

(2011) 09 MAD CK 0156

In the Madras High Court

Case No : Writ Petition No. 17889 of 2011 and M.P. No's. 1 and 5 of 2011

R.K. Ashok Kumar

APPELLANT

Vs

The District Manager, TASMAL Ltd., No. 29 and 30 SIDCO
Industrial Estate, Kakkalur, Thiruvallur District, The General
Manager, (Retail Vending) TASMAL Ltd., Thalamuthu
Natarajan Maaligai, Egmore, Chennai - 8 and M. Manoj
Kumar

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Tamil Nadu Liquor (Retail Vending) Rules, 2003 — Rule 10, 13(1), 8

Citation : (2011) 09 MAD CK 0156

Hon'ble Judges : N.Paul Vasanthakumar, J

Bench : Single Bench

Advocate : Mr. V. Govardhanan for Mr. M. Gnanasekar, for the Appellant; Mr. S. Muthuraj for Respondent 1 and Mr. V. Jayaprakashnarayanan A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice N.Paul Vasanthakumar

1. The prayer in the writ petition is to issue a writ of certiorarified mandamus, calling for the records relating to tender issued by the first Respondent for collection of empty bottles and for selling eatables in the TASMAL bar for the year 2011-2012 in Thiruvallur District and to quash the clause as mentioned in Column No. 3 of the said tender and the consequential order bearing Ref No. Na.Ka. No. 2133/Aa6/2011 dated 28.7.2011/1.8.2011 issued by the first Respondent granting tender in favour of the third Respondent.

2. The first Respondent called for tenders for collection of empty bottles and sale of eatables attached to the TASMAL shop No. 9098, Valluvar Nagar, Minjur, Ponnery Taluk, Tiruvallur District and fixed the last date for submission of the tenders as 28.7.2011. The Petitioner obtained tender form on 26.7.2011 by

paying a sum of Rs. 520/- by way of demand draft. As per the tender conditions, the Respondents insisted that the applicant should enclose rental agreement/ NOC from the owner of the premises where the liquor shop is located. The said insistence of enclosing NOC/rental agreement is objected by the Petitioner contending that the owner of the building is given unfettered discretion to give NOC or rental agreement and the said condition is unreasonable.

3. When the writ petition was posted for admission, learned Additional Government Pleader was directed to take notice for the Respondents 1 and 2. The learned Additional Government Pleader on 12.9.2011 produced the order passed by this Court in W.P(MD) No. 5844 of 2010 dated 5.7.2010 wherein a similar writ petition was dismissed. Relying the said order, learned Additional Government Pleader prayed for dismissal of the writ petition in limine.

4. The Learned Counsel for the Petitioner on the other hand relied on another decision of this Court made in W.P(MD) No. 8591 of 2009 dated 8.10.2009 and contended that the said clause is already held unreasonable.

5. I have perused the orders referred above as well as Rule 8 and 10 of the Tamil Nadu Liquor Retail Vending Rules, 2003.

6. The Petitioner has not obtained NOC/rental agreement from the building owner, where the liquor shop is located. The location of the bar is covered under Rule 10 of the above said Rules, which states that the bar shall lie within the shop or adjoining the shop. The said statutory provision contemplates that the bar shall lie within the liquor shop/adjoining the shop only, that means, the same should be located in the same building. Neither the said rule nor the condition contained in the tender notification is challenged by the Petitioner.

7. Similar issue was considered by the Madurai Bench of this

Court in W.P.(MD) No. 5844 of 2010 dated 5.7.2010, wherein in paragraphs 11 to 16 it is held thus,

11. The bar shall be located within the shop or adjoining the shop used for consumption of liquor. The shop is run by the TASMAL and the licence to run the bar is given to successful bidder for the purpose of selling eatables and collecting empty liquor bottles. The owner of the premises may have objection in running a bar in the premises. No landlord is duty bound to grant permission to run the bar in his premises just because he has already leased out a part of the premises to the TASMAL for the purpose of vending liquor. It is the exclusive right of the owner of the building to give consent for running a bar to some persons.

