

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.12.2014

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

Writ Petition Nos.35021 to 35023, 35034, 35038, 35041, 35043,
35044, 35046, 35047, 35053, 35054, 35056, 35057, 35059, 35062,
35063 to 35067, 35069, 35071 to 35074 and 35081 of 2014

and

M.P.Nos.1 & 2 of 2014 (in each of the petitions)

S.Sakthivel ...Petitioner in WP.35021/14
S.Balamurugan ...Petitioner in WP.35022/14
M.Sudharson ...Petitioner in WP.35023/14
S.Suresh ...Petitioner in WP.35034/14
R.Ramesh ...Petitioner in WP.35038/14
G.Ayyanathan ...Petitioner in WP.35041/14
J.Subhashchandra Bose ...Petitioner in WP.35043/14
P.Jegan ...Petitioner in WP.35044/14
S.Ramanathan ...Petitioner in WP.35046/14
R.Subramanian ...Petitioner in WP.35047/14
M.Sudharson ...Petitioner in WP.35053/14
S.Karuppiyah ...Petitioner in WP.35054/14
R.Rengasamy ...Petitioner in WP.35056/14
S.Balamurugan ...Petitioner in WP.35057/14
R.Shivakumar ...Petitioner in WP.35059/14
K.Thamizhalagan ...Petitioner in WP.35062/14
T.Panneerselvan ...Petitioner in WP.35063/14
S.SenthilKumar ...Petitioner in WP.35064/14
S.Ramesh ...Petitioner in WP.35065/14
P.Sathyamurthy ...Petitioner in WP.35066/14
E.jebaraj ...Petitioner in WP.35067/14
R.Manivannan ...Petitioner in WP.35069/14
S.Perumal ...Petitioner in WP.35071/14
K.Selvam ...Petitioner in WP.35072/14
S.Balu ...Petitioner in WP.35073/14
K.Selvam ...Petitioner in WP.35074/14
G.Senthilkumar ...Petitioner in WP.35081/14

VS

1. The Tamil Nadu State Marketing Corporation Limited (TASMAC)
Rep. by The Board of Directors
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road, Egmore, Chennai- 8.

2. Tamil Nadu State Marketing Corporation Limited (TASMAC)
Rep. by The Managing Director
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road,
Egmore, Chennai- 8.
3. The Tamil Nadu State Marketing Corporation Limited (TASMAC)
Rep. by The Senior Regional Manager
"L.L.A. Buildings"
Anna Salai, Chennai-2.
4. The Tamil Nadu State Marketing Corporation Limited (TASMAC)
Rep. by The District Manager
Kancheepuram (South)
14-18, SIPCOT Industrial Estate
Orikkai, Kancheepuram-631502.

.. 4th Respondents in
W.P. 35021, 35081/14

The Tamil Nadu State Marketing Corporation Ltd., (TASMAC)
rep. by the District Manager,
Kancheepuram (North)
Industrial Estate, Thirumazhisai,
Chennai-600 123.

...4th Respondent in WP.35022/14,
35023/14, 35034/14, 35038/14,
35041/14, 35043/14, 35044/14,
35046/14, 35047/14, 35053/14,
35054/14, 35056/14, 35057/14,
35059/14, 35062/14, 35063/14,
35065/14, 35066/14, 35067/14,
35069/14, 35071/14, 35072/14,
35073/14, 35074.

Prayer in W.P.No.35021 of 2014: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the 4th Respondent dated 22.12.2014 in Na.Ka.No. 488/R6/2014; to quash the same and consequently to direct the Respondents to fix the upset price for the Petitioner Shop No.4305 at the rate of 2.5% on the average sale of the year 2013-2014.

WP.35022/14: to issue a writ of certiorarified mandamus calling for the records relating to the order of the 4th respondent dated

16.12.2014 in Na. Ka. No. 556/R8/2014 and quash the same and consequently direct the respondents to fix the upset price for the petitioners Shop No. 4092 at the rate of 2.5% on the average sale of the year 2013-2014.

