IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A. Nos. 374, 1493 to 1565, 1568 and 1570 to 1662 of 2023
and
C.M.P. Nos. 14415 to 14430, 14432, 14433, 14435, 14436, 14438, 14440, 14442, 14443, 14445 to 14456, 14458 to 14460, 14462 to 14471, 14473 to 14507, 14509 to 14511, 14513, 14514, 14516 to 14531, 14533 to 14545, 14547 to 14552, 14554 to 14570, 14572 to 14575, 14580, 14582, 14599, 14600, 14616 to 14798 of 2023

W.A. No. 374 of 2023:-

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

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

-vs-

1. P.Sangeetharaj

2. G.Karthikeyan

3. M.Gopinath

4. K.Alex Silva

5. Prem Kumar Jecab

6. Ayyapan

7. V.Selvam

8. V.Selvam

9. Vetrivendhan

10. M.Gopinath

11. S.Krishnamoorthy

12. R.Jeyavel

13. T.Magendhiran

14. V.Velayutham

15. L.Ulaganathan

16. V.Ramesh

17. S.Murali

18. T.Marimuthu

19. R.D.Veerasamy

20. K.Senthil Kumar

21. R.Ramesh

22. R.Ramesh

23. V.Kumarasamy

24. M.Amala

25. Balamurugan

26. S.Sundaramahalingam

27. R.Jeyavel

28. S.Sathyamurthy

29. C.Pandiyan

30. Dhanasekar

31. Jeyakumar

32. S.Ramesh

33. Prabakaran

34. Ramanathan

35. R.Panneer Selvam
(R2 to R35 are impleaded vide order dated 26.07.2023 in C.M.P. No. 8421 of 2022 etc., batch) ... Respondents

Prayer:- Appeal under Clause 15 of the Letters Patent,1865 to set aside the order passed by this Court in W.P. No. 21391 of 2022 etc., batch dated 30.09.2022, thereby allowing the Writ Appeal.

For the Appellants : Mr. R.Shunmugasundaram, Advocate General assisted by Mr. K.Sathish Kumar, Standing Counsel and Ms. A.G.Shakeena in W.A. Nos. 374, 1493 to 1565, 1568, 1570 to 1584, 1586 to 1591, 1593, 1594, 1596 to 1614, 1616 to 1659, 1661 and 1662 of 2023 and

Mr. V.Giri, Senior Counsel assisted by Ms. Indira in W.A. Nos. 1585, 1592, 1595, 1615 and 1660 of 2023

For the Respondents : Mr. AR.L.Sundaresan, Senior Counsel
assisted by
Mr. AR.Karthik Lakshmanan
for Mr. L.Palanimuthu
in W.A. Nos. R1 in 374, 1503, 1517, 1558, 1565, 1571, 1601, 1611, 1618, 1620 and 1623 of 2023,

Mr. K.M.Vijayan, Senior Counsel
for M/s. K.M.Vijayan Associates
(for R2 to R25 in W.A. No. 374 of 2023) and W.A. Nos. 1493 to 1495, 1498 to 1502, 1504, 1509, 1510, 1512, 1516, 1522, 1523, 1527, 1528, 1540, 1542, 1551, 1557, 1559 to 1561, 1563, 1573 to 1575, 1578 to 1580, 1583, 1584, 1586, 1590, 1593, 1598, 1600, 1603, 1604, 1607, 1608, 1609, 1612 to 1614, 1622, 1624, 1627, 1629, 1630, 1639, 1641, 1643, 1653, 1657, 1661 and 1662 of 2023,

Mr. R.Singaravelan, Senior Counsel
assisted by Mr. Manimaran and Mrs. Ambika
(for R25 in W.A. No. 374 of 2023) and W.A. Nos. 1531, 1552, 1564, 1576, 1582, 1589, 1602, 1605, 1617, 1625, 1628, 1631, 1635, 1637, 1644 to 1646, 1648 to 1650, 1654 and 1658 of 2023,

Mr. S.Chandrasekar (for R26 in W.A. No. 374 of 2023)

Mr. S.Sarathchandran (for R27 to 31 in W.A. No. 374 of 2023)

