



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:14.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.16581 & 16964 of 2023

and

W.M.P(MD)Nos.13862, 13863, 14190 & 14191 & of 2023

Vizhi Foundation,

Represented by its Founder cum Chairman,

P.Nagendran

... Petitioner in both the

Writ Petitions

Vs.

1. The Commissioner,
Hindu Religious & Charitable
Endowment Board,
No.119, Utthamar Gandhi Road,
Nungambakkam, Chennai – 600 034.

2. The Joint Commissioner,
Hindu Religious & Charitable
Endowment Board,
Madurai Zone, Elis Nagar,
Madurai – 625 016.

3. The Deputy Joint Commissioner/Executive Officer,
Arulmigu Kallalagar Temple,
<https://www.mhc.tn.gov.in/judis>
Alagarkovil, Madurai – 625 301.



4. M/s.J.J.Infra,
represented by J.Gowri Sankar,
S/o.Jeyachandran.

... Respondents in all
W.P(MD)No.16581 of 2023

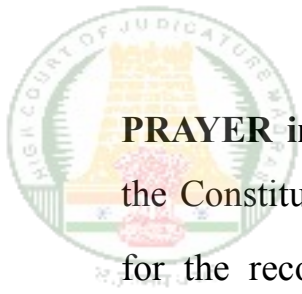
1. The Commissioner,
Hindu Religious & Charitable
Endowment Board,
No.119, Utthamar Gandhi Road,
Nungambakkam, Chennai – 600 034.

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... Respondents in all
W.P(MD)No.16964 of 2023

PRAYER in W.P(MD)No.16581 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Mandamus*, forbearing the Respondents Nos.1 to 3 from accepting tender, granting license/physical position in favour the 4th respondent for maintenance of Children Park and Canteen belonging to the 3rd respondent pursuant to the tender notification in Na.Ka.no.1751/2023/A7, dated 20.06.2023.



PRAYER in W.P(MD)No.16964 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the impugned order passed by the 1st respondent in Moo.Mu.No.29011/2023/T3, dated 05.06.2023 and quash the same and consequently direct the respondents to extend the period of license for 106 days on the basis of the order of the 1st respondent, dated 15.09.2021 and quash the same and consequently direct the respondents to extend the period of license for 106 days on the basis of the order of the 1st respondent, dated 15.09.2021.

In W.P(MD)No.16581 of 2023

For Petitioner : Mr.H.Arumugam

For R-1 & 2 : Mr.S.P.Maharajan
Special Government Pleader

For R-3 : Mr.K.R.Laxman

For R-4 : Mr.K.Govindarajan, for
Mr.S.Poornachandran

In W.P(MD)No.16964 of 2023

For Petitioner : Mr.H.Arumugam

For R-1 & 2 : Mr.Veera Kathiravan,
Additional Advocate General, assisted by
Mr.S.P.Maharajan
Special Government Pleader

For R-3 : Mr.K.R.Laxman



COMMON ORDER

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W.P(MD)No.16581 of 2023 has been filed for ***Writ of Mandamus*** seeking direction to the respondent Nos.1 to 3 not to accept the tender of the 4th respondent.

2. *W.P(MD)No.16964 of 20233* has been filed for ***Writ of Certiorarified Mandamus*** to quash the impugned order, dated 05.06.2023 with a consequential direction to extend the license for a period of 106 days, based on the order of the 1st respondent, dated 15.09.2021 and other based on the conditions of lease as well.

3. Since the issue involved in these Writ Petitions are based on same set of facts, both the writ petitions are taken up together and disposed of by a common order.

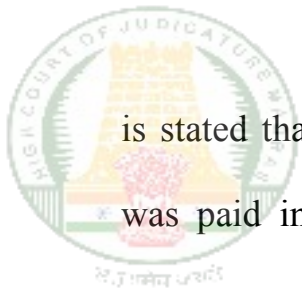
4. The brief facts as stated in the affidavit in ***W.P(MD)No.16581 of 2023*** is that the petitioner Trust was formed with an object to promote the interest and welfare of the society. One of the prominent temples namely Sri Arulmigu Prasanna Venkatachalapathy Temple, Tallakulam, Madurai, which is a sub-temple of Arulmigu Kallalagar Temple, Alagarkovil, Madurai District and is having a temple pond. The said pond was dumped with huge waste. Hence, the respondents 1 to 3 had taken a policy decision to convert the vacant place appurtenant to the pond as Children Park



attached with a canteen and playground.