WP.35023/14:to issue a writ of certiorarified mandamus calling for the records relating to the order of the 4th respondent dated 16.12.2014 in Na. Ka. No. 556/R8/2014 and quash the same and consequently direct the respondents to fix the upset price for the petitioners Shop No. 4100 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in WP.No.35034/2014:

To issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated Nil and quash the same only in so far it relates to the Petitioner Shop No.4447 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4447 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in WP.35038/2014:

To issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated NIL and quash the same only in so far it relates to the Petitioner Shop No.4336 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4336 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in WP.No.35041/2014:

To issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of Kancheepum (North) for 2014-2015 issued by the 4th Respondent and quash the same only in so far it relates to the Petitioner Shop No.4093 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4093 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in WP.35043/2014:

To issue a Writ of Certiorarified Mandmaus Calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners Shop No. 4467 and consequently direct the respondents to fix the upset price for the petitioners

Shop No. 4467 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in WP.35044/2014:

To issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners Shop No.4125 and consequently direct the respondents to fix the upset price for the petitioners Shop No. 4125 at Rs.1 21 662/- for 2014-2015.

Prayer in WP.35046/2014:

To issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners Shop No. 4130 and consequently direct the respondents to fix the upset price for the petitioners Shop No. 4130 at the rate of 2.5% on the average sale of the year 2013-2014.

W.P.NO.35047/14

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated "Nil" and quash the same only in so far as it relates to the petitioner's Shop No. 4323 and consequently direct the respondents to fix the upset price for the petitioner's Shop No. 4323 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

W.P.No.35053/2014:

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated "Nil" and quash the same only in so far it relates to the Petitioner's Shop No.4132 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4132 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice..

W.P.NO.35054/2014:

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated "Nil" and quash the same only in so far it

relates to the Petitioner Shop No.4493 and consequently direct the Respondents to fix the upset price for the Petitioner's Shop No.4493 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

W.P.NO.35056/2014:

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated "Nil" and quash the same only in so far it relates to the Petitioner's Shop No.4497 and consequently direct the Respondents to fix the upset price for the Petitioner's Shop No.4497 at the rate of 2.5% on the average sale of the year 2013-2014.

WP.NO.35057/2014:

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 Kancheepuram North so far it related to the Petitioner Shop and consequently direct the Respondents to fix the upset price for the Petitioner's Shop No.4359 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

W.P.No.35059/2014

to issue a Writ of Certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated "Nil" and quash the same only in so far it relates to the Petitioner's Shop No.4070 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4070 at Rs.91 985/- for 2014-2015.

Prayer in W.P.No. 35062 of 2014

To issue a Writ of Certiorarified Mandamus, Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated Nil and quash the same only in so far it relates to the Petitioner Shop No.4498 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4498 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No. 35063 of 2014

To issue a Writ of Certiorarified Mandamus, Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated Nil and quash the same only in so far it relates to the Petitioner Shop No.4460 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4460 at the rate of 2.5% on the average sale of the year 2013-2014.

Prayer in W.P.No. 35064 of 2014

To issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent dated 16.12.2014 in Na.Ka.No.556/R8/2014, and quash the same and consequently direct the respondents to fix the upset price for the petitioner's shop No.4453 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No. 35065 of 2014

To issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent dated 16.12.2014 in Na.Ka.No.556/R8/2014, and quash the same and consequently direct the respondents to fix the upset price for the petitioner's shop No.4173 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No. 35066 of 2014

To issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent dated 16.12.2014 in Na.Ka.No.556/R8/2014, and quash the same and consequently direct the respondents to fix the upset price for the petitioner's shop No.4066 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No. 35067 of 2014

To issue a Writ of Certiorarified Mandamus, Calling for the records relating to the Bar Upset Price list of Kancheepuram (North) for 2014-2015 issued by the 4th Respondent and quash the same and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4128 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No.35069 of 2014:

to issue a writ of certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of Kancheepuram (North) for 2014-2015 issued by the 4th Respondent and quash the same only in so far it relates to the Petitioner Shop No.4463 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.4463 at the rate of 2.5% on the actual sales of the year 2013-2014 and thus render justice.

