



W.P.Nos.21391 of 2022 & etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2022

Pronounced on: 30.09.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.21391, 21970, 22601, 22606, 22609, 22611, 22614, 21701, 21706, 21712, 21714, 21716, 21718, 21721, 21722, 21724, 21707, 21713, 21715, 21717, 21720, 21727, 21731, 21735, 21737, 21867, 21649, 21447, 21450, 21453, 21455, 21456, 21624, 21625, 21395, 21398, 21392, 21401, 21686, 21691, 21696, 21699, 21702, 21705, 21711, 23342, 23347, 23348, 23379, 23394, 23401, 23405, 23410, 23386, 23390, 23391, 23393, 23395, 23398, 23447, 23452, 23456, 23489, 23550, 23551, 23552, 23553, 23554, 23555, 23556, 23557, 23558, 23559, 23560, 23561, 23562, 23563, 23573, 23574, 23576, 23577, 23625, 23626, 22729, 23214, 23218, 23223, 23228, 23232, 23235, 23238, 23293, 23303, 23191, 23194, 23198, 23201, 23205, 23208, 23212, 23197, 23203, 23202, 23206, 23211, 23215, 23217, 23219, 23224, 22915, 22917, 22921, 22924, 22927, 22946, 22948, 22949, 22951, 22952, 22953, 22954, 22955, 22956, 22957, 23186, 23189, 23192, 23193, 23195, 23196, 23199, 23010, 23012, 23014, 23016, 23019, 23029, 23033, 23037, 23039, 23043, 22958, 22959, 22960, 22961, 22962, 22963, 22964, 22965, 22966, 22968, 22969, 22972, 22988, 22991, 22993, 22996, 22998, 23000, 23002 & 23004 of 2022 and

WMP.Nos.21009, 21010, 21011, 21655, 21661, 21665, 21667, 21670, 20697, 20698, 20704, 20705, 20708, 20710, 20713, 20714, 20717, 20718, 20721, 20722, 20729, 20730, 20731, 20732, 20733, 20734, 20703, 20706, 20711, 20712, 20715, 20716, 20719, 20720, 20725, 20726, 20737, 20738, 20740, 20741, 20742, 20743, 20744, 20745, 20887, 20889, 20666, 20667, 20444, 20445, 20450, 20451, 20453, 20454, 20455, 20456, 20458, 20459, 20643, 20644, 20645, 20646, 20390, 20392, 20396, 20397, 20401, 20402, 20393, 20394, 20404, 20405, 20683, 20684, 20685, 20688, 20692, 20693, 20694, 20695, 20699, 20700, 20701, 20702, 20707, 20709, 22275, 22276, 22281, 22283, 22282, 22284, 22330, 22333, 22335, 22352, 22354, 22355,



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22360, 22361, 22362, 22363, 22364, 22365, 22366, 22367, 22368, 22339, 22341, 22345, 22347, 22346, 22348, 22349, 22351, 22350, 22353, 22357, 22358, 22414, 22415, 22416, 22417, 22420, 22421, 22438, 22440, 22442, 22504, 22507, 22502, 22505, 22503, 22509, 22506, 22508, 22510, 22511, 22517, 22518, 22512, 22513, 22515, 22519, 22514, 22516, 22521, 22524, 22520, 22522, 22528, 22529, 22523, 22525, 22526, 22527, 22538, 22540, 22534, 22537, 22536, 22539, 22541, 22542, 22590, 22592, 22591, 22593, 21749, 21751, 21752, 22183, 22186, 22189, 22192, 22196, 22199, 22200, 22246, 22247, 22248, 22255, 22256, 22257, 22162, 22164, 22170, 22172, 22176, 22178, 22179, 22167, 22169, 22174, 22175, 22173, 22177, 22180, 22182, 22185, 22187, 22190, 21938, 21940, 21942, 21943, 21945, 21952, 21953, 21954, 21955, 21956, 21959, 21958, 21957, 21961, 21960, 22155, 22159, 22161, 22163, 22165, 22166, 22171, 22035, 22036, 22038, 22039, 22040, 22046, 22049, 22053, 22055, 22058, 21964, 21963, 21965, 21966, 21967, 21968, 21969, 21972, 21971, 21974, 21973, 21977, 22000, 22003, 22005, 22007, 22011, 22014, 22020, 22024, 22598, 22600 & 22601 of 2022

WP.No.21391 of 2022

P.Sangeetharaj

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
ThalamuthuNatarajar Maligai,
Egmore, Chennai-600 008.

2.The District Manager/Sub-Collector,
TASMAC Limited,
Thiruvallur (East) District,
No.1, Bangalore High Road,
Chembarambakkam,
Chennai-600 123.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records



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relating to the Tender Notification of the 2nd Respondent in Na.Ka.No.A3/1382/2022 dated 02.08.2022 and quash the same insofar as Clause 8 of the Tender Condition which provides for grant of license to the highest bidder without insisting for No Objection Certificate/Consent from the owner of the Premises and forbear the Respondents from conducting the tender without issuing tender forms to all the intending bidders in physical forms with the entry pass and the tender submission envelope.

AND

WP.No.21649 of 2022

S.Jaganathan

... Petitioner

Vs

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

2.The District Manager,
TASMAC Limited,
Thiruvallur (East) District,
No.1, Bangalore High Road,
Chembarambakkam,
Chennai-600 123.

... Respondents

Prayer in WP.No.21649 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the circular dated 22.07.2014 issued by the 1st Respondent herein in A3/19/2014 Rc No.P1/6411/2011 dated 22.07.2014 and Tender Notification of the 2nd Respondent in Na.Ka.No.A3/1382/2022 dated 02.08.2022 and quash the same insofar as Clause 8 of the Tender Condition



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which provides for grant of license to the highest bidder without insisting for No Objection Certificate/Consent from the owner of the Premises and forbear the Respondents from conducting the tender without issuing tender forms to all the intending bidders in physical forms with the entry pass and the tender submission envelope.

WP.Nos.	For Petitioners	For Respondents
WP.Nos.21391, 21398, 21401, 21392, 21395, 21447, 21455, 21456, 21450, 21453, 21649 & 22729 of 2022	Mr.AR.L.Sundaresan, Senior Counsel for Ms.AL.Gandhimathi	Mr.R.Shunmugasundaram, Advocate General assisted by Mr.K.Sathish Kumar and Mr.P.ArumugaRajan, Standing Counsels for TASMAC
WP.Nos.21624, 21625 & 23489 of 2022	Mr.R.Singaravelan, Senior Counsel for Ms.V.Ambika	Mr.Silambannan, Additional Advocate General assisted by Mrs.C.Sangamithirai, Special Government Pleader for the Government
WP.Nos.21686, 21702, 21711, 21705, 21691, 21696, 21699, 21701, 21724, 21718, 21716, 21714, 21721, 21722, 21706, 21712, 21707, 21717, 21713, 21735, 21727, 21715, 21737, 21720, 21731, 23293, 23303, 23379, 23405, 23394, 23401 & 23410 of 2022	Mr.M.Manimaran	
WP.Nos.21867, 23386, 23390, 23391, 23398, 23395, 23393, 23550, 23551, 23556, 23557, 23555, 23558, 23559, 23552, 23553, 23561, 23554, 23560, 23562, 23563, 23573, 23574, 23576, 23577, 23625 & 23626 of	Mr.D.BabuVaradharajan for Mr.A.Rajaguru	