Mr. B.Harish (for R32 to R35 in W.A. No. 374 of 2023)

Mr. D.Babu Varadharajan for Mr. A.Rajaguru
in W.A. Nos. 1514, 1515, 1539, 1543, 1544, 1562, 1568, 1570, 1587, 1591, 1597, 1599, 1621, 1651 and 1655 of 2023,

Mr. Chitra Sampath, Senior Counsel
for M/s. T.S.Baskaran
in W.A. Nos. 1595 and 1633 of 2023,

Mr. Adhith Narayan Vijayaraghavan
in W.A. Nos. 1594 and 1616 of 2023,

Mr. S.Doraisamy
in W.A. Nos. 1585, 1592 and 1615 of 2023,

Mr. K.Venkatesan in W.A. No. 1640 of 2023, and

Mr. Anirudh Krishnan in W.A. No. 1610 of 2023

COMMON JUDGMENT

(Order of the Court was made by P.D.AUDIKESAVALU, J.)

These intra-Court appeals invoking Clause 15 of the Letters Patent, 1865, arise out of the common order dated 30.09.2022 in W.P. No. 21391 of 2022 etc., batch passed by the Writ Court.

2. The parties are hereinafter referred as per their description in the said Writ Petitions for the sake of clarity and convenience.

3. In the State of Tamil Nadu, monopoly in retail vending of liquor has been conferred on the Tamil Nadu State Marketing Corporation Limited (hereinafter referred to as 'TASMAC' for short). Rules 3 and 4 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 (hereinafter referred to as 'the Rules' for short) made in exercise of powers conferred under Sections 17-C, 17-D, 21, 22-D and 54 of the Tamil Nadu Prohibition Act, 1937, pertain to the grant of licence for retail vending of liquor in shops and bars for the whole of the State of Tamil Nadu. Rule 2(r) of the Rules defines 'shop' as the building in which the liquor is stocked and sold, and as per Rule 2(d) of the Rules, 'bar' means a place located within the shop or adjoining the shop used for consumption therein of liquor. While Rules 8 and 9 of the Rules pertain to

the location of the shop, Rule 9-A inserted by G.O. Ms. No. 20, Home, P & E (VI) Department dated 29.03.2013 issued by the Government of Tamil Nadu, reads as follows:-

> *"**9-A. Grant of privilege to run the bar.**- The privilege of running bars may be granted to private parties by tender. The Board of the corporation may decide the upset price and other terms and conditions of tender, from time to time, with the prior approval of the Commissioner of Prohibition and Excise. The Corporation, as agency shall collect the tender amount from the successful tenderers and remit the same to the Government on or before the 25th of the following month and the Corporation may retain 1% of the amount so collected as agency commission."*

The said rule was later re-numbered as Rule 9-B by G.O. Ms. No. 17, Home, P&E (VI) Department dated 13.02.2022 issued by the Government of Tamil Nadu. Rules 10 and 11 of the Rules read as follows:-

> *"**10. Location of Bar.–** (1) The bar shall lie within the shop or adjoining the shop.*

(2) The bar shall have a minimum plinth area of fifteen square metres. The requirement of plinth area for any bar exceeding fifteen square metres shall be decided by the Collector.

(3) Every bar shall be housed in pucka building and no part of the bar shall be thatched either on the sides or on the roof. The bar room shall be sufficiently screened so that consumption of liquor is not visible from outside and shall also be provided with fans. Sufficient number of tables and chairs for the consumers to conveniently sit and consume liquor shall be provided. Such room shall not be used as a club or recreation room or for any other purpose whatsoever. No gambling or any kind of disorderly conduct in the shop shall be permitted.

(4) Facilities such as drinking water and wash basin within the surroundings of each shop premises shall be provided and the shop, its premises and surroundings shall be always kept clean, hygienic and well lit.

(5) Every shop shall have a signboard in Tamil in front of the shop showing the number of the shop and details regarding authorization issued by the Corporation for the shop, the price of liquor in different sizes of bottles sold in the shop shall also be

displayed. There shall also be displayed on the signboard the following slogans in bold letters about the evils of drinking and such other slogans as may be approved by the Commissioner.

