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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.01.2015

CORAM:

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL

W.P. (MD) .No.19098 of 2014

and

M.P. (MD) .Nos.1 and 2 of 2014

V.Thangasamy

... Petitioner

V.

1.The District Collector,
Kanyakumari, Kanyakumari District.

2.The Executive Officer,
Kanyakumari Town Panchayat,
Kanyakumari.

3.N.Nainar Thevar

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st and 2nd Respondents to cancel the allotment granted to 3rd respondent the work to collect "Seasonal Bus Parking" fees and consequently direct the 1st and 2nd respondents to conduct auction to the work to collect "Seasonal Bus Parking" fees.

For Petitioner	: Mrs.S.Srimathy
For 1 st Respondent	: Mr.K.Guru
	Additional Government Pleader
For 2 nd Respondent	: Mr.Aayiram K.Selvakumar
	Government Advocate

[Orders Reserved on 23.12.2014]

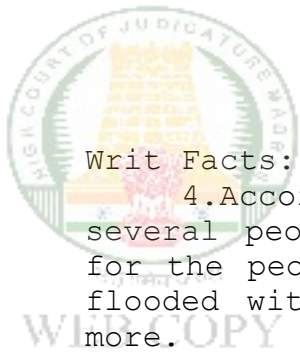
ORDER

Preamble:

The Petitioner has preferred the instant Writ of Mandamus praying for passing of an order by this Court in directing the Respondents 1 and 2 to cancel the allotment granted to 3rd Respondent (viz., the work to collect "Seasonal Bus Parking" fees) and consequently direct the Respondents 1 and 2 to conduct auction to the work to collect Seasonal Bus Parking fees.

2.Heard the Learned Counsel for the Petitioner, the Learned Additional Government Pleader for the 1st Respondent and the Learned Government Advocate for the 2nd Respondent.

3.In so far as the 3rd Respondent is concerned, notice was sent to him through Court by post and it was returned to the Sender with an endorsement 'Unclaimed'. There arises a presumption of service. However, in respect of 3rd Respondent, private notice was taken and for an on his behalf, it was received by one M.Isakiammal and in this regard, on behalf of the Petitioner, an Affidavit of 'Proof of Service' was filed before this Court.



Writ Facts:

4. According to the Petitioner, 'Kanyakumari' is a tourist spot and several people all over India visit that place. The mode of transport for the people is buses, vans and cars and therefore, the place will be flooded with vehicles. Moreover, during the season the traffic will be more.

5. It is the version of the Petitioner that in order to regulate the traffic and also parking of the vehicles, the 2nd Respondent had formulated an idea to appoint someone and collect parking fees of vehicles. The Municipal Council through a Resolution approved the same and it was resolved to let the work of collecting the 'Seasonal Bus Parking' fees through auction. Thereafter, from 2003 onwards the said work was let through auction. The work for the year 2011-2012 was let approximately for Rs.20 lakhs and for the year 2012-2013 the work was let approximately for Rs.24 lakhs.

6. In fact, the Petitioner was anxiously waiting to participate in the auction for this year i.e. 2013-2014. But to his shock, he found from a Newspaper that without conducting auction the work to collect 'Seasonal Bus Parking' fees was given to the 3rd Respondent. Further, the 3rd Respondent is the father of sitting M.L.A. and the 3rd Respondent had influenced through M.L.A. and the M.L.A. had misused the power and undertaken the work.

7. It is the case of the Petitioner that he gave a representation to the Respondents 1 and 2 and the Respondents were silent about the same. Also, he learnt from the Newspaper that the said work was allotted to the 3rd Respondent from 18.11.2014 onwards without conducting any auction.

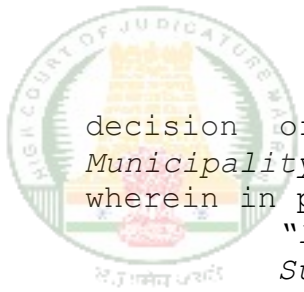
Submissions of the Petitioner and Decisions Cited:

8. The Learned Counsel for the Petitioner urges before this Court that the action of the Respondents in allotting the work to collect the "Seasonal Bus Parking" fees to a private person without conducting auction is an illegal one and also against the provisions of law.