5. In pursuance of the said policy decision, a tender was floated for the first time for Fasili 1429 to 1431 by the 3rd respondent, but the same was postponed to Fasili 1430 to 1432 due to Covid-19 Pandemic situation. The petitioner Trust has participated in the said tender and was declared as a successful bidder for Fasili 1430 to 1432 and license was also granted for maintaining Children Park for a period from 01.01.2021 to 30.06.2023.

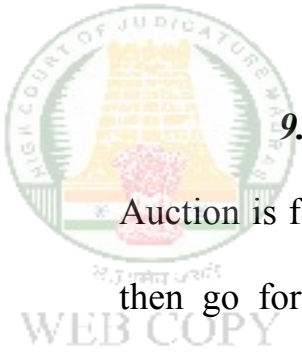
6. As on the date of handing over the land, the land in question was a barren land and the petitioner has removed all the filth and waste materials weighing about 500Kg from the said temple pond and the vacant land. Thereafter, the Petitioner Trust planted shrubs, trees and erected children play amusement equipment by investing huge amount. Further, the petitioner Trust built a temporary canteen shed, entrance gate, ticket counter, light poles etc., for the development of the Children Park. Apart from that, the electricity supply connection and the service lines were installed in the said Children Park at the instance of the petitioner's Trust. During Covid-19 pandemic situation, the children park was closed for 106 days. In fact, the lease was issued during Covid-19 period and an agreement executed between the petitioner and the 3rd respondent, which contains a specific clause that during the period of closure of park due to Covid-19, the lease period shall be extended for the said period. Even, otherwise, the Hindu Religious and Charitable Endowments Department as well as the Government have passed orders, wherein it



is stated that by considering the lock down situation, where ever the lease amount was paid in lump sum, the concerned authorities shall extend the period during which the lock down was in force. Infact 1st respondent has also issued proceedings, dated 15.09.2021 directing all the Executive Officers of the temple to verify the lock down period and directed to extend the same, where ever it is applicable.

7. In the present case the 3rd respondent has considered the request of the petitioner for extension of lease period and recommended for extension of lease for a period of two years by passing a resolution dated 30.03.2023. While recommending the 3rd respondent has taken into consideration the petitioner's work of developing the waste land as a park and maintaining the same. After considering the recommendation, the 1st respondent has passed the impugned order, dated 05.06.2023 directing to refund the amount in proportionate for days of closure during the lock down.

8. In the meanwhile the respondents have issued tender-cum-auction notice. The petitioner and the fourth respondent in W.P.(MD)No.16581 of 2023 namely M/S.J.J.Infra had participated and the J.J.Infra was the successful bidder. Hence the petitioner filed W.P.(MD)No.16581 of 2023 for Mandamus not to accepted the tender. Pending writ petition, the petitioner filed another writ petition in W.P. (MD)No.16964 of 2023, challenging the order of the 1st respondent dated



9. The first contention of the petitioner is that whenever Tender-cum-Auction is floated, the respondents ought to have opened the sealed covers first and then go for open auction from the highest bid amount found among the sealed covers. But the respondents had not followed the aforesaid method since the respondents intended to favour their own persons. However, the learned counsel appearing for the 3rd respondent refuted the same and submitted that the tender was received in a sealed cover and the same was not opened but kept in a box. After receipt of tender without opening on the same day auction was conducted. In the said auction, the 4th respondent J.J.Infra was a successful bidder and he quoted a sum of Rs.36,53,000/-. However, the petitioner has quoted only Rs.35,01,000/-. Therefore, the temple has considered both the offers and has taken the highest quoted price in auction and declared that the J.J.Infra as the highest bidder. This Court is of the considered opinion that there is no illegality in conducting the tender-cum-auction as narrated supra. Infact the respondents have kept the tender as secret, thereafter called for auction and after scrutinizing both tender and auction, the highest quotation was declared as successful bidder and hence there is no illegality.

10. The next contention of the petitioner is that the successful bidder has not submitted all the documents that was directed to be submitted as per the tender conditions and has relied on the conditions of the tender. Under Clause 4 of the tender conditions, it has been stated as under:



அனத்து ஆவணங்களையும் ஏலம் எடுக்கும் ஏலதாரர் ஏல நாள் அன்றே டெபாசிட் செலுத்தும்போது திருக்கோயில் சமர்ப்பிக்கப்பட வேண்டும்.□

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11. The person who are participating in the tender ought to submit the following documents:

...

