BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD) No.20965 of 2019
and
W.M.P.(MD).Nos.17562 to 17564 of 2019

Madurai Mavatta Bar Oppanthathararkal Nala Sangam,
rep. by its President
Mr.K.Murugan. ... Petitioner

vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation
(TASMAC), CMDA Complex,
Egmore, Chennai -08.

2.The Regional Manager,
Tamil Nadu State Marketing Corporation
(TASMAC), Anna Nagar,
Madurai-625 020.

3.The District Manager,
Tamil Nadu State Marketing Corporation
TASMAC, Madurai North District
Manalur,
Sivagangai District.

4.The District Manager,
Tamil Nadu State Marketing Corporation
(TASMAC), Madurai South,
SIPCOT, Madurai. ... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus, calling for the entire records relating to the impugned tender notifications of the 3rd respondent in Na.Ka.No.203/2019/A3 dated 13.9.2019 and the 4th respondent in Na.Ka.No.489/2019/B dated 13.9.2019 and quash the same as illegal.

For Petitioner : Mr.Veera Kathiravan, Sr. Counsel for
M/s.Veera Associates
For Respondents : Mr.H.Arumugam
Standing Counsel for TASMAC

O R D E R

Challenging the tender notifications of the 3rd respondent in Na.Ka.No.203/2019/A3 dated 13.9.2019 and the 4th respondent in Na.Ka.No.489/2019/B dated 13.9.2019, the petitioner is before this Court.

2.The petitioner is the Bar Licensees Welfare Association. The members of the said Association were licensed to run the bar in a particular place adjacent to the liquor shop licensed by the respondents. The respondents have floated a tender in proceedings Na.Ka.No.203/2019/A3, dated 26.07.2019, scheduled to be held on 13.08.2019 for running the bar and to collect empty bottles. Challenging this tender, the members of the petitioner's Association submitted that the respondent Corporation shall not compel them to accommodate the new licensed holders to run the bar in their premises. They have relied on a judgment of this Court in W.P.(MD). No.1515 to 1518/2018, dated 28.03.2018, wherein, a learned Judge has observed as under:

> "20.The Division Bench has only stated that for selling eatables and collect empty bottles, No Objection Certificate from the bar premises owner is necessary. Now, the question is, who is to get No Objection Certificate.
>
> 21.As per the Circular referred to above, it is the duty of the licensee who run the bar to enter into the lease agreement with the bar premises owner along with the condition that the bar premises owner should permit the persons to collect the empty bottles and to sell eatables.
>
> 22.Getting No Objection Certificate and also entering into a lease agreement with the bar premises owner will arise only in the event of the privilege for running bar is granted to third parties. When the fourth respondent is retaining the privilege of running the bar and only permitting some third parties to enter into the bar for the purpose of collecting empty bottles and selling eatables, as per the above said Circular, it is only the TASMAC, being the lessee should get permission and they cannot insist upon the tenderers to get No Objection Certificate. In the above circumstances, imposing such a condition is wholly arbitrary and unwarranted. Therefore, I have no hesitation to set aside the condition imposed by the fourth respondent, insisting upon the tenderers to get No Objection Certificate from the bar premises owner.

23.It is made clear that in the event of the privilege of running bar is granted to any third parties as per Rule 9-A of the Rules, then, it is always open to the respondents to insist upon such a condition, now for granting licence for collection of empty bottles and selling eatables, TASMAC cannot insist upon the tenderers to get No Objection Certificate from the landlord."

In that case, the pre-condition for getting No Objection Certificate from the owners of the premises was struck down.

3.The learned counsel for the petitioner also relies upon another judgment of this Court in W.P.(MD).No.1839 and batch of 2018, dated 19.11.2018, wherein, relying on a decision of this Court in reported in **2017 (1) CTC 83**, (**Kumbhat Holographics Vs State of Tamil Nadu**), this Court held as follows:

"**11.** The learned Additional Government Pleader would rely on a decision of this Court in the case of ***Kumbhat Holographics vs. State of Tamil Nadu***, reported in ***2017 (1) CTC 83***. He would draw the attention of this Court to Paragraph No.36 of the order, which reads as under:

"36. In Shimnit Utsch India (P) Ltd. v. W.B.Transport Infrastructure Development Corpn. Ltd., 2010 (6) SCC 30, it is held by the Apex Court that Government Policy can be changed with changing circumstances and only on ground of change, a Policy is not vitiated. Government discretion to adopt a different Policy, alter or change its policy to serve Public interest and make it more effective."

