



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.01.2022

PRONOUNCED ON : 31.01.2022

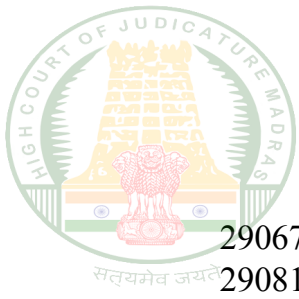
CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P. Nos.27352, 27357, 27361, 27936, 27602, 27605, 27613, 27617, 27619, 27621, 27625, 27703, 27711, 27719, 27723, 27726, 27728 to 27731, 27745, 27751, 27758, 27761, 27765, 27766, 27769, 27774, 27783, 27785, 27789, 27795, 27799, 27805, 27810, 27811, 27813, 27817, 27816, 27820, 27822, 27826/2021, 28117, 27528, 27361, 27513, 27516, 27517, 27519, 27520, 27521, 27522, 27523, 27524, 27525, 27527, 27529, 27530, 27531, 27532, 27702, 27704, 27705, 27706, 27707, 27708, 27709, 27710, 27712, 27713, 27714, 27715, 27716, 27717, 27718, 27720, 27721, 27725, 27851, 27853, 27857, 27858, 27859, 27868, 27873, 27874, 27880, 27883, 28123, 28125, 28126, 28130, 28135, 28139, 27533, 27535, 27536, 27698, 27889, 27896, 27357, 27845, 27848, 27727, 27839, 27722, 27724, 27888, 27632, 27693, 27733, 27735 to 27737, 27739 to 27742, 27746 to 27750, 27752, 27753, 27755 to 27757, 27841, 27842, 27844, 27846, 27847, 27849/2021, 27850, 27852, 27854, 27855, 27856/2021, 27861, 27862, 27866, 27869, 27871, 27875, 27878, 27882, 27885, 27890, 27894, 27895, 27865, 27864, 27886, 27872, 27877, 27881, 27876, 27884, 27887, 27891, 27893, 27898, 27901, 27897, 27902, 27903, 27904, 27908, 27909, 27911, 27940, 27944, 27946, 27947, 27948, 27949, 27941, 27942, 27943, 27951, 27952/2021

and

W.M.P.Nos.29500, 29503, 29121, 29122, 29127, 29128, 29133, 29135, 29142, 29143, 29145, 29146, 29151, 29152, 29153, 29154, 29159, 29160, 29165, 29167, 29244, 29269, 29270, 29282, 29284, 29290, 29292, 29297, 29301, 29303, 29304, 29305, 29306, 29307, 29308, 29309, 29254, 29257, 29299, 29319, 29320, 29322, 29323, 29324, 29325, 29327, 29328, 29329, 29332, 29317, 29318, 29334, 29343, 29344, 29351, 29352, 29353, 29354, 29356, 29357, 29359, 29365, 29370, 29371, 29373, 29375, 29378, 29379, 29380, 29382, 29387, 29388, 29361, 29364, 29385, 29386, 29391, 29393, 29394, 29395, 29397, 29398, 29043, 29065, 28863, 28864, 28865, 28867, 28870, 28871, 29040, 29044, 29046, 29047, 29048, 29049, 29052, 29053, 29054, 29055, 29056, 29057, 29058, 29060, 29061, 29062, 29063, 29064,



W.P.No.27352 of 2021 and etc, batch

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(Through Video Conferencing)

W.P.No.27352 of 2021

S.Jagannathan

.. Petitioner

vs.

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,

**Prayer** : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records relating to the tender notification dated 14.12.2021 in



W.P.No.27352 of 2021 and etc, batch

Na.Ka.No.A3/2242/2021 of the second respondent and quash the same and consequently direct the respondents to extend the right to collect empty bottles and sell eatables in the Bar attached to Sho No.8724, CTH Road, Avadi, Chennai.

For Petitioners in W.P.Nos.27936, : Mr. Suresh Kumar for  
27702, 27704, 27705, 27706, Mr.K.M.Vijayan Associates  
27707, 27708, 27709, 27710,  
27712, 27713, 27714, 27715,  
27716, 27717, 27718, 27720,  
27721, 27725, 277851, 27853,  
27857, 27858, 27859, 27868,  
27873, 27874, 27880, 27883,  
27698, 27889, 27896, 27845,  
27848, 27727, 27839, 27722,  
27724, 27880, 27883, 27698,  
27889, 27896, 27845, 27848,  
27727, 27839, 27722, 27724,  
27888 of 2021

For Petitioner in W.P.Nos.27602, : Mr.A.R.L.Sundaresan,  
27605, 27609, 27613, 27167, Senior Counsel  
27619, 27621, 27703, 27711, for M/s.A.L.Gandhimathi  
27719, 27723, 27726, 27728,  
27729, 27731, 27730, 27745,  
27761, 27751, 27758, 27765,  
27766, 27769, 27774, 27789,  
27795, 27799, 27805, 27810,  
27811, 27813, 27817, 27783,  
27785, 27816, 27820, 27822,  
27862, 27361, 27352, 27357, of  
2021



W.P.No.27352 of 2021 and etc, batch

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For petitioners in W.P.Nos.27632,: : Mr.M.Manimaran  
27733, 2735, 27736, 27737, 27738,  
27739, 27740, 27741, 27742, 27746,  
27747, 27750, 27752, 27753, 27755,  
27756, 27757, 27748, 27749, 27841,  
27856, 27842, 27844, 27852, 27854,  
27855, 27846, 27847, 27849, 27850,  
27861, 27869, 27871, 27862, 27865,  
27866, 278875, 27878, 27882,  
27885, 27890, 27894, 27895, 27897,  
27902, 27903, 27904, 27908, 27909,  
27911, 27940, 27944, 27946, 27947,  
27948, 27949, 27941, 27942, 27943,  
27951, 27952 of 2021

For Petitioner in : Mr.L.Chandrakumar  
W.P.No.27693/2021 umar

For Petitioner in : Mr.P.Sateesh Kumar  
W.P.Nos.27864, 27866, 27872,  
27877, 27881, 27876, 27884,  
27887, 27898, 27893, 27898,  
27901 of 2021

For Petitioner in : Mr.S.N.Ravikumar  
W.P.Nos.28117, 28123,  
28125, 28126, 28130,  
28135 and 28139 of 2021



W.P.No.27352 of 2021 and etc, batch

For Petitioner in : Mr.K.Selvaraj  
W.P.Nos.27528, 27513,  
27516, 27517, 27519,  
27520, 27521, 27522,  
27523, 27524, 27525,  
27527, 27529, 27530,  
27531, 27532, 27533,  
27535, 27536 of 2021

For Respondents in all W.Ps. :: Mr.R.Shunmuga Sundaram,  
Advocate General, Asst.by  
Mr.K.Sathish Kumar and  
Mr.P.Arumugarajan, Standing  
Counsels for TASMAC.

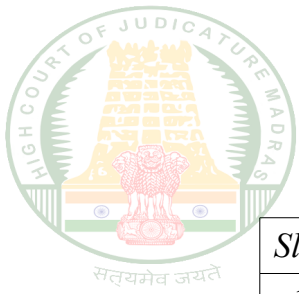
### COMMON ORDER

By this common order all these writ petitions are being disposed.

2. In these writ petitions, the petitioners have challenged the Tender Notification dated 14.12.2021 bearing reference Na.Ka.No.A3/2242/2021 issued by the second respondent Tamil Nadu State Marketing Corporation (TASMAC). Details of the relief sought for in these Writ Petitions are detailed as below:-

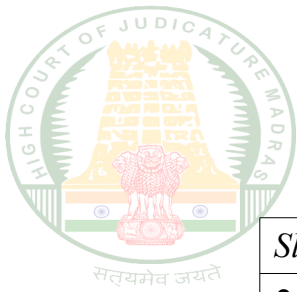


W.P.No.27352 of 2021 and etc, batch



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Sl.No	Writ Petition No.	Prayer
1	27352, 27357, 27361, 27936, 27602, 27605, 27613, 27617, 27619, 27621, 27625, 27703, 27711, 27719, 27723, 27726, 27728 to 27731, 27745, 27751, 27758, 27761, 27765, 27766 and 27769/2021, 27774, 27783, 27785, 27789, 27795, 27799, 27805, 27810, 27811, 27813, 27817, 27816, 27820, 27822, 27826/2021, 28117, 27528, 27361, 27513, 27516, 27517, 27519, 27520, 27521, 27522, 27523, 27524, 27525, 27527, 27529, 27530, 27531, 27532, 27702, 27704, 27705, 27706, 27707, 27708, 27709, 27710, 27712, 27713, 27714, 27715, 27716, 27717, 27718, 27720, 27721, 27725, 27851, 27853, 27857, 27858, 27859, 27868, 27873, 27874, 27880, 27883, 28123, 28125, 28126, 28130, 28135, 28139, 27533, 27535, 27536, 27698, 27889, 27896, 27357, 27845, 27848, 27727, 27839, 27722, 27724, 27888/2021	Writ of Certiorarified Mandamus to call for the records relating to the tender notification dated 14.12.2021 and quash the same and consequently to direct the respondents to extend the right to collect empty bottles and sell eatables in the Bar attached to shops.



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Sl.No	Writ Petition No.	Prayer
2	27632, 27693, 27733, 27735 to 27737, 27739 to 27742, 27746 to 27750, 27752, 27753, 27755 to 27757/2021, 27841, 27842, 27844 27846, 27847, 27849/2021	Writ of Certiorari to call for the records in Na.Ka.A3.No.1001/2021 dated 14.12.2021 issued by the 3 <sup>rd</sup> respondent and quash the same.
3	27850, 27852, 27854, 27855, 27856/2021, 27861, 27862, 27866, 27869, 27871, 27875, 27878, 27882, 27885, 27890, 27894, 27895, 27865, 27864, 27886, 27872, 27877, 27881, 27876, 27884, 27887, 27891, 27893, 27898, 27901, 27897, 27902, 27903, 27904, 27908, 27909, 27911, 27940, 27944, 27946, 27947, 27948, 27949, 27941, 27942, 27943, 27951, 27952/2021	Writ of Mandamus to direct the respondents to issue and accept the tender forms in respect of the tender notification dated 14.12.2021 to the bar attached to the shops.