"மது – நாட்டுக்கு, வீட்டுக்கு, உயிருக்கு கேடு"

"Liquor – ruins country, family and life"

11. Working hours of the shop and bar.– *No business shall be transacted at the shop and bar except during the hours as may be specified by the Government by order."*

4. The Managing Director of TASMAC had issued Circular No. A3/19/2014 dated 22.07.2014 relating to the instructions to be followed in granting of privilege to run the bar and the same is extracted 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 dated 22 July 2014
Rc.No.P1/6411/2011

CIRCULAR

Sub :- TASMAC 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 :- The office letter No.Rc.No.P1/6411/2011 dated 18.06.2015.

In continuation of this 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 documents.

2. The Tender Inviting Authority should evaluate the tenders only based on price bids received from the bidders subject to compliance of other, terms and conditions of the tender.

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 security deposits; and

c) Single demand draft for the current month bard amount.

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

> *"The Lessor unconditionally permits the lessee to undertake the business 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 offered/bid price of 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 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 TASMAC 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 Bars) Rules, 2003, "bar" means a place *located within the shop or adjoining the shop used for consumption therein of 'liquor'. Thus, it is hereby clarified that 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 the 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 wherever single/no offer is received for any shop.

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

> *"Bidder must enclose a copy of the first page of bank passbook of the bidder containing photo 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 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 bank document with the address proof and ID proof submitted by the bidders along with the tender documents.*

Sd/-
Managing Director

To

All Senior Regional Managers,
All District Managers.

//By order//

Sd/-
Section Officer."

On a bare reading of the said circular, it is evident that it is intended to supplement the procedure to be followed under Rules 9-B and 10 of the Rules in locating the bar attached to a liquor vending shop and entering into rental agreement with the owner of that premises for running such bar.

5. TASMAC had published the Notification bearing Na. Ka. No. A3/ 1382/2022 dated 02.08.2022 calling for tender for grant of privilege to run the bar attached to some of its shops for the period from September 2022 to December 2023 without any condition insisting for production of consent / no objection certificate from the owner of the premises where

the bar was proposed to be run by the applicant. Some of the existing holders of the privilege to run such bars attached to the shops had filed the Writ Petitions challenging the said Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC or the Notification bearing Na. Ka. No. A3/1382/2022 dated 02.08.2022 published by TASMAC or both. The Writ Court was of the view that the decision of TASMAC to grant the privilege to run the bar attached to its shop without any condition insisting for production of No Objection Certificate/consent from landlord of the premises where the bar was proposed to be run by the applicant was contrary to the directions issued by this Court in the following cases:-

(i) ***S.Ganesan -vs- Assistant Commissioner, Excise, Chennai*** [(2000) 1 CTC 193];

(ii) ***G.Sethupathy -vs- Senior Regional Manager, Tamilnadu State Marketing Corporation Ltd., Madurai*** (Order dated 08.10.2009 in W.P. (MD) No. 8591 of 2009);

(iii) ***Deputy Collector/District Manager, Tamil Nadu State Marketing Corporation, Tiruchirapalli -vs- R.Ramkumar*** (Order dated 14.03.2012 in W.A. (MD) No. 1492 of 2011); and

(iv) ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated

28.03.2018 in W.P. (MD) No. 1515 to 1518 and 1899 to 1940 of 2018).

On that basis, the Writ Petitions were disposed holding as follows:-

*"**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 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 -vs- Senior Regional Manager, Tamilnadu State Marketing Corporation Ltd., Madurai*** (Order dated 08.10.2009 in W.P. (MD) No. 8591 of 2009), ***S.Ganesan -vs- Assistant Commissioner, Excise, Chennai*** [(2000) 1 CTC 193] and ***Deputy Collector/District Manager, Tamil Nadu State***

Marketing Corporation, Tiruchirapalli -vs- R.Ramkumar (Order dated 14.03.2012 in W.A. (MD) No. 1492 of 2011) *and the observations contained in this order.*

(iii) CCTV cameras shall be set up in all the TASMAC 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 TASMAC that must obtain NOC from the property owners. As regards the 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 TASMAC and implemented in the tenders to follow."

Aggrieved thereby, TASMAC has preferred these appeals against the common order passed by the Writ Court in the said batch of Writ Petitions, before this Court.