12. The learned Additional Government Pleader would submit that the Government policy cannot be static every time, it can be changed then and there and the mere change cannot vitiate the policy itself. As regards the order passed by the learned Judge of this Court, on 28.03.2018, in W.P.(MD) Nos.1515 to 1518 of 2018 and 1899 to 1940 of 2018 is concerned, he would submit that the Judgment was rendered only on 28.03.2018 and the present writ petitions were filed during January, 2018 and this is not a ground that was raised in the writ petitions at first place. However, he would submit that the respondents would not insist on such a condition, namely, no objection certificate from the landlord in the present tender process in view of the Judgment of the learned Single Judge of this Court.

13. This Court has considered the rival submissions of the learned counsel on either side and perused the materials and the pleadings placed on record.

14. This Court, however, is in agreement with the submission made on behalf of the learned Additional Advocate General that in pursuance of the directions issued by this Court, dated 21.12.2017, in a batch of writ petitions, a fresh tender notification was issued on 10.01.2018. Of course, there were not many changes in the new tender notification as appeared in the original tender notification, dated 03.11.2017. Nevertheless, only on that ground, the present notification can be said to be vitiated. What ultimately to be seen is whether any of the conditions imposed in the notification are opposed to any public policy or so onerous, which cannot be practically implemented. This Court, after perusing the conditions does not see any infirmity in the conditions imposed in the impugned notification. In case the petitioners are aggrieved by any increase in the upset price, there is no compulsion that the petitioners should participate in the tender process. There are other bidders in the public, who are willing to accept the new upset price and who can be granted license and such an arrangement will be more beneficial to the State-Corporation.

15. In any event, the writ petitioners have vested right in continuing with their Bar business and enforcing the unwritten contract on their own terms against the public interest. As rightly contended by the learned Additional Advocate General, in view of the old license-holders continuing to pay the pre-revised price, the State-Corporation has suffered huge loss. The existing license-holders, whose licenses have already been expired long ago, are continuing to run their business without their licenses being renewed. Such an arrangement is unjust, illegal and cannot be allowed to continue any further.

16. It is a matter of fact that the petitioners have been enjoying the interim orders of this Court and in any case, merely by grant of interim orders, the rights of the petitioners have not been determined finally. The grounds raised in these writ petitions are also do not merit serious consideration, since they do not warrant interference from this Court. This Court has been witnessing a trend in the recent past that the licensees, who have been given licenses for a particular period, do not give up their licenses or make any earnest attempt to renew their licenses on the basis of change in policy, but they scuttle the efforts of the State through the new policy with revised price and thereby, cause loss to the State exchequer. The existing license-holders will always try to get entranged in their respective business and not allowing the State to have new bidders, who are otherwise willing to pay more price for the new contract that will be put in place.

17. In such circumstances, this Court has to protect the interest of the State than to extend any help to the license-holders, whose continuation in such business, harming the revenue of the State to a large measure. The writ petitioners, in the considered opinion of this Court, have a vested interest to have a hold on the Bar business in their respective place to run the Bar and contrary to the public interest. This is a time to ensure that such a vested interest is removed in order to pay for State – Corporation towards augmenting more revenue to the State.

18. For the above said reasons, this Court does not find any infirmity in the impugned notifications, dated 03.11.2017 and 10.01.2018 and this Court is of the considered view that all the writ petitions lack merit and substance and therefore, they stand dismissed. Wherever, interim orders are granted, the same shall stand vacated.

19. It is made clear that it is open to the respondents to go ahead with the tender process in pursuance of the tender notifications impugned in the writ petitions and the respondents shall not insist on no objection certificates from the landlords for issuing license in terms of the order, dated 28.03.2018, passed by the learned Judge of this Court in the above said batch of writ petitions. No costs. Consequently, connected miscellaneous petitions are closed."

4.The learned counsel for the respondent would rely on a judgment of the Honourable Apex Court in the case of **Mahinder Kumar Gupta and Others Vs Union of India, Ministry of Petroleum and Natural Gas, reported in 1995 (1) SCC 85.** In para No.6 of the said judgment, the Honourable Apex Court has held as follows:

"6.Under these circumstances, we find no arbitrariness or unjustness in prescription of the guidelines for the eligibility criteria. The second writ petition stands liable to be dismissed on the sole ground that the Association cannot file a writ petition as it has no fundamental right under Article 32 of the Constitution. One of the petitioners/appellants has claimed as having partnership, but the details thereof have not been given. We, therefore, dismiss the appeal as well as the writ petitions with costs quantified at Rs.20,000 each."

