

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.26445 to 26447, 26469 to 26490, 27361 to 27367,
27386 to 27387, 27093, 31271 and 27471 to 27474,
27445, 27538 to 27544, 27545 to 27554, 27555 to 27557 of 2015
MP.Nos.1 to 1 of 2015

and

Other Connected Miscellaneous Petitions

S.RAJASEKARAN
S/O.SOLAI DEVAR ...PETITIONER in WP No.26445 of 2015

K.SEKAR
S/O.KANTHASAMY ...PETITIONER in WP No.26446 of 2015

P.DHAMODARAN
S/O.PARTHASARATHY ...PETITIONER in WP No.26447 of 2015

S.ANANTHA RAMAKRISHNAN
S/O. MR.SAKTHIVEL ...PETITIONER in WP No.26469 of 2015

V.SENTHOOR PANDI
S/O. MR.VEERAPPA THEAVAR ...PETITIONER in WP No.26470 of 2015

R.VINOTHKUMAR
S/O. MR.RAJU ...PETITIONER in WP No.26471 of 2015

P.MADASAMY
S/O.MR.PANDI ...PETITIONER in WP No.26472 of 2015

I.MUTHUKUMAR
S/O.MR.ISRAEL ...PETITIONER in WP No.26473 of 2015

V.SENTHOOR PANDI
S/O.MR.VEERAPPA THEVAR ...PETITIONER in WP No.26474 of 2015

M.K.MANIKANDAN
S/O.MR.M.KUMAR ...PETITIONER in WP No.26475 of 2015

M.A.MUTHURAJA
S/O.MR.MADURAI ARUMUGAM ...PETITIONER in WP No.26476 of 2015

M.MALAISELVAM
S/O.MAYAKKAN ...PETITIONER in WP No.26477 of 2015

D.PERUMAL
S/O.DHAKSHINAMOORTHY ...PETITIONER in WP No.26478 of 2015

R.RAJAMANI
S/O.RAYAPPAN ...PETITIONER in WP No.26479 of 2015

R.ANNAMALAI
S/O.RAMAIHA ...PETITIONER in WP No.26480 of 2015

S.MOHAMED MUSTAFA
S/O.SULTHAN ...PETITIONER in WP No.26481 of 2015

R.BALASUNDARAM
S/O.RAJALU ...PETITIONER in WP No.26482 of 2015

D.SARAVANA KUMAR
S/O.DASS ...PETITIONER in WP No.26483 of 2015

V.KUMAR
S/O.VEERAIHA ...PETITIONER in WP No.26484 of 2015

N.ANBZHAGAN
S/O.NATESA THEVAR ...PETITIONER in WP No.26485 of 2015

S.BALA
S/O.SUBRAMANI ...PETITIONER in WP No.26486 of 2015

G.SIVAKUMAR
S/O.GANGADHARAN ...PETITIONER in WP No.26487 of 2015

S.KRISHNARAJ
S/O.SUBRAMANIAN ...PETITIONER in WP No.26488 of 2015

S.DURGAIRAJ
S/O.SHANMUGAM ...PETITIONER in WP No.26489 of 2015

M.KANAGARAJ
S/O.MUTHU ...PETITIONER in WP No.26490 of 2015

M.CHANDRAN
S/O.MASILAMANI ...PETITIONER in WP No.27361 of 2015

S.UMAPATHY
S/O.SITHARAMAN ...PETITIONER in WP No.27362 of 2015

S.KUGAN
S/O.K.SELVAM ...PETITIONER in WP No.27363 of 2015

P. MARAGATHAVALLI
W/O.POOCHANDRAN ...PETITIONER in WP No.27364 of 2015

K.M.SAMY
S/O.KRISHNASAMY ...PETITIONER in WP No.27365 of 2015

E.THANGAMARIAPPAN
S/O.EMPERUMAL NADAR ...PETITIONER in WP No.27366 of 2015

C.KENNADY
S/O.CERUMUGASAMY ...PETITIONER in WP No.27367 of 2015

M.MURUGESAN ...PETITIONER in WP No.27386 of 2015

S.AROKIJARAJ
S/O.SELVARAJ ...PETITIONER in WP No.27387 of 2015

A.R.Vimandhan ...PETITIONER in WP No.27093 of 2015

S.PANDIYAN
S/O.SHANMUGAIAH ...PETITIONER in WP No.31271 of 2015

E.SANKAR
S/O.ELAPPAN ...PETITIONER in WP No.27471 of 2015

AROKIJARAJ
S/O.MARIYA SUSAI ...PETITIONER in WP No.27472 of 2015

VIJAYAKUMAR
S/O.GANESH ...PETITIONER in WP No.27473 of 2015

K.CHANDRASEKAR
S/O.KUMAR ...PETITIONER in WP No.27474 of 2015