9. The Learned Counsel for the Petitioner projects an argument that the action of the Respondents in not providing an equal opportunity is violative of Article 14 and 19(1)(g) of the Constitution of India. It is also represented on behalf of the Petitioner that the allotment of work to collect "Seasonal Bus Parking" fees to a private person affects his right guaranteed under Article 21 of the Constitution of India.

10. The Learned Counsel for the Petitioner strenuously contends that the Respondents are estopped from allotting unilaterally to any person without conducting auction, tender or auction-cum-tender and also that, the act of the Respondents fails the test of fairness in the Decision making.

11. The Learned Counsel for the Petitioner proceeds to submit that there is no transparency of allotting the cart stand for the year 2014-2015. In this connection, the Learned Counsel for the Petitioner to lend support to her contention that Award of Contracts through public auction/public tender ensure transparency, and efficiency etc. relies on the



decision of this Court in *C.Jayanthi V. The Commissioner, Mettur Municipality, Mettur Dam, Salem District and another*, 2006 (5) CTC 236, wherein in paragraph 12, it is observed as follows:

"12.It is a well settled principle laid down by the Supreme Court and this Court that contracts by the State, its Corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality, with all relevant details such as date, time and place of auction, subject matter of auction, estimated cost, Earnest Money Deposit, etc. The main background of the award of the Government contracts through public auction/public tender is to ensure transparency, in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government, where the procurement is available from a single source only, where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists, where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed and such contracts may be awarded through private negotiations."

12.She also cites the decision of this Court in *Erode Municipality, Erode*, represented by its Commissioner *V. N.Arumugham and others*, 2002 (5) CTC 746 at special page 748 wherein in paragraph Nos.8 and 9, it is observed as follows:

"8.It is well settled n law, as held in *TAMIL NADU MUNICIPAL SHOP MERCHANTS' ASSOCIATION AND ETC. VS. STATE OF TAMIL NADU AND OTHERS*. (AIR 2000 MADRAS 393) that the municipal authorities are empowered to allot shops by granting licence, by exercising the powers under Section 303 of the Tamil Nadu District Municipalities Act. While exercising such powers, the Municipal Authorities have to take the largest interest of the society into consideration. If certain persons, merely because they bid at the auction and became successful bidders and thereby became entitled to enjoy the right for certain period, are allowed to contend that they must be renewed, then there will be no control by the public bodies. If persons let into possession would like to continue as long as possible, then their



heirs will be let into possession and it will likewise become a heritable right. Therefore, they cannot be permitted to continue in possession of the shops owned by the Municipality under the guise of right of renewal, and the properties of local bodies cannot be allowed to be fettered by perpetuity.

9. The case of the plaintiffs/respondents herein is also based on a public lease granted, pursuant to a public auction. Therefore, the same cannot be equated to that of a right of tenancy under the Tamil Nadu Buildings (Lease and Rent Control) Act. "

13. The Learned Counsel for the Petitioner seeks in aid of the Division Bench Judgment of this Court *S.Selvarani V. The Commissioner, Karaikudi Municipality, Karaikudi - 630 002* and another, 2005 (1) CTC 81, at special page 87, wherein in paragraph 9, it is observed as follows:

"9. Thus, the law is very clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the same."

Also, in the aforesaid at page 88 and 89, in paragraph Nos. 12 to 14, it is observed as follows:

"12. Learned counsel then drew our attention to the provisions of Sec. 10(3) of the Tamil Nadu Transparency in Tenders Act, 1998. In this connection, we would like to observe that no statute can prevail over the Constitution of India. According to the theory of jurisprudence of the eminent jurist Kelsen (the Pure Theory of Law), in every country there is a hierarchy of laws and the general principle is that if there is conflict between two laws - one in the higher layer of the hierarchy and the other in the lower rung - then the law in the higher layer will prevail. In our country, the hierarchy of laws is as follows:-

