

*W.M.P. (MD) No.5329 of 2020 in
W.P. (MD) No.6139 of 2020
W.M.P. (MD) No.5335 of 2020 in
W.P. (MD) No.6144 of 2020*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.05.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE B. PUGALENDHI

W.M.P. (MD) No.5329 of 2020 in W.P. (MD) No.6139 of 2020

and

W.M.P. (MD) No.5335 of 2020 in W.P. (MD) No. 6144 of 2020

WP (MD) No.6139 of 2020 & WMP (MD) No.5329 of 2020:

A. Bonyface

Petitioner

vs.

- 1 The State represented by its Secretary
to Government
Government of Tamil Nadu
Home, Prohibition and Excise (VI) Department
Secretariat
Fort St. George, Chennai 600 009

- 2 The State represented by its
Secretary to Government
Department of Health and Social Welfare Department
Secretariat
Fort St. George, Chennai 600 009

- 3 The Commissioner
Prohibition and Excise Department
Chepauk, Chennai

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- 4 The Managing Director
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
IV Floor, CMDA Tower, II
Gandhi Irwin Bridge Road
Egmore
Chennai 600 008

Respondents

WP (MD) No.6144 of 2020 & WMP (MD) No.5335 of 2020:

C. Selvakumar

Petitioner

vs.

- 1 The State of Tamil Nadu
represented by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George
Chennai 600 009
- 2 The Managing Director
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
IV Floor, CMDA Tower, II
Gandhi Irwin Bridge Road
Egmore
Chennai 600 008

Respondents

Prayer in W.P. (MD) No.6139 of 2020:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the decision of the first respondent in News Bulletin No.311 dated 04.05.2020 and quash the same.

Prayer in W.M.P. (MD) No.5329 of 2020:

Petition filed praying to stay all further proceedings pursuant to the impugned decision of the first respondent in News Bulletin No.311 dated 04.05.2020, pending disposal of the writ petition.

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Prayer in W.P. (MD) No.6144 of 2020:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the notification in press release no.311 dated 04.05.2020 passed by the first respondent and quash the same and consequently, direct the respondents not to open the TASMACH shops in all over Tamil Nadu till completion (sic completion) of the curfew period.

W.M.P.(MD) No.5335 of 2020:

Petition filed to stay all further proceedings pursuant to the impugned notification in Press Release No.311 dated 04.05.2020 passed by the first respondent, pending disposal of the writ petition.

For petitioner in
W.M.P. (MD) No.5329 of 2020 Mr. Veera. Kathiravan, Sr. Counsel
in W.P. (MD) No.6139 of 2020 for M/s. Veera Associates

For petitioner in
W.M.P. (MD) No.5335 of 2020 Mr. A. Rajkumar
in W.P. (MD) No.6144 of 2020

For State in both cases Mr. K. Chellapandian, Addl. Adv. Gen.
assisted by Mr. R. Sethuraman
Special Government Pleader

For TASMACH in both cases Mr. H. Arumugam

COMMON ORDER

(Order of the Court was made by **P.N.PRAKASH, J.**)

Given the facts obtaining in this case, it will be in the fitness of things to commence this order with the following couplet from Thirukkural:

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துஞ்சினா செத்தாரின் வேறல்ல ரெஞ்ஞான்று
நஞ்சுண்பார் கள்ளுண் பவர்.

அதிகாரம் 93-கள்ளுண்ணாமை -
குறள் 926

They that sleep resemble the dead; likewise, they
that drink are no other than poison eaters.

Couplet 926 of
Chapter 93 titled
“not drinking palm wine”

2 In view of commonality of prayer, the interim reliefs sought in these miscellaneous petitions are considered and decided by this common order.

3 The petitioners in these public interest litigations are, in short, calling into question, the legality and validity of the decision of the State Government to re-open the State-owned TASMALC shops from 07.05.2020 for retail vending of liquor to the public.

