IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 06.12.2023

Orders pronounced on : **13.12.2023**

CORAM :

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.30426, 30430 and 30410 of 2023
& W.M.P.Nos.30031, 30032, 30033, 30036, 30014 and 30015 of 2023

<u>In W.P.No.30426 of 2023 :-</u>

Raveendran Subburaj .. Petitioner

Versus

1. Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Represented by its Managing Director,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road, Egmore, Chennai - 600 008.

2. The District Manager / Deputy Collector,
Coimbatore South, Tamil Nadu State
Marketing Corporation Limited (TASMAC),

4/5A Sangampalayam, Mahalingapuram (Post),
Aachipatti, Pollachi, Coimbatore - 642 002. .. Respondents

In W.P.No.30430 of 2023 :-

Raveendran Subburaj .. Petitioner

Versus

1. Tamil Nadu State Marketing
Corporation Limited (TASMAC),
Represented by its Managing Director,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road, Egmore, Chennai - 600 008.

2. The District Manager / Deputy Collector,
Coimbatore South, Tamil Nadu State
Marketing Corporation Limited (TASMAC),
305, Vilankurichi Road, Near Peelamedu Railway Station,
Old Chinthamani Co-operative Society Godown,
Peelamedu, Coimbatore - 641 004. .. Respondents

In W.P.No.30410 of 2023 :-

M.Ashokkumar .. Petitioner

Versus

The District Manager,
TASMAC Ltd.,

Perambalur District,
Perambalur. .. Respondent

Prayer in W.P.No.30426 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent culminating in the impugned Tender bearing Tender Reference No.1181/2023/RV3 issued pursuant to the Notice inviting for E-Tender, dated 07.10.2023, quash the same in so far as it relates to selection of contractors to collect empty bottles in the bars attached to the retail vending shops of TASMAC Limited, Coimbatore (South) District, and consequently direct the respondents not to interfere with the petitioner's right to collect empty bottles and tins from all the retail vending shops of the respondents in Coimbatore (South) District, either with or without bars, granted to the petitioner vide the 2nd respondent's proceedings bearing Na.Ka.No.312/2023/RV5, dated 18.04.2023 issued to the petitioner for the period 19.04.2023 to 31.03.2024.

Prayer in W.P.No.30430 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent culminating in the impugned Tender bearing Tender Reference No.1303/2023/A4 issued pursuant to the Notice inviting for E-Tender dated 06.10.2023, quash the same in so far as it relates to selection of contractors to collect empty bottles in the bars attached to the retail vending shops of TASMAC Limited, Coimbatore (North) District, and consequently direct the respondents not to interfere with the petitioner's right to collect empty bottles and tins from all the retail vending shops of the respondents in Coimbatore (North) District, either with or without bars, granted to the petitioner vide the 2nd respondent's bearing Na.Ka.No.62/2023/A7, dated 18.04.2023 issued to the petitioner for the period 19.04.2023 to 31.03.2024.

Prayer in W.P.No.30410 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records in pursuant to the proceedings of the respondent in Ve.Aa.No.44/Se.Ma.Tho.A. Perambalur, dated 06.10.2023 and quash the same and direct the respondent to consider Perambalur District alone to permit the petitioner to carry out the pilot project Buy Back Empty bottles from the TASMAC shops till the lease period on 20.08.2024.

<u>In W.P.Nos.30426 and 30430 of 2023 :</u>

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.Arun Anbumani

For Respondents : Mr.J.Ravindran, Additional Advocate General
Assisted by Mr.K.Sathish Kumar,
Standing Counsel

In W.P.No.30410 of 2023 :

For Petitioner : Mr.R.Chandrasekaran

For Respondent : Mr.J.Ravindran, Additional Advocate General
Assisted by Mr.C.Ramesh

COMMON ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The petitioners are the successful bidders and are awarded contract for purchase of empty bottles in the TASMAC Liquor Vending Shops in the districts of Coimbatore (North), Coimbatore (South) and Perambalur respectively. They have filed these three Writ Petitions impugning the tender notifications, dated 06.10.2023 and 07.10.2023 respectively, whereby, fresh tenders are called for award of bar contracts for supply of eatables and collection of empty liquor bottles in the existing bars attached to the respective

TASMAC shops in the districts and also to the newly proposed bars in respect of the shops, in which, there is no bar attached.