12. If the bidder in the auction does not enter into an agreement of lease with the owner of the building, he cannot run the bar, even if he is declared as a successful bidder. Therefore, the bidder who intend to bid in the auction could very well approach the owner of the premises expressing his intention to take the premises on lease and obtain "No Objection Certificate". After all owner of

the building is going to clinch the lease transaction only after a person is declared as a successful bidder. Therefore, there is no question of restricting the issuance of "No Objection Certificate" to only one bidder by the owner of the premises. Further the TASMAG cannot wait after the auction was held till the successful bidder obtains "No Objection Certificate" from the owner of the premises. If "No Objection Certificate" is insisted after the auction is held, the owner of the building may dictate terms with the successful bidder and delay the execution of the lease agreement with the successful bidder and thereby the TASMAG would not be in a position to run the shop in the absence of the bar. Further if the owner of the premises after the successful bidding of the bidder refuses to lease out the premises, the TASMAG has to undertake an unnecessary exercise of auctioning the property once again.

13. A similar question arose before me in V. Raja v. the District Manager, TASMAG, Tuticorin and another, W.P.(MD). No. 9952 of 2007, wherein I held in the judgment dated 28.11.2007 as follows;

5. It is found that the said condition has been imposed only to make the bidder to become fully prepared to run the business immediately on declaring him as a successful bidder. It is not as if many participants in the tender faced similar problem in obtaining "No Objection Certificate" from the owner of the building. After all, the said condition has been imposed to ensure preparedness of the participants in the tender to avoid delay in commencing the trade in bar. If "No Objection Certificate" is not produced in advance by the participants, the successful bidder may take his own time to arrange for a premises. The ultimate sufferer would be the Respondents. Therefore, there is nothing wrong in directing the bidders to come prepared for the occupation of the premises with "No Objection Certificate".

6. As the aforesaid condition imposed by the Respondents is found to be a quite reasonable one, the prayer of the Petitioner to quash such a condition to participate in the tender stands rejected.

Thus, this Court has already held that the condition imposed by the TASMAG to obtain "No Objection Certificate" for participating in the tender process is quite legal.

14. The Division Bench of this Court in S. Ganesan Vs. Assistant Commissioner Excise, Collectorate, Chennai and another, , has held as follows;

In this case, the requirement in Rule 13(1) that prospective licensees, who are not owners of the building must produce a lease agreement with their landlords cannot be regarded as an irrational requirement or a requirement which is arbitrary or mala fide. This requirement is also not capable of being regarded as discriminatory. The Rule applies with the same vigour to every intending licensee. Anyone, who wishes to carry on retail vend of Indian Made Foreign Liquor, must either own the building in which he intends carrying on such business or must have a lease agreement with the owner permitting him to carry on such business

in that premises. That Rule applies not only to those carrying on such business in cities to which the rent control legislation is made applicable, but also to persons carrying on business in areas to which rent control legislation has not been extended.

15. A condition to produce lease agreement with the landlord for participating in the tender could not be regarded as irrational, arbitrary or mala fide, it has been ruled by the Division Bench of this Court.

16. The learned counsel appearing for the Petitioner cited the decision of this Court dated 08.10.2009 in G. Sethupathy v. The Senior Regional Manager, TASMAR, Madurai and another, W.P. No. 8591 of 2009, wherein a passing reference was made by this Court that the Respondents were not fair in directing the Petitioner to get consent letter from the owner of the building. That was a case where the tender condition that intending participants shall produce "No Objection Certificate" from the owner of the building, was not directly under challenge. Therefore the above observation cannot be cited as a binding precedent.

(Emphasis Supplied)

In the said order, the statutory provision was taken note of by the learned Judge, which states that the bar can be located in the same premises or in the adjoining premises.

8. The order cited by the Learned Counsel for the Petitioner in W.P. (MD) No. 8591 of 2009 dated 8.10.2009 is an order cancelling the licence issued and the learned Judge passed the order factually and there is no reference about Rule 8 and 10. In this case, Petitioner has not been issued with any licence and he has not challenged the condition contained in the auction notice or the rule. Hence the said judgment is distinguishable. I am in entire agreement with the order made in W.P. (MD) No. 5844 of 2010 dated 5.7.2010, which in turn followed the Division Bench judgment reported in S. Ganesan Vs. Assistant Commissioner Excise, Collectorate, Chennai and another, .

There is no merit in the writ petition and the same is dismissed in limine. Connected miscellaneous petitions are also dismissed.