4 W.P. (MD) No.6139 of 2020 was filed on 05.05.2020 after the Registry hours. It was, however, taken up for hearing on 06.05.2020 in view of the urgency expressed by Mr. Veera. Kathiravan, learned Senior Counsel representing M/s. Veera Associates, counsel on record for the petitioner in W.P. (MD) No.6139 of 2020.

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5 In W.P. (MD) No.6139 of 2020, we passed the following order on 06.05.2020.

“Today, when the matter was taken up for hearing, Mr. Veera. Kathiravan, learned Senior Counsel representing M/s. Veera Associates, counsel on record for the petitioner, fairly brought to the notice of this Court through the Registrar (Judicial), that the Principal Seat in Chennai has taken on file, a public interest litigation for the same relief as sought in the instant writ petition.

2 After verification, this Court is informed that the Principal Seat has entertained a public interest litigation in W.P. No.7578 of 2020 for the same relief. Hence, for maintaining judicial discipline, this matter stands adjourned to 11.05.2020 (Monday).

Post on 11.05.2020.”

The second writ petition in the instant batch, viz., W.P. (MD) No.6144 of 2020, was filed only on 08.05.2020 and therefore, it was tagged along with W.P. (MD) No.6139 of 2020.

6 In the evening of 06.05.2020, a Division Bench at the Principal Seat which heard W.P. Nos.7578 and 7588 of 2020, seeking the same relief as sought in the instant writ petitions, did not grant stay of the impugned Press Notification, but, imposed further restrictions for vending liquor in the TASMAL outlets and posted the case to 14.05.2020.

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7 Armed with the nod of the Division Bench, the State, like Julius Caesar, turning deaf ears to the caution of the soothsayer “Beware Ides of March”, went ahead with re-opening the TASMAC shops on 07.05.2020. Unfortunately, for the State, the incidents that unfurled from 07.05.2020 as a sequel to the re-opening of the TASMAC shops, brought gloom and doom to the citizens. Tipplers in serpentine queues, throwing to wind all social distancing and mask wearing norms, thronged the TASMAC shops least mindful of the scorching May summer. Hell broke loose in some areas as could be seen from newspaper reports and social media footages.

8 It is indeed sad that in a welfare State, the Government wanted to cash in on the weakness of the tipplers by enhancing Excise Duty on liquor by 15%. A mere look at the countenance of those thronging the TASMAC shops showed that they were all persons obviously from the economically weaker sections of the society.

9 Under Section 57 of the Evidence Act, it is legitimate for this Court to take judicial notice of notorious facts, for, the list therein is not exhaustive, vide the judgment of the Supreme Court in **Onkar Nath and others vs. The Delhi Administration [AIR 1977 SC 1108]**.

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10 In this context, it may not be out of place to refer to the following news items which appeared in the Madurai Edition of The Times of India on the 8th and 9th instant:

08.05.2020 (Page no.3):

An 18 year old girl who attempted suicide by immolating herself after her father picked up a quarrel under the influence of alcohol, is battling for her life in hospital.

08.05.2020 (page no.4):

3 dead in alcohol induced incidents

09.05.2020 (Page no.3):

Three people were murdered in alcohol-related incidents in Tuticorin, Virudhunagar and Tirunelveli on Thursday night”.

11 Press Reports also show that women in droves came to the streets to protest against the opening of the TASMACHOPs, for, it is they who bear the brunt of domestic violence at the hands of the inebriated.

12 While so, the TASMACHOP moved interim application in W.P. No. 7578 of 2020 being W.M.P. No.8928 of 2020 before the Division Bench at the Principal Seat which was taken up for hearing on 08.05.2020. The Division Bench at the Principal Seat took note of the aforesaid developments and rejected the plea of the TASMACHOP to modify the earlier order dated 06.05.2020 and went one step further to give directions to the State Government to

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immediately close down all the TASMAC shops till lock down period is lifted by the Government.

13 In this background, the instant writ miscellaneous petitions were taken up for hearing by us today via Video Conferencing.