3. The impugned Tender Notification has been purportedly issued by the second respondent Tamil Nadu State Marketing Corporation (TASMAC) under the powers conferred with it under the provisions of the Tamil Nadu Prohibition Act, 1937 and the provisions of the Tamil Nadu



Liquor Retail Vending (In Shops and Bars) Rules, 2003 consequent to the amendment to the Act.

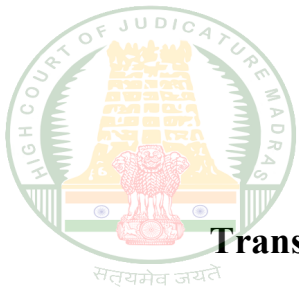
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4. By the impugned Tender, the second respondent Tamil Nadu State Marketing Corporation(TASMAC) has called for a competitive bid from bidders to award contracts to the highest bidders to collect empty liquor bottles in the Bars and for sale of short eats/starters/snacks/side dish water etc. in these Bars situated next to the TASMAC shops.

5. The so-called Bars situated next to the TASMAC Shops are not the leased premises of the respondents TASMAC. They are directly leased by the persons who are given licence to collect bottles and sell short eats. The so called Bar where the prospective licensee is allowed to operate is a place where buyers are allowed consume Indian Made Foreign Spirits and Liquor purchased from the retail shops of the respondents TASMAC.

6. The common grievance of the petitioner is that the respondents TASMAC has floated the above tenders without considering the hardship faced by the petitioners and contrary to the provisions of the **Tamil Nadu**





**Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) and the**

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Rules made thereunder and Circular dated 22.07.2014 bearing reference Circular No.A3/19/2014 and ignoring the loss sustained by them due to closure of the business during the lockdown and during the previous licence period.

7. It is submitted that the previous license was given to be them during September, 2019 for a period of two years and the license period was to come to an end during September, 2021. It is submitted that these petitioners could not fully utilize the period as outbreak of SARS Covid 19 pandemic played a spoil sport and forcing the Bars situated next to the TASMAC shops to remain closed for a period of about 15 months. It is submitted that the respondents TASMAC extended the grace period only till 31.12.2021. It is submitted that these petitioners were thus unable to operate their previous licence which was in operation for a period of two years due to outbreak of covid-19 pandemic in March 2020.

8. It is submitted that due to lockdown imposed due outbreak of Covid 19 pandemic during March, 2020, the petitioners had no business for



about 15 months period and their licence to collect bottle and vend short eats in the Bar premises leased out by them and had remained inoperable due to lock down and stringent Covid protocol.

9. It is submitted that the respondents TASMALC ought to have allowed the petitioner to operate the license for another 15 months period by considering the hardship caused by them.

10. It is submitted that petitioners have suffered huge financial loss and therefore they should be allowed to continue. It is submitted that even though the petitioner were not required to pay the license fee to the respondents TASMALC during these months, they still suffered loss as they were forced to not only pay the lease rentals for the premises to the owners of the premises where the bar attached to the TASMALC shops are in operation. It is submitted that these petitioners were also forced to pay salary to the retinue of workers all through the lockdown period when it was in force.



11. It is therefore submitted that the petitioners should be allowed to

continue for at least another 15 months period as they have lost money on account of fixed expenditure incurred towards the rentals and the salaries to workers.

12. It was further submitted that the petitioners have heavily invested in developing the infrastructure in the rented premises (for running the Bars) and therefore they deserve longer period to recoup the expenses incurred by them towards the rented premises.

13. That apart, it is submitted that in the impugned Tenders, the requirement of obtaining “No Objection” from the owners of the premises was done away with a view to oust the petitioners and include persons closer to the ruling dispensation.

14. It is submitted that the petitioners who have leased the premises will be ousted by the owner of the premises if a higher bid is offered by another bidder and is allowed to operate the bar without insisting on a prior “No Objection” from the owners of the premises.



15. It is submitted that the impugned Tenders are also intended to artificially rig the bid amount to oust person like petitioners to give business to person who are closer to the ruling dispensation.

16. It is submitted that if a higher bidder fails to get “No Objection” or fails to gets a lease from the owner of the premises where the Bars are there, such a bidder will not be able to run the bar and thereby frustrate the legitimate chances of the petitioners to continue in business.

17. It is also submitted that neither the petitioners who have a pre-existing prior lease agreements with the owners of the Bar premises nor the highest bidder will be able to do business if the impugned Tenders floated is allowed to be proceeded in the manner in which tender is being orchestrated.

18. It was submitted that an attempt has been made to unfairly oust the petitioners by giving a go-bye to Circular dated 22.07.2014 bearing reference Circular No.A3/19/2014 and thereby allowing the petitioners to run helter-skelter.



19. At the time of the admission, it was also argued that there was an

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unfair attempt to oust the petitioners from participating in the impugned Tenders by favouring only those who were closed to the ruling dispensation and therefore Tenders floated vide impugned Tender Notifications dated 14.12.2021 bearing reference Na.Ka.No.A3/1001/2021 was vitiated.

20. It was also submitted that the Tender Forms were not readily available for being downloaded from the WEBSITE of the Respondents TASMACH. It was submitted that the physical copies of the Tender Forms were also not available on cost to the petitioners.

21. It is therefore submitted that the provisions of the Tamil Nadu Transparency In Tenders Act, 1998 (Tamil Nadu Act 43 of 1998) and the Rules made thereunder were floated forcing the petitioners to rush to the Court.

22. It is further submitted that pursuant to the orders of this Court dated 22/23.12.2021, the respondents TASMACH did issue Tender forms to the petitioners, but did not permit the petitioners to submit their tender



applications as no drop box was kept in many of the auction centres. It is

further submitted that submits that Tender in the following areas have not

been finalized to accommodate few closer to the ruling establishment:-

<i>S.No.</i>	<i>Name of the District</i>
1	Chennai (Central)
2	Chennai (North)
3	Chennai (South)
4	Kanchipuram (North)
5	Kanchipuram (South)
6	Thiruvallur (East)
7	Krishnagiri
8	Arakkonam

23. It is further submitted that the License Fee payable is in proportion with the sale and therefore the petitioners who have invested heavily should not be made to suffer.

24. The learned Senior Counsel further submitted that the terms of Tender specifically did not include “ No Objection Certificate” (NOC) for the highest bidder and that in certain places where Tenders were opened but



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results were not declared while in certain other places where the Tenders are opened but results were declared to few favourable persons.

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25. It is submitted that terms and conditions of Circular dated 22.07.2014 bearing reference Circular No.A3/19/2014 which was there in the tender floated till 2019 required a successful bidder to get a “No Objection Certificate” from the owners of the bar premises which is conspicuously absent in the impugned Tender Documents though such condition has been incorporated *post facto* in few place while giving Licence to the successful bidder.

26. It is therefore submitted that this has resulted in arbitrary exercise of power by the respondents TASMAL. In this connection, a reference was made to a decision of the Hon'ble Division Bench of this Court in the case of **The Deputy Collector / District Manager Tamil Nadu State Marketing Corporation Tiruchirapalli Vs. R.Ramkumar** in W.A.No.(MD)No.1492 and 1493 of 2011 vide order dated 14.03.2012 reported in 2010 SCC OnLine Mad 6234.



27. The learned Senior Counsel for the petitioners has placed reliance

on paragraph Nos.11 & 12 from the said decision which are reproduced

below:-

*“11. Going by the averments in the common affidavit by the District Manager that licences had been granted to persons with 'No Objection Certificate' along with the application, we do not find any justifiable ground to disturb the order of the learned Single Judge. This is more so for the reason that the order in W.P.No.9500 of 2011 dated 25.09.2011, which was followed in all the writ petitions, which is under appeal, has been accepted by the appellant herein and no grounds are raised as to the correctness of the said order. On the admitted fact that the tender conditions of Pudukottai District and Trichy District are one and the same, we do not find any ground to take a different view. As already noted in the preceding paragraph, given the fact that 'bar' as defined under Rule 2(d) means a place located within the shop or adjoining the shop used for consumption of liquor and the tender is for collection of empty bottles and for selling eatables therein, the applicant must necessarily have the permission of the land owner to locate the shop therein to sell eatables or at least, the appellant should come forward with the plea that they are entitled to permit the applicant to do business in eatables. With no definite stand taken by the appellant either way, we fail to understand the contention of the appellant on reading a condition as regards the furnishing of No Objection Certificate as amounting to introducing a new condition in the tender notification. Thus with TASMAL as the lessee to run the shop with the bar, it is not the case of the appellant that collection of the empty bottles in the bar is not their concern or that they have the right to license the running of the eatery shop therein. In the absence of any specific stand taken, leaving the choice to the appellant to choose according to their desire - a fact which is evident from*





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*paragraph 3 of the affidavit filed by the appellants dated 12.03.2012 before this Court, would only result in an arbitrary exercise of the power of selecting the successful bidder. We do not think, such a course could be permitted. In the circumstances, while agreeing with the view of the learned Single Judge in W.P.No.9510 of 2011, we have no hesitation in affirming the view of the learned Single Judge in the order under appeal and thereby dismissing the writ appeals. It may also be noted that on an earlier occasion, a challenge was made to the tender notification pertaining to Sivaganga District containing a clause requiring the applicants to enclose No Objection Certificate from the owner of the building. The said tender notification related to collecting empty bottles and selling eatables in the Shop-cum-bar run by TASMAC. In considering the said question, in W.P.(MD)No.5844 of 2010, by order dated 05.07.2010, learned Single Judge referred to the decision W.P.No.9952 of 2007 dated 28.11.2007 and held that the condition imposed by TASMAC to obtain No Objection Certificate for participating in the tender process in quite legal. This Court further pointed out that if the owner of the premises, after successful bidding of the futile. Thus this Court rejected the plea of an applicant as regards the furnishing of No Objection Certificate as a requirement for participating in the tender process. The contention taken by TASMCA, the appellants in these writ appeals, is directly opposite to what was contended in the earlier writ petition, except for the sole contention that the tender conditions cannot be improvised. Given the object of floating the tender, we do not find any justification in the contention of the appellants that each district being an independent unit, the Regional Manager of the Unit is entitled to impose conditions as applicable to that district and that there need not be any uniform conditions to prevail in all the districts.*

*12. It may also be noted that TASMCA has been licensed by the Commission of Prohibition and Excise for retail*



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

28. The learned Senior Counsel for the petitioners has also placed reliance on the decision of a Single Judge of this Court rendered in the following cases which has followed the above decision of the Division Bench of this Court:-

**"(i) S.Ramanathan Vs. The Managing Director Tamil Nadu State Marketing Corporation Limited, in W.P.Nos.19073 to 19080, 19469 to 19473 and 19755 to 19757 of 2014, vide order dated 28.10.2014 reported in 2014 SCC OnLine Mad 9439.**



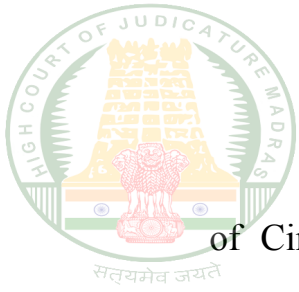
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(ii) *P.Poomalai Vs. The Sub Collector / District Manager, TASMAL Limited, in W.P.No.11581 of 2016 reported in 2016 SCC OnLine Mad 19216.*

(iii) *State of Punjab and another vs. Devans Modern Breweries Ltd. and another, (2004) 11 SCC 26*”.

