

(1985) 06 MAD CK 0016
In the Madras High Court

T. Mariappan

APPELLANT

Vs

The Commissioner, Prohibition and Excise and Others

RESPONDENT

Date of Decision : 18-06-1985

Acts Referred:

Citation : (1986) 1 MLJ 97

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Judgement

V. Ratnam, J.—In this writ petition, the petitioner has prayed for the issue of a writ of mandamus directing the respondents 1 and 2 herein to initiate proceedings under Rule 7(2) of the Tamil Nadu Arrack (Retail Shop) Rules, 1981 (hereinafter referred to as "the Rules") to direct the third respondent to shift Arrack Shop No. 3 from its present location at No. 6, South Car Street, Srivilliputhur, to some other unobjectionable place. The third respondent was the highest bidder for a licence to vend arrack from Arrack shop No. 3 in Srivilliputhur town and he selected door No. 6, South Car Street, for locating his arrack shop. Certain objections were raised by the residents to the location of the arrack shop by the third respondent in the premises chosen by him on the ground that it is located in a thickly populated residential area and is within 100 metres from the municipal elementary school and further it adjoins a hotel and is also situate opposite to the Court buildings. The existence of two Kalyana Mandapams in front of the place selected by the third respondent was also brought to the notice of the concerned authorities and a request was made for the shifting of the location of Arrack shop No. 3 to some other site. Despite the objections so raised, according to the case of the petitioner, the arrack shop had been located by the third respondent contrary to the Rules and, therefore, the shop should be shifted from its present location to some other unobjectionable place. The principal complaint of the petitioner is that the third respondent had violated Rule 6(i) and (ii) of the rules in that the municipal elementary school is situated at a distance of less than 150 metres from the arrack shop and that a hotel by name Thilakam Cafe immediately adjoins the arrack shop in question

and, therefore, it should be shifted to some other place after directing the respondents 1 and 2 to initiate proceedings in that regard.

2. In W.M.P. No. 14360 of 1984, the petitioner had prayed for the appointment of an Advocate-Commissioner to make a local inspection and to ascertain the distance between the arrack shop and the school and the nature of the business carried in Thilakam Cafe and also the existence of a lane, if any, in between the arrack shop, the Thilakam Cafe as well as its nature. By an order dated 6.9.1984, an Advocate of Srivilliputhur was appointed as Commissioner and he submitted a report on 24.9.1984. In the course of that report, the Commissioner found that the distance between the municipal elementary school and the arrack shop in question is 139.20 metres as per measurements and that the distance is 112.85 metres as the crow flies. It was also further found by the Commissioner that Thilakam Cafe situate east of the arrack shop in question in door No. 5, South Car Street, was a hotel and that there was no lane between Thilakam Cafe and arrack shop in question. The existence of certain other buildings was also noticed by the Commissioner in his plan.

3. Thereafter, in W.M.P. No. 12813 of 1984, the petitioner prayed for an order of interim injunction restraining the third respondent herein from running his arrack shop No. 3 at door No. 6, South Car Street, Srivilliputhur, pending disposal of the writ petition and on 8.11.1984, this Court, after accepting the report submitted by the Commissioner, directed the third respondent to comply with the Rules relating to distance and the location of the hotel and in the event of the third respondent not complying with the same, the Excise authorities were directed to take suitable action against the third respondent. Pursuant to this order, the third respondent had made certain alterations with a view to comply with the directions given by this Court in W.M.P. No. 12813 of 1984 and thereafter the Assistant Commissioner (Prohibition and Excise)-II, Ramanathapuram at Madurai, inspected the arrack shop in question on 22.2.1985 and submitted a report to the effect that the counter from which arrack is sold in the shop of the third respondent was situated beyond 150 metres from the school in question and further that the hotel in door No. 5, South Car Street, is separated from the arrack shop by a small lane and that the arrack shop did not immediately adjoin the hotel and, therefore, the Rules were complied with by the third respondent. The stand taken by the respondents 1 and 2 in their counter-affidavit is also to the effect that the location of the arrack shop of the third respondent is in accordance with the Rules, particularly Rule 6.