1. Constitution of India;

2. Statutory Laws - made either by Parliament or by the State Legislatures;

3. Delegated Legislation, which may be in the form of Rules or Regulations made under a statute etc.,

4. Executive instructions or Administrative Orders, viz. Government Orders, etc. The Tamil Nadu Transparency in Tenders Act, 1998 being a State legislation falls under category (2) above and therefore the provisions of Sec. 10(3) of the said Act cannot override or prevail over the provisions of Art. 14 of the Constitution, which is in the highest layer in the hierarchy mentioned above. Hence, the provisions of Sec. 10(3) of the said Act can only be



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interpreted in the manner in which we have mentioned above, viz. that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public-auction/public tender by inviting tenders from eligible persons and the notification of the public-auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality so that every eligible persons may bid in the auction. This alone will ensure the compliance of Art.14 of the Constitution. It is only in rare and exceptional cases, as mentioned above, that this rule may be departed and contracts may be awarded through private negotiations.

13. Apart from what is stated above, we are of the opinion that The Tamil Nadu Transparency in Tenders Act, 1998, may not be applicable to the facts of the present case, because the word "Procurement" in the aforesaid Act has been defined in Section 2(d) as follows:-

" 'Procurement' means acquisition by any means by purchase of goods or services and also of construction."

We are at a loss to understand as to how the right to collect rent from the road-side vendors can be said to be a 'procurement' as defined in aforesaid Act. The said right is neither purchase of goods nor of services.

14. Even at the cost of repetition, we reiterate that the award of Government contracts through public auction/public tender is the rule and award of such contracts through 'private negotiations', except under certain contingencies mentioned above, must be frowned upon as it will give rise to speculations in the minds of the general public of some surreptitious, illegal or corrupt practices in collusion with the authorities concerned. Now a days, the Government contracts or contracts awarded by instrumentalities of the State are often worth crores and crores of rupees and unless there is transparency in awarding of such contracts, there is bound to be great dis-satisfaction and speculation in the minds of the general public of some underhand dealing. This would also be violative of Article 14 of the Constitution."

14. On behalf of the Petitioner, yet another decision, in *P.N.Chinnasamy and 13 others V. The Assistant Director of Town Panchayat, Coimbatore District, Coimbatore and 10 others*, 2011 (1) CTC 584 at page 586 is brought to the notice of this Court, wherein it is, inter alia, observed that 'In such a situation, the public auction on the Notifications dated 07.06.2010 and 16.08.2010, which has been

transparently conducted to provide fair and equitable treatment of all tenderers and to eliminate irregularities, interference and corrupt practices by the authorities concerned, which is the aim and requirement of Article 14 of the Constitution, cannot be assailed. While that being so, this Court cannot find any reasons to interfere with the Notifications impugned in these Writ Petitions as per the ratio laid down by this Court in the case of *C.Jayanthi V. The Commissioner, Mettur Municipality, Mettur Dam, Salem District and another, 2006 (5) CTC 236.*"

15.The Learned Counsel for the Petitioner submits that Section 3(6) of The Tamil Nadu District Municipalities Act, 1920 speaks of "'Cart' includes any wheeled vehicle which is not a carriage but does not include any motor vehicle within the meaning of the Indian Motor Vehicles Act, 1914" and further, the ingredients of Section 270-B of the Tamil Nadu District Municipalities Act, 1920 deals with 'Provision of public cart-stands, etc.' and in fact, the 'cart-stands' will apply to the Petitioner's case.

16.Also that, the Learned Counsel for the Petitioner refers to Chapter IV - Receipts and Expenditure Part I - Receipts wherein Rule 52 under the head 'Receipts and Expenditure of Municipal Councils Fees for Licences and Permissions' and sub-rule 52-6 under the caption 'Fees from Markets, Cart Stands, Slaughter Houses and Fisheries' wherein it is observed as follows:

"52-6. (1)Where the right to collect fees in respect of the use of any market, cart stand, slaughter house or fishery is proposed to be leased out by the council the Executive Authority shall prepare a preliminary notice setting forth the conditions and terms subject to which the lease will be granted.