14 Heard Mr. Veera. Kathiravan, learned Senior Counsel representing M/s. Veera Associates, counsel on record for the petitioner in W.M.P. (MD) No.5329 of 2020, Mr. A. Rajkumar, learned counsel for the petitioner in W.M.P. (MD) No.5335 of 2020, Mr. K. Chellapandian, learned Additional Advocate General assisted by Mr. R. Sethuraman, learned Special Government Pleader appearing for the State and Mr. H. Arumugam, learned Standing Counsel for TASMAC.

15 At the outset, the learned Additional Advocate General and the learned Standing Counsel for TASMAC submitted to this Court that TASMAC has approached the Supreme Court assailing the order dated 08.05.2020 passed by the Division Bench at the Principal Seat and that the matter is likely to be listed during the course of this week.

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16 As a riposte, Mr. Veera. Kathiravan submitted that had he been afforded an opportunity to advance his submissions on 06.05.2020, he would have placed very strong grounds which would have, for certain, persuaded this Court to stay the decision of the Government to re-open the TASMACH shops on 07.05.2020 and that those grounds are still available to fortify the subsequent order dated 08.05.2020 passed by the Division Bench at the Principal Seat and that if the State so desires, it may challenge this order also before the Supreme Court, in which event, the Supreme Court will have a complete picture of the facts that are obtaining in the State of Tamil Nadu.

17 In support of his contention, Mr. Veera. Kathiravan placed reliance on the following passage from the judgment of the Supreme Court in **Rural Litigation and Entitlement Kendra vs. State of U.P. [1999 Supp (1) SCC 504]**:

“16. The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of *res judicata*.”

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18 We found force in the aforesaid submission of Mr. Veera. Kathiravan and heard both sides.

19 Mr. Veera. Kathiravan placed before us the guidelines issued by the World Health Organisation (W.H.O.) in this regard which read as under:

“Alcohol and home isolation or quarantine:

To limit the spread of COVID-19, countries have progressively introduced community-wide lockdowns and periods of quarantine for those who are suspected of having contracted the virus or have been in contact with someone infected by the virus. This means that an unprecedented number of people are now staying in their homes.

It is important to understand that alcohol poses risks to your health and safety and should therefore be avoided during periods of home isolation or quarantine.

- When working from home, adhere to your usual workplace rules and do not drink. Remember that after a lunch break you should still be in a fit state to work – and that is not possible if you are under the influence of alcohol.
- Alcohol is not a necessary part of your diet and should not be a priority on your shopping list. Avoid stockpiling alcohol at home, as this will potentially increase your alcohol consumption and the consumption of others in your household.
- Your time, money and other resources are better invested in buying healthy and nutritious food that will maintain

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good health and enhance your immune system response. For further ideas, take a look at the food and nutrition tips during selfquarantine issued by WHO.

- You might think that alcohol helps you to cope with stress, but it is not in fact a good coping mechanism, as it is known to increase the symptoms of panic and anxiety disorders, depression and other mental disorders, and the risk of family and domestic violence.
- Instead of consuming alcohol to pass your time at home, try an indoor workout. Physical activity strengthens the immune system and overall – from both a shortterm and a long-term perspective – is a highly beneficial way of spending a period of quarantine.
- Do not introduce your children or other young people to drinking and do not get intoxicated in front of them. Child abuse and neglect can be aggravated by alcohol consumption, especially in crowded housing situations where isolation from the drinker is not possible.
- Disinfectant alcohol can easily become accessible for consumption purposes in home isolation. It is important, therefore, to keep such products out of the reach of children and underage drinkers and others who may misuse them.
- Alcohol use can increase during self-isolation and both, isolation and drinking, may also increase the risk of suicide, so reducing your alcohol consumption is very important. If you have suicidal thoughts, you should call your local or national health hotlines.
- Alcohol is closely associated with violence, including intimate partner violence. Men perpetrate most of the violence against women, which is worsened by their alcohol consumption, while women experiencing violence

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are likely to increase their alcohol use as a coping mechanism. If you are a victim of violence and are confined with the perpetrator in home isolation, you need a safety plan in case the situation escalates. This includes having a neighbour, friend, relative or shelter to go to in the event that you need to leave the house immediately. Try to reach out to supportive family members and/or friends and seek support from a hotline or local services for survivors. If you are under quarantine and need to leave the house immediately, call a local support hotline and reach out to someone you trust.