29. The learned Senior Counsel for the petitioners further submits that the order of the Division Bench of this Court in **The Deputy Collector / District Manager Tamil Nadu State Marketing Corporation Tiruchirapalli Vs. R.Ramkumar** in W.A.No.(MD)No.1492 and 1493 of 2011 vide order dated 14.03.2012 reported in 2010 SCC OnLine Mad 6234 led to the issue of **Circular No.A3/19/2014 dated 22.07.2014** referred to *supra*. It is therefore submitted “ No Objection Certificate” is a pre-condition from the owners cannot be dispensed with.

30. The learned Senior Counsel for the petitioners further submits that it has become a regular feature for the respondents TASMAL while floating Tender inviting applications/bids for operating in the premises (bars) for selling short-eats and for collecting empty bottles to delete the requirements



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of Circular dated 22.07.2014 bearing reference Circular No.A3/19/2014

leading to periodical intervention by the Courts. A reference was also made  
a recent Order dated 29.12.2021 in W.P.No.28101 of 2021.

31. It is therefore submitted that unless a Tender process complies with the Provisions of the Tamil Nadu Transparency in Tenders Act, 1998, entire Tender process is gone hitherto liable to be declared as vitiated and retendered illegal.

32. Attention was also invited to the provisions of The Tamil Nadu Transparency in Tenders Act, 1998, The Tamil Nadu Transparency in Tenders Rules, 2000 and the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012. A particular reference was made to procedure prescribed in Chapter V of The Tamil Nadu Transparency in Tenders Rules, 2000.

33. The learned Counsel for the petitioners Mr.K.Selvaraj in W.P.Nos.27528, 27513, 27516, 27517, 27519, 27520, 27521, 27522, 27523, 27524, 27525, 27527, 27529, 27530, 27531, 27532, 27533, 27535 & 27536

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*W.P.No.27352 of 2021 and etc, batch*

of 2021 submits that though the Tenders floated was in terms of Rule 9-A.

of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 and as per proceedings of the Commissioner of Prohibition and Excise in Proc.No.P&E.9 (1)/17936/2012 dated 27.09.2019, there was a large scale irregularity.

34. The learned Counsel further submits that though the respondents TASMAL is obliged to follow the content of **Circular No.A3/19/2014 dated 22.07.2014** pursuant to the orders of this Court dated 23.12.2021, in W.A.(MD)Nos.1492 and 1493 of 2011 Tender Forms, the petitioners were not allowed to submit their Tender application on 30<sup>th</sup> December, 2021.

35. It is submitted that no drop box was there in the TASMAL premises. Thus, some of the petitioners were not allowed to participate in the Tenders. It is therefore submitted that a senior officers from the State Government may be nominated by the Court to oversee a proper completion of the Tender process so that there is no irregularity.



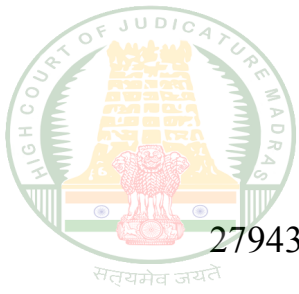
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36. Appearing on behalf of the petitioners, the learned counsel for the petitioner Mr.P.Satheesh Kumar in W.P.Nos.27864, 27886, 27872, 27877, 27881, 27876, 27884, 27887, 27891, 27893, 27898 & 27901 of 2021 submits that the auction under the Impugned Tender Notifications is illegal and ultra-vires the Provisions of the Tamil Nadu Prohibition Act, 1937 and the aforesaid Rules.

37. It is submitted that there is no restriction against consumption of liquor in public place and that the very concept of licensing of premises as Bar premises is not contemplated under the Rules and therefore submits that the Tender process is liable to be quashed and declared as ultravires Act.

38. The learned counsel for the petitioners Mr.M.Manimaran in W.P.Nos.27632, 27733, 27735, 27736, 27737, 27738, 27739, 27740, 27741, 27742, 27746, 27747, 27750, 27752, 27753, 27755, 27756, 27757, 27748, 27749, 27841, 27856, 27842, 27844, 27852, 27854, 27855, 27846, 27847, 27849, 27850, 27861, 27869, 27871, 27862, 27865, 27866, 27875, 27878, 27882, 27885, 27890, 27894, 27895, 27897, 27902, 27903, 27904, 27908, 27909, 27911, 27940, 27944, 27946, 27947, 27948, 27949, 27941, 27942,

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27943, 27951, 27952 of 2021 submits that the petitioners are from Chennai,

Thiruvallur and Kanchipuram regions and that the Tender process has been postponed.

39. The learned Counsel for the petitioners therefore also reiterates the submission of the learned counsel Mr.K.Selvaraj, Senior Officers from the State Government may be nominated by the Court to oversee a proper Tender process is adopted and there is no irregularity.

40. Appearing on behalf of the respondents TASMAL, the learned Advocate General explained the business model of the respondents TASMAL and submitted that the respondents TASMAL was merely outsourcing the work of clearing the used bottles by the consumers and facilitating the consumers to consume alcohol along with the short eats/side dish etc. to be sold in the premises next to the retail shops of TASMAL under Rule 4 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003.



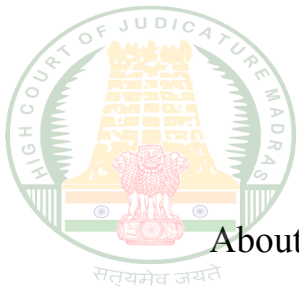
41. It is submitted that the Tender conditions are stringent and are required to be complied by every successful bidder and that only the successful bidders are entitled to sell short eats and collect the empty/used bottles during period of the licence.

42. It is submitted that during the preceding Tender, cartel operated, as is evident from the number of applications were received then. They arranged between themselves such that not more than one or two applications per shop were received. There was no competitive bid during previous tender.

43. It is submitted that whereas pursuant to the impugned Tender Notification, a total of 7430 applications were received in Northern Part of Tamil Nadu for a total of 3436 shops amenable to the territorial jurisdiction of the Principle Bench of this High Court.

44. The Learned Advocate General further submitted that in the southern districts of the State under the jurisdiction of the Madurai Bench of this High Court in 1946 TASMAL retail shops about 866 bars are attached.





About 4887 applications were received and about 1027 bids were finalized

under the above Rules.

45. It is submitted that there are about 3436 retail Shops within the jurisdiction of this Court and that in about 1197 such retail shops in various Districts bars were in operation.

46. It is further submitted that as compared to the previous Tender, a total of 7420 applications were received for 1197 shops indicating that there was a total transparency in the Tender process. It is submitted that pursuant to the order of this Court, the petitioners were also given Tender Forms even though a wrong statement was made by them across the bar to make it seem as if Tender Forms were neither available for being downloaded from the website of the Respondents TASMACH nor physical were supplied to the prospective bidders before filing the writ petitions.

47. It is submitted that the petitioners who appear to have a lease agreement with the owners or the premises adjacent to leased premises where TASMACH Shops are situated cannot be allowed to jeopardize the

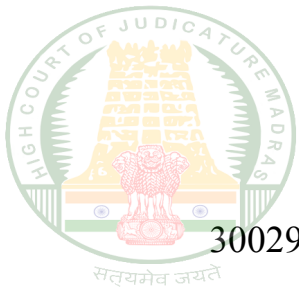


Tender process by insisting that license/permission should **tuned** to suit their requirement to have a prior “No Objection Certificate” (NOC).

48. It is further submitted that under the business model, a successful bidder should enter into a lease with the owner of the property and in case the owner does not offer the lease, the shop will not have a bar adjacent to it.

49. It is further submitted that the decision of the Learned Single Judge of this Court in W.P.No.28101 of 2021 dated 29.12.2021 cannot be said to have laid down the law. It is further submitted that there was only a passing reference was made regarding “No Objection Certificate” from the owners.