He also relied on a judgment of a Division Bench of this Court in **Nadar Mahajana Sangam, Madurai through its General Secretary (For and on behalf of shareholders of Tamilnadu Mercantile Bank Limited) Vs Reserve Bank of India, Central Office, Department of Banking Cooperative**, reported in **2006 (1) CTC 776**, wherein, this Court in para 10 has held as follows:

> "10.The writ petition filed by the appellant cannot have any personal grievance in the matter and at best, only its members can have any grievance. It is well settled that ordinarily a writ petition can only be filed by someone who is personally aggrieved. The powers under Article 226 of the Constitution of India should be sparingly used in only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him. The relief under Article 226 of the Constitution of India is based on the existence of a right in favour of a person invoking the writ jurisdiction. The exception to the General Rule is only in cases where the writ applied for is Writ of Habeas Corpus and Quo Warranto or filed in public interest. Even assuming the members of the appellant's association is affected by an act of the second respondent, but for the purpose of enforcing the rights of the members, writ petition at the instance of the association is not maintainable. Ordinarily, the personal or individual right of the petitioner himself be enforced under Article 226 of the Constitution of India. Merely because the first respondent/Reserve Bank of India has been arrayed as a party, the Court does not get jurisdiction to hear the writ petition since the main writ petition is against the second respondent, which is a private bank."

5.He would further submit that insofar as Madurai is concerned, 261 retail shops were licensed. As per Rule 10 of the Tamil Nadu Liquor Retail Vending (In shops and Bars) Rules, 2003 (hereinafter called as 'the Rules'), the bar shall lie within the shop or adjoining the shop. Originally, they floated the tenders for all the 261 shops. But the condition of locating a bar adjoining the shop was complied with by only 109 shops. In respect of remaining 152 shops, they have not complied with the condition, since, suitable place was not available. Hence, they are going for fresh tender. It is the further contention of the respondents that the petitioners being the previous bar licensees are trying to monopolize the loss caused to the exchequer.

6.In the order passed in W.P.(MD).No.1839 and batch of 2018, dated 19.11.2018, by considering the previous order made in W.P.(MD).Nos.1515 to 1518 of 2018, dated 28.03.2018, this Court directed the respondents to go ahead with the tender process, without insisting on the No Objection Certificate from the landlords. Therefore, he would submit that the members of the petitioner's Association herein also should not be compelled to get No Objection Certificate from their respective landowners, again.

7.I have considered the rival contentions.

8.A simple issue before this Court is that the members of the petitioner's Association have invested so much of money in setting up bars during their license period. It is their apprehension that the respondents would permit the new successful bidders to take over possession of their premises and investments. In the view of this court, such an apprehension is unfounded. The impugned tender notification does not specify the location of the bar. It only calls for tenders from persons, who are willing to run bar and collect empty bottles. In other words, the previous bars run by petitioners were not exact places for which the tender is called for and there is no specification about it. The location of the bar could be any place, where the successful bidder gets lease. It could be on all the three sides of the liquor shop or above or below the very shop. For example, if a shop is licensed in a Shopping Complex, in all the spaces available around the shop, on all the three sides, or the basement or ground floor or upper floor or roof can be used to run the bar. Therefore, the apprehension of the petitioners that the premises in their possession will be trespassed or taken over by the respondents has no basis. If no place is available, as it has been done in the past, the respondents may not set up a bar adjoining the shop.

9.The learned counsel for the respondent went ahead and submit that in that event, they may even shift the shop, wherever space is available for running the bar and the respondents will not interfere with the possession of the previous licensees.

10.The submission of the learned counsel for the respondents is recorded. Since the respondents have given assurance that the petitioners' possession will not be disturbed and they will not be insisted on giving up their investments and premises forcibly, they cannot have any *locus standi* to maintain this writ petition. Since no such condition is imposed as to the location of the bar, this Court does not find any infirmity in the tender notifications of the 3rd respondent in Na.Ka.No.203/2019/A3 and the 4th respondent in Na.Ka.No.489/2019/B, dated 13.9.2019, published by the respondents. As long as the bid is conducted, one cannot ascertain as to who is going to be the successful bidder and where they will locate the bar. It may be on a different place adjoining the shop or shop may be shifted to a convenient place, which can accommodate a bar.

11.In such a situation, on the basis of apprehension, the writ petition is not maintainable that too filed by an association of erstwhile licensees to espouse the rights of its members. The petitioners also do not have any *locus standi* as their licenses have already expired. I do not find any infirmity in the impugned notification inviting tenders and hence, the tender can go on. The petitioners cannot achieve their oblique motive of getting bar licenses which they cannot achieve directly. Therefore also, this Court is inclined to dismiss the writ petition.

12.Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation
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SIPCOT, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-90360[F] dated 30/09/2019)
+1 CC to Mr.H. ARUMUGAM, Advocate (SR-90731[F] dated 01/10/2019)

W.P.(MD) No.20965 of 2019
30.09.2019

vs
MK (05.11.2019) 9P 7C