Alcohol use disorders and COVID-19

Alcohol use disorders are characterized by heavy alcohol use and loss of control over alcohol intake. Although they are among the most prevalent mental disorders globally, they are also among the most stigmatized.

People with an alcohol use disorder are at greater risk of COVID-19 not only because of the impact of alcohol on their health but also because they are more likely to experience homelessness or incarceration than other members of the population. It is therefore essential, under the current conditions, that people who need help because of their alcohol use get all the support they need.”

20 Per contra, the learned Additional Advocate General submitted that the W.H.O. guideline was issued to allay the notion prevailing in some quarters that consumption of liquor will protect one from COVID-19 attack. In this regard, he took us through the heading of the WHO guideline which reads as follows:

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“The most important point to remember:
In no way will consumption of alcohol protect you
from COVID-19 or prevent you from being
infected by it.”

21 We gave careful consideration to the entire guidelines and in our opinion, though the guidelines begin with the above preface, it categorically sets out the ill-effects of consumption of alcohol during COVID-19 pandemic. As rightly pointed out by Mr. Veera. Kathiravan, in the impugned notification, there is no material to infer that the State had consulted experts in the field concerned and had taken their opinion before taking a policy decision of re-opening the TASMALC shops in the State.

22 The learned Additional Advocate General further justified the State's action on the following grounds:

- COVID-19 pandemic is not going to abate in the near future and therefore, people cannot be kept in domestic imprisonment indefinitely;
- economic activities have to be resumed;
- the Central Government itself has permitted the operation of commercial activities, including liquor sale in a phased manner;
- the loss of revenue per day to the State exchequer works out to not less than Rs.100 crores and that revenue is needed for fighting the scourge of COVID-19;
- illicit liquor is being brewed;

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- people of this State are patronising wine shops that are open in the neighbouring States of Andhra Pradesh and Karnakata; and
- the policy decision of the State cannot be subject to judicial review.

23 We do agree with the State's stand that COVID-19 pandemic is going to remain for some more time and that there there does not seem to be any vaccine to prevent it or any medicine to cure it. Even as of now, the State has been adopting a policy of home quarantining and strengthening of immunity and that is why, the State is supplying *Kabasura Kudineer*, a Siddha preparatory and homeopathy medicines for developing immunity. Whereas the W.H.O. states in the guidelines in crystal clear terms as under:

“Avoid alcohol altogether so that you do not undermine your own immune system and health and do not risk the health of others.”
(emphasis supplied)

Thus, on the one hand, the State wants its citizens to develop immunity by consuming *Kabasura Kudineer* and homeopathy medicines and on the other hand, wants to destroy the immunity by making liquor freely available to the public. The W.H.O. guidelines extracted above, clearly warns of increase in violence by men against women under the influence of alcohol in times of such pandemic.

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24 The Constituent Assembly debated on the draft Article 38 (present Article 47) on 23 and 24.11.1948. In the debate, Sri. Mahaveer Tyagi moved an amendment and in his address, he said:

“Sir, for this attempt of mine, I am conscious of the abuses that will be hurled on me by the dry mouths of those who have to stop drinking. I am also aware of the blessings that will be showered on me by the wives of those who will benefit by the removal of the evil. I should only wish “good luck” to the country in case this amendment is accepted.”

25 During the course of the said debate in which the Members gave their opinions on enforcement of prohibition or relaxation, the Vice President of the Assembly, who was presiding at that time, put the following question:

“Does the Hon'ble Member, Dr. Ambedkar, accept the amendment?”.

