

Order dt. 06.05.2020 in WP No.7578 of 2020
[B.Ramkumar Adityan v. Chief Secretary,
Government of Tamil Nadu]

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2020

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

Writ Petition No.7578 of 2020

B.Ramkumar Adityan .. Petitioner

Vs.

1. Chief Secretary
Government of Tamil Nadu
Secretariat, St. George Fort
Chennai 600 009.
2. Additional Chief Secretary
Prohibition and Excise Department
Government of Tamil Nadu
Secretariat, St. George Fort
Chennai 600 009.
3. Principal Secretary
Health & Family Welfare Department
Government of Tamil Nadu
Secretariat, St. George Fort
Chennai 600 009.
4. Director General of Police
Tamil Nadu Police
Dr.Radhakrishnan Salai
Mylapore
Chennai 4.
5. Managing Director
Tamil Nadu State Marketing Corporation Ltd.

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CMDA Tower - II, 4th Floor
Gandhi Irwin Bridge Road
Egmore, Chennai 8.

.. Respondents

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.

For Petitioner	:	Petitioner-in-Person
For Respondents 1 to 3	:	Mr.Vijay Narayan Advocate General Assisted by Mr.V.Jayaprakash Narayanan Government Pleader
For Respondent-4	:	Mr.S.R.Rajagopal Additional Advocate General Assisted by Mr.V.Jayaprakash Narayanan Government Pleader
For Respondent-5	:	Mr.Sathish

ORDER

(Made by Dr.Vineet Kothari,J)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 30th April 2020, by Judges at the respective residence offices and the counsel, staff of the Court appearing from their respective residences.

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2. This petition has been filed by B.Ramkumar Adityan, seeking a ban on the sale of liquor, which is intended to be done by the State of Tamil Nadu through re-opening of TASMAC shops from tomorrow 07.05.2020, during the lockdown period amid COVID-19 situation by challenging the Press Note No.311 dated 04.05.2020 by which the State has issued a public notice for re-opening of TASMAC shops for sale of the liquor in the State of Tamil Nadu, as done by the other neighbouring States, namely, Karnataka and Andhra Pradesh, with certain restrictions as mentioned in the said Press Note. The said Press Note came to be followed by a separate G.O. namely **G.O.Ms.No.223 dated 05.05.2020**. The petitioner in the present writ petition as well as several others filed other writ petitions to the same effect and some have filed applications seeking impleadment in the present writ petition.

3. Heard Mr.B.Ramkumar Adityan, Party-in-Person, Ms.R.Vaigai, learned Senior Counsel, Mr.K.Balu, Mr.Anirudh Krishnan, Ms.Y.Kavitha, Mr.K.Balan Haridas, learned counsel, all appearing for the petitioners in the writ petitions yet to be numbered and Mr.Vijay Narayan, learned Advocate General, Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.V.Jayaprakash Narayanan, learned Government

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Pleader, Mr.Sathish, learned Government Advocate for TASMAC, in a consolidated manner, for about two to three hours.

4. We may briefly summarise the submissions made on both sides.

5. The learned counsel have prayed for total prohibition of the sale of liquor on the State or at least deferment of opening of TASMAC shops up to **17.05.2020** or up to the period the Central Government extends the lockdown during these COVID-19 times. They urged that it was so indicated in the Notifications issued by the National Disaster Management Authority, New Delhi, headed by the Hon'ble Prime Minister of India on **1st May 2020** and in pursuance of which, the Ministry of Home Affairs issued a separate notification signed by the Union Home Secretary, working as a Chairperson of the National Executive Committee under the provisions of Section 10(2) of the Disaster Management Act, 2005. Under these two Central Notifications, the State of Tamil Nadu has issued separate notifications in **G.O.Ms.No.217** dated **03.05.2020** and the aforesaid notification in **G.O.Ms.No.223** dated **05.05.2020**, regarding the sale of liquor in the State of Tamil Nadu.

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6. Mr.Vijay Narayan, learned Advocate General appearing for the State has also produced before us the proceedings of the Managing Director of TASMAC dated **05.05.2020**, in which, the detailed Guidelines about the sale of liquor through stand alone shops of TASMAC have been given.