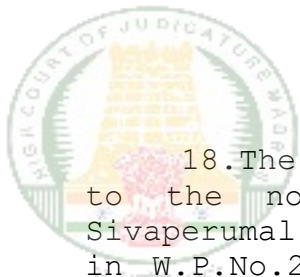
(2)The conditions and terms set forth in the preliminary notice shall be approved by the authority competent to enter into a contract under section 68 of the Act. Such authority shall for the purposes of this sub-rule, be determined with reference to the amount of bid accepted for the previous year's lease:

Provided that the approval of the Preliminary notice by such authority shall not be necessary, if it has previously been approved, unless there are any changes in its conditions and terms."

and submits that the formalities mentioned therein had not been adhered to by the Respondents.

Contentions of the 2nd Respondent:

17.Per contra, it is the contention of the Learned Government Advocate for the 2nd Respondent that the Petitioner is a close relative of the erstwhile contractor one Sivaperumal and that the said Sivaperumal was allotted the contract to collect the 'Seasonal Bus Parking' fees for the year 2013-2014 (November 2013 to January 2014) and the 2nd Respondent received number of complaints from the Public, devotees and vehicle owners against the erstwhile contractor Sivaperumal to the effect that he collected exorbitant parking fee in respect of van, bus etc. and a criminal case was also registered against him and added further, contractors two persons were arrested and later the said erstwhile contractor Sivaperumal's licence was cancelled by the 2nd Respondent.



18.The Learned Government Advocate for the 2nd Respondent brings it to the notice of this Court that the said erstwhile contractor Sivaperumal challenged the termination of his licence before this Court in W.P.No.20568 of 2013 inter alia stating that principles of natural justice were violated and this Court on 03.01.2014 directed him to deposit additional fee and he was permitted to continue and even thereafter several complaints were received saying that unauthorised amount were collected from the pilgrims and vehicle owners, which caused much disturbance to them and apart from the above, when entry fee and parking fee were collected at different places, there were unbearable traffic congestion.

19.The Learned Government Advocate for the 2nd Respondent contends that the 1st Respondent, through proceedings dated 12.10.2014, to set right the subject matter in issue decided to allot the right to collect the fees from the area Kanyakumari Town Panchayat, to Vivekanandharpuram Junction and the four way junction and the same was allotted to a single person for collection of entry fee parking fee at uniform rates in order to avoid traffic congestion and to prevent collection of exorbitant fee from the pilgrims and vehicles owner. Further, based on the instruction of the 1st Respondent/District Collector, Kanyakumari, Kanyakumari District, the Kanyakumari Town Panchayat passed a Resolution No.538 dated 24.10.2014 to that effect.

20.The core submission of the Learned Government Advocate for the 2nd Respondent is that in terms of Section 270-B (1-A) of the Tamil Nadu District Municipalities Act, 1920, the 2nd Respondent is empowered to place collection of fee under the management of such persons as may appear to it proper and accordingly, the same was given to the 3rd Respondent to collect entry fees as per Resolution passed by the Council. As such, the act and the order of the Respondents are proper, reasonable and justifiable too.

21.The Learned Government Advocate for the 2nd Respondent brings it to the notice of this Court that during 28.03.2013, the 3rd Respondent was issued with the licence to collect the entry fees at Vivekanandharpuram Junction and as such, in the light of earlier Resolution, even during the current season, the 3rd Respondent was permitted to collect entry fees at the entrance of the 4 way track junction and by communication of the 2nd Respondent dated 24.10.2014, the 3rd Respondent was asked for his consent and was directed to deposit/pay a sum of Rs.28,50,000/- which was prescribed for the collection and the 3rd Respondent had consented for the same and also paid a sum of Rs.10,00,000/- on 14.11.2014.

22.Besides the above, it is the stand of the Learned Government Advocate for the 2nd Respondent that the existing licensee is permitted to make collection in addition to the area which was permitted by earlier resolution on payment of additional sum of Rs.28,50,000/- (Rupees Twenty eight lakhs and fifty thousand only) in order to avoid loss, difficulty in collecting fee during the season. As such, there is no loss sustained by the Respondents and already the 3rd Respondent was granted permission to collect toll fees in respect of the period between November 2014 and January 2015 and therefore, even if the same is to be based out by conducting public auction, it must be done after passing resolution by



the Council and making advertisement which will consume the rest of the seasonal period and during the interregnum, the town panchayat has no adequate staff for doing the works and it will result in loss of revenue to the Panchayat.