The reply was an emphatic “Yes”.

26 The State was aware that due to lock down, the spread of COVID-19 was controlled in Chennai, but, one day's re-opening of the Koyambedu vegetable market led to a huge spike in COVID-19 cases in the State. Perhaps, the maxim “Once bitten, twice shy”, seemingly, had little impact on the State. The liquor shops that were opened in the neighbouring

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Kerala and far off Mumbai were closed down by those Governments to save human lives, but, alas, this State failed to learn any lesson. Pertinent it is to refer to the following news item that appeared in the opening page of the Madurai edition of The Times of India dated 08.05.2020.

“Tamil Nadu on Thursday reported 580 cases, taking the States' tally past 5,000 to 5,409. As the number of cases soared in the State capital and its neighbouring districts, all linked to the Koyambedu cluster, epidemiologists and public health experts warned that the crowds at liquor shops that opened on Thursday could result in another cluster and another surge in infections.” (emphasis supplied)

27 At this juncture, we are constrained to recall the following sapient passages from the judgment of the Supreme Court in **Khoday Distilleries Ltd. and others vs. State of Karnataka and others [(1995) 1 SCC 574]**. Of course, those were the observations made in the context of the challenge to the State action in prohibiting trade or business of liquor as a beverage.

“60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a). . . .

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

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(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.” (emphasis supplied)

28 But, one can have no scintilla of doubt that the above passages would apply not only to a citizen who wants to carry on trade or business in potable liquor as a matter of right, but also to the State that wants to do the liquor business, by itself, as in this State. The Supreme Court's pungent observations which have been set out above are worth reading and re-reading.

29 We have no incertitude in our mind that there is going to be a cascading effect qua spread of COVID – 19 as a fall out of the re-opening of the TASMAL shops on 07.05.2020. Whatever gains we gathered, thanks to our citizens, who, unlike citizens of certain Western countries, wholeheartedly

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remained indoors, are bound to get dissipated with the re-opening of the TASMAC shops. Experts say that there is going to be a second wave of COVID-19 attack, which, they predict, God forbid, would take a huge toll.

30 The right of the State to carry on liquor sales via TASMAC shops is not an absolute one, but only, a qualified one under Article 19(1)(g) of the Constitution of India and when that right seeks to trample the right to life guaranteed by Article 21 of the Constitution of India, the former has to give way and remain subservient to the latter. In a Republican democracy as ours, when the executive wing were to pursue a policy that is likely to destroy the right to life, the judicial wing cannot afford to sleep like Kumbhakarna. The State cannot be permitted to hide behind the cloak of policy decision when its action is likely to kill people in droves. At this critical juncture, if the judiciary fails to come to the rescue of the people and protect their cherished right to life guaranteed by Article 21 of the Constitution of India, history will not forgive this Court. Tipplers and their protagonists may say, “I have a right to pander to my habits of drinking which is personal and no instrumentality of State can interfere.” Yes. We can afford to agree with this, if the COVID-19 pandemic is not at our doorsteps threatening to devour lives. These tipplers are bound to

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transmit Coronavirus and cause extinction of not only their family members but also their sober neighbours. It appears that COVID-19 spreads like nuclear fission. A tippler may claim to have a right of self destruction, but, in that process, he cannot destroy others. It is like a person committing self immolation hugging his neighbour.