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2022		
WP.No.21970 of 2022	Mr.K.Venkatesan	
WP.Nos.22601, 22611, 22614, 22606, 22609, 22915, 22957, 22953, 22948, 22949, 22951, 22954, 22956, 22955, 22952, 22924, 22927, 22946, 22917, 22921, 22958, 22962, 22960, 22961, 22968, 22969, 22965, 22998, 22963, 22964, 23000, 23002, 23004, 22972, 22988, 22991, 22993, 22996, 22959, 23010, 23039, 23016, 23014, 23043, 23012, 23019, 23033, 23037, 23186, 23192, 23196, 23195, 23189, 23193, 23191, 23201, 23205, 23198, 23212, 23208, 23194, 23202, 23206, 23211, 23215, 23217, 23219, 23224, 23214, 23238, 23228, 23232, 23218, 23223, 23235, 23029, 23199 & 22966 of 2022	Mr.K.M.Vijayan, Senior Counsel for M/s.K.M.Vijayan Associates	
WP.Nos.23197 & 23203 of 2022	Mr.S.Doraisamy	
WP.Nos.23342, 23347 & 23348 of 2022	Mrs.Chitra Sampath, Senior Counsel for Mr.T.S.Baskaran	
WP.Nos.23447, 23452 & 23456 of 2022	Mr.M.S.Krishnan, Senior Counsel For Mr.Adith Narayan Vijayaraghavan	



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WMP.No.22598 2022	of	Mr.Anirudh Krishnan, for the petitioner in Implead Petition	
WMP.No.22600 2022	of	Mr.P.S.Raman, Senior Counsel for Mr.Anirudh Krishnan, for the petitioner in Implead Petition	
WMP.No.22601 2022	of	Mr.AL.Somayaji, Senior Counsel for Mr.Prem Kumar, for the petitioner in Implead Petition	

COMMON ORDER

The State holds a supervening control over the distribution of liquor in Tamil Nadu. Tamil Nadu State Marketing Corporation Limited (TASMAC) is an arm of the State that has the exclusive privilege (if one may call it so) to engage in the distribution of liquor, for which purpose it sets up retail vending outlets.

2. As on date, there are 5358 TASMAC outlets in the State of Tamil Nadu. This position obtains, despite the Tamil Nadu Prohibition Act, of 1937 vintage, that has, as its object the following:

‘Whether it is expedient as early as possible to bring about prohibition, except for medicinal, scientific, industrial or such like purposes of the production, manufacture, export, import, transport, purchase, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu.’



3. Prohibition, as on date, is not a reality, seeing as TASMACH is one of the most lucrative sources of revenue to the State and one must rest content with regulation. The State has, vide Government Orders, brought in Rules and Regulations to govern the activity of retail vending and running of bars (including the collection of empty bottles and sale of eatables), one such being the Tamil Nadu Retail Vending (Shops and Bars) Rules, 2003 (in short '2003 Rules').

4. Rule 2(d) of the 2003 Rules, defines a 'bar' to mean a place located within or adjoining the shop, used for consumption of liquor therein. The general practice followed now is for TASMACH to run the vending units and the attached bars, in premises rented for that purpose, and float tenders for the collection of empty bottles and selling of snacks in the bars (hereinafter referred to as 'activity in question').

5. The activity of vending as well as running of the bars remains the exclusive domain of TASMACH, though the activity of collection of bottles and sale of snacks by itself, contains some degree of overlap with the management of the bar.

6. Bearing in mind the defined location of the bar within or adjoining the shop, it becomes necessary for permission of the property owner to be obtained



for the setting up of the bar as well as for the persons carrying out the activity in question, to gain entry to the premises.

7. To be noted, that while the landlord may grant consent to TASMACH setting up a retail vending unit, he may have every objection to letting his premises out for running of a bar. Also to be noted that the setting up of the retail vending store and the bar may not be simultaneous and many a time, the setting up of the bar is at a later point in time.

8. For many years, the practice followed across the State was disparate. While in some places, the tender notification included a condition to the effect that the bidder must obtain the owner's permission, in some districts, this practice was not followed. It was only upon the intervention of this Court that the practice of obtaining consent of the property owner was made mandatory, though there are difficulties that arise in the procedure adopted by TASMACH in this regard.

9. The present procedure requires the tender applicant to only indicate in the application whether consent has been obtained, and the governing Circular, dated 22.07.2014 makes it categorically clear that no proof of such consent need be furnished at the time of submission of the application.



10. It is only after the opening of the tender that the highest bidder, H1, is required, within 7 days, to obtain the rental agreement duly executed by the lessor permitting H1 to engage in the activity in question, failing which H2, the second highest, is required to not just obtain the rental agreement, but also match the offer of H1.

11. In the present batch of cases, one set of writ petitions, numbering 74, challenge tender notifications dated 22.08.2022 on various grounds, but primarily for want of no-objection at the time of submission of tender application.

12. The matters had come for admission on various dates and this Court had directed that the while the process of tender shall proceed as scheduled, that shall be subject to a decision being taken in these Writ Petitions, there shall be no award of tender. The Court had, even at the initial hearings, expressed the prima facie view that consent of the owner must *precede* the floating of the tender and not *follow* the tender notification.

13. The grant of consent by the owner is critical to the running of the bar and connected activities, and it does not stand to reason that such a vital requirement could be deferred to a later point in time, after the process of tender had already transpired and attendant cost been incurred.



14. The submissions of Mr.K.M.Vijayan, Mr.R.Singaravelan, Mr.AR.L.Sundaresan, Ms.Chitra Sampath learned senior counsel and other learned counsel, converge in common, in acceptance of the point noted in the preceding paragraph though their individual arguments and suggestions on the modus operandi to be followed by the State, in regard to how the procedure could be streamlined, differ.

15. Their submissions, revolve around the arbitrariness of the procedure presently in force and in this regard, they draw attention to certain decisions of this Court on the issue of obtaining of consent from the property owner and the conclusions arrived at in those decisions.

16. Since there is some overlap in the citations, they are consolidated and listed below:

1.*S.Ganesan v. Assistant Commissioner Excise, Collectorate, Chennai & another* [2000 (1) CTC 193]

2.*The Deputy Collector/District Manager, Tamil Nadu State Marketing Corporation, Tiruchirapalli v. R.Ramkumar* (2010 SCC OnLine Mad 6234)

3.*S.Ramanathan v. The Managing Director, Tamil Nadu State Marketing Corporation Ltd., (TASMAC), Gandhi Irwin Road, Egmore, Chennai-8 & Others* (2014 SCC OnLine Mad 9439)

4.*P.Poomalai v. The Sub Collector/District Manager, TASMAC Ltd., Kancheepuram North District, Thirumazisai-III, Chembarambakkam, Chennai-600 123 & Another* (2016 SCC OnLine Mad 19215)



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5.*L.Velu v. The Managing Director, Tamil Nadu State Marketing Corporation Ltd., Thalamuthu Natarajar Maligai, Egmore, Chennai-600 008 & another* [WP.No.28101 of 2021 dated 29.12.2021]

6.*G.Sethupathy v. The Senior Regional Manager, Tamilnadu State Marketing Corporation Ltd., Madurai and Another* [WP(MD)No.8591 of 2009 dated 08.10.2009]

7.*M.Prasana v. The District Manager, (TASMAC), Tamil Nadu State Marketing Corporation Ltd. Sivagangai District and Another* [WP(MD)No.5844 of 2010 dated 05.07.2010]

8.*K.T.Plantation Private Limited and Another v. State of Karnataka* [(2011) 9 SCC 1]

9.*R.K.Ashok Kumar v. The District Manager, TASMAC Ltd., No.29 & 30 SIDCO Industrial Estate, Kakkalur, Thiruvallur District and Others* (WP.No.17889 of 2011 dated 23.09.2011)

10.*State of Haryana v. Mukesh Kumar and Others* [(2011) 10 SCC 404]

11.*Vidya Devi v. State of Himachal Pradesh and Others* [(2020) 2 SCC 569]

12.*S.Jagannathan v. The Managing Director, Tamil Nadu State Marketing Corporation Limited, Thalamuthu Natarajar Maligai, Egmore, Chennai-600 008 & another* (WP.Nos.27352 of 2021 & batch dated 31.01.2022)

13.*Sukh Dutt Ratra and Another v. State of Himachal Pradesh and Others* [(2022) 7 SCC 508]

17. Mr.Sundaresan draws attention to the provisions of the Tender Tamil Nadu Transparency in Tenders Act, 1998 (in short ‘Tender Act’) and the Tamil Nadu Transparency in Tenders Rules, 2000 (in short ‘Tender Rules’) to state that the procedure envisaged therein is to facilitate a transparent process of tender. The postponement of the condition relating to furnishing of the no



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objection certificate is contrary to Section 10(1) and (2) of the Act and Rules 15 and 22 of the Rules.