50. The learned Advocate General also referred to paragraph Nos. 6, 7 & 8 from the decision of a Learned Single Judge of this Court in W.P.Nos.29727 to 29746 of 2017, 29779 to 29808 of 2017, 29853 to 29856 of 2017, 29863, 29864 of 2017, 29869 to 29889, 29893 to 29913, 29954 to 29962, 29979 to 29987, 30004 to 30011, 30043 to 30056 of 2017, 30027 to



30029 of 2017, 30099 to 30109 of 2017, 30260, 30261 of 2017, 30112 to 30117 of 2017, 30119 to 30131 of 2017, 30181 to 30183 of 2017, 30190 to 30213 of 2017, 30216 to 30230 of 2017, 30254 & 30255 of 2017, 30260 & 30261 of 2017 & 30279 of 2017 & 30359 of 2017 to 30363 of 2017 vide order dated 23.11.2017 wherein it was observed as under:-

*“11. Based on such statistics no inference of legal mala fides could be drawn. There is also no allegation of bias made against TASMAL by any of the petitioners. Thus, the only ground of challenge to the impugned notification is on the ground of irrationality. It was argued that the method of fixation of the upset price was irrational, since the volume of sales in the bar has to be considered and not the volume of sales in the retail vending shops. Admittedly, the exclusive right to vend liquor vest with TASMAL. The licence to be granted by TASMAL for which the impugned notification has been issued, is to sell eatables and collect empty bottles in the bar attached to the shop. The normal concept of a bar cannot be adopted in the present batch of cases, unlike the bars, which are functioning in hotels where licence is granted in form FL-II and FL-III. Though the respondent/TASMAL states that the eatables ought to be sold in the “bar” attached to the shop to term the premises as a “bar” in the general sense, as it is popularly understood as incorrect. This is so because, the licensee is not permitted to vend liquor in the premises termed as “bar” attached to the shop. TASMAL does not vend liquor in the premises termed as “bar” attached to the shop. At best, it could be termed as a facility offered by TASMAL by having a premises adjacent to the retail vending shop, where the consumers who purchase liquor from the retail vending shop would be permitted to consume the liquor, so purchased, in the said*

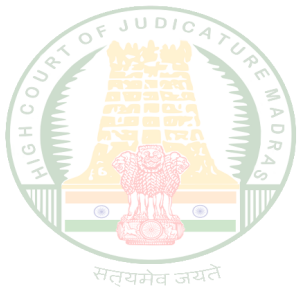


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*premises. By way of addition facility, licences are issued for selling eatables and collecting the empty bottles. Therefore, there should be reasonable nexus between the turnover in the retail vending shop and the licence fee to be fixed by TASMAL for granting the licence to sell eatables and collect empty bottles. It is not for this Court to examine as to whether fixation of 3% or 2.5% or 1.5% or 1% of the turnover of the shop for computing the quantum of Security Deposit/licence fee.*

*13. The fixation of a different percentage for Nilgiris District cannot be a sole reason to strike down the impugned notification, as the respondent seeks to justify their action by stating that such was the basis ever since 2003 onwards and considering the ground realities prevailing to that District 2006 onwards, a different percentage was fixed. Above all none has a fundamental right to trade in liquor. The licence, which is proposed to be offered pursuant to the impugned tender is an adjunct to the right to trade liquor, as it is intended as a facility to the consumers who consume liquor purchased from the retail vending shop adjacent to the premises. Therefore, it has to be observed that the petitioner cannot equate the licence, which will be granted to them as any other licence issued by the Government or Government Corporations. But for the permission granted by TASMAL to create a facility for permitting customers to consume liquor in a 20 designated area, no independent right flows in favour of the petitioners. There are specific prohibition under the Rules, which prohibit establishment of shops near places of worship, educational institution etc.*

*14. The learned counsels appearing for the respondent/TASMAL submitted that the concept of providing a premises for consumption of liquor adjacent to the shop on account of ban of consumption of liquor in public places and to prevent persons from*



W.P.No.27352 of 2021 and etc, batch

*consuming liquor in open areas and to maintain a hygienic atmosphere, which most of the petitioners, who are existing licensees have failed to adhere to. This is also one of the contributory factors for lack of patronage as stated by some of the petitioners.”*

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51. It is submitted that a successful bidder is entitled to licence only on production of a “No Objection Certificate” (NOC) from the owner of the premises as without such “No Objection Certificate (NOC), a successful bidder cannot carry out the object for which the licence is granted.

52. The Learned Advocate General further submitted that it is for the individual landlord to choose to whom “No Objection Certificate” (NOC) is to be given or not.

53. It is further submitted that the officers of TASMACH are senior officers drawn from the State Government and there is a presumption in law and that they would have complied with all the requirements of the law and the applicable Rules unless specific instances are brought on record and proved. It is submitted that mere oral submission is not sufficient.



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54. The Learned Advocate General further submitted that allegations against the officers of the respondents TASMAL that they were resorting to favoritism and exercising their powers in an arbitrary manner cannot be countenanced in absence of any direct proof or averments to that effect in the affidavit filed in support of the present writ petitions.

55. The Learned Advocate General further submitted that the last date for the Tender expired on 30.12.2021 and that pursuant to the order of this Court dated 23.12.2021, Tender Applications were given to the petitioners and pursuant these petitioners were given an opportunity to participate in the tender by filing their Tender Documents. It is submitted that those who failed to file the Tender Documents on 30.12.2021 are not entitled but spoked now in the completion of the tender process.

56. It is further submitted that these writ petitions have become infructuous and if the petitioners are so aggrieved it is for the respective petitioners to work out their remedy under the Provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder against the decision awarding license to the successful bidders.



57. It is submitted that since the Tender process for 1503 shops are

completed in respect of Thiruvallur ( West), Chennai Region, Coimbatore Region, Salem Region only in the following regions the tender has been postponed.

58. The Learned Advocate General has also filed a copy of the report

submitted on behalf of TASMAC, content of which reproduced below:

- It is submitted that the TASMAC has the exclusive privilege license to run the liquor shops and bars, issued by the Commissioner of Prohibition and Excise, as per Rule 4 of the Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules 2003. The said Form -1 license (Rule 4), the Commissioner of Prohibition and Excise has granted the license for a period of one year, from 29.11.2003 to 28.11.2004. From 2004 onwards the license was renewed periodically till date, as per Rule 7 of the above said Rules 2003.

- It is submitted that 5382 TASMAC Retail Vending Shops are functioning as on 31.12.2021.

- It is submitted that the TASMAC has invited the Tender for permission to sell eatables and to collect empty bottles in the bar attached to the Retail Vending shops of TASMAC.

- It is submitted that the previous tender was for a period of twenty-four months, got expired on 31<sup>st</sup> October 2021. Subsequently, extended up to



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31.12.2021. Therefore, District wise tender notification for fresh tender was published in the newspaper, from 13.12.2021 to 16.12.2021 and the last date for submission of application was fixed as 30.12.2021 for a few Districts and on 31.12.2021 for some Districts.

- It is submitted that the Petitioners are the existing licensees for permission to sell eatables and to collect empty bottles in the bar attached to the Retail Vending shops of TASMAL for a period 1.10.2019 to 30.09.2021, and some of the licenses expired on 31.10.2021. Subsequently, extended up to 31.12.2021.

- It is submitted that there is no change in the Tender conditions. The present tender conditions are the same as mentioned in the 2019 tender. In addition to the 2019 tender condition, the two clauses, viz. To comply with the SOP of the COVID 19 pandemic and to maintain the Bar cleanly and hygienically were included.

- It is further submitted that in order to evaluate and finalize the tender forms by the District Managers, fourteen conditions were culled out from the Tender Conditions. Therefore, the fourteen conditions are neither new nor addition to the original conditions.

- It is submitted that the petitioners are finding a way to stall the Tender proceedings in order to continue the existing permission to sell eatables and to collect empty bottles in the bar attached to the Retail Vending shops, by filing these writ petitions without any valid grounds. The conditions already exist in 2019 and all the petitioners have accepted those conditions and licenses were issued in their favour. Now, they cannot be questioning the tender conditions.





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• It is further submitted out of 38 Districts, due to administrative reasons, (due to very less number of application forms was sold and due to heavy rain in Chennai), the process of the tender has been postponed in the following 8 Districts.

- Chennai (N)
- Chennai (C)
- Chennai (S)
- Kancheepuram (N)
- Kancheepuram (S)
- Thiruvallur (E)
- Arakkonam; and in
- Krishnagiri.

Except for the above 8 districts, in all other 30 districts, the tender was finalized.

• It is further submitted that the applications were issued physically and also through online. The applicant can download the application forms through online and they can also obtain them physically from the District Manager Office of respective Districts.

• It is further submitted that as on 31.12.2021, 13073 applications were sold and 19146 have been viewed through online (as on 29.12.2021). Whereas, in 2019 Tender, only 6482 applications were sold. Therefore, the claim of restriction in supply of application form is false. Further, when compared to the previous tender (2019) more than 100% of applications were sold during this present tender.

• Further as on 31.12.2021, except for the 8 districts, in all other districts, the TASMAL has received the 10019 completed applications out of which 2530 was finalized”.



59. I have considered the arguments advanced by the learned Senior

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Counsel for the petitioners and the respective learned counsels for the petitioners. I have also considered the arguments advanced by the learned Advocate General on behalf of the respondents duly assisted by Standing Counsel for TASMAL. I have also perused the provisions of the law and the case laws cited.

60. The facts are not in dispute. The respondents had earlier floated a tender in the year 2019 for the same activity. Most of the petitioners herein were successful bidders and were given a licence for a period of two years between October/September 2019 and September 2021. The licence period were to come to an end on 30.09.2021 at the expiry of two years period. The licence given to these petitioners by the respondents TASMAL was for collecting used empty bottles and sell short eats. These petitioners were to rent out the premises from the owners of the premises where the consumers of liquor purchased from the retail outlet were allowed to consume the liquor.



61. Under the Tender floated for 2019-2021, a successful bidder was

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required to obtain “No Objection Certificate” (NOC) from the owner of the premises. Relevant clause from the aforesaid Tender Document reads as under:-

(v) kJf;TI fl;ll chpkjhujplkpUe;J jilapy;yh rhd;W (No Objection Certificate) bgw;W rkh;g;gpj;jg; gpd;dnu kJf;TI mDkjp tH';fg;gLk;/	Before permission is granted, the successful bidder should obtain No Objection Certificate from the owner of the Bar Premises
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62. This clause regarding “NOC” was inserted in the Tender condition pursuant to Circular dated 22.07.2014 bearing reference Circular No.A3/19/2014 which in turn appears to have been issued pursuant to order dated 14.03.2012 of the Division Bench of this Court in **The Deputy Collector / District Manager, Tamil Nadu State Marketing Corporation Tiruchirapalli Vs. R.Ramkumar** in W.A. (MD) Nos.1492 & 1493 of 2011 reported in 2010 SCC OnLine Mad 6234. The above Clause is absent in the Tender Document.



