

In the High Court of Judicature at Madras

Dated : 04.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.7385 of 2016
and WMP.Nos.6592 and 6593 of 2016

Rajan

...Petitioner

Vs

1.The Managing Director, TASMAC,
Egmore, Chennai- 600 008.

2.The Senior Regional Manager,
TASMAC, Coimbatore.

3.The District Manager and Deputy
Collector, TASMAC, Erode District.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records relating to the order passed by the 3rd respondent dated
27.08.2012 made in Na.Ka.No.0923/ 2012/R2 and quash the same.

For Petitioner : Mr.N.Chinnaraj

For Respondents: Mr.K.Sathishkumar

ORDER

Heard Mr.N.Chinnaraj, learned Counsel appearing for the
petitioner and Mr.K.Sathish kumar, learned Counsel appearing for
the respondents.

2. The petitioner, who is working as a supervisor in the
TASMAC shop, has been issued with an order of recovery from his
salary on the ground that the bar managed by him has not
generated required revenue for the State and that he should
match the revenue payable in cases where the bars are managed by
private licensees.

3. The correctness of identical orders has been tested
before this Court in W.P.Nos.27785 to 27789 of 2012 and this
Court, by a common order dated 05.5.2017, allowed the said writ
petitions. The operative portions of the said common order read
as follows :

"4. The learned counsel appearing for the writ petitioner submitted that the same issue was considered by this Court earlier in the batch of writ petitions on 03.1.2008 in W.P.No.19231 of 2007 etc., batch and the order is extracted here under :

'It is also made clear that as far as the petitioners are concerned, if any salary or other benefit to which they are entitled to from the time of their being appointed to run the shops, is due, the respondent is directed to make payment of the same to those employees. In a given case if any amount has been paid by the petitioners. In a given case if any amount has been paid by the petitioners in respect of fixation of 2.5% or 1.5% in the past, it becomes necessary to permit the respondent to conduct an enquiry over the same and find out the situation. Accordingly, permission is granted. In a given case if the amount is paid and no collection is made, the respondent is directed to repay the same. If it is found that the petitioners have got any profit out of it, they should be directed to make payment to the respondent.'

5. Accordingly, the discretion was provided to the competent authorities either to fix 2.5% or 1.5% of the total sales amount, then such a discretion is provided to the authorities, the respondents had imposed 2.5% without considering the fact that the Supervisors / Writ Petitioners themselves were conducting the bars attached with the TASMAL Shop and sustaining heavy loss.

6. The learned counsel for the writ petitioner submitted that some of the writ petitioners are now working and some left the job. Under these circumstances, this Court is of the view that the respondents shall reconsider and pass appropriate orders in respect of fixation of 2.5% or 1.5% of the total sales amount, in accord with the factual circumstances of each cases.

7. With these, the orders of recovery issued by the respondents are quashed and liberty is granted to the respondent to reconsider the entire factual circumstances relating to the conducting of bars attached

with TASMAC Shop and the profit and loss situation by providing opportunity to the writ petitioners and pass appropriate orders either by fixing 2.5% or 1.5% and thereafter decide the issue as early as possible by passing appropriate orders.

8. With this observation, the writ petitions are allowed."

4. The learned Standing Counsel for the respondents does not dispute the above legal position and would submit that the present writ petition may also be disposed of on similar lines.

5. Therefore, the direction issued in the common order dated 05.5.2017 in W.P.Nos.27785 to 27789 of 2012 would equally apply to the case of the petitioner in W.P.No.7385 of 2016.

8. In the result, the writ petition is allowed and the orders of recovery are quashed. Liberty is granted to the respondent Corporation to reconsider the entire factual circumstances in relation to conducting of bar attached to the TASMAC shop and the profit and loss situation by providing an opportunity to the writ petitioner and pass appropriate orders either by fixing either 2.5% or 1.5% and thereafter decide the issue as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gpa/msrm

To

1.The Managing Director, TASMAC,
Egmore, Chennai- 600 008.

2.The Senior Regional Manager,
TASMAC, Coimbatore.

3.The District Manager and Deputy
Collector, TASMAC, Erode District.

+1cc to Mr.K.SATHISHKUMAR, Advocate, S.R.No.43292

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TR(13/07/2018)