7. The learned counsel appearing for the petitioners expressed their dismay and anguish at the decision of the State for re-opening of the liquor shops in the State of Tamil Nadu which, according to them, will throw the norms relating to social distancing or physical distancing as is desired and mandated in these COVID-19 times to the winds and as per the TV reports and other media reports of the two adjacent States where the liquor shops have been opened recently, the huge crowd gathered for purchase of liquor and it will further increase the corona virus positive cases in the State of Tamil Nadu, which is already leading over various other States. Unfortunately in the spread of this disease, out of 32 Districts of the State, most of the Districts are in Red or Orange category, except one District Krishnagiri, which is in Green zone so far.

8. The learned counsel for the petitioners and intervening applicants, therefore, vehemently suggested that the sale of liquor

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through TASMAL shops should be either completely prohibited or at least deferred till the Lockdown is completely lifted on 17th May 2020. They also raised various other submissions that the State is intending to do so only for revenue collection under the guise of putting back the economy into gear through re-opening of TASMAL shops and to only fetch higher revenue, ignoring the health hazards which it will cause and also it is likely to increase the cases of domestic violence, besides causing serious health problem to the people through the gathering of crowds at such TASMAL shops and the Guidelines indicated in the notifications and orders issued by the Department of the State are not likely to be followed, despite police bandobust made, as indicated by the learned counsel appearing for the State, including the learned Additional Advocate General.

9. On the other hand, the learned Advocate General vehemently defended all these orders and submitted that since the vaccine for corona virus is yet to be found and there is no complete cure for this disease immediately available, the norms for safety have been prescribed and that the revival of economy also cannot wait endlessly and therefore, the policy decision of the State Government to restart the sale of liquor through TASMAL shops, is a rational and economically viable decision and

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being a policy matter, it should not be interfered with by the Court. He submitted that the detailed Guidelines and safeguards have been put in place for maintaining physical distancing norms and despite the threat of the disease being there, the deferment of opening of the TASMACH shops till the lifting of the lockdown completely, cannot be insisted upon. He submitted that even after 17th May 2020, the corona virus will not disappear. But, undue delay in re-opening the TASMACH shops and other business activities including factories etc. cannot depend upon this and since the Central Government through their Notifications on 1st May 2020 have permitted the economic activity with some restrictions, which have been adopted and followed by the State Government in their orders, there is no justification to either prohibit the sale of liquor completely or defer the same even up to 17th May. He also submitted that approximately Rs.90 Crores of revenue is expected per day from the sale of liquor and therefore, this revenue aspect of the matter cannot be ignored by the State, which needs fund to be employed for public purposes only, including managing the COVID-19 situation.

10. The learned Advocate General drew our attention to the Guidelines laid down in **G.O.Ms.No.223** dated **05.05.2020** and the proceedings of **TASMACH dated 05.05.2020** and submitted that not only

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the social distancing will be maintained by physical distance of six feet between the customers by laying down the barricades at the TASMAC shops, but also by allotting different time slots for the people depending upon their age as well. He submitted that persons above 50 years will be permitted to purchase liquor between 10.00 am to 1.00 pm, people between the age group of 40 to 50 will be permitted to purchase between 1.00 pm to 3.00 pm and people between 18 years to 40 years will be permitted to purchase between 3.00 pm to 5.00 pm. He submitted that if the liquor sale is not made through authorised shops of TASMAC, as per the reports received by the State that the people have started manufacture of liquor illegally at their homes and other places and such illegal manufacture of poisonous liquor through various other methods will only cause greater health hazard and problems for the State.

11. Regarding acceptance of digital payments by TASMAC shops, the learned Advocate General submitted that 850 Retail vending shops of Chennai region have the facility of Point of Sales Machine for accepting the digital payments and e-Wallet digital based payment system has been installed in 58 retail vending shops in 13 Districts. He submitted that as far as other 5338 shops in the State are concerned, the TASMAC was considering the installation of uniform payment system through the digital

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method and tenders for that were invited. The last date for submission of tender was fixed on 07.04.2020 and due to the lockdown announced by the Central Government, the said date was extended to 08.06.2020 and therefore, it will take sometime to accept the digital payment only for the sale of liquor in the State.