T.R. MOHAN (SHOP NO.8828) ...PETITIONER in WP No.27445 of 2015

M.CHINNASAMY
S/O.MR.MANIKKAM PILLAI ...PETITIONER in WP No.27538 of 2015

M.VAIRAVAN
S/O.MR.MADHAVAN ...PETITIONER in WP No.27539 of 2015

N.SENTHIL
S/O.MR.NAGU ...PETITIONER in WP No.27540 of 2015

S.PRABHU
SON OF MR.SARKUNAM ...PETITIONER in WP No.27541 of 2015

M.SUNDARAPANDI
SON OF MR. MALAICHAMY ...PETITIONER in WP No.27542 of 2015

M. GANDHI
S/O. MAYAN ...PETITIONER in WP No.27543 of 2015

S. UMAPATHY
S/O. SEETHARAMAN ...PETITIONER in WP No.27544 of 2015

K.RAJENDRAN
S/O.MR.KARUPPAIAH ...PETITIONER in WP No.27545 of 2015

S.SENTHILNATHAN
S/O.MR.SHANMUGAM ...PETITIONER in WP No.27546 of 2015

S.RAMANATHAN
S/O.SEVUGAN CHETTIYAR ...PETITIONER in WP No.27547 of 2015

N.THIRUNAVUKKARASU
S/O.NATARAJAN ...PETITIONER in WP No.27548 of 2015

S.VASUDEVAN
S/O.SEETHARAMAN ...PETITIONER in WP No.27549 of 2015

M.BASKAR
S/O.MR.MUNUSAMY ...PETITIONER in WP No.27550 of 2015

M.BALASUBRAMANIAM
S/O.MUTHU ...PETITIONER in WP No.27551 of 2015

V.SELVAM
S/O.VELU ...PETITIONER in WP No.27552 of 2015

K.BARATH
S/O.KRISHNAN ...PETITIONER in WP No.27553 of 2015

M.GANDHI
S/O.MR.MAYAN ...PETITIONER in WP No.27554 of 2015

V.ELUMALAI
S/O.MR.VELU ...PETITIONER in WP No.27555 of 2015

P.HIMACHALAN
S/O.MR.PALANISAMY ...PETITIONER in WP No.27556 of 2015

M.RAJA
S/O.MR.MANIKKAM

...PETITIONER in WP No.27557 of 2015

Vs.

1.The Managing Director,
TASMAC Limited
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai- 600008

...1st Respondent in WPs.26445 to 26447,
26469 to 26476, 26477 to 26483, 26484 to
26490, 27361 to 27367, 27093, 31271,
27471 to 27474, 27445, 27538 to 27544,
27545 to 27554, 27555 to 27557,
27386, 27387 of 2015

2.The District Manager,
TASMAC Limited
Tiruvallur East District,
No.1, Bangalore High Way,
Chembarambakkam,
Thiruvallur 602103

...2nd Respondent in WPs.26445 to 26447,
26469 to 26476, 26477 to 26483,
26484 to 26490, 27361 to 27367,
27093, 31271, 27471 to 27474,
27538 to 27544, 27545 to 27554,
27555 to 27557, 27386, 27387 of 2015

...3rd Respondent in WP.27445 of 2015

3.The Senior Regional Manager,
TamilNadu State Marketing Corporation,
(TASMAC), CMDA Towers, 4th Floor,
Egmore, Chennai - 600008.

...2nd Respondent in WP.27445 of 2015

W.P.26445 to 26447 of 2015:

These petitions are filed under Article 226 of the Constitution of India to issue a writ of declaration, to declare the minimum upset price as filed in the Tender dated 9.8.2015

i. for Shop No.9064 at No.278/1, Suriya Garden,
Kattapakkam, Poonamallee (in WP.26445/15)

ii. for Shop No.8867 at 145, Arcot Road Valasaravakkam
Chennai-87 (in WP.26446/15)

iii. for Shop No.8933 at No.34 (M7H Road) Ambattur,
Chennai- 53, (in WP.26447/15)

on null and void suffering statutory backing of fixing the
minimum upset price in strict adherence with reference to
clause 2 of the license fee of the Tender terms and
conditions of the tender.