2. The case of the petitioners is that in the month of April, 2023, by a due tender, they are appointed as Contractors for collection of empty liquor bottles from the TASMAC shops in furtherance to the Buy Back Scheme introduced by the first respondent according to the orders of this Court. In order to avoid liquor bottles being scattered all over the State of Tamil Nadu in agricultural lands, water bodies, garbage collection bins, open areas, irrigation channels etc., this Court passed orders directing the respondents to charge an extra amount of Rs.10/- for every bottle that is sold by the first respondent in its retail outlets and to return the said amount upon return of the said empty bottles. The empty bottles so collected were ordered to be sold and disposed of properly, so that, they can be put into reuse or recycle so that there is minimum damage to the environment. Pursuant thereto, they have been awarded contract

and they have been receiving the bottles from the Retail Liquor Vending Shops and have been properly disposing of the same to appropriate dealers who are cleaning the bottles and supplying back to the distilleries to reuse and the damaged ones are recycled for appropriate use. The petitioners are also paying the General Sales Tax on the bottles collected and all the bottles supplied to them are duly accounted for.

3. While so, when the respondents have so far been representing before this Court on various occasions that they are collecting every bottle in the retail shop and have been filing status reports accordingly, now, in total violation of the Buy Back Scheme, they have floated the impugned tender. More specifically, the tender condition Nos.9, 32, 37, 50 and 71 are directly in conflict with the earlier orders of this Court and the entire tender itself is designed in such a manner so as to defeat the very Buy Back Scheme mandated by this Court. The said tender conditions are extracted hereunder :-

> " **9.** The license to collect the empty bottles and sales of eatable will be finalized by the District Manager to bidder who quotes the highest bid amount.
>
> **32.** The licensee is entitled to collect the left over empty liquor bottle by the consumers in the bar. The licensee shall not compel the customers to hand the empty liquor bottles.
>
> **37.** Details pertaining to the sale of empty bottles, the name of the purchaser, quantity of bottles sold and the intended usage are to be maintained in the registers prescribed.
>
> **50.** It is the duty of the licensee to submit the accounts for empty bottles sold when called for by the TASMAC.
>
> **71.** The empty bottles collection should be disposed then and there. District Manager will impose penalty for empty bottles stored in the bar premises."

4. Further, when tenders were originally awarded in the month of April, 2023 to the writ petitioners, only a portion of the shops (for example, in Coimbatore (South), 75 out of 166) were having bars attached to them and therefore, in respect of the retail shops where there are no bars, the petitioners were collecting the entire bottles. Now, when the contract is subsisting and is valid upto April, 2024, in between, new bars are floated in respect of the balance shops also, thereby, it directly cuts into the quantum of bottles which

supplied to them under the tender and thus, affects the vested rights of the petitioners. Hence the Writ Petitions.

5. The Writ Petitions are resisted by the respondents by filing a detailed counter-affidavit. It is the case of the respondents is that the first respondent namely, TASMAC, has the monopolistic rights of retail liquor vending throughout the State of Tamil Nadu. Under Rule 9(b) of the *Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003*, it is also empowered to run bars. In the bars run by the first respondent, there is no sale of liquor, but it is only an enclosed place where the Contractors appointed by these tenders should provide tables and chairs and can supply eatables to the persons coming inside the bar to drink liquor and from those of the persons, who do not want to go back to the shop again and hand over the empty bottle, they can hand over the same to the bar contractor himself who, upon paying amount to the

customer, in turn, collects the bottle. The bottles are supposed to be sold by the Contractors and they can appropriate the proceeds themselves.

6. The monthly license fee which is fixed by the first respondent is also by taking into account the profit which the Contractors may receive on account of the sale of empty bottles. Right from the inception of the Buy Back Scheme, it is only the bottles received at the retail shops which are supplied to the petitioners and the bottles which are received in the bars attached are sold by the bar Contractors themselves. The impugned tender does not violate any condition of the Buy Back Scheme as imposed by this Court. The stickers are duly removed from the bottles collected by the bar contractors and are accounted for. The petitioners are only entitled for supply of the bottles in respect of the retail shops and not the bars. Their concern is not relating to the Buy Back Scheme, but, their own commercial profit. Their contract is in no way altered or meddled with. Until their contract period, their bottles from the

retail shops will be supplied. The tender conditions are in no way in violation of the scheme framed by this Court. The licenses are expiring in the month of December, 2023 and therefore, unless the interim orders are vacated and the Writ Petitions are disposed of, the respondent Corporation will be put to grave prejudice.