18. On the part of the respondents, a spirited defence is put up to the challenge to the Circular. The thrust of the submissions of Mr.R.Shunmugasundaram learned Advocate General who appears for the State is that the challenge to the very same Circular has been repelled earlier and thus cannot be entertained now. He has filed a compilation of cases comprising some cited by the petitioners, along with the following in addition, to buttress his submissions.

1.*V.Ramesh and Others v. The Managing Director, Tamil Nadu State Marketing Corporation Limited, Thalamuthu Natarajar Maligai, Egmore, Chennai-600 008 & another* (WP.Nos.21145 of 2022 & batch dated 12.08.2022)

2.*Mr.N.Sathiaah V. The Senior Regional Manager, Tamil Nadu State Marketing Corporation Limited, Coimbatore and another* (W.P.No.26762 of 2021 dated 23.12.2021)

3.*Madurai Mavatta Bar Oppandathathararkal Nala Sangam, represented by its President Mr.K.Murugan V. The Managing Director, Tamil Nadu State Marketing Corporation (TASMAC) CMDA Complex, Egmore, Chennai – 08 and others* (W.P.(MD) No.20965 of 2019 dated 30.09.2019)

4. *G.Sakthivel v. The Managing Director, Tamil Nadu State Marketing Corporation, (TASMAC), CMDA Complex, Egmore, Chennai-600 008 & Others* [WP(MD)No.1515 to 1518 of 2018 and batch dated 28.03.2018]



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5.P.Pounraj V. The Managing Director, Tamil Nadu State Marketing Corporation, (TASMAC), CMDA Complex, Egmore, Chennai-600 008 & others (W.P.(MD) No.1839 of 2018 and batch dated 19.11.2018)

6.P.Poomalai V. The Sub-Collector/District Manager, TASMAC Ltd. and others (W.P.No.11581 of 2016 dated 26.07.2016)

19. Secondly, the petitioners cannot be permitted to challenge the Circular at this distance of time, seeing as they have participated in several tenders themselves from 2014 till date. Having been the beneficiary of the conditions set out under the impugned Circular, they cannot, as and when it suits them, raise a challenge. Then again, public tenders must not be interfered with as a matter of rote and the Court must be extremely cautious in deciding a challenge to the same.

20. In support of the above propositions, the following judgments are referred by Mr.AL.Somayaji, Mr.P.S.Raman, Mr.M.S.Krishnan, Senior Counsel and Anirudh Krishnan learned counsel for the interveners who are the highest bidders in the tender. The miscellaneous applications filed seeking impleadment as interveners are ordered and the cause titles of the respective writ petitions directed to be amended.

1.*Pioneer Urban Land and Infrastructure Limited and Another v. Union of India and Others* [(2019) 8 SCC 416]

2.*N.P.Mathai v. Federal Bank Limited* (1992 SCC OnLine Ker 512)

3.*Silppi Constructions Contractors v. Union of India and Another* [(2020) 16 SCC 489]



4. *Michigan Rubber (India) Limited v. State of Karnataka and Others* [(2012) 8 SCC 216]

5. *Meerut Development Authority v. Association of Management Studies and Another* [(2009) 6 SCC 171]

6. *Tafcon Projects (I) (P) Ltd. v. Union of India and Others* [(2004) 13 SCC 788]

7. *Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) Represented by its Chairman and Managing Director and Another v. CSEPD – TRISHE Consortium Represented by its Managing Director and Another* [(2017) 4 SCC 318]

8. *State of M.P. and others v. Nandlal Jaiswal and Others* [(1986) 4 SCC 566]

9. *Tata Cellular v. Union of India* [(1994) 6 SCC 651]

10. *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited and Another* [(2016) 16 SCC 818]

11. *N.G.Projects Limited v. Vinod Kumar Jain and Others* [(2022) 6 SCC 127]

12. *CSEPD – TRISHE Consortium v. Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) and Ors.* (W.A.Nos.712 and 713 of 2015 dated 07.09.2015)

13. *M.Prasana v. The District Manager, (TASMAC), Tamil Nadu State Marketing Corporation Ltd. and Another* [WP(MD)No.5844 of 2010 dated 05.07.2010]

14. *M.Thirunavukkarasu and Ors. V. The District Manager, Tamil Nadu State Marketing Corporation Limited, Pudukkottai, Pudukkottai District* [WP(MD)No.10381 of 2011 dated 09.11.2011]

15. *Reliance Energy Ltd. and Another v. Maharashtra State Road Development Corpn. Ltd. and Others* [(2007) 8 SCC 1]

16. *Kuthannur Service Co-Operative Bank Limited, Represented by its Secretary v. Income Tax Officer* (2020 SCC OnLine Ker 39)



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21. The challenge to the Circular is addressed first, as a decision in regard to that will have a direct bearing on the challenge to the tender notification. The Circular is under challenge in the following Writ Petitions (W.P.Nos.23562, 23563, 23573, 23574, 23576, 23577, 23550, 23551, 23552, 23553, 23554, 23555, 23556, 23557, 23558, 23559, 23560, 23561, 23625, 23626, 23342, 23347, 23348, 23386, 23390, 23391, 23393, 23395, 23398, 21649 of 2022) and is extracted in entirety below:

**TAMIL NADU STATE MARKETING CORPORATION
LIMITED
CMDA TOWER-II, IV FLOOR GANDHI IRWIN BRIDGE
ROAD
EGMORE CHENNAI-600 008**

Circular No.A3/19/2014

Date : 22nd July, 2014

CIRCULAR

Sub: TASMAL Ltd – Bar tender – Inclusion of certain clauses in the tender Documents and instruction to be followed while evaluating the bar tender and Awarding the contract – reg.

Ref: This Office letter No.Rc. No.P1/6411/2011 dated 18.06.2014

In continuation of the Office letter referred above, the following instructions are issued in connection with bar tender:-

- 1.The tender applicants need not enclose the No Objection Certificate, obtained from the bar premises owner, along with the bar tender documents.*
- 2.The Tender Inviting Authority should evaluate the tender only based on price bids received from the bidders subject to compliance of other terms and conditions of the tender.*



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3. After evaluation of the price bids and selection of the highest bidder (H1), the Tender Inviting Authority should intimate, within 24 hours, the successful bidder (H1) about the selection subject to submission of the following within seven days by the successful bidder.-

- (a) the rental agreement between the bar premises owner and the successful bidder,
- (b) single demand draft for the scrutiny deposits; and
- (c) single demand draft for the current month bar amount.