Analysis:

23. At the outset, it is to be pointed out that the object of inviting tenders and entrusting the work are: (1) to locate or select highly proficient and competent person who will be able to execute the work as per terms and conditions of tender notification to the satisfaction of concerned authority without incurring any delay or default in execution of work; (2) to let the work done at a reasonably low cost and to the best advantage of the Corporation/State; (3) to provide an opportunity to all eligible persons are intending tenderers to submit their tender.

24. It cannot be gainsaid that Article 14 of the Constitution is a positive concept. There can be no question of violation of Article 14 of the Constitution, if the Government/concerned authority endeavours to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. But if the said power is exercised for any collateral purpose, the exercise of that power can be questioned before a Court of Law.

25. At this stage, this Court very relevantly points out that in the decision of the Hon'ble Supreme Court in *Raunaq International Limited V. I.V.R. Construction Limited*, AIR 1999 Supreme Court 393, it is held that '*unless Court is satisfied that there is a substantial amount of public interest or transaction is entered into mala fide the Court shall not interfere in Article 226 in disputes between two tenderers*'.

26. It is true that a public authority has a duty to act fairly and to adopt a procedure which is fair play in action. Although public auction is desirable in a given case but when such procedure is not followed, arbitrariness cannot be presumed in all cases. As a matter of fact, even the lowest bidder has no enforceable right to get the contract.

27. Ordinarily, a public authority is not supposed to enter into a kind of private negotiation without calling for a tender in a given case. Also, it is well settled principle that whenever a contract or licence is sought to be given, it is desirable/palatable or even obligatory on the part of a public authority to adopt a transparent and fair method. In short, there is no place for designed negotiations and infusion of fraud on financial morality, as opined by this Court.

28. In this connection, it is not out of place for this Court to significantly point out that Section 16 of the Tamil Nadu Transparency in Tenders Act, 1998 enjoins that the provisions of the said Act will not apply during natural calamities and emergencies declared by Government. Also that, there are inherent limitations for a Court of Law in exercise of its powers under the concept of 'Judicial Review'. That apart, the terms of invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The tenderers are to be judged on their own intrinsic merits in accordance with the terms and conditions of tender notice.



29. It is to be remembered that the freedom of the authorities to award contracts is not unlimited, some play has to be given in the joints. Being the awarders of contract, they have a freedom to choose the best person in process of Decision making to satisfy itself whether any arbitrariness or discrimination has crept in. Beyond that, it cannot traverse and analyse matters in order to find out that a particular award of contract is liable to be interfered on the ground that the tender submitted by a particular individual is more beneficial or superior than the tender accepted by the concerned authority.

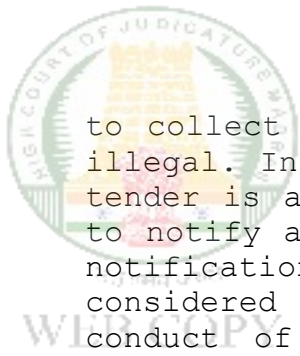
30. In fact, as per Section 36 of the Tamil Nadu District Municipalities Act, 1920, the Government has power to suspend or cancel resolution etc., provided it shall before taking action under this Section on any of the grounds referred to in Clauses (a) and (b) give the authority or the person concerned an opportunity for explanation. Also, Section 36(1)(c) of the Act, 1920 proceeds to the effect that where the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety or is likely to lead to a riot or an affray the Collector has power to suspend the resolution. Section 36(2) of the Act empowers the Collector to take immediate action necessary on any of the grounds mentioned in Clause (c) of the sub-section(1). He can suspend the resolution or order licence of permit or act as the case may be provided Section 36(i)(c) is satisfied. Moreover, Section 37 of the Act, 1920 empowers the District Collector, in case of emergency to direct or prohibit the execution of any act which in the opinion of Collector is necessary for the safety of the public. Also that, the State Government has got powers either to cancel or suspend any resolution passed by the Municipal Council as per decision *Kovi Ravi and others V. Secretary to Government of Tamil Nadu, 2008 (6) MLJ 762*.