WP.Nos.26469/15 to 26490/15 & 27445/15 :

These writ petitions are filed under Article 226 of the
constitution of India seeking to issue a writ of
certiorarified Mandamus to call for the records of the 2nd
respondent relating to the fixation of the upset price for the
license fee in Column No.12 of the Tender Form for the period
2015-2016;

i. for the Shop No.9182 located at No.187/10,
Puthur Village Road, Ambattur,
Chennai-600 053 (in WP.26469/15);

ii. for the Shop NO.8903 located at No.186, Redhills Road,
Puthur, Ambattur Chennai-53. (in WP.26470/15)

iii. for the Shop No.8797 located at No.14, Athipattu Main Road,
Ambattur, Chennai-58, (in WP.26471/15)

iv. for the Shop No.8773 located at No.142 P.H. Road, Avadi,
Chennai-54 (in WP.26472/15)

v. for the Shop No.9189 located at No.6 Babuji Nagar,
Kathivedu, Chennai-99, (in WP.26473/15)

vi. for Shop No.9065 located at No.3 Avadi Poonamallee
High Road, Paruthipattu Avadi Chennai-54 (in WP.26474/15)

vii. for Shop No.8792 located at No.5/13 Radial House,
Anna Nagar west Extension, Chennai-101, (in WP.26475/15)

viii. for Shop No.8727 located at No.3, Tiruvallur Street,
E.V.R. Nagammai Nagar, Tirumullaivoil, Chennai-109
(in WP.26476/15)

IX. for Shop NO.9036 located at No.41, Janani Nagar,
Malayambakkam Road, Poonamallee,
Chennai 601 122, (in WP.26477/15)

- x. for Shop No.8796 located at No.5/1 Annai Nagar,
100 Feet Road, Korattur, Chennai 76 (in WP.26478/10);
- xi. for Shop No.8898 located at No.25, Shanthi Nagar,
Padi Main Road, Korattur Chennai-58 (in WP.26479/15);
- xii. for Shop No.9146 located No.1, Alapakkam Main Road,
Alapakkam, Chennai-116, (in WP.26480/15)
- xiii. for Shop No.8923 at No.493 CTH Road, Pattabiram,
Chennai-72 (in WP.26481/15);
- xiv. for Shop No.8918 at No.78/111, Annai Puthur Main Road,
Puthur, Ambattur, Chennai-53 (in WP.26482/15);
- xv. for Shop No.8837, located at No.42, M.H. road,
Madhavaram, Chennai-50 (in WP.26483/15);
- xvi. for Shop No.8780 at No.8, Sivasakthi Nagar,
Thirumullaivoyil, Chennai -62, (in WP.26484/15);
- xvii. for Shop No.8890, located at No.82, MTH Road, Mannurpet,
Chennai-50 (in WP.26485/15);
- xviii. for Shop No.9142 located at No.1, HVF. road, Avadi,
Chennai-54, (in WP.26486/15);
- xix. for Shop No.9086 located at No.2, Kulakkarai Street,
Pattabiram, Chennai-72, (in WP.26487/15);
- xx. for Shop No.8705, located at No.87, P.H.Road,
Avadi, Chennai-54 (in WP.26488/15)
- xxi. for Shop NO.8724, located at No.287/11, CTH Road,
Avadi, Chennai-71 (in WP.26489/15);
- xxii. for Shop No.8708, located at No.19 Alapakkam Main road,
Madurovoyal, Chennai-47 (in WP.26490/15);
- xiii. for Shop No.8825 at No.558/18 Sivanthi Adhithanar Nagar,
Puzhal, Chennai (in WP.27445/15);

respectively and quash the same and to direct the respondents to fix the upset price for the licence the for collecting empty bottles and to sell eatables in the Bar attached to the said shop at 2.5% of the average monthly Salem during the previous year plus 10% for the monthly average of the bid

amount of the previous year, which ever is higher and grant licence for the same in favour of the petitioner who has the consent/NOC from the owner of the building;

WP 27361 to 27367 : These writ petition are filed under Article 226 of the constitution of India seeking by Mandamus directions the respondents to accept the tender application

- 1) for shop Nop9173 at No.1/23 Subramaniam Nagar, Manali Salai, Tiruvottiyur, Chennai 19 (in WP 27361/15)
- 2) For Shop No.9062 at No.37/1, Koilpathagai Main Road, Avadi, Chennai (in WP 27362/15)
- 3) For shop No.8840 at No.64/3, PNT Quarters, Tiruvottiyur, Chennai 19 (in WP 27363/20915)
- 4) For Shop No.8737 at No.352 CTH Road, Thirunindravur (in WP 27364/15)
- 5) For Shop No.0925 at No.31, North Park Street, Venkatapuram, Ambattur, Chennai 53 (in WP 27365/15)
- 6) For Shop No.8809 at No.44, Thulukkanam Street, Tiruvottiyur, Chennai 19. (in WP 27366/15)
- 7) For Shop No.8820 at No.19, Kanakkar Street, Tiruvottiyur, Chennai 19 (WP 27367/15) respectively and to consider the same on merits or in the alternate to hold a re-tender for the said shops.