4. The rental agreement between the bar premises owner and the successful bidder must contain, inter – alia, the following clause-

“The lessor unconditionally permits the lessee to undertake the premises of running the bar including collecting empty bottles and selling of eatables during the period of lease agreement.”

(5) If the successful bidder (H1) fails to furnish the rental agreement entered into with the bar premises owner within seven days, the Tender Inviting Authority may request the next highest bidder (H2) to match the offer/bid price of the highest bidder (H1) and only upon acceptance of the same award the contract to H2 bidder provided that H2 bidder furnish the rental agreement that he has entered into with the bar premises owner.

6. If bidder fails to furnish the rental agreement to the Tender Inviting Authority, then the bidders will perpetually be banned/blacklisted to participate in subsequent tenders of TASMAL in addition to forfeiture of the Earnest Money Deposits of the bidders.

7. According to rule 2 (d) of the Tamil Nadu Liquor Retail Vending (In shops and bar) Rules, 2003, ‘bar’ means a place located within the shop or adjoining the shop used for consumption therein or liquor’. Thus, it is hereby clarified the word ‘adjoining’ means premises located immediate left side/right side/back side of the shop or immediate top floor,



or immediate bottom floor to the shop and in all cases where bar premises walls should physically touch any wall of the retail vending shop.

8. The Tender Inviting Authority should not accept single offer and shall invariably re-tender whatever single/no offer is received for any shop.

9. The Tender Inviting Authority should invariably incorporate the following clause in the bar tender document-

'Bidder must enclose a copy of the first page of bank passbook of the bidder containing plots and present address of the bidder. This copy should be attested by either the concerned bank branch manager or notary public.

10. In so far tenders which are already published or under the process of awarding the contract, the Tender Inviting Authority must obtain a copy of first page of bank passbook of the bidder containing the photo and present address of the bidder attested by either the concerned bank branch manager or notary public. The Tender Inviting Authority must cross check the details of the bank document with the address proof ID proof submitted by the bidders along with the documents.

(Sd/-) T. Soundish
Managing Director

22. Though the prayer addresses the Circular in full, only clauses (1) to (6) are under specific attack. Clause (1) of the impugned Circular is curiously worded, in the negative, and states that *'the tender applications need not enclose the No Objection Certificate, obtained from the bar premises owner, along with the bar tender.*

23. To decide on the appropriateness and legality of the condition, one must take heed of the provisions of the Tender Act. The objective of the Act is



to provide transparency in public procurement and to regulate the procedure in inviting and accepting tenders. To this end, the preamble to the Act includes the laudable object of *'eliminating irregularities, interference and corrupt practices in the matters relating to tender processes by providing transparency in such matters.'*

24. Incidentally, I may state that, from 2014 till date, and learned counsels would bear me out in this, almost every Notification for a TASMAT tender sees a flood of litigation in regard to the tender process, evaluation standards and the award. This certainly means that something is amiss in the process, calling for correction.

25. Section 10 of the Act provides for the evaluation and acceptance of the tender and reads thus:

10. Evaluation and acceptance of tender (1) The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the procedure and criteria specified in the tender document.

(2) After evaluation and comparison of tenders as specified in sub-section (1), the Tender Accepting Authority shall accept the lowest tender ascertained on the basis of objective and quantifiable factors specified in the tender document and giving relative weights among them.



26. There is thus a statutory mandate for the tender document to contain all conditions and criteria, a comprehensive fashion. Moreover, Rule 15 of the Tender Rules states that the tender documents shall clearly indicate the criteria including the financial bid to be adopted for evaluation of tenders and how such criteria are to be quantified or evaluated. The procedure to be followed is as per Rule 22, which states that the tenders, once opened, shall be decided then and there, based upon their compliance with the tender conditions. Rule 22 does not contemplate deferment of a condition to a later date, and post the opening of the tenders.

27. In the present case, once determined to be H1, there is one more stage that H1 has to satisfy in order to qualify for the award and that is the furnishing of the rental agreement containing the consent clause. This procedure is clearly and entirely alien to the process envisaged under Section 10(2) and Rules 15 and 22, that mandate that upon opening of the bid documents and determining the highest bid, the tender is to be awarded without demur and without contemplating any further condition.

28. The procedure set out under clause (1) of the impugned Circular is thus clearly arbitrary and directly contrary to the letter and spirit of the Tender Act and Rules. All conditions are envisaged at the inception and if found



wanting at the stage of opening of bids, render the bid as non-responsive.

There is no question of deferring the compliance of one condition to a later date and keeping the tender in animated suspension for another seven days as contemplated under the impugned Circular.

29. I thus accept the submission of the petitioners to the effect that the imposition of any condition post the opening of bids, such as procurement of agreement with clause for consent, as in the present case, would vitiate the tender process itself. The tender must stand or fall dependent upon the conditions that accompany the tender notification and the application forms. There can be no imposition or compliance sought of any condition, post opening of tender/bids and such a procedure does not flow from a plain reading of the Tender Act and Rules.

30. There is yet another procedural objection raised, to the effect that the procedure set out under Rules 21 and 22 of the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 have not been satisfied. This relates to the number of representatives that each tenderer is entitled to have in attendance at the time of the tender issuing process and the obtaining of signatures of all the tenderers at that time. According to the petitioners, these procedures have not been followed.



31. Mr.Vijayan has also strongly urged that the entire process is irregular in so far as the application forms are issued selectively, there is no proper procedure in accepting the filled-in forms and the opening, selection and categorisation of the bids is improper. He, along with Mr.Krishnan and the other petitioner counsel also submit that despite the interim order of this Court injuncting the process of tender, the respondents have not only continued with the process, but have also proceeded to award the tenders.

32. This is denied by the respondents who confirm that there has been no award of tender though H1 has been determined based upon their understanding that it was only the implementation of the tender that was stayed. In light of my conclusions and the resultant quashing of the impugned tender notifications, this issue becomes academic.

33. I discuss below instances when this Court had had occasion to deal with the impugned Circular. A learned single Judge of this Court in the case of *G.Sethupathy* (supra) had dealt with a challenge to the award of a bar licence. At paragraph 10 and 11, he deals with the methodology that was in vogue then, as follows:

10.Before going into the merits of the case, I would like to place on record the manner of granting licence as admitted by the learned counsel appearing for both parties. Whenever, auction is conducted for granting licence to any person to sell the eatable and



to collect the empty bottles, the person, has to obtain the consent letter from the owner of the premises. It is also admitted that the bar, where the eatables can be sold must locate either in the same place where the TASMAC shop is located or in the adjacent building.

11.It is further admitted that the building in which, the TASMAC shop located is either taken on lease by TASMAC or owned by the TASMAC. It is further admitted that the buildings where the TASMAC shop is located is normally either selected by the TASMAC authorities for the first time and subsequently, the successful tenderer will have to obtain the consent from the owner of the building for selling the eatable and to have the bar and if the building, in which the TASMAC shop is located is not sufficient to have the bar attached to it, the successful tenderder has to find out a place nearer to the shop preferably adjacent to the shop and produce the 'No Objection' letter from that owner. In short, the bar and the TASMAC shop should be an integral part and the successful bidder has necessarily to obtain the consent letter from the owner of the building, where the TASMAC shop is located.

34. The learned Judge sets out at paragraphs 12 and 13, his suggestions as to how the procedure must be carried out, to be fair and equitable.

12.According to me, the practise of directing the tenderer to get 'No Objection' letter from the owner of the shop will invariably enable the owner of the building to fix the rent for the building at his whims and fancies and the successful tenderer is at the mercy of the owner of the building and he has no other option, except to accept the rent fixed by the landlord, failing which he will loose the tender.