7. We have heard *Mr.N.L.Rajah*, learned Senior Counsel and thereafter, *Mr.Arun Anbumani* learned Counsel appearing on behalf of the petitioner in W.P.Nos.30426 and 30430 of 2023 and *Mr.R.Chandrasekaran*, learned Counsel appearing on behalf of the petitioner in W.P.No.30410 of 2023. *Mr.J.Ravindran*, learned Additional Advocate General assisted by *Mr.K.Sathish Kumar*, learned Standing Counsel appearing on behalf of the respondents in W.P.Nos.30426 and 30430 of 2023 and assisted by *Mr.C.Ramesh*, learned Counsel appearing on behalf of the respondent in W.P.No.30410 of 2023.

8. *Mr.N.L.Rajah*, learned Senior Counsel appearing on behalf of the petitioner in W.P.Nos.30426 and 30430 of 2023, leading the arguments, submitted that the petitioner is aggrieved on two counts. Firstly, when contract has been duly awarded to him, in respect of collection of empty bottles from the Retail Vending Shops, when the contract is in force, if new bars are opened in respect of the shops, in which as on the date of the contract in April, 2023, where there was no bar attached, that would directly result in the reduction of the number of bottles which would be supplied to the petitioner as Contractor and therefore, during the subsistence of the contract, when the petitioner has a legitimate expectation and in the absence of any commission or omission on behalf of the petitioner, his vested rights cannot be affected.

9. The second submission made by the learned Senior Counsel is that the entire scheme of tender now floated by the respondents inasmuch as it is for collection of empty liquor bottles is in direct violation of the orders of this

Court. The learned Senior Counsel would draw the attention of this Court, to the series of the orders passed in W.P.(MD).Nos.7606 of 2017 etc.. He would point out to the first order passed on 25.04.2022 which is reproduced hereunder:

> " **3.** Upon submission of the above proposed scheme by the TASMAC, the Government of Tamil Nadu vide Letter (Ms) No.32, Home, Prohibition and Excise (VI) Department, Secretariat, Chennai 600 009 dated 21.04.2022 accepted the proposal as submitted by the TASMAC and accorded permission to the TASMAC to implement the scheme of buying back the empty liquor bottles in TASMAC Liquor Retail Vending Shops in The Nilgiris District. The learned Addl. Advocate General has also produced a Xerox copy of the above said letter.
>
> **4.** The modalities prescribed for the buy back scheme are reproduced hereunder:
>
> (a) For every sale of liquor bottle in The Nilgiris District, an extra amount of Rs.10/- shall be collected from the consumer over and above the maximum retail price.
>
> (b) The extra amount of Rs.10/- so collected shall be refunded to the consumer on production of empty liquor bottle.
>
> (c) The TASMAC shops shall collect the empty liquor bottles which have been sold in any of the TASMAC shops in The Nilgiris District.
>
> (d) A rubber stamp marking shall be fixed in the liquor bottles sold in the Nilgiris District, to identify the bottles.

(e) The Managing Director, TASMAC, shall make necessary arrangements for creating awareness in this regard, among the public and the tourists. In co-ordination with the District Administration, The Nilgiris District.

5. The learned Additional Advocate General further submitted that the above scheme will be implemented w.e.f. 15th May, 2022.

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11. Considering the allegations made in the memo filed by the petitioner, without going into the merits and demerits of the allegations, this court directs the TASMAC authorities as well as the Department of Prohibition to see that the bars are supervised regularly to check whether the bars strictly follow the conditions attached to the licenses and if any violations are found, they authorities concerned are directed to close the bar and cancel the license. The authorities concerned are directed to see that the scheme is implemented effectively without any violations or deviations and if any violations or deviations are found in the implementation of the scheme, necessary disciplinary action should be initiated against the erring officials of the TASMAC as well as the Department of Prohibition for their dereliction of duty under the applicable service rules.