6. We have elaborately heard Mr. R.Shunmugasundaram, Learned Advocate General assisted by Mr. K.Sathish Kumar, Learned Standing Counsel and Ms. A.G.Shakeena, Learned Counsel and Mr. V.Giri, Learned Senior Counsel assisted by Ms. Indira, Learned Counsel for the Respondents and Mr. AR.L.Sundaresan, Learned Senior Counsel assisted by Mr. AR.Kathik Lakshmanan, Learned Counsel, Mr. K.M.Vijayan, Learned Senior Counsel, Mr. R.Singaravelan, Learned Senior Counsel assisted by Mr. Manimaran and Mrs. Ambika, Learned Counsel, Mrs. Chitra Sampath, Learned Senior Counsel, Mr. S.Chandrasekar, Learned Counsel, Mr. S.Sarathchandran, Learned Counsel, Mr. B.Harish, Learned Counsel, Mr. D.Babu Varadharajan, Learned Counsel, Mr. Adhith Narayan Vijayaraghavan, Learned Counsel, Mr. S.Doraisamy, Learned Counsel, Mr. K.Venkatesan, Learned Counsel and Mr. Anirudh Krishnan, Learned Counsel for the Petitioners and perused the materials placed on record, apart from the pleadings of the parties.

7. It is vehemently contended by the Learned Advocate General and Learned Senior Counsel appearing for TASMAC that the Writ Court exceeded the scope of judicial review permissible in contractual matters pertaining to the State. It is explained that the Petitioners are existing licensees of the bars who have an hidden agenda to indefinitely continue the business of running the bar without increasing the privilege fee defeating public interest. They had abused the legal process by filing the Writ Petitions with oblique motives of creating a cartel in their favour to prevent TASMAC from obtaining the best possible price for augmenting revenue. The effect of the impugned order of the Writ Court was that the commercial wisdom of TASMAC to boost its revenue has been thwarted and it has been forced to restrict competition by denying potential participation from all eligible persons.

8. The correctness of the impugned order is supported by the Learned Counsel appearing for the Petitioners by emphasizing that the business interests of the Petitioners, who have substantially invested in the bars, has to be protected and the restraint on invitation to all persons to participate in the tender without consent / no objection certificate from the owners of the premises would have to be approved,

particularly, when this Court on earlier occasions has also ruled to that effect.

9. Before proceeding to examine the rival claims, it requires to be noticed that a Learned Judge of this Court in ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated 28.03.2018 in W.P. (MD) No. 1519 of 2018) has already upheld the validity of the Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC. However, on a reading of the impugned order, it appears that the said decision had not been brought to the notice of the Writ Court.

10. Be that as it may, on the same day, in ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated 28.03.2018 in W.P. (MD) Nos. 1515 to 1518 and 1899 to 1940 of 2018), the same Learned Judge of this Court had, however, set aside the condition in the tender issued in furtherance to the Notification in Na. Ka. No. 777/2017/CV-3 dated 10.01.2018 published by TASMAC insisting upon the applicant to produce 'No Objection Certificate' from the owner of the bar premises stating as follows:-

"22. Getting No Objection Certificate and also entering into a lease agreement with the bar premises owner will arise only in the event of the privilege for running bar is granted to third parties. When the fourth respondent is retaining the privilege of running the bar and only permitting some third parties to enter into the bar for the purpose of collecting empty bottles and selling eatables, as per the above said Circular, it is only the TASMAC, being the lessee should get permission and they cannot insist upon the tenderers to get No Objection Certificate. In the above circumstances, imposing such a condition is wholly arbitrary and unwarranted. Therefore, I have no hesitation to set aside the condition imposed by the fourth respondent, insisting upon the tenderers to get No Objection Certificate from the bar premises owner."