13.If the successful bidder is able to find out a place, which can accommodate both the shop and bar, then the new place has to be approved by the District Collector and the authorities of the



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TASMAC. Bearing this in mind, we will have to appreciate and analysis the facts of the case.

35. Justice V. Bharathidasan had had occasion to consider the Circular in two Writ Petitions, W.P.(MD) No.1519 of 2018 and W.P.(MD) Nos.1515 to 1518 of 2018 and batch. Both orders were pronounced on 28.03.2018. In the latter batch of writ petitions, the Court was concerned with a challenge to a tender Notification issued by the TASMAC specifically concerning condition 6(v) relating to NOC and payment of GST. We are not concerned with the aspect of GST.

36. At paragraph 5, the submissions of the petitioner have been recorded as follows:

5.The learned counsel appearing for the petitioner submitted that production of No Objection Certificate from the bar premises owner, after awarding tender is arbitrary. The above condition was a subject matter earlier in WA(MD)Nos.1492 and 1493 of 2011 and this Court has held that if the owner of the premises has an objection in selling eatables in the bar, after selection of successful bidder by the TASMAC, certainly, would have an impact on the lease given to TASMAC to run the shop attached to the bar. It is further submitted that the tenderers need not enclose the No Objection Certificate, obtained from the bar premises owner along with the bar tender documents, which is totally in violation of the orders passed by this Court. It is further contended that obtaining No Objection Certificate from the bar premises owner as a pre-requisite document with tender documents will make the bidder fully prepared to run the business immediately on declaring him as a successful bidder, and it is necessary that all the intending



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tenderers have to submit No Objection Certificate from the landlord along with tender documents.

37. At paragraph 16, learned Judge makes a categoric observation that since the tender notification impugned in that writ petition only related to a tender for collection of empty bottles and selling snacks and as the licensee was TASMAC, it was the duty of TASMAC to enter into lease agreement with the owner of the bar premises. At paragraph 18, he refers to the Circular issued on 22.07.2014, impugned before me, reiterating that it is TASMAC that should obtain an NOC from the owner and that there cannot be any insistence upon the tenderer to obtain such licence.

38. At paragraph 20, he crystallises the very issue that has weighed in the mind of this Court, in the following terms:

'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.'

39. At paragraph 22, he sets aside the condition imposed by the 4th respondent insisting that the tenderers obtain NOC from the owner. Thus, the submission of the State to the effect that the Circular has been challenged and has been upheld by this Court is found to be contrary to the decision in W.P.(MD) Nos.1515 to 1518 of 2018 batch, wherein this Court vide order



dated 28.03.2018 has struck down the conditions imposed upon bidders to obtain NOC.

40. The above decision assists the case of the petitioners in full and I concur with the opinion of the learned judge. All tenders between 28.03.2018 till date, requiring the applicant to obtain NOC are thus directly contrary to the decision of this Court and the State is seen to be in contempt of order dated 28.03.2018.

41. As far as the second order of Justice Bharathidasan is concerned, it has been rendered in W.P.(MD) No.1519 of 2018 where the prayer is as follows:

Petition filed under Article 226 Constitution of India to issue a writ of Certiorarified mandamus, to call for the records of the impugned circular issued by the first respondent herein in his proceedings in Circular No.A3/19/2014 RC.No.P1/6411/2011 dated 22.07.2014 and quash the same as illegal and against Judgment dated 14.03.2012 in WA(MD).Nos.1492 and 1493 of 2011 on the file of Madurai Bench of Madras High Court and further direct the respondents herein to insist upon No Objection Certificate from the landlord of the bar building as a prerequisite condition at the time of submitting tender papers.

42. This Writ Petition came to be dismissed relying on several judgments of the Hon'ble Supreme Court in *Tata Cellular V. Union of India* (1994) 6 SCC 651, *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corpn. Ltd,*



(2016) 16 SCC 818 and *Jagdish Mandal V. State of Orissa*, (2007) 14 SCC

517 holding that the condition imposed by the respondents not to be arbitrary.

43. At paragraph 16 and 18, he states as follows:

16. With the exclusive privilege of vending IMFS either in shops or bars, the TASMAC should locate shops as per Rule 8 of the Rules. The TASMAC, being the licensee, it is the duty of the TASMAC to enter into a lease agreement with the owner of the shop as well as the owner of the bar premises. In the event, the TASMAC decides to grant the privilege to run the bar to any third parties as per Rule 9A of the Rules, they can grant the privilege by calling tenders. Then the highest bidder should locate the bar in the shop or adjacent to the shop, then he had to enter into a lease agreement with the bar premises owner for running bar in the above premises. The impugned circular also clearly stated about the submission of rental agreement between the bar premises owner and the successful bidder, and it is also stated that the above rental agreement should contain a clause that, the lessor unconditionally permits the lessee to undertake the business of running the bar including collecting empty bottles and selling eatables during the period of lease agreement.

17. Impugned circular extracted here, and is not repeated in the interest of brevity

18. In view of the above said Clauses, as per the agreement entered between the highest bidder and the bar premises owner, the lessor not only permits higher bidder to run the bar and he also permits the third parties to collect empty bottles and selling eatables, and no separate No Objection Certificate is required to be obtained from the bar premises owner for collecting empty bottles and selling eatables. As per Clause 3 of the Circular, the highest bidder, after evaluation of the price bids and selection of the highest bidder, the Tender Inviting Authority should intimate the highest bidder about his selection within 24 hours and the selection is subject to submission of the rental agreement between the owner of the bar premises and successful bidder. Then only, the privilege of running bar can be



granted to successful bidder. In the above circumstances, when the respondent TASMAL directing the highest bidder to submit a rental agreement, which should contain a specific clause for permitting the lessee for collection of empty bottles and selling eatables, there is no purpose for insisting No Objection Certificate along with tender documents. Apart from that as rightly contended by the learned Additional Advocate General, if getting No Objection Certificate is put as a pre-condition, then the bar premises owner will be the deciding authority and the person to whom No Objection Certificate has been given by the bar premises owner alone will be entitled to submit his tender forms, thereby the competition will be narrowed down to a person to whom the No Objection Certificate was issued by the landlord. Now, by virtue of insisting for production of No Objection Certificate after declaration of the highest bidder, the competition is wide open and enables many number of persons to participate in the tender.

44. Thus, a distinction has been made by learned Judge between running of a shop and bar on the one hand and the activity of collection of bottles and vending snacks on the other. The modus operandi in the State of Tamil Nadu as on date is that it is the exclusive privilege of TASMAL to run a shop and a bar. The bars are part of or adjacent to the shops itself and are managed by TASMAL.

45. There is an employee of a TASMAL who oversees the running of the bar. Thus and to state categorically, both activities of running a shop and running a bar fall exclusively within the domain of TASMAL. The proper course of action is thus, for the respondents to obtain even at the time of grant



of privilege to the owner, his consent/no objection to the running of the bar should such occasion arise in future.

46. This would obviate the necessity for each of the tender participants to obtain a no objection for the very same purpose. All that would be left is the concurrence of the property owner to enter into a lease with highest bidder in the auction for collection of empty bottles and vending of snacks.

47. In the case of *S.Ganesan* (supra), the challenge was to Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (in short '1989 Rules') which required that the sale of the privilege of vending Indian made Foreign Liquor should be confirmed only after production of necessary documents and certificates including the lease agreement executed with the landlord of the building, wherein the proposed shop was to be located.