12. In this regard, Mr.Anirudh Krishnan, learned counsel appearing for the applicant submitted that his client company is already providing E-Wallet services to the State and the company is even ready to extend this digital payment service to TASMAC free of any charges.

13. As far as the case of MRP violations by excess collection of charges by the shops are concerned, as alleged in some of the applications, the learned Advocate General submitted that during the last year of April 2019 to January 2020, a total of 7117 cases of MRP violations have been booked by the Corporation and therefore, the State is taking action against the concerned employees of TASMAC and other District Managers of Revenue Department. To ensure that excess collection on sale of liquor is not made by various TASMAC shops, he further submitted that as far as the **Containment Zones or Red Zones** are concerned, the sale of liquor is not to be opened from tomorrow vide

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G.O.Ms.No.223 dated 05.05.2020, in which it is clearly stated that the liquor retail vending shops will be opened from 07.05.2020 except in the shops located in Malls, Market Complex, Containment zones and in the areas falling within the jurisdiction of Greater Chennai Police. Therefore, he submitted that as far as the city of Chennai is concerned, liquor shops will not be opened. He further submitted that constant monitoring will be done to ensure that these Guidelines which are in terms with the Guidelines issued by the Central Government, Ministry of Home Affairs dated 01.05.2020 will be strictly adhered to and therefore, taking a comprehensive view of the matter, the Notification in **G.O.Ms.No.223 dated 05.05.2020** announcing the re-opening of the TASMAC shop for sale of liquor in the State, other than Chennai should not be interfered with.

14 The learned Advocate General further submitted that the health safety measures of wearing mask, maintaining physical distance of six feet etc. will also be ensured by the Police personnel employed for this purpose, for which special arrangements and bandobust have been made by the State and which submission was also supported and explained by Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the Police Department.

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15. Heard the learned counsel at length at the admission stage of Public Interest Litigation also and we intend to pass the following interim order, which will be applicable to all such writ petitions filed in this lockdown period, which petitions or applications for intervention may be at the stage of scrutiny numbering process by the Registry as of now.

(i) We direct the respondent State and all concerned authorities of TASMAL including sales personnel thereto to strictly adhere to the Guidelines and restrictions stipulated in the Notification 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 of TASMAL in **Rc.No.R3/2093/2020** dated **05.05.2020**, which are quoted below for ready reference:

G.O.(Ms.)No.223 dated 05.05.2020

*"NOW THEREFORE the Government hereby ordered
that the Liquor Retail Vending Shops be opened from 07.05.2020
(except the shops located in Malls, Market Complexes,
Containment Zones and in the areas falling within the
Jurisdiction of Greater Chennai Police) subject to the following
conditions till the lock down ends.:-*

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1. There should not be any crowd in the Liquor Retail Vending Shops.

2. The social distance of 6 feet between two customers should be maintained.

3. Not more than five persons to be allowed in the shop at a time.

4. The shop timings will be from 10.00 a.m. to 05;00 p.m.

5. Necessary security and safety measures need to be done in all the Liquor Retail Vending Shops.

6. In each and every Liquor Retail Vending shop, additional personnel need to be deployed so as to avoid crowding in the shops.

Further the Government ordered that the no bars shall be allowed."

Proceedings of TASMAL in Rc.No.R3/2093/2020 dated 05.05.2020

Annexure - I

Instructions to be followed at the Retail Vending shops

1. All shop personnel should be present in the shops

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(Other than those who reside in containment zone). Wherever shops are not to be opened, those staff can also be redeployed in other shops which are to be opened.

*2. Shop Personnel must wear **triple layer masks** and **sanitize** their hands at the periodic intervals while working.*

*3. If there's sufficient space, sales can be done from **two counters** at the shop window, there should be **at least 6 feet distance** between the two counters. If sufficient space is not available then sales must be done only from one counter.*

*4. **Only medically fit persons**, without any co-morbid conditions and **below 55years of age** should be called for work.*

*5. The **barricading with wooden sticks** should be done for regulating the customers in front of the shops. **Circles must be drawn** within the barricades with **diameter of 1 feet with 6 feet distance** between each circles. The barricading should be a single line barricade. Customers should come in single line within the barricade. The barricading should be **for at least 200 feet**, where space is not available barricading can be done for lesser length but it should be ensured that circles are drawn with*

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diameter of 1 feet with 6 feet distance between each circle even beyond the barricade.