12. The TASMAC shall file a report regarding the implementation of the scheme by 30th June, 2022."

10. Though initially the scheme was ordered in respect of hill areas, thereafter, by order, dated 11.10.2022 in W.P.No.15120 of 2019, it was ordered

to be extended to the districts of Coimbatore and Perambalur as a Pilot project for extending the scheme throughout the State. On 27.01.2023, in the said Writ Petition, on the basis of the status report filed, this Court, after taking into consideration the amount of bottles which are said to have come back, directed that the empty liquor bottles be sold as per the tender process and the TASMAC was directed to file a report as to the income generated from the sale of the bottles. It is specifically mentioned in the order that the report should indicate how the bottles are removed, stored and utilised by the tenderer. Thereafter, it was also reported by the respondents that a total sum of Rs.48,44,646/- was realised by the sale of bottles in Coimbatore and Perambalur and even while so reporting, the fact that bottles were only collected through the bar contractors were not supplied to the petitioners, was never brought to the notice of this Court.

11. As a matter of fact, again on 08.06.2023, this Court had dealt with the number of shops, number of bottles sold to customer, number of empty bottles returned from customer, percentage of bottles returned, amount of Rs.10/- collected, amount refunded and balance amount and the amount realised by the sale of bottles and directed that all the surplus amount can be kept in a separate account so as to be appropriately used for the purposes of better implementation of the Buy Back Scheme. Therefore, the sale of a major percentage of bottles is through bar contractors, then the amount realised by the sale of that bottles which is ordered to be maintained in a separate account is affected and therefore, the tender is directly against the Buy Back Scheme of this Court. By tendering the collection of empty bottles to the bar contractors and paying the amount to them by only by collection of stickers, the very purpose of collection of bottles is lost as there is only collection of stickers. That would pave the way of non collection of bottles. The very purpose of environment protection is lost by the tender.

12. It is at this stage, this Court intervened and ascertained from the respondents as to what is the existing position in respect of the current year. For the first time before this Court, it was averred that even during the present year, only part of the bottles are collected in the retail shops and part of the bottles were collected only through the bar contractors. *Mr.N.L.Rajah*, learned Senior Counsel thereafter placed the following data before this Court :-

COIMBATORE (NORTH)

MONTH	PURCHASE QUANTITY (empty bottles)		AMOUNT PAID
April, 2023	20,62,194		Rs.1,50,92,792
May, 2023	85,23,309		GST Rs. 27,16,703
June, 2023	59,47,796		-------------------
July, 2023	63,25,892		Rs.1,78,09,495
August, 2023	66,34,928		-------------------
September, 2023	46,24,889		
	--------------	3,41,19,008	

October, 2023	68,43,125
November, 2023	35,24,653

Total	4,44,86,786

In the Order dated 13-10-2023, the details of collection of empty bottles as on 20-09-2023 furnished by TASMAC has been extracted. As per the same, as of 20-09-2023, the number of empty bottles returned in 5,23,14,047. However, as of September 2023, only 3,41,19,008 empty bottles were sold to the Petitioner. There is a difference of 1,81,95,039 empty bottles, which were not sold to the Petitioner.

COIMBATORE (SOUTH)

MONTH	**PURCHASE QUANTITY (empty bottles)**	**AMOUNT PAID**
April, 2023	18,23,339	Rs.1,22,83,209
May, 2023	65,96,996	GST Rs. 22,10,978
June, 2023	56,15,682	--------------------

July, 2023	57,11,671		Rs.1,44,94,187
August, 2023	53,78,549		--------------------
September, 2023	41,93,550		
	------------	2,93,19,787	
October, 2023	56,43,326		
November, 2023	31,23,164		

Total	3,80,86,277		

In the Order dated 13-10-2023, the details of collection of empty bottles as on 20-09-2023 furnished by TASMAC has been extracted. As per the same, as of 20-09-2023, the number of empty bottles returned is 4,97,95,440. However, as of September 2023, only 2,93,19,787 empty bottles were sold to the Petitioner. There is a difference of 2,04,75,653 empty bottles, which were not sold to the Petitioner.

