

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.5865 of 2016
and
WMP.Nos.5226 & 5227 of 2016

R. Sudhakaran

.. Petitioner

Vs

1. The Secretary
Municipal Administration and
Water Supply Department
Fort St. George
Chennai - 600 009
2. The District Collector
Salem District
Salem
3. The Commissioner
Corporation of Salem
Salem
4. The Assistant Commissioner
Ammapet Ward Office
Salem

.. Respondents

Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus to call for the records relating to the impugned tender notification dated 11-02-2016 made in Na.Ka.No.A1/20727/2016 issued by the third respondent published in Malai Malar Daily on 12-02-2016 in respect of serial number 13 is concerned and to quash the same and consequently direct the third respondent to levy the direct toll charges from the petitioner by the third respondent and to pass orders.

For petitioner	:	Mr. C. Prabakaran
For respondents	:	Mr. R. Rajeswaran, Addl.G.P. For RR1 and 2 Ms.K.Bhuvaneswari for RR3 and 4

ORDER

The petitioner has filed this writ petition praying for issuance of Writ of certiorarified mandamus calling for the records relating to the impugned tender notification dated 11-02-2016 made in Na.Ka.No.A1/20727/2016 issued by the third respondent published in Malai Malar Daily on 12-02-2016 in respect of Serial number 13 is concerned and to quash the same and consequently, direct the third respondent to levy the direct toll charges from the petitioner and other persons who are small traders in the market, which is under the control of the Municipal Corporation, Salem.

2. At the time when the writ petition was taken up for admission, this Court was not inclined to stay the tender, but took note of the grievance of the petitioner wherein it was stated that the erstwhile licensee of the respondent-Corporation has been illegally collecting high rates of Toll Fees from the vendors of the market, including the petitioner and in spite of several representations given by the aggrieved persons, the respondent-Corporation did not take any action and if the right to collect toll fees from the traders is brought for auction, once again the traders will be harassed.

(ii) The learned counsel for the respondent-Corporation, who accepted notice at the admission stage, stated that the Corporation would fix the Board in the area clearly stipulating the licence fee.

(iii) This Court observed that this will not solve the problem; even if the Board is installed, the Commissioner should ensure that the licensee adheres to the terms and conditions of the licence; no action appears to have been taken; therefore, this Court in its order dated 17-02-2016 permitted the auction proceedings and simultaneously directed the Commissioner of Corporation of Salem to file an affidavit as to how he shall ensure the licensee would collect proper toll fee; such affidavit was directed to be filed by the Commissioner on 07-03-2016, i.e., today.

3. Today, an affidavit has been filed by Thiru. R. Selvaraj, the Commissioner, Corporation of Salem, the third respondent herein and it appears that the Commissioner is oblivious of the direction issued by this Court in its order dated 17-02-2016.

4. The learned counsel appearing for the Commissioner of the Municipal Corporation has drawn the attention of this Court to Paragraph Nos.7 and 13 of the counter affidavit. The averments contained therein are absolutely vague and in fact, it

is an irresponsible statement, as in paragraph No.13 of the counter, it is stated that the licensee for the period between 2013 and 2015 was already been warned. This vague averment shows that the Commissioner was aware of the fact that the erstwhile licensee has not adhered to the Schedule of rates fixed by the Corporation but was acting as per his own whims and fancies and such an erring licensee has only been warned.

5. This Court could take judicial note of the fact that the Commissioner of Corporation would take stringent action against licensees and lessees when they commit default or they do not pay electricity charges and encroach upon the common area. The licensee who was granted the contract for the period between 2013 and 2015 has been given a free hand, probably for the reasons best known to the Commissioner and other Officials. Thus, while recording the displeasure to the manner in which the counter affidavit has been filed, there will be a direction to the Commissioner to strictly adhere to the Schedule of rates, which has been fixed, conduct surprise inspection and ensure that there is no complaint of excess collection. In order to ensure that there is no excess collection of fees and also to ensure that the Commissioner of the Salem Corporation monitors the matter, the Secretary, Department of Municipal Administration and Water Supply shall also call for periodical reports from the Commissioner, Corporation of Salem, so that there are sufficient checks on the new contractor, who has been awarded the licence.

6. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous petitions are closed.

glp

s/d-
Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Secretary
Municipal Administration and
Water Supply Department
Fort St. George, Chennai - 600 009
2. The District Collector
Salem District Salem
3. The Commissioner
Corporation of Salem
Salem

4. The Assistant Commissioner
Ammapet Ward Office
Salem

+ 1 cc to Mr.C.Prabhakaran, Advocate, SR 14554

+ 1 cc to Ms.K.Bhuvaneswari, Advocate, SR 15121

+ 1 cc to Govt.Pleader, High Court, Madras SR 14656

kgk(co)
prk23/3

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