During an earlier occasion, this Court in ***S.Ramanathan -vs- Managing Director, Tamil Nadu State Marketing Corporation Ltd.(TASMAC)*** (Order dated 28.10.2014 in W.P. No. 19073 of 2014 etc., batch) was dealing with a claim seeking that TASMAC must be restrained from granting license to collect empty bottles and sell eatables in bar attached to various liquor vending shops run by any person without 'no objection certificate' from the Petitioners therein, who were either owners or lessees of the bar premises, and it was held as follows:-

"7. .... From the reading of the decision of the Hon'ble Division Bench, it is clear that the State should insist upon a no-objection certificate from the landlord and the Court finds that such insistence is neither arbitrary or unreasonable nor in any manner malafide. In fact in the case on hand prior to the present notification, such a condition had existed. However, before filing of these writ petitions, notification has been issued by TASMAC on 09.07.2014 in which this condition was conspicuously absent, which made the petitioners to rush to this Court. It is to be further noted that the TASMAC is the licensee of the premises i.e., the shop or the bar. The license which is granted is only for the purpose of running the bar for consumption of liquor sold by TASMAC. Therefore, when TASMAC inducts a third party into the premises it is mandatory for the TASMAC to insist upon a no-objection certificate from the owner of the premises failing which the rule itself would be vitiated and it would affect the rights of the petitioners, over reaching the scope of the tenancy or going in a manner which is prejudicial to the petitioner/ landlord. The landlord may choose to whom he may grant NOC and therefore the respondents should not have issued the tender notice without such a condition.

8. However, during the pendency of the writ petitions, a circular has been issued on 22.07.2014 which contemplates that the successful bidder/ highest bidder is required to produce the rental agreement with the owner of the premises in which there should be a condition stating that the owner of the premises unconditionally permits the licensee/ successful bidder to undertake business for running bar including collection of empty bottles and sell eatables in the bar attached to the TASMAC shop, during the lease period. Therefore, such condition mandates production of no-objection certificate. The circular dated 22.07.2014 also states that failure to produce such a rental agreement within 7 days, the Tender Inviting Authority may request the next highest bidder to match the offer/ bid price of the highest bidder. Further, the circular states that if the bidder fails to furnish the rental agreement to the Tender Inviting Authority, then the bidders will perpetually be banned/ blacklisted to participate in the subsequent tenders. In the light of the subsequent Circular dated 22.07.2014, the relief sought for by the petitioners has been considered and granted.

9. Accordingly, all the Writ Petitions are allowed and the respondents are directed to insist upon no-objection certificate/ lease agreement from the owner/ landlord of the premises with *all the relevant clauses from the highest/ successful bidder, as confirmed by the Tender Inviting Authority and as stipulated in the Circular dated 22.07.2014. Consequently, the connected M.P.s are closed. No order as to costs "*

It could be noticed from that decision that the Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC during the pendency of that litigation had been approved.

11. It would assume significance here that in the decisions in ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated 28.03.2018 in W.P. (MD) Nos. 1515 to 1518 and 1899 to 1940 of 2018) and ***S.Ramanathan -vs- Managing Director, Tamil Nadu State Marketing Corporation Ltd.(TASMAC)*** (Order dated 28.10.2014 in W.P. No. 19073 of 2014 etc., batch), the Court had proceeded on the premise as if Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC had imposed a condition that tenderers would have to obtain 'no objection certificate' from the owner of the bar premises, whereas it actually contains a clause to the contrary that the tender applicants need not enclose the 'no objection certificate' obtained from the bar premises owner along with the tender documents, and a rental agreement entered

by the successful bidder with the owner of the bar premises would have to be submitted within seven days from the time of intimation of selection after evaluation of the price bids.

12. The Division Bench of this Court in ***S.Ganesan -vs- Assistant Commissioner, Excise, Chennai*** [(2000) 1 CTC 193] had upheld the validity of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989. The said rule, which required the licensees of the liquor vending shops to produce certificate in the prescribed format regarding their ownership or lease of the building where those shops were to be located with their suitability from the revenue officials, have been repealed, and it related to the earlier regime where private individuals were granted licensees to operate liquor vending shops. The observations made by the Court in that context do not have any relevance in the changed scenario, where a new set of rules conferring exclusive privilege to TASMAC to operate the shops, has been put in place. The privilege to individuals is now confined only to run the bars attached to those shops to sell eatables and collect used bottles. Moreover, relief had been declined to the Petitioners in those cases before the Court and nothing adverse could be inferred against the State, much less TASMAC, in that case.