WP 27386 & 27387/15 and 27471 to 27474/15

These Writ petitions are filed under Article 226 of the constitution of India seeking to issue a Writ of Mandamus directing the respondents to fix the upset Price at a reasonable amount for shop No.8912, 9187, 9035, 9008, 8799, 9178 respectively.

This Writ petition No.27093/15 is filed to issue a Writ of certiorari to call for the records in respect of the proceedings of the 2nd respondent dated nil in respect of the Bas Tender for the period 2015-16 fixing the upset price for the period August 2015 to July 016 and quash the same in respect of the bar attached to 74 TSMAC retail vending shop No.8834, Situate at No.2/228 200 ft Road, Manjambakkam, Madhavaram, Tiruvallur Dist. 600 060.

This Writ petition read with 31271/15 in filed to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relations to fixation of the upset price for the licence fee in column No.12 of the Tender Form in respect of shop No.8721 situate at Door No.3/810 complised in survey No.27/413, Chennakuppam Village, Poonamallee Taluk, Quash the same and direct the respondents herein to fix the upset for the fix the license fee for collecting empty bottles and to sell catables in the Bar attached to the said shop at 2.5% of the average monthly sales during the previous year plus 10% or the monthly average of the bid amount of the year 2013-14 whichever is higher, and grant the license for the same in favour of the petitioner, who has the consent/NOC from the owner of the building.

WP.27538 to 27557/15: These Writ petitions are filed under Article 226 of the constitution of India Seeking by to issue Writ of Declaration to declare the minimum upset price fixed in lender application

- 1) for the shop No.9167 situated at No.85, Mettukuppam main Road, Maduravoyal, Chennai 95 (in WP 27538/10)
- 2) For Shop No.8927, at Plot No.323/3 Alapakkam Main Road, Chennai 116 (in WP 27539/15)
- 3) For shop No.8781 located at No.440, Krishna Complex Trunk Road, Kumananchavadi, Chennai 56 (in WP 27540/15)
- 4) For shop No.8916 located at No.3 Red hills Road, Puthur, Ambattur, Chennai 53 (in WP 27541/15)
- 5) For shop No.9180 situated at No.1/3 Thiruvallur Road, Ramavaram, Chennai 89. (in WP 27542/15)
- 6) For Shop No.9030 located at CTH Road, Pattabiram, Chennai 71 (in WP 27543/15)
- 7) For Shop No.8908 Situated at MTH Road, Ambattur, Chennai 600 053 (in WP 27544/15)
- 8) For Shop No.9171 located No.14/7 Poonamallee High Road, Karambakkam, Porur, chennai 110 (in WP 27545/15)
- 9) For Shop No.8847 located Plot No.103/1 Mettukuppam Main Road, Kuppusamy Nagar, Vanagaram, Chennai 95 (in WP 27546/15)

- 10) For shop N.9058 located at Chettiyar Agaram Main Road, Vanagaram, Chennai 95 (in WP 27547/15)
- 11) For Shop No.8851 located at No.104/3 Alapakkam Main Road, Porur, Chennai 116 (in WP 27548/15)
- 12) For Shop No.8777 located at Plot No.8, Lakshmi Nagar, PH Road, Avadi at Chennai 54 (in WP 27549/15)
- 13) For shop No.8726 located at No.481/1 CTH Road, Thirumullaivoyal, Chennai 62 (in WP 27550/15)
- 14) For shop No.8857 located at No.281/1 Alapakkam Road, Maduravoyal, Chennai 95, (in WP 27551/15)
- 15) For Shop No.8769 located at No.1, Meenakshi Amman Nagar, Mettukuppam, Main Road, Nerkundram, Chennai 87 (in WP 27552/15)
- 16) For the shop No.9056 located at No.49, HVF Road, Avadi Chennai 54 (in WP 27559/15)
- 17) For shop No.8910 situated at No.17/37 Ramasamy High School Road, Ambattur, Chennai 53 (in WP 27554/15)
- 18) For shop No.8738 situated at No.1, Swaminathan Estate, Suppammal Road, Mettukuppam, Chennai 95 (in WP 27555/15)
- 19) For Shop No.9069 located at No.36/80 Trunk Road, Porur, Chennai 116 (in WP 27556/15)
- 20) For shop No.8771 situated at No.290, Trunk Road, Poonamallee, Chennai 56 (in WP 27557/15) respectively

as null a void suffering the statutory backing of fixing the minimum upset price in strict adherence with reference to clause No.2 of the tender terms and conditions.

