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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23909 of 2021

(Through Video Conferencing)

P.Sasikumar

...Petitioner

Vs

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

2.The District Manager,
Tamil Nadu State Marketing Corporation Limited (TASMAC),
Kudikadu, Cuddalore - 607 001.

3.The District Collector,
Cuddalore District, Cuddalore - 607 001.

4.The Assistant Commissioner, (Excise)
Cuddalore, Cuddalore District.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to ensure the opening and functioning of the TASMAC retail vending liquor Shop No.2617 situated at Araichikuppam Village, Survey No.401/5 of Silambinathanpettai Village, Panruti Taluk, Cuddalore District.

For Petitioner	: Mr.K.Prabakar
For Respondents	:
For R1 & R2	: Mr.K.Sathish Kumar Standing Counsel
For R3 & R4	: Mr.D.Ravichander Government Counsel

ORDER

Mr.K.Sathish Kumar, learned Standing Counsel takes notice on behalf of the first and second respondents and Mr.D.Ravichander, learned Government Counsel takes notice on behalf of the third and fourth respondents.



2. This writ petition has been filed by the petitioner for issuance of a Mandamus, to direct the respondents to ensure the opening and functioning of the TASMAC retail vending liquor Shop in Shop No.2617 situated at Araichikuppam Village, Survey No.401/5 of Silambinathanpettai Village, Panruti Taluk, Cuddalore District.

3. The case of of the petitioner is that the third respondent by a proceeding dated 20.02.2021 bearing reference No.R3/36205/2020 had granted permission for establishing TASMAC retail vending liquor Shop to the petitioner. It is further submitted that the first respondent has also granted consequential permission for opening a TASMAC retail vending liquor Shop at the aforesaid place by an order dated 29.07.2021 bearing reference in Na.Ka.No.R3/4582/2021.

4. However, after the petitioner had invested by putting up the shop, the respondents have not come forward to establish the TASMAC retail vending liquor Shop, as a result, the petitioner is being put to monetary loss. It is further submitted that the petitioner representation dated 22.09.2021 has not received attention from the respondents.

5. It is submitted that the respondents are refraining from opening the TASMAC retail vending liquor Shop based on a complaint of a local person. It is further submitted that there cannot be any basis for such action merely because of a third party has filed a complaint.

6. Appearing on behalf of the first and second respondents, the learned standing counsel submits that merely because permission was granted earlier does not ipso facto mean that a shop has to be necessarily opened if there are other factors which came in the way of opening of such shop in a busy residential area.

7. The learned standing counsel has placed reliance on the decision of this Court in V.Jothi Vs District Manager, TASMAC Ltd., Chennai - 600 123 passed in W.P.No.21349 of 2021 dated 05.10.2021.

8. Appearing on behalf of the third and fourth respondents, the learned Government Counsel submits that there is no concluded contract and therefore the question of the petitioner asking the respondents to open the TASMAC retail vending liquor Shop at his place/at his shop cannot be countenanced.

9. The learned Government Counsel has relied on the decision of the Hon'ble Supreme Court in Uflex Ltd., Vs. Government of



Tamil Nadu & Others, (2021) SC 465 which follows the earlier decision of the Hon'ble Supreme Court in Galaxy Transport Agencies Vs New J.K.Roadways, Fleet Owners and Transport Contractors and others, (2020) SCC Online SC 1035.

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10. The learned Government Counsel further submits that these disputes cannot be adjudicated in a writ proceeding and it is open for the petitioner to approach earlier to the Civil Court in case the petitioner has suffered any loss on account of expenses incurred for establishing the shop and infrastructure there of for the TASMAL retail vending liquor Shop.

11. Heard the learned counsel for the petitioner and the learned standing counsel for the first and second respondents and the learned Government Counsel for the third and fourth respondents.

12. It is noticed that the petitioner has sent a representation dated 22.09.2021. It has not received any attention from the respondents. Considering the above this writ petition is disposed by directing the respondents to pass appropriate orders/to reply to the aforesaid representations of the petitioner within a period of three months from the date of receipt of a copy of this order.

13. In case the respondents decline the request of the petitioner, it is always open for the petitioner to work out the remedy in the manner known to law. It is made clear that merely because the respondents are the Statutory Bodies and the Government Departments ipso facto does not mean that commercial dispute can be brought to the Court under Article 226 of the Constitution of India. It is therefore made clear that in case the request of the petitioner is rejected, it is open for the petitioner to approach the Civil Court to work out the remedy in accordance with law.

14. This Writ Petition stands disposed of with the above observations. No costs.

-s/d-

Deputy Registrar (CS)

True Copy

Sub-Assistant Registrar

rgm/arb



To

1. The Managing Director,
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 2. The District Manager,
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 3. The District Collector,
Cuddalore District, Cuddalore - 607 001.
 4. The Assistant Commissioner(Excise)
Cuddalore, Cuddalore District.
- +1 CC to Mr.K.Prabakar, Advocate sr 57431
+1 CC to The Government Pleader sr 58033.

W.P.No.23909 of 2021

GSM(CO)
SP(24/11/2021)