13. The other decisions in ***G.Sethupathy -vs- Senior Regional Manager, Tamilnadu State Marketing Corporation Ltd., Madurai*** (Order dated 08.10.2009 in W.P. (MD) No. 8591 of 2009) and ***Deputy Collector/ District Manager, Tamil Nadu State Marketing Corporation, Tiruchirapalli -vs- R.Ramkumar*** (Order dated 14.03.2012 in W.A. (MD) No. 1492 of 2011) relate to periods prior to the introduction of Rule 9-A in the Rules and the Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC. As such, it would not be possible to construe as if the said decisions have precluded TASMAC from stipulating Clauses (1) to (6) in the Circular No. A3/19/2014 dated 22.07.2014 issued by it.

14. In this backdrop, it must also be pointed out that the Hon'ble Supreme Court of India in ***Regional Manager -vs- Pawan Kumar Dubey*** [(1976) 3 SCC 334] has highlighted that it is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its *ratio decidendi* and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. The Constitution Bench of the Hon'ble Supreme Court of India in ***Padma Sundara Rao***

(Dead) -vs- State of Tamil Nadu [(2002) 3 SCC 533] has aptly ruled in this regard as follows:-

> *"Courts should not place reliance on decisions without discussing as to how the factual situations fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in* ***Herrington -vs- British Railways Board*** *(1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

15. In the absence of any challenge in further legal proceedings, the aforesaid decisions of this Court in ***Deputy Collector/District Manager, Tamil Nadu State Marketing Corporation, Tiruchirapalli -vs- R.Ramkumar*** (Order dated 14.03.2012 in W.A. (MD) No. 1492 of 2011), ***G.Sethupathy -vs- Senior Regional Manager, Tamilnadu State Marketing Corporation Ltd., Madurai*** (Order dated 08.10.2009 in W.P. (MD) No. 8591 of 2009) and ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated 28.03.2018 in W.P. (MD) Nos. 1515 to 1518 and 1899 to 1940 of

2018), may have attained finality in respect of the Petitioners in those cases. However, it cannot be treated as perpetually creating any fetter on TASMAC to defend its right to grant the privilege of running bars attached to its shops to the applicants in future tenders without insisting upon consent / no objection certificate from the owners or lessees of those premises. In this regard, it would be useful to extract the dictum laid down by the Hon'ble Supreme Court of India in ***State of Maharashtra -vs- Digambar*** [(1995) 4 SCC 683], which reads as follows:-

> *"16. .... Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes*

> *which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.”*

In such circumstances, we are unable to subscribe to the views expressed by the Writ Court and proceed to determine whether the Petitioners were otherwise entitled to the reliefs sought in their respective Writ Petitions.

16. It must be recapitulated here that it is well settled that disposal of public property by the State or its instrumentalities partakes the character of a trust and the methods to be adopted for its disposal must be fair and transparent providing an opportunity to all the interested persons to participate in the process and the law in that regard has been lucidly explicated by the Hon’ble Supreme Court of India in ***Kasturi Lal Lakshmi Reddy –vs- State of Jammu & Kashmir*** [(1980) 4 SCC 1] in the following words:-

"10. …. There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the Welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contractor dealing with his property. But the Government is not free lo act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in and unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and *public interest and if it fails to satisfy either best, it would be unconstitutional and invalid….*

14. …. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. ***The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so****. ….*

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in ***Ramana Dayaram Shetty –vs- International Airport Authority of India*** *[(1979) 3 SCC 489] that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone but if it does so, it must do so fairly* *without discrimination and without unfair procedure.* ***Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance.*** *This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. ….”*

(emphasis supplied)

It would also be relevant to extract the legal position from the decision of the Hon'ble Supreme Court of India in ***Jagdish Mandal -vs- State of Orissa*** [(2007) 14 SCC 517], which reads as follows:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. ***Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”.*** *When the power of judicial*

review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. ***The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.*** *The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:*

> *(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone ?*
>
> *OR*
>
> *Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached ?*
>
> *(ii) Whether public interest is affected ?*
>
> *If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*
>
> (emphasis supplied)

The Hon'ble Supreme Court of India in ***Meerut Development Authority -vs- Association of Management Studies*** [(2009) 6 SCC 171] considered as to what is the nature of the rights of a bidder participating in the tender process and held as follows:-

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

28. It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

The Hon'ble Supreme Court of India in ***Michigan Rubber (India) Limited -vs- State of Karnataka*** [(2012) 8 SCC 216], after referring to earlier decisions, has laid down the law relating to interference of the Constitutional Courts in contractual matters as follows:-

"23. From the above decisions, the following principles emerge:
(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial

review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government."