31 Be it noted that what the petitioners are seeking is not a complete prohibition of liquor vending by TASMAC shops, but a wise decision to keep the TASMAC shops closed for a limited period and thereby, support the laudable efforts of the frontline COVID-19 warriors like doctors, nurses, para-medicals, police, Corporation and Municipal workers, judiciary, fourth estate, *et al.*

32 When a myopic State policy stands pitted against public health, the natural choice should be to protect the latter at the cost of the former. In this context, it is, but, felicitous to refer to paragraph no.16 of the judgment of the Supreme Court in **Vincent Panikurlangara vs. Union of India and others [(1987) 2 SCC 165]**:

“16. A healthy body is the very foundation for all human activities. That is why the adage “*Sariramadyam Khaludharma*

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Sadhanam”. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in *Bandhua Mukti Morcha v. Union of India* [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] aptly observed: (SCC p. 183. para 10)

“It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case* [*Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

While endorsing what has been said above, we would refer to Article 47 in Part IV of the Constitution. That article provides:

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

This article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India*

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[(1981) 1 SCC 246 : 1981 SCC (L&S) 50] this Court has pointed out that: (SCC pp. 308-09, para 123)

“The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a court of law.... It does not mean that directive principles are less important than fundamental rights or that they are not binding on the various organs of the State.”

In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority — perhaps the one at the top.” (emphasis supplied)

33 The State's main grievance is that, it requires revenue to combat COVID-19 and the TASMACH shops will fill its wallet. At the first blush, this argument does appear appealing. But, there is a serious underlying fallacy in the said argument. The State is aware that, due to lock down, the citizens also have become penniless, save those who fall in the bracket of middle class and upper middle class. The fact remains that majority of our citizens are daily wage earners, which will include street hawkers and petty vendors. The COVID-19 lock down has brought them to utter penury. The majority of the

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patrons of the TASMAC shops is from this category and as stated above, it was mostly the economically backward people who laid siege of the TASMAC shops on the 7th and 8th instant. The simple question we ask ourselves is from where did these poor people get money to purchase liquor. It is obvious that the little money which they would have otherwise used for purchasing food for themselves and their family members, has gone into the coffers of the TASMAC shops. Had the Government permitted the resumption of small business activities and thereafter opened the TASMAC shops, none could have had any grudge. Only when the Government put the cart before the horse for fetching revenue, its action becomes questionable and clothes this Court with the power of judicial review. When the Government had rightly prohibited entry into places of worship during the lock down period, its decision to allow tipplers to congregate before TASMAC shops, is indubitably antithetical.

Quoting Mahatma Gandhi here would not be out of place:

“I hold drink to be more damnable than thieving and perhaps even prostitution. Is it not often the parent to both? I ask you to join the country in sweeping out of existence the drink revenue and abolishing the liquor shops.”

34 The contention of the Government that tipplers from Tamil Nadu are patronising the liquor shops in the adjoining Andhra Pradesh and

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Karnataka, on account of which, the Government is losing revenue, lacks substance, because, there is total lock down of inter-State movements. A few tipplers living in the border areas may smuggle themselves into the adjoining States for a drink. One swallow will not make a summer.

35 We are not, for a moment, predicating this order of ours on the last limb of Article 47 of the Constitution, *viz.*, prohibition, but, on Article 21, read with the first limb of Article 47, *ibid.*, to safeguard the lives of the commoner from the aggression of COVID-19 pandemic. Be it noted that policy decision of the Government is not completely immune from judicial review, especially where it seeks to brazenly violate the fundamental right of the citizens guaranteed by Article 21 of the Constitution of India. The edifice of the State rests on the existence of a specific geographical boundary and the existence of citizens within the said boundary. When a State policy threatens to cause a likely extinction of its citizens, judicial review of it by the Constitutional Court is not tantamount to judicial overreach.

36 After hearing both sides extensively, when we were about to raise, the learned Standing Counsel for the TASMACH, sensing our mind, sought

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adjournment on the ground that the TASMAC has engaged learned Advocate General to make submissions. We rejected this request since the learned Additional Advocate General had extensively argued before us all the points and further, the request for adjournment was made at the fag end of the hearing of the case.

As a sequitur to the discussions aforemade, we are in complete agreement with the order dated 08.05.2020 passed by the Division Bench at the Principal Seat and we also issue directions to close down the TASMAC shops in the same lines. We further direct the Registry to place these public interest litigations before the Hon'ble Chief Justice to be dealt with appropriately, either by tagging them with the connected matters under consideration before the Principal Seat, viz., W.P. Nos. 7578, 7589 to 7593, 7595, 7599 and 7600 of 2020 or in any other manner as the Hon'ble Chief Justice deems fit.

