. Even though the petitioner had filed such affidavit, this Court opines that, it is left open to the petitioner, depending upon the arrival of his customers, workmen engaged for preparing the food and as per their convenience, to fix his own timings subject to the conditions of the notification issued by the Labour and Employment Department. Thus, when the said notification is in favour of the petitioner, then, the second respondent-Police has no jurisdiction or authority to interfere with the business activities of the petitioner and dictate the closure timings.

25. Even otherwise, the petitioner is entitled to carry on his business as per the terms and conditions of licence issued by the Corporation or other licencing authorities. If no time limit is prescribed in the licence, the petitioner, on his own, can fix the timings for his business depending upon the arrival of customers, over which, the second respondent police has no role or jurisdiction to interfere with the business of the petitioner in any manner. All the more, what the respondent-Police is expected to do is that, to ensure that no untoward incident takes place at the premises or in the eatery shop and in case of need,

they are expected to render all possible assistance to prevent such incident from being taken place, rather than anticipating that, law and order problem would arise, if the petitioner is allowed to run the shop after 10.30 p.m. In fact, the respondents, being the Police Officials have to render protection, in case of any danger is overcoming or any information received by them that untoward incident is going to take place, they have to be vigilant in preventing the same, after all it is their bounden duty.

26. Section 23 of the Chennai City Police Act, 1888 (Tamil Nadu Act 3 of 1888) prescribes the Duties of Police Officers, which reads as under:

**“23. Duties of Police-officers.-** Every Police-officer shall, for the purposes of this Act, be considered to be always on duty. He shall not engage, without the written permission of the Commissioner, in any duty other than his duties under this Act. It shall be his duty to use his best endeavours and ability to prevent offences and public nuisances; to preserve the peace; apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to take charge of all unclaimed property; to seize and impound stray cattle; to collect and communicate intelligence affecting the public peace, and promptly to obey and execute all orders and warrants lawfully issued to him; and it shall be lawful for every Police-officer, for any of the purposes mentioned in this section, without a warrant to enter and inspect any drinking shop, gaming-house or other

place of resort of loose or disorderly characters.”

27. Therefore, the prime role of the Police is to uphold and enforce the law impartially and to protect life, liberty, property, human rights and dignity of members of the public and to prevent crimes and maintain law and order.

28. Ours is a democratic country and every citizen has a right to practise any profession or to carry on any occupation, trade or business as enshrined in Article 19(1)(g) of the Constitution of India. In the present case, the petitioner is carrying on his business by running his eatery shop with proper licence, ofcourse at late hours, which is also permissible in terms of the Notification, dated 05.06.2019 issued by the Labour and Employment Department. While so, under the guise that opening the eatery shop by the petitioner would create law and order problem by anti-social elements, who visit the shop, the second respondent is interfering with the business activity of the petitioner and further, without any authority of law or jurisdiction, has passed the impugned order, directing the petitioner to close his eatery shop by 10.30 p.m. every night, which in the opinion of this Court, would violate the right guaranteed by the Constitution and nothing but taking away the very livelihood of the petitioner.

29. It is shame and very deplorable that being the law enforcers and protectors of the people, the police, instead of taking stringent action against

the anti-social elements who indulge in illegal activities and create law and order problem, even, if necessary, by arresting them in order to protect the interest of the petitioner, unfortunately, insisting the petitioner to close his eatery shop by 10.30 p.m. If, unexpectedly, any law and order problem arises on any day, in the interest of the petitioner and his customers, the respondent police may direct the petitioner to close the shop on that particular day, but merely based upon apprehension that there may be law and order problem arising, the respondent police cannot interfere and compel the petitioner to close his eatery shop every day by 10.30 p.m. The respondent police, with the aid of their information sources, if receives any information that anti-social elements entered the eatery shop for dining and going to indulge in illegal activities, can immediately act upon and rush to the eatery shop and apprehend those anti social elements and in fact, the opening of the shop would pave way to the respondent police to identify and catch hold of those anti-social elements and proceed against them by taking proper action.

30. In fact, this Court expects the respondent police to be vigilant and prompt in discharging their duties and ensure that no crimes would take place in the society. While so, in the present case, it is unfortunate to note that the respondent police, instead of extending their helping hand and protecting the

interest of the petitioner and ignoring their duties, in a blind-fold manner, insisting him to close the shop, which would show that we are living in a totalitarian regime.

31. The Latin proverb "Aegrescit medendo" translates to the term "Cure is worse than the disease". The present writ petition presents the same scenario indicating the restrictive and narrow approach adopted by the Police.

32. Food is undoubtedly the most important of the basic needs of a human being. The reason being without proper shelter and clothing one can survive, but without food one cannot starve and survive for long.

33. Cooking food in one's home is certainly the most healthy and affordable. But in today's urban life style situation warrants a substantial population to eat in restaurants and road side eateries for varied reasons. Let it be breakfast, lunch or breakfast, the city offers wide range of restaurants catering to the needs of millions of people.

34. Some restaurants are open even late in the night and several people visit these places to have food. The visitors include private employees, watchmen and guards, taxi drivers who drive Ola, Uber and other cabs, young

delivery boys working in swiggy, zomato and other delivery agencies, night shift employees and others. These people run around all day and night without minding about their hunger and eat at odd times. A restaurant open a little late at night serves as a huge sigh of relief for their hungry stomachs.