While reiterating the limited scope of judicial review in matters of relating to the award of contracts by the State and its instrumentalities, it has been observed in ***Maa Binda Express Carrier -vs- North-East Frontier Railway*** [(2014) 3 SCC 760] as follows:-

> *"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders.* ***It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant***

to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. *So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process."*

(emphasis supplied)

Again, in ***Bharat Coking Coal Limited -vs- AMR Dev Prabha*** [(2020) 16 SCC 759] the Hon'ble Supreme Court of India has restated the legal position on the maintainability of Writ Petition in interfering with the award of tender contracts by the State as follows:-

*"28. The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness. [**Central Coalfields Ltd. -vs- SLL-SML (Joint Venture Consortium**), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106; **Siemens Aktiengeselischaft & Siemens Ltd. -vs- DMRC,** (2014) 11 SCC 288]. Phrased differently, the courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned,*

*and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. [**Air India Ltd. -vs- Cochin International Airport Ltd.** (2000) 2 SCC 617]. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. This is especially true given our unique domestic circumstances, which have demonstrated the need for judicial intervention numerous times. Hence, it would only be the decision-making process which would be the subject of judicial enquiry, and not the end result (save as may be necessary to guide determination of the former).*

29. This position of law has been succinctly summed up in ***Tata Cellular -vs- Union of India** [**Tata Cellular -vs- Union of India**, (1994) 6 SCC 651] , where it was famously opined that: (SCC pp. 677-78, para 77)*

> *"77. … Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly*

put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, ***Wednesbury [Associated Provincial Picture Houses Ltd. -vs- Wednesbury Corpn.****, (1948) 1 KB 223 (CA)] unreasonableness.*

(iii) Procedural impropriety."

30. But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. ***In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress.***

31. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily; or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. ***Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources.***

....

33. Such conscious restraint is also necessary because judicial intervention by itself has effects of time and money, which if unchecked would have problematic ramifications on the State's ability to enter into contracts and trade with private entities.

*Further, it is not desirable or practicable for courts to review the thousands of contracts entered into by executive authorities every day. Courts also must be cognizant that often-a-times the private interest of a few can clash with public interest of the masses, and hence a requirement to demonstrate effect on "public interest" has been evolved by this Court. [**Jagdish Mandal -vs- State of Orissa** (2007) 14 SCC 517, para 22].*

*34. **It is thus imperative that** in addition to arbitrariness, illegality or discrimination under Article 14 or encroachment of freedom under Article 19(1)(g), **public interest too is demonstrated before remedy is sought.** Although the threshold for the latter need not be high, but it is nevertheless essential to prevent bypassing of civil courts and use of constitutional avenues for enforcement of contractual obligations."*

(emphasis supplied)

17. Having due regard to the aforesaid legal principles, the validity of Clauses (1) to (6) of the said Circular No. A3/19/2014 dated 22.07.2014 issued by the Managing Director of TASMAC would have to be examined. As already noticed, the validity of the Circular No. A3/19/2014