63. Clause 9 to the Tender Document of 2019-2021 are reproduced

below:

Tender Document 2019	<i>Tender Document 2021</i>
12.(6) xg;ge;j g[s;sp nfhUtjw;F xg;ge;jhuh;fs; ,Ug;gpl rhd;W my;yJ FLk;g ml;il efy; kw;Wk; epue;ju fzf;F vz;. (PAN CARD No.) Mfpatw;wpd; efiy rkh;g;gpf;f ntz;Lk;.	11(6) xg;ge;jg;g[s;sp nfhUtjw;F xg;ge;jjhuh;fs; ,Ug;gpl rhd;W my;yJ FLk;g ml;il efy; my;yJ Mjhh; ml;il efy;. thf;fhsh; milahs ml;il efy; kw;Wk; tUkhd thp epue;ju fzf;F vz; Mfpatw;wpd; efiy jtwhJ rkh;g;gpf;f ntz;Lk;.
(6) (v) kJf;TI fl;ll chpkjhuhplkpUe;j jilapy;yh rhd;W (No Objection Certificate) bgw;W rkh;g;gpj;jg; gpd;dnu kJf;TI mDkjp tHf;g;gLk; .	11(6) (v) kJf;TI fl;olj;jpd; epiyj;jd;ik Fwpj;jhd rhd;W (Stability Certificate) bgw;W rkh;g;gpf;f ntz;Lk;.
(v) kJf;TI fl;olj;jpd; epiyj; jd;ik Fwpj;jhd rhd;W (Stability Certificate) bgw;W rkh;g;gpf;f ntz;Lk;.	

64. When the Impugned Tender Notification dated 14.12.2021 was issued, the requirements of getting “No Objection Certificate” (NOC) from the owners of the premises where the bars which was hitherto there has been



deleted which appears to have given rise to a cause of action.

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65. Facts on records also indicates the last date of the Tender that was on 31.12.2021. Tender process bar attached to about shops located in the following regions have been postponed:-

<i>S.No.</i>	<i>Name of the District</i>
1	Chennai (Central)
2	Chennai (North)
3	Chennai (South)
4	Kanchipuram (North)
5	Kanchipuram (South)
6	Thiruvallur (East)
7	Krishnagiri
8	Arakkonam

66. The tender process has been purportedly postponed on account of the inclement weather and on account of the following reasons:

- i. Lack of enough adequate number of applications.
- ii. Administrative reasons
- iii. For the betterment of the Revenue of the respondent”.



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67. While issuing the previous Tender, the Commissioner of Prohibition & Excise had clarified in his proceedings dated 27.09.2019 as follows:-

**ORDER:**

In the GO 1st read above, the Government have issued amendment order by inserting Rule 9A in Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 after rule 9, as follows:

**"9A. 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.

" 2) The Board of TASMACH has approved the formula for upset price and other terms and conditions of tender, as follows:

The Board of TASMACH vide Circular Resolution No.40 / 2019 dated: 13.09.2019 resolved to approve the following proposals of TASMACH to call tender under new formula with effect from 01.10.2019 as



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follows:

All the District Managers may be directed to call fresh tender during the month of September 2019 for granting permission to sell eatables and to collect empty bottles in the bars attached to the Retail Vending shops, as per below mentioned terms and conditions.

- a) The upset prices should be fixed at the rate of 1.80% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Corporation & Municipality areas.
- b) The upset prices should be fixed at the rate of 1.60% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Town Panchayat areas.
- c) The upset prices should be fixed at the rate of 1.40% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in village Panchayat areas.
- d) In respect of The Nilgiris District, the upset prices should be fixed at the rate of 1.50% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Municipality areas, 1.25% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Town Panchayat areas and 0.75% of average monthly sales of last financial year (2018-19) for the bars attached to the concerned Retail Vending shops located in Rural areas of The Nilgiris District.
- e (i) In case of retail vending shops which are opened during the financial year 2018-19 ( i.e. , after 01.04.2018 but before 31.03.2019), the average sales should be calculated by totaling the cumulative sales value and divided by the number of working days which the shop was run in the financial year 2018-19 this average sales per day



should be multiplied by 30 to arrive at the average monthly sales .

ii) In case of retail vending shops which have been opened after the financial year 2018-19 (i.e. On or after 1<sup>st</sup> April 2019) the average sales should be calculated by totaling the cumulative sales value and divided by the number of working days which the shop was run and this average sales per day should be multiplied by 30 to arrive at the average monthly sales.

iii) In case of retail vending shops which are functioning less than one month or new shops which would be opened in future, the average sales should be calculated by totaling the sales value for the total number of days during which the shop is working (this should be minimum of fifteen days) and divided by the number of days shop was run and multiply with 30 days ( to convert it for one month average sales).

f) The tender period is for a period of two years. (upto 30.09.2021)

g) The monthly bar license fee will remain constant during the tender period of 24 months (i.e. Upto 30.08.2021)

h) The above changes have been incorporated in the bar terms and conditions and other existing terms and conditions already approved by the Board of TASMACH may be approved by the Commissioner of Prohibition and Excise for granting permission for sale of eatables and collections of empty bottles in the bars that may be continued.

3) The Managing Director, TASMACH in his reference 4<sup>th</sup> cited has requested the Commissioner of Prohibition and Excise to approve the above New formula fixed by the board of TASMACH conditions, enclosing the copy of Board resolution as approved by the Board.





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4) In the circumstances stated above, the proposal of the Managing Director TASMAL, has been carefully examined with reference to G.O.(Ms)No.20, Home Prohibition and Excise (VI) Department dated 29.03.2010. The new formula fixed by the Board and the terms and conditions thereon resolved in their Circular Resolution No.40/2019 dated 13.09.2019 are hereby approved.”

68. However, it is doubtful whether Rule 9A of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 allows respondent TASMAL to get into the business. It will be therefore useful to refer to the current model of business of TASMAL and the historical background of the prohibition law in the State of Tamil Nadu.

69. Commentaries on ancient Tamil Literature regarding Sangha Kalam (r'f fhyk;) indicates that consumption of intoxicating for pleasure was an accepted norm and was allowed. The following quotes of Avvaiyar (xstitahh;) from Purananuru (g[wehD]W) indicates that the consumption of intoxicating was for pleasure:-

“rpwpa fs; ngwpNd> vkf;F <Ak;;; kd;Nd!  
ngupa fs; ngwpNd>



ahk; gh!> jhd;kfpoe;J cz;Zk; kd;Nd!"

(g[wehD}W - 235)

70. The Ruler Adhiyaman Nedumananchi (mjpakhd; neLkhdQ;rp) would first give the available toddy (fs;) from palm tree to his subjects and if there was excess, he would also consume.

71. In Purananuru (GwehD}W), the quotes of the Kabilar (fgpyH), a Tamil Poet indicates that Jar containing intoxicating wine was opened and male sheep were slaughtered and unlimited rice and fatty meat were cooked for being served to guest. The relevant quote reads as under:-

kl;Ltha; jpwg;gTk;> ik tpil tPo;g;gTk;>  
ml;L Md;W Mdhf; nfhOe;Jit Cd; NrhWk;  
ngl;lhq;F <Ak; ngUtsk; gOdp>.....

(GwehD}W - 113)

72. The Kabilar (fgpyH) in Purananuru (GwehD}W) has also indicated that the King / Ruler Pari Vendhar (murd; ghup) served intoxicating drinks to those who visit him. The relevant quote reads as under:-



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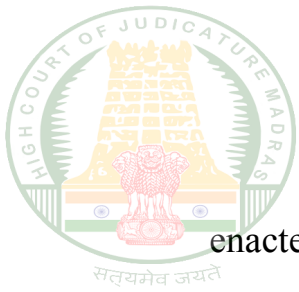
“<z;L epd;NwhHf;Fk; Njhd;Wk; rpW tiu>  
nrd;W epd;NwhHf;Fk; Njhd;Wk; kd;w>  
fspW nkd;W ,l;l ftsk; Nghy>  
ewTg; gpope; jpl;l NfhJ cilr; rpjwy;  
thu; mRk;G xOFk; Kd;wpy;>  
Nju; tPR ,Uf;if> nebNahd; Fd;Nw...”

(GwehD}W - 114)

73. The Thiruvalluvar (jpUts;StH) has given verses against the consumption of intoxicating drinks in Chapter 93 (mjpfhuk; 93) – Not Drinking (fs;Sz;zhd;ik).

74. Mahatma Gandhi said "*Nothing but ruin stares a nation in the face that is prey to the drink habit.*" William Gladstone said "*Intoxicating drinks have produced evils more deadly, because more continuous, than all those caused to mankind by the great historic scourges of war, famine, and pestilence combined*".

75. Thus, there is a mixed history. In the Ancient time, consumption of intoxicating drinks was an accepted norm. However, over a period of time, taboo has been associated with it. Owing to ills and social menace and deleterious impact on the society, Madras Prohibition Act, 1937 was



enacted.

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76. After independence when the Constitution was made and come into force, an embargo has been laid under Article 47 Constitution. There is a negative sanction. Article 47 of the Constitution of India states that the State shall raise the level of nutrition and the standard of living and to improve public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of intoxicating drinks and drugs which are injurious to health. Article 47 of the Constitution of India reads as under:-

*“Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”*

77. Ironically, today there is no prohibition against consumption. On the other hand, there is regulation of manufacture, sale and



consumption of alcoholic liquor and intoxicating drinks in the State.

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There is a total prohibition on sale and consumption of toddy and illicit arrack alone. There is no clarity whether other forms of indiginous liquor drinks existed. Only manufacture and consumption of country made liquor and arrack is prohibited.

78. Ban on sale and consumption of illicit arrack and intoxicating brew has resulted in untold miseries and loss of life and quality of life to who have got addicted to it is accepted. This steps of the Government is in consonce with Directive Principle of State Policy in Article 47 of the Constitution.

79. Over a period of time, consumption of liquor in the State has increased and has found acceptance in the society though with some reluctance. Social drinking is also finding acceptance.

80. The successive Governments have been seen encouraging promoting the sale and consumption of alchohal and liquor, presumably to augment the revenue for the State. There has been a steady increase in



the numbers among consumers owing to increase in the disposable income and the consuming public seems to have lapped the culture of drinking Indian Made Foreign Liquor and the imported Foreign Liquors that are being sold by the respondents TASMAL as a State Monopoly. The taboo which was earlier associated with the drinking is giving way to a new social order.

81. There is no doubt that both middle class lifestyle has seen an increase in social drinking in recent times. Poorer class consisting of daily labourer involved in hard physical work are also known for consuming liquor presumably to ease the pain after a day's long hard work. Appropriately sized packets and bottles are delivering high and keeps the consuming population spirited to churn the economy. A study *from the World Health Organization (WHO). Global Status Report on Alcohol and Health 2014*, indicates nearly 5.1% of the global burden of disease are attributable to alcohol consumption and it causes nearly 3.3 million deaths every year. Despite the same, the number of persons who are getting used to consume alcohol is increasing every year.