Total Quantity sold to the Petitioner by TASMAC - Rs.8,25,73,063

Total Amount paid by the Petitioner to TASMAC - Rs.2,73,76,001

Total GST paid by the Petitioner - Rs. 49,27,681

13. As per the said data, though it is submitted before this Court that a total number of 5,23,14,047 bottles were returned in respect of Coimbatore (North), only 3,41,19,008 bottles were supplied to the petitioner. Similarly, in respect of Coimbatore (South), even though before this Court it is projected that 4,97,95,440 bottles were returned, only 2,93,19,787 bottles were actually supplied to the petitioner. In this context, we adjourned the matter further so as to enable the petitioner to file an affidavit containing the above details and we directed the respondent Corporation to respond in respect thereof. Accordingly, an affidavit containing the particulars was filed by the petitioners. In fact, further particulars as to how they are disposing of the bottles and also the payment of the GST amount is also furnished in detail.

14. The respondent Corporation had filed a response to the additional affidavit. In the additional affidavit, for the first time, it is brought to the notice of this Court that when the Buy Back Scheme is implemented in respect of

Coimbatore and Perambalur districts, in respect of Coimbatore (North), it is admitted that as rightly contended by the petitioners, only 3,41,19,008 bottles have been sold to the petitioners, but, however, the remaining bottles were collected by the respective 68 bar contractors. Upon collection of the bottles from the customers, they repaid the amount of Rs.10/-. Everyday by cash the said amount is reimbursed by the first respondent Corporation to the bar contractors. In proof of collection of bottles, the stickers are removed from the bottles and are handed over to the respondent Corporation. Detailed account in respect thereof is being maintained in three registers namely, Annexure - I, Annexure - II and Annexure - III and vouchers are also maintained. The entire account is subjected to internal audit. This apart, the GST statement, showing the other dealers to whom the bottles are supplied by the bar contractors including their GST numbers are also maintained. It is asserted by the learned Additional Advocate General that the GST is paid by the respective dealers who collect the bottles from the bar contractors also. The original registers and voucher books in respect of one such shop are produced before us. He would submit that there was no intention to suppress the said fact before this Court. Even in the tender issued last year, the collection of bottles was expressly mentioned and accordingly, it is only the bar contractors who have been collecting the said bottles. The ultimate aim of not letting bottles to go out is maintained and is better served by this twin system of collecting bottles. It is true that the price of the bottle which is sold by the bar contractors is not brought into the special account as the price of the bottles is also included in the monthly license fee in respect of the bar contract tenders.

15. After filing of those details, *Mr.Arun Anbumani*, learned Counsel also appearing on behalf of the petitioner in W.P.No.30410 of 2023, continuing the arguments, would submit that now, as per the affidavit filed in response exposes the serious flaw in implementation of the Buy Back Scheme. There is no verifiable procedure as to actually where the bottles were collected. Now, it

is possible for the retail vending employees and the bar contractors to collude with each other by simply collecting the stickers and making unlawful gain by showing as if the bottles are returned, thereby, not only pocketing Rs.10/- which are collected etc., and which are not returned to the customers, but, the fate of the bottles also remains to be unknown.

16. *Mr.Arun Anbumani*, would further submit that the petitioners collect bottles and supply them to appropriate persons. By placing reliance on the additional affidavit filed he would submit that the dealers whom the petitioners are supplying clean the bottles and are being put into reuse by supplying back to the concerned distilleries. No such mechanism is ensured by the respondent Corporation in respect of the bars. Once the bar contractors appropriate the money in respect of the empty bottles sold, then the said amount is not coming to the common account which is directed to be maintained by this Court. Finally, he would conclude his arguments by saying that now, the petitioner is

being put to grave prejudice as the amount of bottles which have to be supplied to the petitioner will be drastically reduced since new bars are now sought to be started in respect of the other shops also.

17. *Mr.R.Chandrasekaran*, learned Counsel appearing on behalf of the petitioner in W.P.No.30410 of 2023, would submit that similar are the facts and circumstances in respect of the Perambalur district also and the rights of the petitioner are violated and the Buy Back Scheme is also violated in the district of Perambalur also by the impugned tenders.

18. In reply thereof, *Mr.J.Ravindran*, learned Additional Advocate General, submits that the respondent Corporation is open for any audit or further directions of this Court in respect of the Buy Back Scheme. The respondent Corporation is very much interested in successful implementation of the Buy Back Scheme. It is willing to follow any further or other directions

in respect of the supply of bottles by the bar tenderers also. That does not in any way entitle the petitioners who are only Contractors having commercial interest to question the same. He would submit that they do not have any vested right to collect the bottles from the bars. He would once again reiterate that there was no intention to hide the fact that the part of the bottles were collected by the bar tenderers, but, no occasion arose to give those details. As a matter of fact, he took the assistance of the Managing Director of the first respondent Corporation and also the Revenue Divisional Officer who is working as Regional Manager in Coimbatore district who were personally present and demonstrated the procedure as to how the accounts are maintained before this Court and submitted the originals.