4. The learned Counsel for the petitioner rested the claim of the petitioner for the issue of a writ of mandamus on two grounds. The first is that the arrack shop in question is situate within a distance of 150 metres from the municipal elementary school on the north of South Car Street thereby violating Rule 6(1) of the Rules and, therefore, the arrack shop of the third respondent should not have been permitted to be established at door No. 6, South Car Street, Srivilliputhur. On the other hand, the learned Counsel for the third respondent submitted that

the shop in question, wherefrom arrack is sold in retail for consumption to permit holders, is located at a distance of more than 151.50 metres from the entrance of the school and there is, therefore, no violation of Rule 6(i) of the Rules as contended by the petitioner. In order to ascertain whether there is a violation of Rule 6(i) of the Rules as contended by the petitioner, it would be necessary to refer to the Rule itself. That rule states that no shop shall be established within a distance of 150 metres from any school, college, hostel, hospital, place of worship, Chief Minister's Nutritious Meal Centre, factory, railway station, bus stand, cinema theatre or any place inhabited predominantly by labourers and poor people. Explanation (iv) states that for the purpose of Rule 6(i) of the Rules, "distance" shall mean the distance by the shortest pathway, lane, street or road, generally used by the members of the public. It would also be necessary in this connection to notice the definition of "shop" occurring in Rule 2(h) of the rules, which defines it as "the building wherefrom arrack is sold in retail to holders of permit for consumption". It is the case of the petitioner that the distance rule is violated on account of the location of the municipal elementary school within a distance of 150 metres from the arrack shop. This claim of the petitioner does not appear to be quite correct, for, it is seen from the plan submitted by the Assistant Commissioner (Prohibition and Excise)-II that the distance between the municipal elementary school and the shop, namely, the building from which arrack is sold in retail, is in excess of 150 metres. A look at the plan shows that the distance from the centre of the entrance of the school to the centre of South Car Street is about 9.50 metres. From the centre of South Car Street on the western side up to the centre of the road just opposite to the location of arrack shop No. 3, the distance measures to about 119.40 metres. Again, from the centre of the road to the southern edge, the distance is 10.80 metres and that from the southern edge upto the point where arrack shop No. 3 is located, the distance is 11.08 metres. Thus, the total distance between the school entrance and the arrack shop No. 3 by the shortest way is clearly in excess of 150 metres. This is brought out by the sketch dated 22.2.1985 submitted by the Assistant Commissioner (Prohibition and Excise)-II, Ramanathapuram at Madurai. Besides, the petitioner in his statement dated 22.2.1985 has also accepted these measurements and has stated that the distance between the municipal school and the arrack shop No. 3 is 151.50 metres. He would also state that his objection with reference to the distance was before the removal of the asbestos sheet and since had been removed, it should be seen that it was not put up again. Thus, from the sketch as well as the statement of the petitioner himself, it is clearly established that the distance between the present location of Arrack shop No. 3 and the municipal school is in excess of 150 metres and there is, therefore, no violation of Rule 6(i) of the Rules. The first ground urged by the learned Counsel for the petitioner cannot, therefore, be accepted.

5. The second ground pressed by the learned Counsel for the petitioner is that owing to the existence of a hotel immediately adjoining the arrack shop in question, there is a violation of Rule 6(ii) of the Rules and that would suffice to

render the location of Arrack Shop No. 3 in the place, where it is now, objectionable. On the other hand, the learned Counsel for the third respondent submitted that the arrack shop in question is not established within the premises of any hotel or any other eating place and that it is also not situate immediately adjoining the hotel or an eating place and since the object of the Rule is to maintain the identity of the arrack shop as distinguished from a hotel or other eating place, that has been achieved by the existence of a lane in between door No. 5 where the hotel is located and door No. 6 where the arrack shop is located. In other words, the learned Counsel contended that if there is something in between the hotel and the arrack shop separating them in such a manner that they are not located cheek by jowl and their separate and distinct identity is preserved, then the arrack shop cannot be said to immediately adjoin the hotel as to fall within the mischief of Rule 6(ii) of the Rules.

6. To appreciate this contention, it is necessary to refer to Rule 6(ii) of the rules which runs as follows:

No shop shall be established within the premises of any hotel or any other eating place or immediately adjoining such hotel or eating place.