dated 22.07.2014 issued by the Managing Director of TASMAC has been upheld by this Court also in ***G.Sakthivel -vs- Managing Director, Tamil Nadu State Marketing Corporation (TASMAC), Chennai*** (Order dated 28.03.2018 in W.P. (MD) No. 1519 of 2018). It is beyond any pale of doubt from Clauses (1) to (6) of the Circular No. A3/19/2014 dated 22.07.2014 that they intend to safeguard the financial interests of TASMAC. Prudence expects of a participant in the tender to be vigilant enough to inspect the premises and satisfy himself about the availability of place and its suitability for running of the relevant bar attached to the respective shops before submitting his bid. In that process, the tenderer would have to necessarily communicate with the owner of the proposed premises to grant him lease for the Bar in the event he turns out to be the successful bidder. In all probability, there may be only one place attached to the existing shop in the same building for running the eating house and collection of bottles satisfying the requirements of Rules 9-B and 10 of the Rules. This would obviously mean that all the tenderers for a particular Bar cannot be expected to simultaneously obtain consent / no objection certificate from the owner of the premises before submitting their bid in the tender. As it is only the successful bidder who would be running the eating house with facility of bar, TASMAC has rightly imposed the condition that though the tender applicant need not enclose 'no objection certificate' from the owner of the bar premises at the time of submitting his tender, the highest bidder would have to furnish the rental agreement entered with the bar premises owner within seven days from the time of intimation of his selection after evaluation of the bid. In the event of his failure to produce that essential document, the second highest bidder would be called upon to produce such rental agreement with the owner of the bar premises at the offered / bid price of the highest bidder. If the bidders did not produce such rental agreement from the owner of the bar premises, they would obviously forfeit their Earnest Money Deposit, which is adequate to recompense TASMAC for the expenditure incurred in conducting the tender and to take up re-tender process. The said procedure is certainly in public interest to safeguard the financial interests of TASMAC and in consonance with the mandate of Article 14 of the Constitution *viz-a-viz* the rights of the participants in the tender in the light of the principles laid down in the binding judicial pronouncements governing the controversy involved.

18. The claim of the Petitioners in the Writ Petitions that TASMAC must insist that before submitting his bid in the tender, the participant must also obtain the consent / no objection certificate from the owner of the bar premises, is fraught with oblique motives. It would be unrealistic

to expect the owner of the bar premises to grant such consent / 'no objection certificate' in writing to all potential tenderers of such bar before they submit their bid. If such claim as made by the Petitioners is accepted, it would lead to an anomalous situation where participation in the tender would be confined only to the existing lessee or owner of the bar premises and all other persons willing to make a higher bid than them would be prevented from participating in that tender, which would militate against public interest defeating the purpose of TASMAC granting the privilege to private individuals to run bars attached to its shops at competitive price to augment its income leading to formation of cartel, which cannot be countenanced.

19. It is needless to add here that if there are any practical difficulties in carrying out the aforesaid procedure, it would be certainly open to TASMAC to suitably modify the same, but such possibility cannot be a reason for this Court, in the limited exercise of its powers of judicial review of the decision making process, to substitute the decision itself merely because some other better option is available in its perception.

20. It must also be placed on record here that during the course of hearing, it has been represented before this Court that there would not be

any condition banning / blacklisting the successful bidders who have failed to produce lease agreement from the owner of the bar premises in participating in future tenders, and the Managing Director, TASMAC has filed an affidavit dated 25.07.2023 to that effect. It would also be incumbent upon TASMAC to ensure transparency by video recording of the entire tender process followed in awarding the tender contract.

21. In view of the foregoing discussion, the impugned common order dated 30.09.2022 in W.P. No. 21391 of 2022 etc., batch passed by the Writ Court, which cannot be sustained, is set aside and the Writ Petitions shall stand dismissed. Since the period of the impugned tender from September 2022 to October 2023 would lapse shortly, it may not be appropriate to proceed with the impugned tender notification and TASMAC shall be at liberty to issue fresh tender for future periods following the prescribed procedure in accordance with law.

In the upshot, the Writ Appeals are allowed on the aforesaid terms. Consequently, C.M.P. Nos. 14415 to 14430, 14432, 14433, 14435, 14436, 14438, 14440, 14442, 14443, 14445 to 14456, 14458 to 14460, 14462 to 14471, 14473 to 14507, 14509 to 14511, 14513, 14514, 14516 to 14531, 14533 to 14545, 14547 to 14552, 14554 to 14570, 14572 to

14575, 14580, 14582, 14599, 14600, 14616 to 14798 of 2023 are closed. There will be no order as to costs.

(S.V.G., CJ.) (P.D.A., J.)
05.09.2023

Index : Yes
Neutral Citation : Yes

vjt

To:

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

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

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

vjt

W.A. No. 374 of 2023 etc., batch

05.09.2023