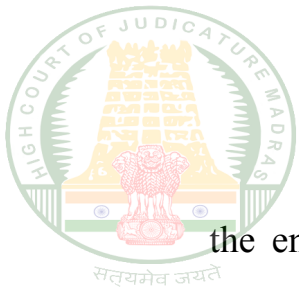
82. During the course of hearing, a question was posed as to how the

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respondent TASMAL could be seen permitting consumption of liquor either near the TASMAL shops or in the “Bars” as defined in Rule 2(d) of the aforesaid Rules, in the light of prohibition under Sections 4 and 4A preamble to the Tamil Nadu Prohibition Act, 1937. Both the sides, were caught unaware, as this was neither expected nor within the scope of the dispute in these Writ Petitions. Staid silence to this pointed question only shows that either of the parties want this continue.

83. The petitioners on the one hand want to continue to remain relevant and want to continue to do the business. On the other hand, respondents TASMAL wants to make it seem that business was perfectly legal and licence were given to the highest bidder in a fair and transparent manner and the petitioners who were licensee’s during the previous period cannot dictate terms to them. It will therefore be useful to refer to the underlying statutory provisions and the evolution of law on prohibition in Tamil Nadu.

84. In Tamil Nadu, law on Prohibition was enacted in 1937 with



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the enactment of the Madras Prohibition Act, 1937. It imposed a total prohibition. Late Shri C. Rajagopalachari (Rajaji), the then Chief Minister of Madras Presidency had introduced a total prohibition in the Salem District in the year 1937 under the Madras Prohibition Act of 1937. The name of Act was later renamed as The Tamil Nadu Prohibition Act, 1937 after reorganisation of the State in 1956.

85. As mentioned above, The Tamil Nadu Prohibition Act, 1937 predates the Indian Constitution. It provides for complete prohibition. The Preamble to The Tamil Nadu Prohibition Act, 1937 (formerly The Madras Prohibition Act of 1937) as it stands even today clearly declares it as an Act to introduce and extend the prohibition of the manufacture, **sale and consumption of intoxicating** liquors and drugs.

86. The preamble itself makes it clear that it is expedient as early as possible to bring about the prohibition, except for medicinal, scientific, industrial or such like purpose, of the production, manufacture, possession, export, import, transport, purchase, sale and luncheon of intoxicating liquors and drugs in the State of Tamil Nadu. Ironically, practice and





subsequent amendment to the Act is contrary to the preamble and Constitution of India.

87. The only exception that is discernible from the preamble to the Act makes it clear that there can be no prohibition only for medicinal, scientific, industrial or such like purpose. Thus, consumption of liquor for intoxication is not falling under the exceptions.

88. It was later extended through out the Madras Presidency in 1948. In 1949, an exception was given to members of armed force. A provision was also made to exempt British officials from the Prohibition restriction. A system to grant permits to individuals who consumed foreign liquor was given to allow the Britishers to consume liquor.

89. The Governor had given an order that all Europeans who apply for liquor licence be granted one. Despite such restrictions, people could however travel to areas within the Presidency where the Prohibition was not in force for consumption of liquors.



90. A system was also devised to regulate licensed clubs for sale and consumption of wine for religious purposes in Churches and brandy in Hospital for Medical purposes. Licenses were also given for toddy tapping as it was accepted then.

91. A reading of the pre-amble of the Tamil Nadu Prohibition Act, 1937 makes it clear that the Act is in consonance with the Directive Principle of State Policy under Article 47 of the Constitution of India which enjoins State to endeavour to take steps to bring about a prohibition of intoxicating drinks and drugs which are injurious to health.

92. In 1971-72, prohibition was briefly lifted for the 1<sup>st</sup> time. The sale of liquor and toddy through shops were thrown open to the public with the enactment of Tamil Nadu Prohibition (Suspension of Operation) Act, 1971.

93. The operation of the provisions of the Tamil Nadu Prohibition Act, 1937 was suspended with the enactment of Tamil Nadu Prohibition



(Suspension of Operation) Act, 1971. The prohibition imposed was however short lived.

94. Within three years, the Tamil Nadu Prohibition Act, 1937 was revived with the enactment of Tamil Nadu Prohibition (Revival of Operation and Amendment) Act, 1974 with effect from 20.08.1974.

95. In 1976, prohibition was once again briefly introduced. In 1981, Prohibition was again lifted and thus the public was once again allowed to purchase liquor from wine shops.

96. However, successive Governments appears to have reserved the power to grant exemption from the Act by permitting the manufacture, sale and consumption of liquor in order to generate and augment its finance. Number of bottling units and distilleries which have sprouted in the last two decades shows a demand and steady increase in the number of consumers and a business opportunity.

97. The Government is not only seen actively promoting the sale of liquor and intoxicating drinks but is actively encouraging the consuming



public to consume the same in the confines of the so called “Bar” for which the impugned Notifications have been issued.

98. In 1981, few fundamental changes which were brought to the Act and slew of Rules were framed. TASMAL which was incorporated in 1981 was confined with the whole sale operations alone. Thus, the sale of liquor was permitted in bars and hotels. By Tamil Nadu Act 23, of 1981, Section 17-B and Section 17-C were introduced.

99. TASMAL was given the monopoly/exclusive privilege for effecting whole sale of Indian made Foreign Liquor and Foreign Liquor and that no other person other than TASMAL was entitled to any privilege of supplying and effecting whole sale of liquor in the whole or any part of the State.

100. TASMAL became a wholesale dealer and was thus given licence by the Commissioner of Prohibition and Excise subject to Such Rules to be framed by the State Government. Between the period from 1989 to 2003, private Bars were allowed to operate like in other States.



101. Sale of liquor in Bars attached to the shops was first introduced

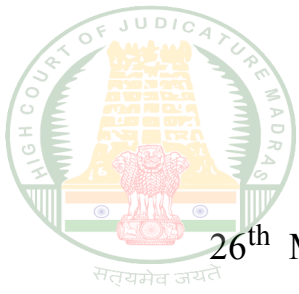
WEB COPY in the year 1989 under the Tamil Nadu Liquor (Retail Vending) Rules,

1989. It was allowed to facilitate consumption of liquor in the bars attached to private “wine shops”. These bars were run by private persons under a license by the Commissioner of Prohibition and Excise.

102. On 21.04.1992, by G.O.Ms.90, the Government ordered the auction of retail vending shops throughout the State. In 1992-93, the Government of Tamil Nadu decided as a policy to give Bar licence to the retail shops in order to augment revenue from auctions of retail shops.

103. The then existing Tamil Nadu Liquor (Licence and Permit) Rules, 1981 was later repealed to facilitate the retail vending of IMFL and Beer in Bar. This change in policy was notified before the auction for the year 1992-93 stating only retail vendors will be eligible for Bar licences.

104. By G.O.Ms.No.99, Prohibition and Excise Department, dated



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26<sup>th</sup> May, 1992, the Government of Tamil Nadu introduced the **Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992** for regulating the issue of licence and the privilege of retail vending of liquor in the Bar. The Rules came into force on 1<sup>st</sup> June, 1992.

105. Under rule 4(a) of the aforesaid Rules, a person holding a licence granted under Rules 13 of **Retail Vending Rules, 1989** was allowed to file an application for grant of privilege and licence for retail vending of liquor in the Bar. These bars are different from the bars attached to the hotels to whom licences are issued under the provisions of the Tamil Nadu Liquor (License & Permit) Rules, 1981.

106. In 1993, G.O.Ms.No.44, Prohibition and Excise Department, dated 03.03.1993 was issued. The then Government decided to dis-continue the grant/renewal of licences for bars attached to the Indian Made Liquor Retail Vending Shops under the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 with effect from the excise year commencing from the 1<sup>st</sup> June, 1993.



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107. Thus, Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 came to be rescinded with effect from 1<sup>st</sup> June, 1993. This was challenged both before the Madras High Court and the Hon'ble Supreme Court.

108. As per Rule 3 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, the privilege of selling liquor in licence shops was available only to a person by auction. The privilege amount was determined in that auction. Rule 4(1) enabled to fix the maximum number of shops to be established in the State.

109. Under Section 17-B of the Act, a licence for manufacture, etc., of potable liquor for human consumption was introduced. Under Section 17-C, exclusive privileges for manufacture and sale of Indian made foreign spirits and selling of India made foreign liquor spirit was introduced.



110. The respondents TASMAC enjoys a State monopoly in wholesale and retail market in Tamil Nadu as far as sale of alcoholic beverages liquor are concerned. It enjoys an absolute monopoly in the State under the provisions of the Tamil Nadu Prohibition Act, 1937.

111. Though these amendments and new Rules were made to facilitate the sale of liquor by TASMAC both in wholesale and retail market, it should be noted that by Tamil Nadu Act 9 of 1979, Section 4(1)(j) and Section 4A which were inserted to the Tamil Nadu Prohibition Act, 1937. They still remains in force.