“(58). அரசு நிறுவனங்களில் பூங்கா பரமரிப்பு பணிகள் மேற்கொண்டதற்கான மூன்றாண்டுகளுக்குரிய முன் அனுபவச் சான்றிதழ் இணைக்கப்படவேண்டும்.

(59). மேற்காணும் விதிமுறைகளை மீறும் டெண்டர்-ஏலம் இரத்து செய்யப்பட்டு சட்டவிதிகளின்படி நடவடிக்கை எடுக்கப்படும்.

(60). சேவைவரி பதிவுச்சான்றிதழ், நடப்பு மாதத்திற்கு (G.S.T) செலுத்தியதற்கான இரசீது சமர்ப்பிக்கவேண்டும்.

(61). நிதியாண்டு 2021-2022 மற்றும் 2022-2023ம் நிதி ஆண்டுக்கான வருமானவரி (I.T.Return)கான சான்றிதழ் சமர்ப்பிக்க வேண்டும்.

(62). தொழிலாளர் நல அலுவலக பதிவு சான்று சமர்ப்பிக்க வேண்டும்□.

12. The Learned Counsel appearing for the petitioner submitted that on combined reading of the Clause 4 along with Clauses 58 to 62 it would be evident that the documents ought to be submitted at the time of submitting the application. Since the 4th respondent has not submitted the certificate from Assistant Inspector of Labour at the time of submitted the application, the 4th respondent ought to be disqualified from the auction. In the present case, the successful bidder has submitted the documents listed in Clauses 58 to 61. However, as far as the Clause 62 certificate from Assistant Inspector of Labour is concerned, the 4th respondent has not submitted along with the tender application, but subsequently has submitted the



same on 10.07.2023.

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13. Now the question arises whether the said certificate from Assistant Inspector of Labour would vitiate the tender process. It is seen that the Serial No.62 is a certificate issued by the Assistant Inspector of Labour-2, Madurai. On perusal of the said certificate, it is seen that the certificate directs the employer to grant leave during the five public holidays stated thereunder. The said certificate is extracted here under:

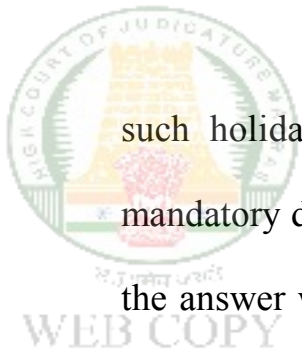
“Registration No.TN/AIL2MDU/NFSH/68-23-00117

Under Section 3 of the Tamil Nadu Industrial Establishments (National Festival and Special Holidays) Act, 1958 (Tamil Nadu Act XXXIII of 1958), I specify the "festival(s) mentioned in column (2)/festival(s) mentioned in column (3) of the statement below for which holidays of the statement below in lieu of the festival/s mentioned in column(2) thereof which was/were specified for the industrial establishment in proceeding No.TN/AIL2MDU/NFSH/68-23-00117 dated 10.07.2023 for which holidays shall be granted every year to the employees in the industrial establishment, namely M/s.JJ INFRA at 3/687, Meenakshi garden 12th extension, Alagar govil main road, Mathur, Mathur Town, Madurai east Taluk, Madurai District – 625301.

Serial Number	Description of the Festivals	Description of festivals proposed Number for specification in lieu of that/those mentioned in column(2)
1	Thai Pongal	
2	Tamil New Year	
3	Vinayagar Chaturthi	
4	Deepavalli	
5	Christmas	

14. On perusal of the said certificate it is seen the certificate directs the

employer not to engage any worker on five public holidays and has listed the dates of



such holidays. Now the question would be whether, this can be considered as a mandatory document and the ought to be submitted before finalizing the tender, then the answer would be emphatic “No”. Moreover, there is no such condition where it states that it is a mandatory document. Therefore, this Court is of the considered opinion that it is not a mandatory document.

15. The Learned Counsel for petitioner has relied on the Judgment rendered by the Hon'ble Division Bench of this Court in *W.A(MD)No.1280 of 2013, reported in 2014 (2) CWC 422*. In that case, the petitioner thereunder had participated in the tender for Tamil Nadu Civil Supplies Corporation. The condition therein is that the concerned tenderer should possess 5 lorries in his name and he should have tied up 10 lorries for each region. If it is for more than one region, he should have tied up with 15 lorries. On perusal itself it can be understood that this condition is mandatory because for Civil Supplies Corporation, lorry is essential for supplying or transporting the goods from one region to another region. Therefore, it is mandatory to produce the same at the time of submitting the tender application. But, in the present case, it is not so. The list contains only declaration of holidays. Hence the respondents have rightly accepted the certificate at the time of granting the license, coupled with the fact the 4th respondent is the highest bidder. Therefore, the tender that was concluded by the respondents, there is no illegality, when the respondents have granted the tender to the successful bidder who had quoted higher rate.



