



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD)Nos.8605 of 2013 & 8548 of 2013

and

M.P (MD) .Nos.1,2 of 2013 & 1,2 of 2013

(Through Video Conference)

W.P (MD)No.8605 of 2013:

C.Krishna Moorthy

..Petitioner

-Vs-

1.The Tamilnadu State Marketing Corporation Limited (TASMAC)
Rep.by its Senior Regional Manager,
Plot No.100, Anna Nagar,
Madurai - 20.

2.The District Manager,
Tamilnadu State Marketing Corporation Limited (TASMAC)
Door No.25/1-837 and 25/2-838,
Konam Industrial Estate,
Nagercoil,
Kanyakumari District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the second respondent from conducting re-tender cum auction to the Bar attached to the TASMAC Shop bearing No.4863 situated in Monday Market, Kalkulam Taluk, Kanyakumari District, till the completion of the petitioner's license for the period from 01.12.2012 to 30.11.2013 as per his proceedings, vide Na.Ka.No.45/B/2012, dated 30.11.2012.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mr.B.Jameel Arasu

Standing Counsel

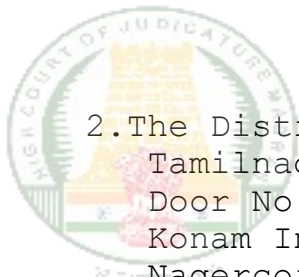
W.P. (MD) .No.8548 of 2013:

D.Edwin Jeyaraj

..Petitioner

-Vs-

1.The Tamilnadu State Marketing Corporation Limited (TASMAC)
Rep.by its Senior Regional Manager,
Plot No.100, Anna Nagar,
Madurai - 20.



2.The District Manager,
Tamilnadu State Marketing Corporation Limited (TASMAC)
Door No.25/1-837 and 25/2-838,
Konam Industrial Estate,
Nagercoil,
Kanyakumari District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the second respondent from conducting re-tender cum auction to the Bar attached to the TASMAC Shop bearing No.4861 situated in Neyyoor, Kalkulam Taluk, Kanyakumari District, till the completion of the petitioner's license period from 01.12.2012 to 30.11.2013, as per his proceedings vide Na.Ka.No.45/B/2012, dated 30.11.2012.

For Petitioner : Mr.B.Brijesh Kishore

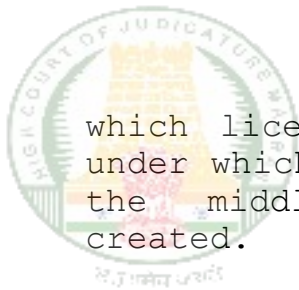
For Respondents : Mr.B.Jameel Arasu
Standing Counsel

COMMON ORDER

Since the issue raised in both the writ petitions is one and the same, though filed by different writ petitioners, with the consent of the learned counsel appearing for both side, both these cases are heard together and are disposed of by this common order.

2.That the prayer in these writ petitions is for a writ of mandamus, forbearing the second respondent from conducting re-tender cum auction to the Bar attached to the TASMAC Shops bearing Nos.4863 and 4861, respectively, situated in Monday Market, Kalkulam Taluk, Kanyakumari District and Neyyoor, Kalkulam Taluk, Kanyakumari District, respectively, till the completion of the petitioners' license for the period from 01.12.2012 to 30.11.2013 and 01.12.2012 to 30.11.2012 respectively.

3.The petitioners in both these cases are licence holders to run the bar attached with the TASMAC shops, and such licence was given to these petitioners by proceedings of the second respondent, dated 30.11.2012. According to the said licence, the licence period is from 01.11.2012 to 30.11.2013, accordingly, the respective petitioners claimed to have run the respective Bars for some time, however, the said Bar conducted by the petitioners were closed and sealed by the respondent- TASMAC on 25.02.2013, and in order to create a third party right, the respondent had gone for a fresh auction by issuance of a notification in this regard on 14.05.2013. Only, at that juncture, these writ petitions were filed seeking a writ of mandamus, directing the respondents not to go for a fresh auction to create the third party right, in respect of the Bar, for



which licence had been given to these petitioners on 30.11.2012, under which the licence period was over by 30.11.2013, therefore, in the middle of the licence period, no third party rights can be created.

4. At the time of admission, it seems that this Court had granted interim order that the re-auction process shall go on, however, that shall not be confirmed.

5. However, these writ petitions have not been subsequently taken up for hearing, and all these years, these writ petitions had been kept pending.

6. In the meanwhile, it seems that subsequent third party right whether has been created pursuant to the impugned re-auction process initiated by the respondent or not, since the licence period under the licence dated 30.11.2012 in both the writ petitions was over as early as on 30.11.2013, therefore, thereafter, the petitioners seems to have not made any attempt to get any fresh licence or for extension of licence period.

7. At this juncture, when these writ petitions were taken up for final hearing, Mr.B.Brijesh Kishore, learned counsel appearing for the petitioners has submitted that since the licence period was over as early as in the year 2013, that is, very long back, virtually, nothing survives in these writ petitions insofar as the prayer sought for herein. However, the learned counsel for the petitioners would submit that, apart from the licence fee payable to the respondent, the petitioner has deposited a security deposit in one lump sum to the respondent, and the said security deposit, all these years have not been returned to the petitioners, therefore, atleast, let the security deposit amount, which is kept pending at the hands of the respondent TASMAC can be directed to be returned back to the respective petitioners, he contended.

8. Heard Mr.B.Jameel Arasu, learned Standing Counsel appearing for the respondent-TASMAC, who, on instructions, would submit that, as stated by the learned counsel for the petitioners, the licence period was over by 30.11.2013, and in the meanwhile, subsequent auction was also conducted, and to various persons, the Bar licence might have been given, but that aspect is immaterial for the disposal of these writ petitions, in view of the licence period, admittedly, was over by 30.11.2013, however, insofar as the claim now made by the petitioners through the learned counsel for the petitioners that, the security deposit can be directed to be returned is concerned, in this regard, whether the petitioner is entitled to get back the security deposit or not can be decided, and in this context, the petitioners can give a fresh representation to the respondents, immediately, the same would be considered on



merits, after hearing the petitioners concerned, and accordingly, a decision would be made, as to whether the security deposit can be returned back to the petitioners or otherwise, therefore, the learned Standing counsel would submit that, these writ petitions accordingly can be disposed of.

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9.Considering the said submissions made by the learned counsel for the parties and having perused the materials placed before this Court, as the licence period, admittedly, was over by 30.11.2013 itself, hence, after eight years, nothing would survive in these writ petitions to agitate the issue, as per the prayer as sought for in these writ petitions, this Court is inclined to issue the following order:

"that the writ petitions since have become infructuous, as the licence period was over on 30.11.2013, it is liable to be dismissed, therefore, both the writ petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

It is open to the petitioners to make a fresh representation to the second respondent seeking returning back the security deposit made by them, in the year 2012, which is lying with the respondent-TASMAC, and on receipt of any such representation to be submitted by the petitioners, the same shall be considered by the respondent-TASMAC and a decision shall be made thereon, on merits and in accordance with law, within a period of four weeks thereafter."

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Senior Regional Manager,
Tamilnadu State Marketing Corporation Limited (TASMAC)
Plot No.100, Anna Nagar, Madurai - 20.



W.P.(MD)Nos.8605 of 2013 & 8548 of 2013

2.The District Manager,
Tamilnadu State Marketing Corporation Limited (TASMAC)
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RD/PM(12.11.2021) 5P 3C