



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.12.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.28163 of 2021
and WMP. Nos.29770, 29771 & 29772 of 2021

K.Ravi

...Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
Thalamuthu Natarajar Maligai,
Egmore, Chennai - 600 008.

2.The District Manager,
TASMAL Ltd., Thiruvallur East District,
No.1, Bangalore High Road,
Sembarambakkam,
Chennai - 600 123.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the tender notification dated 14.12.2021 in Na.Ka.No.A3/2242/2021 of the second respondent herein and quash the same and consequently direct the respondents to extend the right to collect empty bottles and sell eatables in the Bar attached to shop No.8920 situated at No.1/1, Avadi-Redhills Road, Ambattur, Chennai - 600 053.

For Petitioner : Mr.N.Sadhananthan
For Respondents : Mr.P.Arumugarajan,
Standing Counsel

O R D E R

Mr.Arumugarajan, learned Standing Counsel accepts notice for the respondents and is armed with instructions to proceed with the matter finally. Hence, by consent of both sides, this Writ Petition is taken up for final disposal even at the stage of admission.

2. The petitioner challenges tender notification in Na.ka.No.A3/2242/2021 dated 14.12.2021 issued by the second



respondent/The District Manager, TASMAL calling for tenders for collection of empty bottles and sale of eatables in TASMAL Bars.

3. According to the petitioner, he was holding licence in respect of rights to collect empty bottles and to sell eatables in the Bar attached with TASMAL shop in Shop No.8920 situated at 1/1, Avadi - Redhills Road, Ambattur, Chennai. The period of licence was two years, i.e., from 01.10.2019 till 30.09.2021. Security deposit was collected and a monthly licence fee was also required to be paid by the licensee.

4. The petitioner operated the licence for some time, when the COVID - 19 pandemic intervened and TASMAL shops were closed, consequently, so too the Bars, from March 2020 onwards. Though the shops were permitted to resume operations with some restrictions imposed from 30.12.2020, the bars remained closed.

5. The petitioner had made a representation before the respondents seeking an extension of the licence period citing that the COVID - 19 pandemic was beyond his control and that he has been seriously and adversely affected by virtue of the fact that the licence had remained inoperative for a substantial period. He would also submit that he had remitted rent to the owner of the property housing the Bar, which compounded the hardship.

6. The present Writ Petition has been filed in the above circumstances challenging a tender notification issued by the respondents calling for tenders for sale of empty bottles and eatables for the period 01.01.2022 to 31.12.2023. In this context, learned counsel for the petitioner refers to a representation that the petitioner claims to have made on 18.12.2021 seeking extension of licence period. A copy of the representation available on file does not reveal any acknowledgement of filing.

7. Mr.Arumugarajan, learned counsel for the respondents would submit that licence fee has not been collected from the licensees for the period when the State was under lock down, viz., from 16.03.2020 to 30.12.2020 and again from 26.04.2021 to 31.10.2021. He would also submit that in fact, identically placed licensees who had made representations seeking extension of licence in time, had been granted the benefit of such extension for a period of two months.

8. Thus, he would submit that there has been no prejudice caused, and in any event, the pandemic presented a scenario when the Bars could not have been opened and operated, bearing in mind public safety. It was thus a policy decision of the State and there ought to be no intervention in this regard.



9. I agree with the stand of the respondents. The closure of the Bars was a decision taken by the State in the best interests of the citizenry. In any event, the respondents confirm that licence fee has not been collected by them from licencees for the period when the State was locked-down. To this extent, the petitioner has suffered no monetary loss. The payment of rent to the land owners is a commercial transaction and hence the risks and consequences flowing from the same would have to be borne as a natural incident of the same. The challenge to the tender notification is thus rejected. The same view as the one taken aforesaid has been taken by a learned Judge of this Hon'ble Court in M.Rajakumara Pandian V. The District Collector and others (W.P.(MD) No.17077 of 2021 dated 20.10.2021).

10. As far as the impugned tender notification is itself concerned, a flaw pointed out is that it contains no condition therein requiring participants to produce a no-objection certificate from the land owners whose premises are proposed to be occupied by the licencees. This shall be rectified and the award of tender shall be subject to the lowest bidder producing a no-objection certificate from the respective land owner.

11. Barring the aforesaid, the process of tender shall proceed as proposed. Since the respondents have specifically conceded that the online portal of TASMAL has neither the facility for bidders to access, fill and submit online applications nor contains a downloadable format of the application form, the respondents shall ensure that a physical copy of the tender application form is available for purchase by interested bidders at the applicable rate. Such form shall be made available till 8.30 p.m. every day, prior to the last date for submission of bids, to enable interested persons to participate.

12. With the issuance of directions as above, this Writ Petition stands dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar (VO)

//True Copy//

Sub Assistant Registrar

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To

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BP(CO)
KKV/30/12/2021