31. It is to be pointed out that the 1st Respondent/District Collector, Kanyakumari District on 12.10.2014 conducted a Review Meeting on the Tourism Development Works on 08.10.2014 at 5.00 p.m. at Collectorate Nagercoil and in respect of the proposed work under the caption '(c) Vehicle Parking', Necessary arrangements are to be made to collect both entry fee and parking charges at uniform rates during the season period at main entrances at Vivekanandapuram Junction and at 4 way entrance by Executive Officer, Town Panchayat, Kanniyakumari and pursuant to the instruction of the 1st Respondent, the 2nd Respondent/Panchayat had passed a Resolution No.538 dated 24.10.2014 to that effect.

32. It transpires that the 2nd Respondent, by his proceedings dated 14.11.2014, had issued orders in favour of the 3rd Respondent permitting him to collect vehicle parking fee in respect of the year 2014-2015 (for the period from 17.11.2014 to 31.01.2015) prescribing certain general conditions and also specifying the place where the vehicle is to be parked. At this juncture, this Court relevantly points out that it is the categorical stand of the 2nd Respondent that the present case is not one of Auction or Lease but it is one of Collection of Fees for temporary parking for a period of three months from November to January in a year.

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33. As far as the present case is concerned, the main grievance of the Petitioner is that without conducting an auction allotting the work



to collect the seasonal bus parking fees to the 3rd Respondent is *per se* illegal. In this connection, this Court very relevantly points out that a tender is an offer and it is something which invites and is communicated to notify acceptance. After all, the issuance of tender notice is only a notification to the eligible persons to apply for tender, in the considered opinion of this Court. Moreover, ordinarily resorting to conduct of public auction or transfer by inviting tenders from the eligible persons concerned will be a reasonable and legitimate mode of specifying the requirement of Article 14 of the Constitution of India. Furthermore, the Tamil Nadu Transparency in Tenders Act, 1998 was enacted by the State Government to provide for transparency in public procurement and to regulate the procedure in inviting and accepting tenders by the Departments of Government, Public Sector Undertakings, Statutory Boards etc.

34. One cannot brush aside an important fact that a valid tender must be unconditional; it must be made at the proper place; it must conform to the terms of obligation and it must be made at the proper time and in proper form and apart from that, the person by whom the tender is made should be able and willing to fulfil his obligations; there must be reasonable opportunity for inspection; the tender must be made to the proper person and it must be of full amount.

35. It is the emphatic plea of the Petitioner that from the year 2003 onwards, the seasonal bus parking fees work was let through auction and the work for the year 2011-2012 was let approximately for Rs.20 lakhs and for the year 2012-2013 the work was let approximately for Rs.24 lakhs. However, the fact situation is that for the year 2014-2015 (for the period from 17.11.2014 to 31.01.2015) in respect of the temporary vehicle parking for three months, no tender/ public auction was called for/held. However, by means of proceedings of the 1st Respondent dated 12.10.2014 it was decided to allot the right to collect the fees from the area Kanyakumari Town Panchayat to Vivekanandharpuram Junction and the four way junction and the same was allotted to a single person for a collection of entry fee and parking fee at uniform rates and in this regard, based on the instruction of the 1st Respondent, the 2nd Respondent had passed a Resolution No.538 dated 24.10.2014.

36. It is to be pointed out that the Petitioner has not challenged the Resolution No.538 dated 24.10.2014 passed by the 2nd Respondent. But in the present Writ Petition has only prayed for passing of an order by this Court directing the Respondents 1 and 2 to cancel the allotment order dated 14.11.2014 passed by the 2nd Respondent.

37. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in *Netai Bag and Others V. The State of West Bengal and others*, AIR 2000 SC 3313 at special page 3314, whereby and wherein, it is held as follows:

"Generally when any State land is intended to be transferred or the State largesse decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people. That would be a sure method of guaranteeing the compliance of mandate of Art. 14 of the Constitution. Non-floating of tenders or not holding of public



auktion would not be in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner. Making an exception to the general rule could be justified by the State executive, if challenged in appropriate proceedings. The constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the Courts can substitute their opinion for the bona fide opinion of the State executive. The Courts are not concerned with the ultimate decision but only with the fairness of the decisions making process.