112. Under Section 4 of the Tamil Nadu Prohibition Act, 1937, there is a Prohibition of the Manufacture of, Traffic in, and consumption of Liquor and Intoxicating Drugs. Section 4 of the Tamil Nadu Prohibition Act, 1937 reads as under:-

*“4. Prohibition of the manufacture of, traffic in, and consumption of liquor and intoxicating drugs –*

*(1) Whoever –*





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**(a)** Imports, exports, transports or possesses liquor or any intoxicating drug; or

**(aa)** imports, exports, transports or possesses liquor exceeding fifty litres but less than one hundred litres; or

**(aaa)** imports, exports, transports or possesses liquor of one hundred litres and above: or

**(b)** manufactures liquor or any intoxicating drugs; or

**(c)** Except in accordance with the rules made by the State Government in that behalf cultivates the hemp plant (*Cannabis sativa*); or collects any portion of such plant from which an intoxicating drug can be manufactured;

**(d)** taps any toddy-producing tree or permits or suffers to be tapped any toddy producing tree belonging to him or in his possession; or

**(e)** draws toddy from any tree or permits or suffers toddy to be drawn from any tree belonging to him or in his possession; or

**(f)** constructs or works any distillery or brewery ; or

**(g)** uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or keeps or has in his possession any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured; or

**(h)** bottles any liquor for purposes of sale; or

**(i)** sells liquor or any intoxicating drug; or

**(j)** consumes or buys –

i. any liquor other than such liquor as may be specified by the State Government, by notification, in their behalf; or

ii. any intoxicating drug; or

**(jj)** knowingly expends or applies any money in direct



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*furtherance or support of the commission of any of the acts specified in clauses (a) to (j)*

*(k) allows any of the acts aforesaid upon premises to his immediate possession, shall be punished.—*

*(a) in the case of offences falling under clauses (aaa), (b), (f) and (h) with rigorous imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees;*

*(b) In the case of offence falling under clause (aa), with imprisonment for a term which may extend to six months in with fine which may extend to two thousand rupees; and*

*(c) In the case of offences falling under other clauses, with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees.*

*Provided that nothing contained in this sub-section shall apply—*

*(i) to any act done under, and in accordance with the provisions of this Act or the terms of any rule, notification, order, licence or permit issued there under;*

*(ii) to the possession, sale, purchase, use or consumption of duty paid medicinal or toilet preparations for their bonafide medicinal or toilet purposes; or*

*(iii) to the transport or possession for personal consumption of the prescribed quantity of any liquor specified by the State Government under sub-clause (i) of clause (j)*

*(1-A) Where in the case of an offence falling under clause (a) [clause (aa), clause (aaa)] clause (b), clause (h), or clause (i) of sub-section (1), the liquor or any intoxicating drug involved contains any ingredient which is likely to cause death or grievous hurt to the consumer, then the offender, on conviction, shall be punished.*



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*(i) If death has ensued due to its consumption with rigorous imprisonment for life and with fine which shall not be less than five thousand rupees; and*

*(ii) In any other case, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to seven thousand rupees.*

*(2) It shall be presumed until the contrary is shown –*

*(a) that a person accused of any offence under clauses [(a) to (jj)] of subsection (1) has committed such offence in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug or any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured, for the possession of which he is unable to account satisfactorily, and*

*(b) that a person accused of any offence under clause (k) of sub-section (1) has committed such offence if an offence is proved to have been committed in premises in his immediate possession in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug or any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or*



*from which may liquor or intoxicating drug has been manufactured.”*

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113. As per Section 4 (1)(j) of the Tamil Nadu Prohibition Act, 1937, whoever “consumes or buys” :-

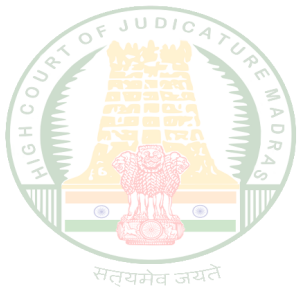
“(i) any liquor, other than such liquor as may be specified by the State Government, by notification, in their behalf; or  
(ii) any intoxicating drug; or

shall be punished, with imprisonment for a term which may extend to 3 months or 5 which may extend to ? 1000”

114. Consumption of specified liquor alone is thus permitted under the Act. Thus, a consumer can purchase liquor from the Retail Outlet of the respondents TASMAL consume alcohol in confines of house.

115. As per Section 4-A of the Tamil Nadu Prohibition Act, 1937, (which was substituted by Tamil Nadu Act 9 of 1979), a person is punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs.1000/- who is found:-

“ i. in a state of intoxication in a public place; and/or  
ii. whoever, not having been permitted to consume



*any liquor or intoxicating drugs in pursuance of the Act, is found in a state of intoxication in any, private place.”*

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116. Section 4-A of the Tamil Nadu Prohibition Act, 1937 reads as

under:-

**“4-A. Punishment for being found in a State of intoxication:** Whoever is found in a state of intoxication in any public place and whoever, not having been permitted to consume any liquor or intoxicating drug in pursuance of this Act, is found in a state of intoxication in any private place, [shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees].”

117. Thus, there is an embargo under the provisions of the Tamil Nadu Prohibition Act, 1937. A person who is found in a state of intoxication in any “**public place**” is punishable for an offence under the Act. A person consuming liquor in a bar does not necessarily go for few pegs. Chances are that such a person who goes there to get fully intoxicated. These bar facilitates such an environment.

118. Section 4A was inserted by Tamil Nadu Act 9 of 1979 when prohibition was in force in the State. It still continues to remain in force.



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119. The reason for introducing the above provision appears to be that a person living in a dry area could go to an adjoining wet area, drink there and return in an intoxicated state. Since, such persons cannot be prosecuted under the provisions of the Act, as it stood, then it was introduced.

120. Statement and object to the introduction also stated that they can be prosecuted neither under Section 3 (12) of the Tamil Nadu Nuisances Act, 1889 (Tamil Nadu Act III of 1889) nor under Section 510 of the Indian Penal Code.

121. It was further stated that the former provision applies only to a person found drunk and is incapable of taking care of himself in a public place, while Section 510 of the Indian Penal Code provides only for punishment of a person who, in a state of intoxication, appears in a public place or in a place by trespassing and there conducts himself, in such a manner as to cause annoyance to others.



WEB COPY 122. Section 4A was amended so as to make, the person found in a state of intoxication **in any public place**, and a person other than those who are permitted to consume any liquor or intoxicating drug, is found in a state of intoxication **in any private place** is punishable with simple imprisonment which may extend to 3 months ( 6 months prior to amendment vide Tamil Nadu Act 2 of 1989) or fine which may extend to Rs.1000/-, on both.

123. The amendment was intended to implement the policy of the Government under the Tamil Nadu Prohibition Act, 1937. It was in consonance with the total prohibition which existed then from 1976 and Article 47 of the Constitution of India.

124. As mentioned above, it is only in the year, 1992, the concept of, consumption of liquor in bars was, introduced with the enactment of Rules, 1992. Though not consistent with the provisions of the Act, the rules were framed to allow a privilege to obtain permission to operate a bars along with the private retail vending shops. This was, however, later withdrawn.

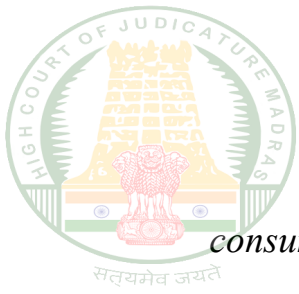


WEB COPY 125. The Government later framed the Tamil Nadu Liquor (Retail Vending in Bar, Renewal of Licence, Fixation of Privilege Amount and Refund) Rules, 1994 vide G.O.Ms.No.155 Prohibition and Excise (VI), dated 30.9.1994.

126. Under the aforesaid Rules, Bar Licence issued under Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 was deemed to have been renewed and privilege was granted for the period from 1<sup>st</sup> June, 1993 to 30<sup>th</sup> June, 1993. Where any licensee had paid an amount in excess of the privilege amount specified in Rule 4, such amount was to be refunded by the licensing authority to the licensee, after deducting the Government used if any, under the rescinded Rules. This was at the time when license and privileges were given to private persons to run wine shops & bars.

127. In **Madras City Wine Merchants' Association and Others Vs. State of Tamil Nadu and Another**, (1994) 5 SCC 509, the Hon'ble Supreme Court held that "*When the State has received complaints that the*





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*consumption of liquor in bars resulted in law and order problems, woman folk being harassed, certainly, in public interest it could take a decision to repeal the grant of Bar licences. There is nothing unreasonable.”*

128. In 2003, when Section 17-C (1-B) was introduced from the Tamil Nadu Prohibition Act, 1937 along and Section 22-D to the Tamil Nadu Prohibition Act, 1937, Section 4A was however not amended. As a result of above amendment, retail sale of liquor was also exclusively given to the respondents TASMAC.

129. In 2003, when Respondents TASMAC thus took over the business of retail business in the sale of liquor in the State with the insertion of Section 17-C (1-B), TASMAC became State monopoly. The then existing Tamil Nadu Liquor (Retail Vending) Rules, 1989 and Tamil Nadu Liquor (Retail Vending in Bar) Rules, 2000, were repealed.

130. However, no corresponding amendment to Section 4-A of the Tamil Nadu Prohibition Act, 1937 has been made so far. Thus, prohibition against consumption of alcohol and intoxicating liquor in Public place still



continues in the State.

WEB COPY 131. It should be recalled that though the reasons for insertion of Section 4-A in 1979 was intended to discourage persons visiting wet areas and returning to dry areas in a state of intoxication, the provision as it stands today, does not permit a person to be in a “State of Intoxication” in a public place.

132. Section 4A does not encourages a person to consume liquor and/or intoxicating drug who is not entitled to consume even in a private place as mentioned above. Such consumption is still punishable under the Act. Though, an amendment was made in 1989 by reducing punishment to 3 months, it should be underlined that there is no scope for a person to be in a state of intoxication in a “public place” under the scheme of the Act.

133. Sub Clause (1-A) and Section 17-C (1-B) of the Tamil Nadu Prohibition Act, 1937 which were inserted in the Act, merely allows TASMAC to do “wholesale” and “retail business”, does not permit respondents TASMAC a right to confer privilege to a 3<sup>rd</sup> parties to



render allied business of selling short eats and/ or support service to collect used bottle from premises used as a bar. If the Act does not permit a person to be in a state of intoxication in public place, TASMAL cannot be seen permitting consumption by consumers of liquor in public place. Even if bar is not a public place, person after consuming liquor in the so called bar will have to necessarily pass through public place to return home. Therefore, what TASMAL cannot do directly, it cannot do indirectly.

134. It is to be further underlined, that a person choosing to consume the liquor purchased from TASMAL shop in the Bar goes only to get intoxicated.

135. Rule 2(d) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003 which loosely defines the expression “Bar” to mean a place located within the shop or adjoining to the shop used for consumption therein of liquor cannot be allowed under the Scheme of the Act allow consumption as such bars are “public place.” They are not private place. In fact, TASMAL has no legal control over such place. A person desiring to



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consume alcohol purchased from the TASMAL shop visit them out of choice. By allowing person to consume alcohol in such bars, the respondents TASMAL has become an accessory for violation of the law which cannot be condoned.

136. As a retail seller, TASMAL may have been entitled to operate a Bar if the provisions of the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 2002 had survived with a few amendments. However, under Section 22 D (c) of the Tamil Nadu Prohibition Act, 1937, even these Rules have been completely repealed.