*6. The **shops should be sanitized** by using user friendly disinfectant liquid at least five times during the working hours.*

*7. Apart from sanitizing the shops with **disinfectant liquid**, the shop personnel should spray the bleaching powder outside the shops at least twice daily.*

*8. **Not more than 5 persons** to be allowed in the shop at the same time.*

*9. Shop personnel while sanitizing the shops should wear **triple layer masks**. All the shop personnel need to wear the disposable hand gloves and also wear triple layer masks while attending to the customers.*

*10. Minimum two personnel per **shop should stand outside** of the shop to regulate the customers for ensuring the social distance.*

11. These shop personnel should also take care that

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there is no crowding nearby TASMACH shops and also to ensure that no customers are drinking liquor in the public places.

12. The Bars attached to the Retail Vending shops is not permitted to function. The District Manager and shop personnel should ensure that all entry points to the bars attached to the Retail Vending shops are closed and sealed properly.

13. One person must be engaged through outsourcing agency to stand at entrance of shop with hand sanitizer to be used for all customers before they make the purchase.

14. Sales to be done only to customers who are wearing a mask.

15. No Bulk sales to be done.

16. Token system to be followed for regulating crowds. Timings must be mentioned in the tokens to ensure that not many persons gather in front of shops. No token should be given after 4 pm and shops should compulsorily be closed at 5pm.

17. Public address system should be hired by the District managers for all shops where more crowds are expected especially in urban areas.

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18. District managers may temporarily hire additional staff through outsourcing agency to ensure that above instructions are followed and for proper crowd control."

(ii) Besides the aforesaid Guidelines and Restrictions, we are of the opinion that following further restrictions deserve to be imposed on the sale of liquor to TASMAC shops in the areas allowed, in addition to the conditions contained in the aforesaid two Government notifications/Guidelines dated 05.05.2020.

(a) Item 15 of the Guidelines issued by the TASMAC says that "**No Bulk sales to be done**". Since the word "Bulk" is not defined or clarified in the said Guidelines and Instructions (but it seems to be equivalent to 0.219 Gallon as per Google), we consider it appropriate to direct that **not more than two bottles of 750 ML each** of liquor (including Beer, Wine, etc.) **of any one type** and which is the usual bottle size as stated by the learned Advocate General, will be sold to one customer at a time. The same customer cannot make such purchase of liquor more than **twice in a week, with a minimum gap of three**

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days.

(b) The TASMACH shop in question, which is allowed to undertake such sale as per the Notifications dated 05.05.2020 will immediately **issue "Bill for such sale"**, noting the **name, address and Aadhar card number** of the person/buyer concerned. If any sale is found to be made in violation of this direction and such fact is brought to the notice of this Court, that shop in question will be immediately closed and will not be allowed to be reopened, except by the specific orders of the Court.

(c) Vide Item No.11 and Item No.12 of the Instructions dated 05.05.2020 also which indicate that the Bars attached to the Retail Vending shops will not be permitted to function and the entry point to such Bars attached to Retail Vending shops will be closed and sealed properly and drinking liquor in public places will be prohibited. This appears to be issued for not allowing the customers to consume the liquor at the shop itself or in the Bar attached thereto or any other public place.

We, therefore, direct that to maintain properly

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the law and order and to avoid any untoward incident, no purchaser of liquor shall be allowed to consume the liquor at or nearby the shop in question or at any other public place and the police personnel deployed in duty for such bandobust and such consumption of liquor can take place only in the private premises of the person(s) concerned.

(iii) Though the learned Advocate General has submitted that **Digital payment** facility for purchase of liquor is available in some of the TASMALC shops, but they are mainly situated in the City areas, where presently the sale of liquor is not going to start from **07.05.2020**, we are of the opinion that to avoid unnecessary malpractice of over charging through cash payments and to encourage digital payment as per the avowed Government Policy, we direct that the payment for purchase of liquor should be made through approved E-payment applications like **RuPay, Bhim, Google Pay, etc.** which can be made available on all the smart phone holders and which can easily be assumed to be available with TASMALC shop owners/Managers and which applications can be downloaded and the payment through these banking channels will not only keep a track and check on the sale of liquor, but is also likely to

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prevent those who do not intend to pay through known and approved sources, but purchase and consuming liquor free from all restriction. This direction, in our opinion, can meet the ends of not only starting this economic activity through recorded sources of payments and business, but will also regulate the business to some extent and avoid unnecessary increase in offences of excess MRP charging, etc. and then booking cases, trials, etc.