48. The condition came to be upheld by the Bench holding at paragraphs 15 and 16, as follows:

“15. Rule 13(1) of the Rules requires the production of a xerox copy of the document showing that the auction purchaser himself is the owner of the building, or the production of a xerox copy of the lease agreement executed with the landlord of the building, wherein the proposed shop is to be located. Such copies are to be furnished within seven days of the receipt of the orders of confirmation of the sale of the privilege. The lease agreement, having regard to the purpose for which it is to be produced, and the context in which the requirement is mandated is clearly lease agreement which covers the period for which license is sought. In



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the case of the owner, of the building as long as he continues to be owner, there is no possible threat to his continued enjoyment of the premises, in normal circumstances. A person, who is not a owner can assert a right to remain in occupation of the premises belonging to another only when such a right is granted to him by the owner. The grant of such a right, which would enable the grantee to have undisturbed possession and enjoyment can only be under a lease. That is the reason why in the Rule, it is provided that a lease agreement executed with the landlord of the building shall be produced before the license can be received by the person, whose offer for the purchase of the privilege has 9 been accepted confirmed by the authority.

*16. A contractual tenant, who has a valid and subsisting lease in his favour, has a right to retain possession of the premises for the duration of the lease subject to the conditions of the lease. So long as he complies with the condition, he has a right to remain in occupation. The duration for which he is in occupation, in the context of the grant of the license for the retail vend of liquor, has necessarily to include the duration for which the license is sought. **Even before the grant of the license, the copy of the lease deed is, therefore, required, so as to assure the state that the licensee will be in a position to carry on uninterrupted trade in that premises for the period for which the license has been granted.***

(emphasis, in bold, supplied)

49. Thus, even as early as in 2000, the very question that arises in this batch of writ petitions, as to the appropriate stage at which an NOC should be obtained from the property owner, had engaged the attention of the Court and the Court had categorically upheld the conditions requiring the production of a lease agreement before the privilege was confirmed. The relevant rule, i.e., Rule 13 (1) reads as follows:



"13. Grant of licence-

(1) Within seven days of receipt of the orders of confirmation of the sale of the privilege in Form V, the auction purchaser shall make an application in Form VI to the licensing authority for the grant of the licence together with the application fee specified in sub-rule (3), a certificate in Form III from the Excise Officer or an officer not below the rank of a Deputy Tahsildar duly authorised by the Collector regarding suitability and also ownership or lease of the building for not less than a year of the shop from where he intends to sell liquor, and a xerox copy of the document showing that the auction purchaser himself is the owner of the building or a xerox copy of the lease agreement executed with the landlord of the building wherein the proposed shop is to be located'

50. W.P.(MD)Nos.13152 and 13153 of 2011 had been filed before the Madurai Bench of this Court by participants in the tender process urging that TASMAL must only consider applications duly supported by a no-objection certificate (NOC) from the respective land owners for bars attached to IMFL shops, in Pudukottai district.

51. The matters travelled in Writ Appeal and in the case of *The Deputy Collector/District Manager, Tamil Nadu State Marketing Corporation, Tiruchirapalli V. R. Ramkumar* (W.A.(MD)Nos.1492 and 1493 of 2011 dated 14.03.2012), this Court specifically noted the variance in the procedure followed by different districts in this regard. In conclusion, they accepted the



argument that an NOC must be obtained from the owner and thus the imposition of such condition by TASMAL was legal.

52. The Court pointed out that if, after the completion of the bidding process, the owner refused to lease out the premises, the entire exercise of auction would be rendered futile. The argument of TASMAL that every district was an independent unit and the Regional Manager concerned was free to impose such conditions as he thought proper, was rejected. At paragraph 12 of the decision, the Bench states as follows:

*'12. It may also be noted that TASMAL has been licensed by the Commissioner of Prohibition and Excise for retail vending of IMFL in shops and bars. The conditions imposed in Form 1 licence show that Indian Made Foreign Spirit and beer shall be sold in open bottles glasses for consumption only within the premises of the bar. There is no prohibition imposed on TASMAL in the matter of calling for tenders for the purposes of selling eatables in the bar run by TASMAL and for collecting empty liquor bottles. **If the owner of the premises has an objection in selling eatables in the bar after the tenderer is selected by the TASMAL, certainly, this would have an impact on the lease given to TASMAL to run the shop attached with the bar. Hence, out of sheer business necessity, the notification issued for collecting empty bottles and selling eatables in the bar has to go along with the lease conditions given to TASMAL and not de hors the licence granted. In the circumstances, the contention of the appellant that the order of the learned single Judge had gone beyond the terms of the notification is totally devoid of merits and self-destructive.**'*
(emphasis in bold, supplied)



53. In the case of *S.Ramanathan V. The Managing Director, TASMAC and 2 others* (W.P.Nos.19073 to 19080 of 2014 etc. dated 28.10.2014), a learned single Judge of this Court decided a batch of Writ Petitions challenging the tender for grant of licence for collection of empty bottles and selling eatables without an NOC being obtained.

54. Pending Writ Petitions, TASMAC informed the Court that a Circular had been issued on 22.07.2014, being Circular No.A3/19/2014 that stipulated that the highest bidder would be required to produce a rental agreement from the owner of the premises, containing a clause that the owner unconditionally permitted the licensee to undertake the business of running a bar including collection of empty bottles and selling eatables.

55. Recording the issuance of that Circular and noticing that the production of a NOC had been made mandatory, the Writ Petitions were allowed. To my mind, the interpretation of the decisions of the Division Bench, in avowed compliance of which the Circular has been issued, is, clearly, faulty, and moreover, contrary to the ratio of the decisions of the Division Bench.

56. Admittedly, the premises in which the bar is to be housed and the activity in question is to be carried out, is common to the tender notification. The owner's consent to be obtained is qua the activity of running a bar,



collecting empty bottles and selling eatables. This activity does not change from one tender applicant to another. Thus, consent, once given by the property owner will remain unchanged qua the activity.

57. It is the responsibility of the TASMAC to obtain an NOC from the owner for the running of a bar, collection of bottles and selling eatables. Prudence demands that such permission/consent be sought and obtained even at the time of entering into the lease for the shop, so to provide for such requirement, should it arise in the future.

58. In my view, the decisions in the case of *G.Sethupathy*, *S.Ganesan*, *Ramkumar* and *G.Sakthivel* (supra) have also taken note of this aspect of the matter specifically in stating that NOC must be obtained from the property owner *in advance*.

59. All that remains is for the applicants to then obtain no objection/consent of the owner to enter into the premises for the management of the bar, collection of bottles and sale of eatables. This would substantially mitigate, if not obviate, the confusion and the resultant uncertainty in the finalisation of the tenders.

60. The justification set out for this strange procedure is that prior consent would result in skewing of the lease amounts and distort the process.



However, despite repeated queries there is no clarity forthcoming in this regard.

Why and how the process will be adversely affected if prior consent was obtained and in what regard the post-facto consent is better, are questions that the State has been unable to throw any light upon.

61. In fact, the rampant litigation that results after every TASMAC tender notification bears testimony to this. No process of tender rife with such uncertainty and lack of clarity can be said to be in accordance with the Tender Act and Rules. The object of the Act is to facilitate the process of tender and any situation or process that militates against this object, must go.

62. The impugned tender Notification came to be issued on 02.08.2022 calling for tenders for collection of empty bottles and selling of eatables. The Notification provides a link from where the application forms could be downloaded and it is only in the form that, for the first time in the process, a column refers to 'consent' obtained from the owner. It is relevant to note that there is no consent that is to accompany the application.