The object of this Rule is clear. It is intended to prohibit the use of a hotel as an arrack shop and vice versa. The first part of the Rule prohibits the establishment of an arrack shop within the premises of any hotel or other eating place. This is obviously intended to prevent the misuse of a hotel as an arrack shop. It is common knowledge that those who consume arrack prior to or during such consumption, take some eatables. It may be that facilities for that are also provided in an arrack shop. Such facilities are available in a hotel. However, that should not be taken as enabling conversion of a hotel or an eating place into an unlicensed arrack shop. That is the reason why the establishment of an arrack shop within a hotel or other eating place is not permitted under Rule 6(ii) of the rules. The same idea of preserving the identity of an arrack shop as well as an eating place is also reflected in the latter part of Rule 6(ii) of the rules. The use of the expression "immediately adjoining" before the words "hotel or eating place" is significant. Prima facie, it would mean co-terminus with or absolutely contiguous, without anything in between or meeting end to end or along a common boundary. That would be the primary meaning. But there is also a looser sense meaning near or neighbouring. The words "immediatly adjoining" have been used correctly and exactly and not loosely. If there is something in between an arrack shop and a hotel or an eating place, that by itself would be sufficient to distinguish the two places and to preserve their separate identity so that a misuse of the place is rendered impossible. The prohibition under Rule 6(ii) of the rules would apply only when the situation of the arrack shop and the hotel or an eating place is such that they are located immediately next to each other and contiguously and in such a manner that easy access can be had from one to the other destroying the identity of the places either as a hotel or as an arrack shop, but resulting in the free use of the hotel or the arrack shop, as an

arrack shop or as a hotel, as the case may be. In other words, if there is some feature which would render the arrack shop not immediately adjoin such a hotel or an eating place, then there could be no violation of Rule 6(ii) of the Rules.

7. The learned Counsel for the petitioner invited attention to *Cave v. Horshell* (1912) 3 K.B. 533 to contend that "immediately adjoining" conveys the idea that two things may adjoin, though they are not next to each other. Ordinarily, the expression "immediately adjoining" may even comprehend two premises lying not far apart. But, having regard to the purpose of the Rule, it would be difficult to accept the interpretation put upon the expression "immediately adjoining" as connoting two things merely adjoining, though not situate next to each other.

8. In this case, the Commissioner in his report dated 24.9.1984 found that the hotel is situate in door No. 5, while, the arrack shop is situate in door No. 6 and that there is no lane between these two buildings. With reference, therefore, to the features as they then stood and noticed by the Commissioner in his report, the location of Arrack Shop No. 3 in door No. 6 might have been open to the objection that it violated Rule 6(ii) of the rules. But then, subsequent to the order passed in W.M.P. No. 12183 of 1984, as a result of the removal of certain structures and roofing materials, a vacant lane to a width of 4.2 feet between door Nos. 5 and 6 had come into existence. The report submitted by the Assistant Commissioner (Prohibition and Excise)-II, Ramanathapuram at Madurai also shows that the hotel on the east is separated by that lane and that Arrack Shop No. 3 does not adjoin the hotel. The petitioner, in the course of his statement dated 22.2.1985, clearly admitted that to the north of the shop for a distance of about 11.8 metres there is a lane and that the hotel is located at a distance of 4.2 feet from the lane. Thus, from the report of the Assistant Commissioner (Prohibition and Excise)-II, Ramanathapuram at Madurai, as well as the statement of the petitioner himself dated 22.2.1985, it is clear that the arrack shop in question does not immediately adjoin the hotel, but that it is separated by a lane to a width of 4.2 feet and that would enable the maintenance as well as the preservation of the identities of the arrack shop as well as the hotel as such without in any manner enabling one to be put to the other use. Considering the physical features revealed by the report supported by the statement of the petitioner himself, it has to be held that there is no violation of Rule 6(ii) of the Rules earlier. Thus, the second ground urged by the learned Counsel for the petitioner is also unacceptable. No other point was urged. Consequently, the rule nisi is discharged and the writ petition is dismissed. There will be, however, no order as to costs.