Prayer in W.P.No.35071 of 2014:

to issue a writ of certiorarified Mandamus Calling for the records relating to the Bar Upset Price list of 2014-2015 issued by the 4th Respondent dated Nil and quash the same only in so far it relates to the Petitioner Shop No.27 and consequently direct the Respondents to fix the upset price for the Petitioner Shop No.27 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No.35072 of 2014:

to issue a writ of certiorarified Mandamus calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated 'NIL' and quash the same only in so far as it relates to the petitioner's Shop No.64 and consequently direct the respondents to fix the upset price for the petitioner's Shop No.64 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No.35073 of 2014:

issue a Writ of Certiorarified Mandamus calling for the records relating to the bar Upset price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners shop No.104 and consequently direct the respondents to fix the upset price for the petitioners shop NO.104 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice

Prayer in W.P.No.35074 of 2014:

issue a Writ of Certiorarified Mandamus calling for the records relating to the bar Upset price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners shop No.132 and consequently direct the respondents to fix the upset price for the petitioners shop NO.132 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

Prayer in W.P.No.35081 of 2014:

to issue a writ of certiorarified Mandamus Calling for the records relating to the Bar Upset Price List of 2014-2015 issued by the 4th respondent dated Nil and quash the same only in so far as it relates to the petitioners Shop No. 4001 and consequently direct the respondents to fix the upset price for the petitioners Shop No. 4001 at the rate of 2.5% on the average sale of the year 2013-2014 and thus render justice.

For Petitioner in
all Writ Petitions : Mr.K.Selvaraj

For Respondents in
all Writ Petitions : Mr.S.Muthuraj

COMMON ORDER

Heard Mr.K.Selvaraj, learned counsel for the petitioners and Mr.S.Muthuraj, learned Standing Counsel for the respondent-Corporation.

2. When the matter is taken up today, the learned counsel appearing for the petitioners submitted that in identical circumstances, this Court vide order dated 23.12.2014 had partly allowed the batch of writ petitions in W.P.No.34596 of 2014 and etc.batch. Accordingly, he would pray for a similar direction in these writ petitions also.

3. Learned Standing Counsel appearing on behalf of the respondent- Corporation would also submit that they have no objection for passing a similar order in these writ petitions.

4. I have heard the submissions made on either side and perused the order.

5. This Court in W.P.Nos.34596 of 2014 and etc.batch. has passed the following order:

"17. The impugned orders are clear cases of arbitrary exercise of power without proper application of the direction issued by this Court, in view of the fact that the earlier direction has not been taken into consideration in its letter and spirit. When the respondents themselves have accepted in the annexure to the impugned orders that the growth rate is "zero", it would be rather unreasonable on the part of the respondents to compel the intending bidders to accept

the upset price, which is calculated based on the sales statistics for the year 2012-2013. It may be true that clause 2(iii) of the tender conditions provides for adopting the higher value. In my view, the application of sub clause (iii) of clause 2 of the tender conditions is unilateral in all cases de hors the factual situation. The respondents cannot be oblivious of the conditions prevailing as they are the persons who have shifted the shop and they are fully aware of the fact that the sale has drastically dropped after relocation of the shop. Therefore, relocation of the shop is one of very relevant and mitigating factor, which should be borne in mind while fixing the upset price. Therefore, this Court is of the view that there is no necessity to strike down clause 2(iii) and the said clause has to be read down for the purpose of considering the factors in issue and the respondents should be directed to consider the case of the petitioners, which appears to be uniform, since in respect of such of those shops which have been shifted away from the National Highway, the growth rate is zero and the sales have presently dropped.

18. Accordingly, while holding that there is no necessity to quash or set aside clause 2(iii), the impugned orders in these Writ Petitions are quashed and the matter is remanded to the respondents for fresh consideration, by taking into account the sales statistics for the year 2013-2014, assess the possibility for increase of sales in the current year and thereafter take pragmatic decision in the matter.

19. This Court has issued this direction in the light of the peculiar facts and circumstances of the cases and in the light of the earlier directions issued by this Court and that the sales in the shops in question have reduced, owing to relocation, which itself was pursuant to the orders passed by this Court.