For Petitioners : Mr.L.Chandrakumar
(WP.Nos.26445 to 26447,
27361 to 27367/15)

Mr.AR.L.Sundaresan, SC for
Mr.P.Rajkumar Pandian
(WP.Nos.26469 to 26476, 31271
26477 to 26490 of 2015)

Mr.R.Alvin Manoj Raj
(WP.Nos.27386 to 27387,
27471 to 27474 of 2015)

Mr.A.Thirumaran (WP.27093/2015)

Mr.A.Ganapatheeswaran
(WP.27445 of 2015)

Mr.P.Rajkumar Pandian
(WP.27538 to 27544, 27545 to
27554, 27555 to 27557 of 2015)

For Respondents : Mr.Aravind Pandian,
AAG assisted by
Mr.C.Kasirajan

ORDER

The common grounds and submissions in these Writ Petitions are that the Petitioners were issued with licences to run their respective bars for the excise year commencing from 01.08.2014 to 31.07.2015, which were subsequently extended up to 31.08.2015. The last date for submission of the bids for the year 2015-2016, commencing from 1.9.2015 to 31.7.2016 was fixed as 27.07.2015 at 2.00 p.m. Though the tender forms were to be made available for sale from 10.07.2015, the same were made available for sale to the Petitioners only on 27.07.2015 from 11.00 a.m. till 5.00 p.m. The upset price was fixed unilaterally for all the 229 shops under the control of the 2nd Respondent, contrary to the condition 2 of the tender conditions, as per which, the upset price can either be 2.5% of the average monthly sales during the previous years plus 10% or the monthly average of the bid amount of the previous years. The 2nd Respondent has no authority to fix the upset price higher than what is provided for in the tender conditions. Due to arbitrary fixation of Upset Price, the Petitioners are facing financial crisis. The Upset Price fixed by the respondents is exorbitant and over and above 2.5% stipulated in the tender conditions. Hence, it is prayed that the upset price should be fixed in accordance with the tender conditions.

2. In some of the writ petitions, it is prayed for a direction to the Respondents to accept their tender applications and then, to fix the upset price at a reasonable amount in accordance with the tender conditions.

3. This Court heard the learned counsel on either side at length and considered their rival submissions and the materials on record.

4. Earlier, in a batch of Writ Petitions, in the impugned original tender therein, the fixation of upset price was not in accordance with the condition 2 of the tender conditions. Hence, this court granted an interim order, directing the Respondents to fix the upset price accordingly. When those writ petitions were taken up for final hearing, the Respondents stated that necessary fresh conditions would be incorporated in the tender notification, as directed by this Court. Recording the said submissions, those writ petitions were disposed of. Despite such an undertaking, the same set of conditions have been set out verbatim in the present tender notification. Hence, against the same set of conditions reproduced in the present tender notification, which were agreed to be amended properly, the Petitioners have approached this court by way of these Writ Petitions.

5. Since on the earlier occasion, this court found that the fixation of the upset price was not in accordance with the conditions in the tender notification and again the same flaw has been committed in the present tender conditions stipulated in the tender notification, i.e. earlier terms and conditions have been formulated verbatim in the present tender notification, despite specific directions of this court, this court finds it appropriate to quash the impugned orders, for fixing the upset price as agreed upon earlier. Accordingly, the following directions are issued:-

1. The impugned orders are quashed.
2. The Respondents are directed to formulate appropriate tender conditions as agreed upon earlier, so as to fix the upset price for the Bars.
3. The Respondents are directed to fix the upset price taking into consideration the volume of sales and finalise the tenders.
4. The said exercise shall be complied within four weeks from the date of receipt of a copy of this order. Till then, the Petitioners are permitted to pay the existing rent with an enhancement of 25% over and above the amount payable from 1.9.2015.

6. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Managing Director,
TASMAC Limited
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai- 600008
- 2.The District Manager,
TASMAC Limited
Tiruvallur East District,
No.1, Bangalore High Way,
Chembarambakkam,
Thiruvallur 602103
- 3.The Senior Regional Manager,
TamilNadu State Marketing Corporation,
(TASMAC), CMDA Towers, 4th Floor,
Egmore, Chennai - 600008.

+1 cc to Mr.C.Kasirajan, Advocate, sr.58709
+2 ccs to Mr.L.Chandrakumar, Advocate, sr.58356
+2 ccs to Mr.P.Rajkumar Pandian, Advocate, sr.58730
+1 cc to Mr.A.Ganapatheeswaran, Advocate, 58875

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