63. Though the impugned Circular pretends to comply with the directions of this Court in the cases dealt with by the Division Bench in *S.Ganesan and R.Ramkumar* (supra), the specific direction at clause (1) that the applicant need



not furnish the consent from the owner and the procedure in clauses (2) to (6) of the Circular puts paid to such pretence.

64. There is a vital difference in the *timing* when the condition is imposed. While Rule 13 of the 1989 Rules required the NOC to be obtained by the bidders *prior* to confirmation of the licence, the impugned Circular requires the production of the NOC *after* determination of the highest bidder.

65. Consequently, the impugned Notification does not require the consent to be '*produced*' but only to indicate whether consent has been '*obtained*'. In my view, this is grossly insufficient and inadequate and the call for tender must itself be only after such consent has been obtained.

66. Column 4 of the application reads as follows:

4	விண்ணப்பதாரர் உரிமம் கோரும் கட்டிடத்தின் உரிமையாளரா?	:	ஆம்/இல்லை
4(a)	இல்லையெனில் கட்டிட உரிமையாளரிடம் மதுக்கூடம் நடத்த அனுமதி பெறப்பட்டுள்ளதா?		ஆம்/இல்லை

67. There is nothing requiring the applicant to produce any material in support of the averment that he has obtained consent from the owner and an applicant, in order to qualify for the next stage of tender must indicate in the



‘positive’, in column 4/4A, failing which their applications would be liable to be rejected at the threshold.

68. It is upon opening of the bids that the real confusion would arise as far as present tenders are concerned. The terms and conditions state that upon opening of the bids, the highest bidder (H1) would be ascertained and called upon thereafter to obtain the executed lease agreement with the owner.

69. He is granted a period of 7 days for production of the rental agreement between the owner containing a clause that the lessor unconditionally permits the lessee to undertake the business of running the bar including empty bottles and selling of eatables during the period of lease agreement, along with required demand drafts.

70. In my view, such a procedure would only enable undesirable practices and corruption and the State certainly cannot facilitate and enable such a process. If H1 is unable to so produce the lease deed, the next in line, ie., H2 would not only have to produce the lease deed but have to match the bid of H1.

71. Some of the petitioners are aggrieved by the latter condition. While production the lease deed is mandatory, directing them to match the bid of H1 is impracticable and casts an onerous burden which many might not be able to



withstand. The condition insisting that H2 match the bid of H1 is, in my view, wholly arbitrary and perverse, as all applicants have the freedom to decide their financial bid based upon their financial capacity.

72. That aside, the condition as regards the financial bid is that the bid be above the reserve price fixed for the tender. Thus, the condition that H2 raise his bid to match that of H1 essentially increases the reserve price leading to an alteration of the tender conditions at the stage of opening of the tender.

73. Failure to produce the rental agreement with the consent of the owner would trigger action to blacklist and disqualify both H1 or H2, as the case may be. Clause 6 provides that if bidder fails to furnish the rental agreement to the tender inviting authority then the bidders will perpetually be banned/black listed from participating in subsequent tenders of TASMACH in addition to forfeiting the earnest money deposit of the bidders.

74. In view of my conclusion to the effect that it is TASMACH that should negotiate the consent from the landowner to manage the bar and collect bottles/sell eatables, nothing further need be said about this condition, that would have to go.

75. Now coming to the imposition of the main condition itself, in clause (1), there is no doubt, and it is beyond argument today, to state that production



of NOC cannot be insisted upon. This Court in the cases of *G.Sethupathy*, *S.Ganesan*, *Ramkumar* and *G.Sakthivel* (supra) have categorically set out the reasoning and necessity for prior consent and those orders have attained finality.

76. As held by Justice Bharathidasan in the decision aforesaid, it is for TASMAL, as the licensee, to negotiate such activity with the property owner as part of rental agreement entered into by them. It is not for this Court sitting under Article 226 of the Constitution of India to decide on the modus operandi by which the aforesaid process may be carried out.

77. Suffice it to say that the present modus operandi is not just sub-optimal but breeds confusion, undesirable and corrupt practices, litigation and uncertainty. In my considered view, the decision of Justice Bharathidasan in W.P.(MD) NO.1515 to 1518 of 2018 is being misquoted by the respondents and in fact, supports the case of the petitioners in full.

78. Justice Parthiban while disposing a batch of Writ Petitions in W.P.(MD) No.1839 of 2018 etc. batch on 19.11.2018 had also dealt with a challenge to an identical tender notification as in the present case. He refers, at paragraph 12 of the decision, to the submission of the learned Additional



Advocate General that Government policy cannot remain static but has to be flexible and change from time to time.

79. The learned Additional Advocate General was defending the reference by the petitioners therein, to order passed by Justice Bharathidasan in W.P.Nos.1515 to 1518 of 2018. In that context, he would submit that the decision had been rendered only on 28.03.2018 and the Writ Petitions before Justice Parthiban had been filed in January, 2018.

80. However he would submit, and his submission is recorded, that the respondents would not insist upon the production of NOC from the landlord in view of the earlier decision of this Court. Thus, in conclusion, at paragraph 19, learned Judge permits the tender process to proceed recording that the respondent shall not insist upon the NOC in view of the decision of Justice Bharathidasan in the batch of Writ Petitions.

81. The relevant portion of his order reads as follows:

12. The learned Additional Advocate General would submit that the Government policy cannot remain static all the time, it can be changed from time to time and 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.

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.

82. The serious objection raised by the highest bidders are to the effect that the petitioners must not be allowed to challenge the Circular which they themselves have taken advantage of in the past. Though acceptable as a general proposition, that is not the real question that arises in this case.

83. What has come to be questioned is the non-compliance of the State with the decisions of this Court rendered as early as in 2009, 2010 and 2014. These decisions have been reiterated on 28.03.2018, this Court holding that it is for TASMACH to obtain NOC from the property owner.

84. The State has also unambiguously accepted this position as recorded in the decisions extracted above. Thus, continuing to insist upon condition No.1 in the impugned circular opens the State to action for contempt. In these circumstances the decisions cited by the interveners on the settled principles



that courts will be slow to interfere in tender matters have no bearing upon this matter and I thus do not find it necessary to discuss the same in extenso.

85. In arriving at the decisions as above, I have been guided by the settled principle that in matters of public tender the Court will confine itself to the integrity of the process and procedure adopted by the respondents and not so much, with the decision itself. As regards the latter, it is only manifest perversity and arbitrariness that will persuade a Court to intervene and no less.

86. As the Hon'ble Apex Court held in *Silppi Constructions Contractors*, (supra),

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20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.



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87. In *Nandlal Jaiswal and Others* (supra), the Court held thus:

40. But, while considering the applicability of Article b, in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide.

.

*What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity Cannot be tested on any rigid a 'priori' considerations or on the application of any straight-jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or play in the 'joints' to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company v. State of Chicago*, 57 Lawyers Edition 730*

“are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is



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best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void."

88. The principle of 'play at the joints' comes to aid of this Court now in arriving at the conclusions that I have. In doing so, I also bear note of the statement of the learned AAG in the case of *P.Pounraj* who enunciated precisely the same sentiment; that over the years, it becomes necessary to review the manner in which proceedings are conducted to accommodate and provide for changing needs of a dynamic society and the State.

89. In my view, the time has come for there to be a change to better and more transparent methodology to be arrived at by TASMAL and the State, one that is in line with the decisions of the Division Bench and the Act and Rules concerned.