19. We have considered the rival submissions made on either side and perused the material records of the case. Two questions arise for determination in the present Writ Petitions are :-

(i) Whether or not the present impugned tenders which are now floated are violative of the vested rights and legitimate expectation of the petitioners ?

(ii) Whether the impugned tender is liable to be set aside as violative of the orders relating to the Buy Back Scheme and detrimental to the Buy Back Scheme ?

Question No.i :-

20. On a perusal of the contract awarded to the writ petitioners, it would be clear that it was only for the supply of empty liquor bottles from the retail shops alone. The bars are not specifically included. Almost from April, 2023, it can now be seen that around 30% to 40% of the total bottles returned are collected in the bar and the same were not supplied to the petitioners. Therefore, the writ petitioners very well knew that the collection of empty bottles in the bar is not meant to be supplied to them. Secondly, even after the fresh tender whichever customer hands over the bottle to the retail shop, the

same will only be handed over to the writ petitioners. The writ petitioners need not have any apprehension in respect of the same and we record the undertaking of the Corporation that they will directly hand over the bottles which are coming back to the retail shops only to the petitioners till the expiry of their contract period. Therefore, there is no vested right of the petitioners to collect the bottles which are left by the customers or returned by the customers in the bar attached to the shops. When their scope of tender was very clear and so far in respect of the past seven months the same has also been understood and implemented as such, the petitioners cannot plead violation of vested rights.

21. As far as legitimate expectation is concerned, the petitioners are only collecting the bottles and are paying the price for the bottles which are supplied to the petitioner at the agreed rates depending on the type of the bottle. Thus, there is no question of the petitioners being put in prejudice by the

establishment of new bars. Even after the establishment of the new bars, the customers who are returning the bottle to the retail shops will continue to return. Even after sitting and drinking inside the bar, it is represented by the respondents that it would be open for the customers to again go back to the retail shop and return the bottles if they choose to do so. It is only from these willing customers who want to get back their Rs.10/- from the bar contractors, the bar contractors are allowed to collect empty bottles. The respondents have made categorical submission that even the bar contractors are to pay the said sum of Rs.10/- to the customers. Therefore, there is no violation of legitimate expectation. Further, the business of selling liquor and all activities associated with it are *res extra commercium*. Therefore, there can be no legitimate expectation at all by the petitioners or any person whomsoever. Tomorrow, if the State decides to implement the prohibition in full, nobody can claim any legitimate expectation. The petitioners, the bar contractors or the respondent Corporation can never have any legitimate expectation that people would subject themselves to the ill-habit of drinking and that they will derive revenue out of it. The entire business is *res extra commercium* only. Useful reference can be made to the judgment of the Hon'ble Supreme Court of India ***Khoday Distilleries Ltd., Vs. State of Karnataka***[1] in this regard. Therefore, we hold that by the impugned tenders, no vested right of the petitioners is affected nor there can be any legitimate expectation of the petitioners that is violated.

Question No.ii :-

22. The next contention on behalf of the petitioners is that the impugned tenders is violative of the Buy Back Scheme. Firstly, it can be seen that when the Buy Back Scheme is implemented in Coimbatore and Perambalur districts with effect from 01.04.2023, it is now brought on record that from the very implementation, the empty liquor bottles which the consumers consumed in the bar, they were at liberty to hand over to the bar contractors, but, after paying Rs.10/- to them or collecting the same. It is true that the said fact has so far

1 (1995) 1 SCC 574

been placed before this Court. The respondents could have been more diligent to place all the connected and relevant facts while filing status reports in respect of the Buy Back Scheme. Therefore, we had to hear the parties in detail and we have perused the response to the additional affidavit on behalf of the petitioners. The officials were also present before us and explained as to how the entire system works. In fact, the pictures of the stickers being pasted in sheet of paper for accounting is also placed before us. Three registers in the form of Annexure - I, Annexure - II, Annexure - III are maintained. The originals in respect of one such shop is produced before us. Though the records are maintained in respect of the bottles, regarding the payments, we find that such amounts shown as are paid by cash vouchers and the manner in which it is maintained does not inspire confidence of the Court.