The State Govt. had set up a abattoir/slaughter house at place 'D'. It was running in losses. The State Government was in search of some private party to take over the said abattoir. Newspaper advertisements were issued by the State Livestock Processing Development Corporation inviting private parties to take over the Abattoir at place 'D' which is shown to be running in losses and for which the Comptroller and Auditor General had severally criticised the aforesaid Corporation. The respondent-State failed to get any buyer for project at 'D' despite Newspaper advertisements. Due to financial constraints, continuous loss suffered in project at place 'D' and lack of technical expertise, the respondent-State could not venture to undertake the project for setting up of an abattoir at place 'M'. Having failed in all its efforts, the then Minister-in-charge of the Animal Husbandry and Veterinary Services Department of the State Government wrote to some Bombay based firms, reputed in the field, to salvage the two projects. Positive response is stated to have been received from some firms including the respondent. The respondent firm had shown interest in taking over both the sites at places 'D' and 'M' under certain terms and conditions for the purpose of revitalising and making operational the existing abattoir at 'D' and for setting up of integrated Food Processing Unit along with abattoir at 'M'. The Government therefore decided to make a package deal for the purposes of transferring the Project at place 'D' and establishment of Project at place 'M' and granted a lease of the disputed land in favour of respondent after negotiations.

Held in view of the peculiar facts and circumstances, the action of the respondent-State in executing the lease deed with respondent could not be said to be unreasonable, illegal, arbitrary or actuated by extraneous considerations."

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38.Also, it cannot be forgotten that Section 270-B of the Tamil Nadu District Municipalities Act provides that a Municipal Council may

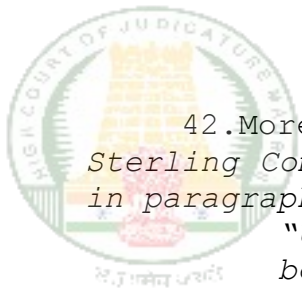


construct or provide and maintain public landing places, halting places and cart-stands and may levy fees from the use of the same. Section 270-B enjoins Municipality to collect fees from the persons using public landing places, halting places and cart standings. Moreover, Section 270-B includes a stand for carriages including motor vehicles and animals. Section 270-D speaks of recovery of cart stand fees and when fee is not paid on demand the person appointed to collect the fees can seize and detain the vehicles. The collection of fees for vehicle can be justified only as per the provisions contained in Section 270-B, C and D only if vehicles use halting places or public landing places or cart standing constructed, provided and maintained. It is to be remembered that preventing the use of public streets for parking vehicle is different from providing halting place and maintaining the same.

39. It is to be pointed out that 'Mandamus' demands some activity on the part of person or valid to whom it is addressed. In the absence of an enforceable legal right no mandamus can be asked for, as opined by this Court. To put it precisely, for issuance of Mandamus, the Petitioner/Applicant must show that he has a legal right to the performance of a legal duty. That apart, a Writ of Mandamus can be issued/granted only in a case where there is a statutory duty cast upon the officer concerned and there is a failure on his part to perform that duty. In short, the existence of a legal right and an obligation of the public authority to fulfil the same on the date of petition are condition precedents to seek the relief of 'Mandamus'.

40. In the present case on hand, even though the Petitioner is said to be a close relative of erstwhile contractor Sivaperumal yet, it cannot be said that he is not an affected/aggrieved person and equally it cannot be said that he has no *locus standi* to file the present Writ Petition because of the reason he has a legal grievance in the sense that the Respondents 1 and 2 had not conducted tender-cum-auction in regard to the collection of toll fees/temporary seasonal parking fees for three months period from 17.11.2014 to 31.01.2015. Therefore, this Court holds that the Petitioner is an aggrieved person and in any event, he has a substantial and genuine interest in the subject matter in issue. Viewed in that perspective, the Writ Petition filed by him is perfectly maintainable in law, especially when he has come out with a specific averment in para 3 of his affidavit in the Writ Petition that the 3rd Respondent is the father of sitting M.L.A. etc.