16. The judicial interference in the tender process are very limited and unless it is shown that the tender is granted by misusing the powers then the tender cannot be interfered. The Apex Court in case of Raunaq International Ltd. V. I.V.R. Construction Ltd., and others reported in AIR 1999 8C 393 has held as under:

“When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest or the transaction is entered into malafide, the Court should not intervene under [Article 226](#) in disputes between two rival tenderers.”

The Apex Court in the case of Association of Registration of Plates V. Union of India and others reported in 2004 AIR SCW 7074 has held:

“In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering Authority is found to be malicious and misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. [Article 14](#) of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim fundamental right to carry on business with the Government. All that he can



claim is that in competing for the contract, he should not be unfairly treated and discriminated to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar (supra) is that Government contracts are highly valuable assets and the Court should be prepared to enforce standards of fairness on Government in its dealings with tenderers and contractors.”

In the case of M/s.Michigan Rubber (India) Ltd. Vs. the State of Karnataka & others reported in (2012) 8 SCC 216 the Apex Court has followed the Raunaq's case and held unless malicious or misuse of statutory powers is established the Court cannot interfere in tender process. In the present case after scrutinizing the records this Court is of the considered opinion that there is no such malicious or misuse of statutory powers and also there is no malafide intention to the tendering authority while granting tender to the 4th respondent. Hence the writ petition filed in W.P. (MD)No.16581 of 2023 ought to be rejected.

17. As far as the claim of extension of lease period for 106 days is concerned, the respondents have violated the contract executed between the petitioner and the 3rd respondent. In the contract it has been specifically agreed to extend the lease period. Moreover the 1st respondent has also passed a common order directing the concerned Executive Officers to grant extension of lease period. Therefore, this Court is of the considered opinion that the petitioner is entitled to extension of lease period in the light of the contract and the order dated 15.09.2021 of the 1st respondent. Hence this Court directed the petitioner to submit an affidavit of undertaking to vacate on completion of 106 days. The petitioner had submitted an



affidavit that he will vacate the premises on the date of completion of 106 days. THE

said affidavit is extracted hereunder:

“I, P.Nagendran S/o.Pitchai, Hindu, aged about 55 years, Chairman, Vizhi Foundation, Door No.3, Nagndrapuram, Alagusundaram Nagar, Bykara, Madurai-625 004, do hereby solemnly affirm and sincerely state as follows:

1. I am the Founder cum Chairman of the Petitioner Trust and as such I am well acquainted with the facts of the case.

2. I humbly submit that I have filed the above writ petition challenging the rejection of my request to extend the period of 106 days, during that time the children park was closed pursuant to the order passed by the Government due to Covid-19, When the writ petition came up for hearing on 13.07.2023, I have submitted that though I have claimed 2 years in the representation, I restrict the claim with respect to 106 days as per the order of the 1st respondent dated 15.09.2021 and as per the terms of the contract entered between me and the 3rd respondent Temple.

3. I hereby undertake that I would vacate and surrender the possession of the children park as given to me on or before 14.10.2023 without any claim pursuant to the lease agreement entered between me and the 3rd respondent mentioned above.

It is therefore prayed that this Hon'ble Court may be pleased to accept this affidavit and pass suitable orders and thus render justice”.

Recording the said affidavit, the petitioner is directed to vacate the premises on completion of 106 days from the said park and hand over the possession to the 3rd respondent on or before 12 noon on 14.10.2023. The petitioner shall not seek any extension. Consequently, the respondents are directed to extend the lease period of 106 days to the successful bidder as well. The temple as well as the Commissioner shall not conduct any fresh tender until the term of the successful bidder is

<https://www.mhctn.gov.in/judis> completed as stated supra. Hence the W.P.(MD)No.16964 of 2023 ought to be



allowed. The impugned order dated 05.06.2023 is quashed to the extent stated *supra*.

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18. With these observations and directions, ***W.P(MD)No.16581 of 2023*** is dismissed and ***W.P(MD)No.16964 of 2023*** is allowed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No

14.07.2023

Internet : Yes

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To

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S.SRIMATHY, J

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**Common Order made in
W.P.(MD)Nos.16581 & 16964 of 2023**

14.07.2023