137. The 2003 amendments to the Tamil Nadu Prohibition Act, 1937 which paved way for the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003 merely contemplates grant of an exclusive license to TASMAL for retail sale under Rule 4 of the aforesaid Rules under Section 17-C of the Tamil Nadu Prohibition Act, 1937.

138. Under Rule 4 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003, TASMAL has been licensed to sell liquor in



retail market. Rule 4 reads as under:-

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**4. Grant of licence.—**

*(1) On application, Commissioner of Prohibition and Excise shall grant licence in Form-I for the retail vending of liquor in shops and bars in the whole State. The licence shall be issued in the name of the Corporation.*

*(2) The licence granted under this rule shall be subject to the provisions of the Act and Rules made thereunder.*

*(3) The Corporation shall issue an authorisation in Form-I in respect of each shop where the business of retail vending of IMFS is to be carried on either directly by the Corporation or through the Co-operative Societies as agents of the Corporation.*

*(4) The Corporation shall furnish the list of authorized retail vending shops located within each district to the Collector indicating the details of such shops run directly by the Corporation and the shops run by the Co-operative Societies as its agents. List of such shops shall be furnished by the Corporation to the Collector concerned within 10 days of the commencement of business”.*

139. The reality shows that respondenta TASMALC merely leases a small portion of a building premises for its retail shops. In the retail shops, its staffs are stationed along with the stock of liquor/ alcohol for sale to the consumers and buyers. This activity falls within the four corners of law under the provisions of the Tamil Nadu Prohibition Act, 1937.



WEB COPY 140. . The respondents TASMAL has not entered into any separate lease agreements with the owners of premises for the balance area which are being used as “Bar” for the consumers to consume the liquor/alcohol purchased from the TASMAL Shops.

141. Instead, the respondents TASMAL has over a period of time encouraged the owners of the leased premises (which some times happens to be the Local and Municipal Authority) to develop the area adjacent to the leased retail shop as “a Bar” for being leased to the licensee's facilitate the buyers of liquor to consume the liquor/Alcohol purchased from the TASMAL Shops.

142. The purported exercise of auctioning rights under the impugned Tender Notifications as explained as having been issued under Rule 9A of the Tamil Nadu Liquor Retail Vending (In Shops and Bars), Rule 2003 cannot be countenanced under Rule 9A.

143. Rule 9A which was inserted to the Rules only in the year 2013



vide G.O.Ms.No.20, Home P & E dated 29.3.2013 reads as under:

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*“ Rule 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 Probation 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 25<sup>th</sup> of the following month and the Corporation may retain 1% of the amount so collected as agency commission.”*

144. The respondents TASMACH has however continued to auction such right to sell short eats to private parties and to collect used bottles ostensibly in line with the powers granted under Rule 9A of the aforesaid Rules in terms of the proceedings dated 27.09.2019 bearing reference Proceedings No.P&E.9(1)/17936/2012 of the Commissioner of Prohibition and Excise Department though even prior to insertion of Rule 9A in 2013 also such auction appears to have been conducted and granted permission to sell eatables (short eats) and to collect bottles.

145. The impugned exercise, cannot be legitimized under Rule 9A, though, the attempt was made to state that the impugned Tender



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Notification was in line with the aforesaid provision. The respondents

WEB COPY TASMAC has no authority under the Act, to encourage consumption of alcohol and intoxicating liquor in public place or so-called “Bar” for which it is auctioning rights to highest bidders.

146. The power to grant licence to run a bar can vest only with the licencing authority namely the Commissioner of Prohibition & Excise. Respondents TASMAC is a mere “wholesale” and “retail” dealer. It cannot run a “Bar” by itself whether directly or indirectly.

147. Under the scheme of Tamil Nadu Prohibition Act, 1937, the respondents TASMAC cannot be seen to be actively promoting consumption of liquor by consumers to get intoxicated and seen in “public place”.

148. In any event, even if the so called “Bar” is not a “pubic place”, the such consumers afrer consumption would have to pass through “ public place” to return to their home or to their place of stay. In my view, the respondents TASMAC cannot be seen allowing consumption of alcohol





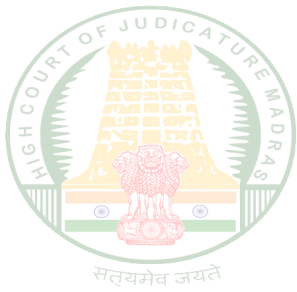
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and intoxicating liquor its consumer and to be such “public place” whether directly or indirectly without violating law. Therefore, respondents cannot auction such rights which indirectly permits consumption of liquor/alcohol under the scheme of the Tamil Nadu Prohibition Act, 1937 by encouraging consumers to violate Section 4A of the Act.

149. At the same time, the petitioners also cannot arm twist the respondents TASMAL to give them business to them merely because they have a prior lease arrangement with the owners of the bar premises and that they may suffer loss. Even otherwise, the Tender conditions indicate that petitioners cannot complain. Relevant portion of the Tender Condition reads as under:-

“(i) If the circumstances required to close the liquor shop or changed to another place due to administrative reason, new tender will be floated cancelling the tender. If the liquor shop/ bar is closed, the tenderer cannot claim any compensation.

(ii) If any change is made in the Government policy, this tender itself will be closed. The Government need not give any reason to intimate the tenderer. If the tender was ended, there is no need to pre-notice. If closed the liquor shop/bar, the tenderer cannot claim any compensation.”



150. The attempt of the petitioners to strangulate and muzzle out the auction proceedings by the respondents TASMAL cannot be countenanced.

Further, sale of liquor is a *res extra commercium* in the State of Tamil Nadu. It is an activity outside the scope of commerce. Consumption of alcohol/liquor is injurious to health and interferes with the safety welfare and health of society even though over a period of time, consumption of alcohol/liquor found social acceptance due to increase in the disposal income in the hands of individuals. [see **Khoday Distilleries Ltd. v. State of Karnataka**, (1995) 1 SCC 574].

151. In *State of Punjab Vs. Dial Chand Gian Chand and Co.*, (1983) 2 SCC 503 : AIR 1983 SC 743), the Hon'ble Supreme Court held that a licensee who participates in the auction voluntarily and with full knowledge is bound by the bargain and the writ petition filed under Article 226 by such licensee in an attempt to dictate terms of the licence without paying the licence fee must fail. The Court held that highest bidder after acceptance of his bid cannot challenge the second auction on the ground of adverse effect on his business.

152. Therefore, even on this count the petitioners cannot have

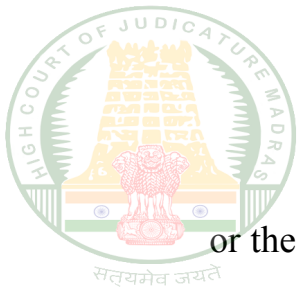


grievance against the act of Respondent-TASMAC under Article 226 of the Constitution of India before this court. The petitioners cannot hold the respondents TASMAC to ransom by forcing latter to give privileges/licence to them for running the so-called bar by taking advantage of prior lease agreement/agreement with the owners of the premises where such bar are being currently operated.

153. Further, the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules made thereunder contemplate an alternate remedy for a redressal of their grievances.

154. It is therefore for the petitioners to approach the appropriate authority under the provisions of the aforesaid Act and the Rules made thereunder if there was any violation . Therefore, on this score also, there is no merits in these Writ petitions.

155. Statutorily, the respondents TASMAC have been given powers merely to engage itself in wholesale and retail sale of alcoholic liquor alone. It has not been given power to consumption of liquor in public



or the so called Bar.

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156. The respondents TASMACH cannot be seen to encourage violation of Section 4-A of the Tamil Nadu Prohibition Act, 1937 even though the intention of introducing Section 4-A was to discourage persons from going to wet areas and return intoxicated in the dry areas when the prohibition was still in force.

157. The consumption of alcohol/ liquor as law stands under the prohibition of the Tamil Nadu Prohibition Act, 1937 and the Rules made thereunder stands is permissible only in private space and/or in the recess of one's home.

158. If respondents TASMACH has to continue to encourage consumption of liquor in the so-called bar, the substantive law under the Tamil Nadu Prohibition Act, 1937 has to be amended taking note of the changes and in the light of the decision of the Hon'ble Supreme Court in **State of Punjab Vs. Devans Modern Breweries**, (2004) 11 SCC 26.

159. Since the practice of running a bar is in vogue since 2003 which



not strictly in accordance with the provisions of the Tamil Naidu Prohibition Act, 1937 and Article 47 of the Constitution of India, the legislature may bring in suitable legislation to amend the Act.

160. The provision as it stands today does not permit a person to be in public in an intoxicated state. Therefore, the respondents TASMAL as a State Monopoly can only confine itself with “wholesale” and “retail sale” of alcohol/liquor and cannot be allowed to be seen actively encouraging a person to consume alcohol in public space and violate the sanctions under the law.

161. The practice of respondents TASMAL to allow mushrooming of “Bar” within the meaning of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 is contrary to the provisions of the Tamil Nadu Prohibition Act, 1937.

162. Till the law is amended, and proper rules are framed which are in tune and consistent with the provisions of the Tamil Nadu Prohibition Act, 1937, the respondents TASMAL shall refrain from granting licences/permits to the petitioners and others to do the support service or the



business in the sale of short eats or collecting used bottles.

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163. The respondents TASMACH may therefore take suitable steps to recall the tender called for instead of encouraging violation of law by its consumers. Commercial expediency to garner profit cannot justify the continuance of the Bar.

164. The respondents TASMACH is therefore directed to take steps to close down the Bars attached to the TASMACH shops wherever licences have been issued to a section of the bidders, within a period 6 months.

165. These Writ petitions are dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

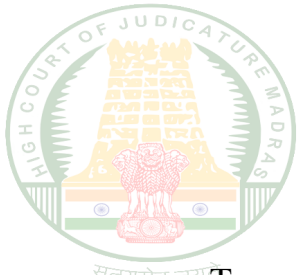
31.01.2022

Index : Yes/No

Internet : Yes/No

Speaking / Non Speaking Order

kkd



To  
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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,



*W.P.No.27352 of 2021 and etc, batch*

**C.SARAVANAN.,J.**

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Pre-delivery Common Order in  
W.P. Nos.27352 of 2021 and etc batch

31.01.2022