35. To anticipate some unruly or anti social elements visiting these restaurants/eateries/hotels and therefore directing them to be closed down and not open late at night is neither rational nor logical. However the Police appear to be orally giving instructions to close down these eateries/restaurants since they apprehend that unruly or anti social elements who are intoxicated might visit these places and create law and order issues.

36. This controversy has not arisen for the Court's consideration for the first time. A Division Bench of the Kerala High Court in "***R.Ravikumar vs Sub Inspector & Another***" reported in 2016 (4) Kerala Law Journal 656, while considering the similar issue, has held as under:

"11. Running of a hotel is not detrimental to the interests of the public. On the other hand, it caters to the needs of the general public. There is no case for the fifth respondent that the petitioner committed any offence. No crime is registered against him. That anti social elements used to visit the hotel is not a ground to direct the owner of a hotel to close down the hotel after 11 p.m. That

offences are being committed in the locality by anti social elements is also not a ground to stop the running of the hotel after 11 p.m.. If any offence is committed by any person, it is for the police to investigate and apprehend the accused. The police can also prevent commission of offences. So long as the first respondent has no case that the petitioner has committed any offence or that any conspiracy to commit any offence took place in the hotel premises, he was not justified in preventing the petitioner from running the hotel during permitted hours."

37. As held in the above judgment Article 19(1)(g) provides the right for a hotel or restaurant owner to run his hotel in accordance with law. This right can only be reasonably restricted under Article 19(6) . Article 19(6) is extracted below for a specific purpose:

"(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law...."

38. A bare reading of clause 6 makes it amply clear that the State by making any law in the interest of the general public can reasonably restrict the right under Article 19(1)(g). The right of the general public to feed themselves



by consuming food from these hotels/eateries is an essential part of their right to food which has been recognized as an integral part of Article 21.

39. Therefore there are two rights in stake here. First the right of the hotel/restaurant owner to run his business or trade guaranteed under Article 19(1)(g). Second is the right of the customers to consume food which is a part of Article 21. If the State wants to regulate the first right, then the restriction can only be through a law. Such restriction must be reasonable and proportional. Admittedly there is no legal prohibition to operate a restaurant/eatery at late night. Without such a statutory power the Police cannot try to force or coerce these persons to shut their hotels/restaurants simply because they anticipate a law and order issue. By doing so they are depriving of the right to food of the customers who come to eat there.

40. The preamble of our Constitution guarantees a democratic republic and not a Police State. To deprive the exercise of fundamental rights of several persons because the Police believe that few unlawful or notorious elements might enter the restaurants at late night is completely unacceptable and unreasonable.

41. This approach of the Police in denying food to the customers, depriving the right to run the business of a hotel owner just because they do

not want any law and order issue which might be caused by anti social or unruly elements who might visit these places is like burning down your own house to get rid of a rat.

42. For the foregoing reasons, the impugned order of the second respondent is liable to set aside.

43. In the the light of the above discussion, this Court would like to hold/issue the following directions, viz.,

1. that by virtue of amendment of Section 35 vide Chennai City Police (Amendment) Act, 2007, the Commissioner of Police is not empowered to make any rules under Section 39, in the matter of regulating the timings of opening and closing of the eatery shops/hotels/restaurants and thus, the police authorities are not having any authority or power to dictate the opening and closing timings of the eatery shops/hotels/restaurants either orally or written instructions;
2. the police authorities shall not interfere with the business activities of the eatery shops/hotels/restaurants and disturb their peaceful functioning under the guise of law and order problem and even in which

case, it is bounden duty of the police authorities to provide appropriate protection to the eatery shops/hotels/restaurants;

3. that by virtue of G.O.Ms.No.60 Labour and Employment (K2), dated 28.5.2019 vide Notification published in Tamil Nadu Gazettee, dated 15.06.2019 since the State Government permitted all the shops and establishments to keep Open for 24x7 all days of the year, the owners of the eatery shops/hotels/restaurants are at liberty to fix closing timings on their own depending upon their convenience and arrival of customers subject to the compliance of the conditions prescribed in the Notification until further orders by the Government or otherwise, as per the terms and conditions of the License/permits issued by the State Government/Municipal Corporation/Licensing Authorities,
4. that the State Government alone is empowered to fix opening and closing timings of eatery shops/hotels/restaurants and to make rules thereof;
5. that the State Government shall ensure smooth functioning of the eatery shops/hotels/restaurants during the night hours so that the private employees, watchmen and guards, taxi drivers who drive Ola, Uber and other cabs, young delivery boys working in swiggy, zomato and other delivery agencies, night shift employees and others can get food at odd

hours.

6. that the police authorities shall be vigilant and take earnest safety measures at all times and ensure that no law and problem would arise so that the eatery shops/hotels/restaurants can function peacefully without any interruption; and
7. that it is needless to state that the police authorities can take action in accordance with law in the event of owners of the eatery shops/hotels/restaurants indulge in any illegal or prohibited activities.

44. Accordingly, this Writ Petition is allowed and the impugned order of the second respondent is set aside. No costs. Consequently, connected W.M.Ps are closed.

**03.02.2022**

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non-Speaking Order

suk/sp

**KRISHNAN RAMASAMY.J.,**

suk/sp

To

- 1.The Commissioner of Police,  
Greater Chennai,  
Commissioner Office Building,  
E.V.K.Sampath Road,  
Vepery, Chennai – 600 007.
- 2.The Inspector of Police,  
G3-Kilpauk Police Station,  
Poonamallee High Road,  
Kilpauk, Chennai – 600 010.

W.P.No.10512 of 2018

03.02.2022