41. Further, based on the Resolution No.538 passed by the 2nd Respondent dated 24.10.2014 and also on the basis of the proceedings of the 1st Respondent dated 14.11.2014, the existing licensee/3rd Respondent was permitted to make collection in addition to the area which was permitted by the earlier resolution on payment of additional sum of Rs.28,50,000/- in order to avoid loss, difficulty in collecting fee during the season and since it is not the case projected by the Petitioner before this Court that the Respondents had sustained loss in granting permission to the 3rd Respondent and also that, when the 3rd Respondent had paid Rs.10 lakhs on 14.11.2014, the Writ Petition filed by the Petitioner is devoid of merits.



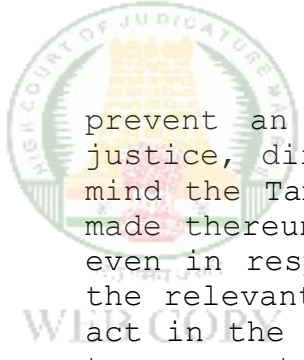
42. Moreover, in the decision of the Hon'ble Supreme Court in *Sterling Computers Limited V. M & V Publications Limited*, AIR 1996 SC 51, in paragraph 12, it is observed as follows:

"Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of play in the joints' to the executive."

43. Also, it cannot be ignored that the seasonal collection of fees for temporary parking for a period of three months from November 2014 to January 2015 (viz., from 17.11.2014 to 31.01.2015) cannot be characterised as highly skilled/technical/specialised work. Moreover, in matters pertaining to administrative decisions, a Court of Law is to exercise judicial restraint as per Division Bench decision of this Court reported in *Rama Muthuramalingam V. The Deputy Superintendent of Police, Mannargudi*, AIR 2005 Madras at page 1.

44. On a careful consideration of respective contentions and also this Court, taking note of the attendant facts and circumstances of the instant case in an encircling fashion, is of the considered view that the non-floating of tender or not holding of public auction for the year 2014-2015 (in respect of the period from 17.11.2014 to 31.01.2015) by the Respondents 1 and 2, cannot be termed as a consequence of exercise of the executive power in an unfair, arbitrary and capricious fashion. Just because the Respondents 1 and 2 in the present case, for the year 2014-2015 (in respect of the period from 17.11.2014 to 31.01.2015) in regard to the seasonal parking of vehicles had not conducted a public auction or not notified or floated or public tender, one cannot ipso facto assume/presume or indulge in conjecture or surmise that an irregularity or illegality or unconstitutionality has been committed by the concerned parties. Even though the Tamil Nadu Transparency in Tenders Act, 1998 provided for transparency in public procurement and to regulate the procedure in inviting and accepting tenders and matters connected therewith or incidental thereto, yet in the present case, the 2nd Respondent had passed a Resolution No.538 in regard to the collection of fees for temporary seasonal parking for a period from 17.11.2014 till 31.01.2015 and based on the power conferred upon the 2nd Respondent to place collection of fee under the management of such persons as may appear to it proper under Section 270-B (1-A) of the Tamil Nadu District Municipalities Act, 1920, the 3rd Respondent was permitted to collect entry fee as per Resolution passed by the Council and as such, the same cannot be held to be an invalid, illegal one, as opined by this Court. Per contra, the permission/ sanction order dated 14.11.2014 of the 2nd Respondent is fair, just and legally valid one, in the eye of law.

<https://hcservices.courts.gov.in/hcservices/> result, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed. Before parting with the case, this Court, to



prevent an aberration of justice and to promote substantial cause of justice, directs the Respondents 1 and 2 (public authorities) to bear in mind the Tamil Nadu Transparency in Tenders Act, 1998 and the Rules 2000 made thereunder in regard to the calling of tender or floating of tender even in respect of collection of fees for seasonal temporary parking for the relevant period, as held for the years 2011-2012 and 2012-2013 and to act in the manner known to law and in accordance with law by adopting a transparent and fair method [with a view to avoid any room for complaint/favouritism/nepotism from any quarters in the near future].

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Kanyakumari, Kanyakumari District.

2.The Executive Officer,
Kanyakumari Town Panchayat,
Kanyakumari.

+1cc to M/S.S.SRIMATHY, ADVOCATE IN SR : 124

Sgl

SR : 05.02.2015 : 14p/4c

ORDER IN
W.P. (MD) No.19098 of 2014
06.01.2015