23. No proper proof is also produced in respect of payment of GST by the third party purchasers of the bottles from the respective bar contractors. Be

that as it may, the primary aim of the Buy Back scheme was not to let the bottles in the environment. To that extent we have no concrete material to disbelieve that (i) in respect of every bottle sold in the Retail Vending Shop, an additional sum of Rs.10/- is collected from the customer; (ii) a sticker is placed on every bottle; (iii) When the bottles are left with the bar contractors, it is averred that they in turn paid to the customers. Though there is no proof for the same, till date we see that there is no such complaint from any customer is received by the respondent administration nor any any petition has been filed before this Court for the past period, in which, the Buy Back Scheme is implemented; (iv) The GST statement of supply of the bottles to the various third parties by the bar contractors is also placed on record. Therefore, we are satisfied that by the tender condition, our orders are not violated.

24. The purpose of the Buy Back Scheme was to ensure that the bottles are being returned to the respondents and that the maximum number of bottles

are put into reuse. We do not find the tender conditions as such violative of any of our orders. But, as rightly as contended by *Mr.Arun Anbumani*, learned Counsel, there is scope in shop or bar for personnel manning at the ground level to manipulate the accounts without collecting bottles. In that regard, firstly, a status report is also filed, in which, it is promised that the respondents are shortly going to introduce a bar-code in the place of the stickers in the bottle, in which case, upon scanning of the bar-code, return of Rs.10/- with the identity of the bottle sold at the particular shop etc., can be identified. The respondents are at liberty to proceed further to implement the bar-code. But, we expect that every detail of the modalities and the manner in which it has to be implemented from the stage of affixing the bar-code till the return of the money to the customers and completing accounts in respect of the empty bottles be placed before this Court. Secondly, when huge amount of money in the form of Rs.10/- per bottle is returned everyday to the bar contractor, the same cannot be returned by way of cash.

25. Therefore, to ensure proper accounting and that the amount is actually paid to the bar contractor, we direct that the said money due to the bar contractor everyday should be paid only through banking transaction and not by cash. Further, to ensure that the bottles are actually collected and it cannot be a hogwash, we direct the first respondent Corporation to issue appropriate circular to all the bar contractors to sell it only to such persons who have the GST registration and GST has to be paid on such purchase of bottles. TASMAC. The management shall review these accounts once in every two months and ensure the implementation of the above. We issue the aforesaid directions as further directions in the Buy Back Scheme. The aforementioned directions will also be issued as separate directions in the Writ Petition in which of continuing mandamus is issued and pending before this Court so that the present Writ Petitions are disposed of. Accordingly, we answer the question

that the tender conditions are not violative of the Buy Back Scheme as proposed by this Court or any of the orders of this Court.

26. In the result, the present Writ Petitions are disposed of in the following terms :-

(i) The impugned tender notifications are valid and the respondents can proceed to finalise the same in accordance with law;

(ii) The respondents shall also carry out the aforementioned directions which will also be issued in the other pending Writ Petitions;

(iii) No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K., J.) (D.B.C., J.)
13.12.2023

Index : yes
Speaking order
Neutral Citation : yes

grs

To

1. The Managing Director,
   Tamil Nadu State Marketing
   Corporation Limited (TASMAC),
   Thalamuthu Natarajan Maaligai,
   Gandhi Irwin Road, Egmore, Chennai - 600 008.

2. The District Manager / Deputy Collector,
   Coimbatore South, Tamil Nadu State
   Marketing Corporation Limited (TASMAC),
   4/5A Sangampalayam, Mahalingapuram (Post),
   Aachipatti, Pollachi, Coimbatore - 642 002.

3. The District Manager / Deputy Collector,
   Coimbatore South, Tamil Nadu State
   Marketing Corporation Limited (TASMAC),
   305, Vilankurichi Road, Near Peelamedu Railway Station,
   Old Chinthamani Co-operative Society Godown,
   Peelamedu, Coimbatore - 641 004.

4. The District Manager,
   TASMAC Ltd.,
   Perambalur District,
   Perambalur.

N.SATHISH KUMAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.Nos.30426, 30430 and 30410 of 2023

13.12.2023