20. The learned counsel for the petitioners submitted that during the pendency of the earlier Writ Petitions, the petitioners have been granted temporary license for one month and the same may be considered by the respondents for the period after 31.12.2014, if auction is not conducted by then. In the light of the fact that temporary licences have been granted, if the respondent does not propose to hold re-auction, as per the direction given above before 31.12.2014, then their request for grant of temporary license shall be

considered as done for the previous months.

21. In the result, the Writ Petitions are partly allowed to the extent indicated above. No costs. The connected Miscellaneous Petitions are closed. "

6. In view of the order passed by this Court in WP.No.34596 of 2014, etc., batch cases, these writ petitions are partly allowed to the extent indicated in para No.18 and the respondents are directed to consider the request of the petitioners as indicated in para No.20 of the order cited above. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vj2/rg

To

1. The Board of Directors
Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road, Egmore, Chennai- 8.
2. The Managing Director
Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road,
Egmore, Chennai- 8.
3. The Senior Regional Manager
The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
"L.L.A. Buildings"
Anna Salai, Chennai-2.

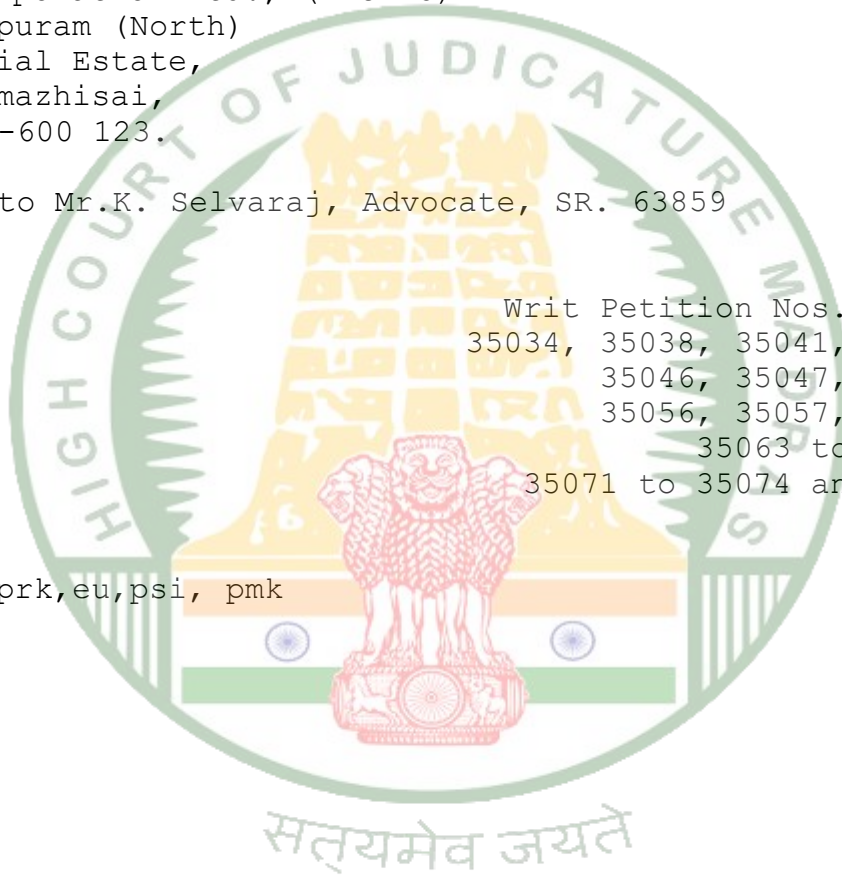
4. The District Manager
Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Kancheepuram (South)
14-18, SIPCOT Industrial Estate
Orikkai, Kancheepuram-631502.

5. The District Manager,
Tamil Nadu State Marketing
Corporation Ltd., (TASMAC)
Kancheepuram (North)
Industrial Estate,
Thirumazhisai,
Chennai-600 123.

50 ccs to Mr.K. Selvaraj, Advocate, SR. 63859

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