(iv) To encourage digital payment and online booking of the purchase orders of the liquor, we further direct that those who book online and make online digital payments through banking channels are permitted to buy up to **two bottles** of one type of liquor in a day. The others who do not make online payments and do not book orders online, as they may not have such mobile phone facility at all, will be allowed to purchase **only one bottle of 750 ml** in a day, on the basis of tokens issued to them, read with conditions stipulated in Clause (ii)(a) above.

(v) The learned Advocate General has given the data that approximately 7117 cases in the last ten months had to be booked for alleged MRP violations. Therefore, to prevent this, we are of the opinion that sale of liquor on cash payment particularly in Covid times is not a

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justified course of action and thus, we prohibit the sale of liquor against cash under the orders issued by the State Government, namely G.O.Ms.No.223 dated 05.05.2020, except in the cases indicated above in Clause (iv) of this order.

(vi) The learned Advocate General also submits about issuance of Tokens with time slots given depending upon the age group of the consumers. We specifically requested the Advocate General to take instructions in the matter as to whether online booking of tokens for sale of liquor through TASMAC shops can be insisted upon or not. The issuance of tokens at the shops itself at the same time, when the sale of liquor is taking place is likely to cause a serious threat to the social distancing or physical distancing norm, which is being insisted upon by the Central Government and the State Governments and Medical Authorities. Therefore, we direct that the State and TASMAC should consider immediately the method of sale of liquors online and upon online payment, Tokens can be issued online to the persons concerned with the time slots given on the same, when the customer can go and collect his liquor bottles already sold to him on the Token produced by him or shown by him to the concerned sales persons. This will largely avoid unnecessary crowding at the TASMAC shops which are allowed to restart

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such business from 07.05.2020. The exception to online booking for liquor can be made only for those persons who do not have the phone facility available to them and cannot book it online and for whom, separate counters for issuance of Tokens and sale of distribution of liquor bottles can be opened at the TASMAC shop in question, so that the social distancing or physical distancing as per the norms prescribed and adopted by the State Government can be strictly maintained.

(vii) No sale of liquor without Sale Bills shall be made by any TASMAC shop and if any complaint is received in this regard by this Court, the Court may direct the permanent closure of such TASMAC shop after making necessary enquiry in the matter.

(viii) With the aforesaid restrictions and the restrictions already stipulated in the aforesaid Government notifications/Guidelines dated 05.05.2020, we are of the opinion that we cannot totally prohibit the re-opening of the TASMAC shops for sale of Liquors, including Beer, Wine, etc. in the State as we have already dismissed one such Public Interest Litigation in **WP No.7565 of 2020 on 04.05.2020**, it being a State policy matter and we are also not inclined to stay or defer the said impugned decision of the State Government dated 05.05.2020 to reopen

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the TASMAL shops in specified areas from 07.05.2020 until 17.05.2020 or even if the date of the lockdown is further extended by the Central Government or the State Government depending upon the emerging situation of COVID-19 disease, as we feel that the balance of revival of economic activity and management of Covid related disease has to be maintained by the State Authorities and it is not within the domain of the Court to interfere with the same.

(ix) The State will constantly monitor the sale of liquor in terms of the aforesaid restrictions depending upon the change of declaration of zones from Green to Orange, Orange to Red and Red to Containment zones and opening or closing of TASMAL shops in terms of the aforesaid restrictions will also be governed by the declaration of the respective areas in different zones by the competent authority, on day-to-day basis.

16. All these matters may be posted before the Court on 14.05.2020 again.

17. The office may number the other fresh writ petitions and applications of impleadment, etc. and place the entire record of all these related cases before the Court on the next date of hearing along with any

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fresh cases filed hereafter also, so that a common order may be passed after hearing all the petitioners and the respondents, in this lead case.

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