BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos.1622 & 1623 of 2018
and
W.M.P(MD)Nos.1709 to 1712 of 2018

Balamurugan ... Petitioner
in W.P(MD)No.1622 of 2018

K.Balaji ... Petitioner
in W.P(MD)No.1623 of 2018

Vs

1.The Government of Tamil Nadu,
Rep. By its Secretary (Home),
Prohibition and Excise,
Fort St. George,
Chennai-9.

2.The Managing Director,
Tamil Nadu State Marketing Corporation (TASMAC),
CMDA Tower II, 4th Floor,
Egmore, Chennai-600 008.

3.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
104-C,SIPCOT Campus,
Thoothukudi-2. ... Respondents
in both writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Tender Notification of the third Respondent in Na.Ka.No.A4/486/2017 dated 10.01.2018 and quash the same and consequently direct the respondents to conduct tender for Bar to TASMAC outlets attached all existing and proposed outlets to be opened in Thoothukudi District same time and same manner.

For Petitioners : Mr.N.Mohideen Basha
For R1 : Mrs.Padmavathi Devi,
Special Government Pleader
For R2 & R3 : Mr.B.Jameel Arasu

COMMON ORDER

The relief sought for in these writ petitions is to call for the records in relation to the Tender Notification issued by the third respondent vide proceedings, dated 10.01.2018 and quash the same and consequently, direct the respondents to conduct tender for Bar to TASMAC attached all existing and proposed outlets to be opened in Tuticorin District same time.

2.Heard Mr.N.Mohideen Basha, learned counsel appearing for the petitioner, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the first respondent and Mr.B.Jameel Arasu, learned counsel appearing for the respondents 2 & 3.

3.The issues raised in these writ petitions in relation to the conditions stipulated in the Tender Notification, dated 10.01.2018 has been elaborately adjudicated in a Batch of Writ Petitions in W.P.Nos.29727 to 29746 of 2017 etc., and a Judgment was delivered by the High Court of Madras on 23.11.2017. The learned Judge after elaborately discussing the issues arrived a conclusion as under:-

"15. For all the above reasons, I find that there is no irrationality or arbitrariness in the conditions stipulated in the impugned tender notification and the basis for calculating the Security Deposit and the monthly licence fee has been shown to be done in an appropriate manner taking into consideration the turnover of a particular retail vending shop. Apart from that the licence fee does not remain static throughout the period of licence, as was earlier, but would depend upon the sale in the preceding month. This would take care of situation, where the sales have come down in a particular shop for a particular month. This condition cannot be stated to be irrational or unreasonable.

16.As pointed out earlier, the argument of the petitioner that the volume of sale in the bar alone should be taken into consideration and not the turnover in the retail vending shop is a plea which is to be rejected, as there is no right to vend liquor in the premises termed as "bar" and it is only a facility offered for persons, who purchase liquor from the retail vending shop and would desire to consume the same in the facility, which is adjacent to the retail vending shop. In such facility authorized by the TASMAC, the petitioner is granted licence to sell eatables and collect empty bottles. Thus, there can be no independent turnover for the "Bar". Hence, the volume of sales calculated based on the sales turnover of the shop is just and proper. All these years, the licence fee has been computed based on the turnover of the shops. Hence, the contention of the petitioner in this regard is devoid of merits.

17.In the light of the conclusion arrived at by this Court holding that there is no irrationality or unreasonableness in the impugned tender notification, the decision in the case of LIC of India (Supra), International Airport Authority of India (supra) would have no application to the facts of the present case. Equally, the decision in the case of Style (Dress Land) (supra) also would not be applicable to the cases on hand, as this Court was found that there is no arbitrariness of irrationality in the conditions of tender. In the case of Kerala Samsthana Chethu Thozhilali Union (supra), the challenge was to the Kerala Abkari Shops Disposal Rules, 2002 as ultra vires the Abkari Act and on the contentions raised with regard to the Constitutional validity of the Rules, a decision was rendered holding that the State while parting with exclusive privilege cannot take recourse to a doctrine "take it or leave it" having regard to the equity clause enshrined under Article 14 of the Constitution of India and State in its dealings must act fairly and reasonably and the bargaining power of the State does not entitle it to impose any condition it desires. The said decision can have no application to the cases on hand in the State of Tamil Nadu, the lar governing liquor trade is the Tamil Nadu Prohibition Act and the right to vend liquor is an exclusive privilege of the State. The petitioners have failed to establish as to how Article 14 of the Constitution has been enfringed on account of the tender condition and in the light of the discussion in the preceding paragraphs, it can be safely concluded that the action of the respondent/TASMAC has been fair and reasonable and the conditions imposed are neither arbitrary or irrational. The decision in the case of Doongaji and Co. (I) vas. State of Madhya Pradesh and others reported in (1991) Suppl. (2) SCC 313 cannot be applied to the cases on hand, as it dealt with issuance of licence to manufacture and supply liquor under the Madhya Pradesh Excise Act, 1915. The said decision is clearly distinguishable on facts as under the provisions of the Tamil Nadu Prohibition Act, the exclusive right to vend liquor vests with the State.

18.For all the above reasons, it is held that the petitioners have not made out any case of interference with the impugned notification and accordingly, these writ petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

4.In view of the Judgment delivered in the Batch of writ petitions, no further consideration needs to be exercised in respect of the grounds raised in these writ petitions.

5.Accordingly, these writ petitions are stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(ADII)
/True Copy/

Sub-Assistant Registrar

To

1.The Secretary (Home), Government of Tamil Nadu,
Prohibition and Excise,
Fort St. George,
Chennai-9.

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2.The Managing Director,
Tamil Nadu State Marketing Corporation (TASMAC),
CMDA Tower II, 4th Floor,
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3.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
104-C,SIPCOT Campus,
Thoothukudi-2.

+One cc to Mr.N.Mohideen Basha, Advocate, SR.No.44502

+One cc to Mr.B.Jameel Arasu, Advocate, SR>No.44728

+One cc to The Special Government Pleader, SR.No.44804

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RL/7C/4P/SV/MMS/SAR4/13/2/2018

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