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(P.N.P., J.) (B.P., J.)
11.05.2020

cad

Note to Office:

Issue order copy within one day after the same is received by the Court Officers' Section.”

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W.P. (MD) No.6139 of 2020
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W.P. (MD) No.6144 of 2020*

To

- 1 The Secretary
Home, Prohibition and Excise (VI) Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 2 The Secretary to Government
Department of Health and Social Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009
- 3 The Commissioner
Prohibition and Excise Department
Chepauk
Chennai
- 4 The Managing Director
Tamil Nadu State Marketing Corporation Ltd. (TASMAC)
IV Floor, CMDA Tower, II
Gandhi Irwin Bridge Road
Egmore
Chennai 600 008

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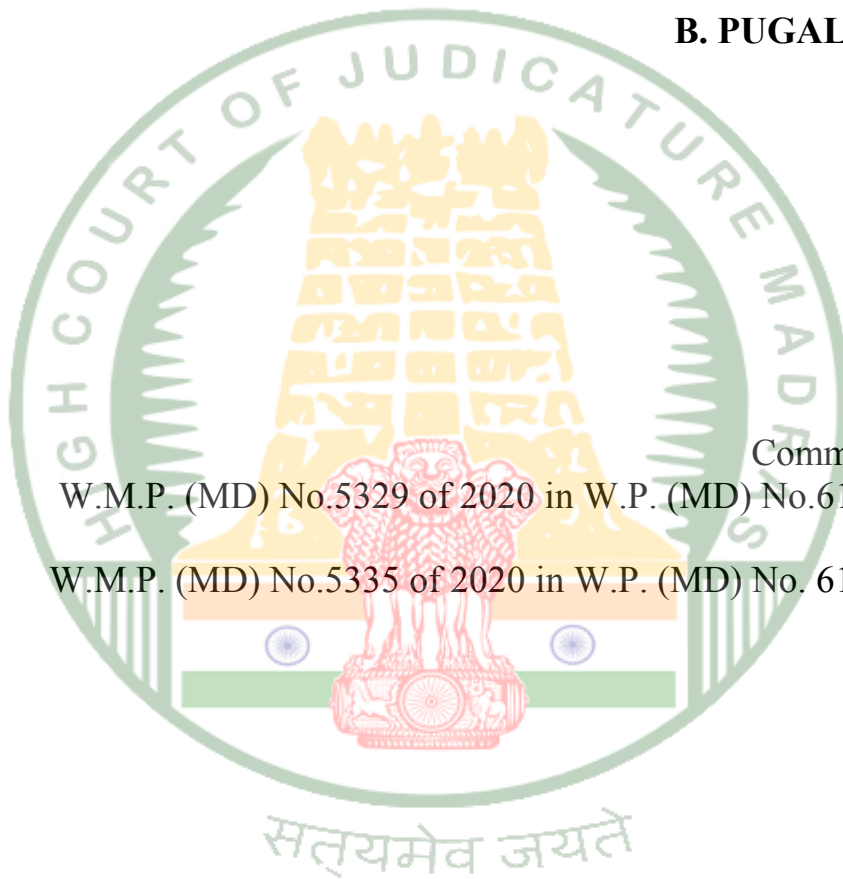
*W.M.P. (MD) No.5329 of 2020 in
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W.M.P. (MD) No.5335 of 2020 in
W.P. (MD) No.6144 of 2020*

P.N. PRAKASH, J.

and

B. PUGALENDHI, J.

cad



Common order in
W.M.P. (MD) No.5329 of 2020 in W.P. (MD) No.6139 of 2020
and
W.M.P. (MD) No.5335 of 2020 in W.P. (MD) No. 6144 of 2020

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