90. In *Afcons Infrastructure Limited* (supra), the Apex Court has held thus:

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11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)[2] it was held by this Court, relying on a host of decisions that the decision making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision making process is mala fide or is intended to favour someone. Similarly, the decision should not



be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

12. In Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] it was held that the constitutional Courts are concerned with the decision making process. Tata Cellular v. Union of India [(1994) 6 SCC 655] went a step further and held that a decision if challenged (the decision having been arrived at through a valid process), the constitutional Courts can interfere if the decision is perverse. However, the constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was confirmed in Jagdish Mandal v. State of Orissa [(2007) 14 SCC 517] as mentioned in Central Coalfields.

13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.

91. In the present case, the State has, itself, undertaken before this Court that the process as set out by the Division Benches shall be followed. To deviate from that undertaking renders the impugned Circular and Notification liable to interference of this Court.



92. The impugned tender notifications read with the Circular, to my mind, breach the cardinal principle of 'legal certainty' in tender matters. The narration in the preceding paragraphs has captured the difficulties faced in TASMAT tender matters over the years, especially in relation to the obtaining of an NOC from the property owner, and the stage of the same. Such uncertainty, in my view, vitiates the basic tenets of, and objects enshrined in, public procurement and are fatal to its cause.

93. In *Reliance Energy Ltd. and Another* (supra), the above principle stands reiterated in the following terms:

38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".

39. In Reliance Airport Developers (P) Ltd. v. Airports Authority of India, (2006) 10 SCC 1, the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision-making power and he must give effect to it otherwise it may result in illegality. The principle of "judicial review" cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different



views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an important aspect of rule of law. In the case of Reliance Airport Developers (supra), the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks had different stages. Objectivity was thus provided.

94. Much has been said about the Circular, its veracity and the limitation/fetters that bind the Court when interpreting the same. Circulars issued by the authorities bind those officials/authorities and no other, certainly not the Court. It is always open for this Court to examine the impact and integrity of the same, particularly in matters of public tenders.

95. In *Kuthannur Service Co-Operative Bank Limited, Represented by its Secretary* (supra), the Apex Court states thus:

11. The aforesaid contention is misconceived. Clarificatory circulars are issued by Government departments



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for the guidance of the officers. Such circulars or instructions do bind the department and its officers. But they do not bind the Court in interpretation of statutory provisions. Circulars issued by a Government department cannot have any primacy over the decision of the jurisdictional High Court. Circulars and instructions thus issued will not survive, if they are contrary to the decision of a Constitutional Court. If a circular provides an interpretation of law that runs contrary to the interpretation given by the jurisdictional High Court, it no longer survives. Circulars or instructions given by the department are no doubt binding on the authorities under the Act, but when the Supreme Court or the High Court has declared the law on the question arising for consideration, it will not be open to a party to contend that the circular should be given effect to and not the view expressed in the decision of the Supreme Court or the High Court. Any direction issued by the Government in a circular would be mere expression of its opinion. But, once a provision has been interpreted by the superior court, then it will not be open to the assessee to project an interpretation on the concerned provision in tune with the circular, but against the law laid down by the Court.

96. With this, challenge to Circular No.A3/19/2014 dated 22.07.2014 is accepted and the procedure set out in clauses (1) to (6) therein alone, are set aside. TASMAC shall ensure that NOC is obtained for the running of bar including collection of bottles and sale of eatables, prior to issuance of tender Notification.

97. It is however, necessary that the owner also consent to a particular person participating in the running of the bar/collection of bottles/sale of eatables. Such consent must also be obtained from the owner at the



commencement of the tender process. How such consent is to be obtained is best left to be decided by the respondents, i.e., the State and the TASMAC in an appropriate manner.

98. Suffice it to say that the constitution/continuance of bars must await such a decision. Any notification relating to the tender of the specified activity to follow, shall be in strict compliance of the decisions of this Court as above and the conclusions in this order. The impugned Notification is quashed and the impugned Circular to the extent of the observations made above also stands quashed. Mandamus as sought for is issued.

99. SUMMARY OF CONCLUSIONS:

- (i) The batch of Writ Petitions challenging tender Notification are allowed and impugned tender Notification dated 02.08.2022 is quashed.
- (ii) In light of order of this Court in W.P.Nos.1515 to 1518 of 2018 dated 28.03.2018 that has attained finality, the State having accepted the order in full and reiterating such acceptance in subsequent orders passed in W.P.(MD) No.1839 of 2018 etc. batch on 19.11.2018 and following the orders of this Court dated



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28.03.2018 and 19.11.2018, clauses (1) to (6) of the impugned Circular No.A3/19/2014 dated 22.07.2014 are set aside and the State directed to issue a Circular afresh strictly in line with the decisions of the Division Bench in the cases of *G.Sethupathy*, *S.Ganesan* and *R.Ramkumar* (supra) and the observations contained in this order.

- (iii) CCTV cameras shall be set up in all the TASMACH centres where they are unavailable now and it shall be ensured that the cameras are functional at all times. It shall be ensured that the events of the tender opening day are videographed, as a matter of routine. Necessary instructions shall be issued to enable the same.
- (iv) In light of the aforesaid orders, mandamus, as sought, forbearing the respondents from in any manner, proceeding further or finalizing the tender conducted by the respondent pursuant to the tender notification dated 02.08.2022 is issued and re-issue of tender shall be in strict compliance of the direction at point (ii) and (iii) above.
- (v) It is made clear that in subsequent tenders, it is TASMACH that must obtain NOC from the property owners. As regards the



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procedure to be followed for obtaining of lease agreement by the applicants, a hassle-free, transparent and smooth procedure must be put in place by TASMAL and implemented in the tenders to follow.

100. All the Writ Petitions are allowed in the above terms. No costs.

Connected Miscellaneous Petitions are closed.

30.09.2022

Index : Yes / No

Speaking Order/Non-speaking order

Sl

Note: Registry is directed to carry out necessary amendments to the cause title in W.P.Nos.21713, 21649 and 21731 of 2022

To

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

2.The District Manager/Sub-Collector,
TASMAL Limited,
Thiruvallur (East) District,
No.1, Bangalore High Road,
Chembarambakkam,
Chennai-600 123.



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DR.ANITA SUMANTH, J.

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W.P.Nos.21391, 21970, 22601, 22606, 22609, 22611, 22614, 21701, 21706, 21712, 21714, 21716, 21718, 21721, 21722, 21724, 21707, 21713, 21715, 21717, 21720, 21727, 21731, 21735, 21737, 21867, 21649, 21447, 21450, 21453, 21455, 21456, 21624, 21625, 21395, 21398, 21392, 21401, 21686, 21691, 21696, 21699, 21702, 21705, 21711, 23342, 23347, 23348, 23379, 23394, 23401, 23405, 23410, 23386, 23390, 23391, 23393, 23395, 23398, 23447, 23452, 23456, 23489, 23550, 23551, 23552, 23553, 23554, 23555, 23556, 23557, 23558, 23559, 23560, 23561, 23562, 23563, 23573, 23574, 23576, 23577, 23625, 23626, 22729, 23214, 23218, 23223, 23228, 23232, 23235, 23238, 23293, 23303, 23191, 23194, 23198, 23201, 23205, 23208, 23212, 23197, 23203, 23202, 23206, 23211, 23215, 23217, 23219, 23224, 22915, 22917, 22921, 22924, 22927, 22946, 22948, 22949, 22951, 22952, 22953, 22954, 22955, 22956, 22957, 23186, 23189, 23192, 23193, 23195, 23196, 23199, 23010, 23012, 23014, 23016, 23019, 23029, 23033, 23037, 23039, 23043, 22958, 22959, 22960, 22961, 22962, 22963, 22964, 22965, 22966, 22968, 22969, 22972, 22988, 22991, 22993, 22996, 22998, 23000, 23002 & 23004 of 2022 and

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