

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.971 of 2018
and
CMP.Nos.8211 and 8212 of 2018

P.K.Amina

... Appellant

vs.

1.The Divisional Railway Manager
Southern Railway, Salem Division,
Salem - 636 005.

2.The Senior Divisional Commercial
Manager (Co-ordination)
Southern Railway, Salem Division,
Salem - 636 005.

... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 12.01.2018 passed by the learned Single Judge in WP.No.7839 of 2017.

W.P.No. 7839/2017:

Writ Petition filed under Article 226 of the constitution of India praying for issuance of a Writ of Certiorari Mandamus, to quash the order passed by the 2nd Respondent dated 08.03.2017 and direct the respondents to renew the license regarding the stall (SA/SMU/04) in platform No. ¾ at Erode Junction Railway Station in Compliance with circular No.22/2017.

For Appellant : M/s.Janani Shankar

For Respondents : Mr.P.T.Ramkumar

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

The unsuccessful writ petitioner is the appellant herein. This writ appeal is directed against the order dated 12.01.2018 passed by the learned Single Judge in WP.No.7839 of 2017.

2.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

3.Shorn of the minute details, the facts, which are germane and necessary for the disposal of this appeal, are as follows:

3.1 The petitioner was allotted licence by the Indian Railway Catering & Tourism Corporation Ltd. for operating a catering stall in platform no.3/4 at Erode Junction Railway Station. The licence was granted for a period of five years with effect from 23.03.2009 and it was subsequently renewed for a further period of three years (i.e.) from 23.03.2014 to 22.03.2017.

3.2 Before the expiry of the licence, the petitioner made an application dated 04.02.2017 seeking renewal, which was not considered by the respondents. Hence, the petitioner filed WP.No.7001/2017 seeking a direction to the respondents to dispose of her representation.

3.3 Pending the said writ petition, the second respondent rejected the request of the petitioner, by order dated 08.03.2017.

3.4 Consequent to the order passed by the second respondent, this Court dismissed the said writ petition as having become infructuous, however, granted liberty to the petitioner to challenge the order of the second respondent.

3.5 In view of the same, the petitioner filed the aforesaid writ petition to quash the order dated 08.03.2017 passed by the second respondent and direct the respondents to renew the licence regarding the stall (SA/SMU/04) in Platform No.3/4 at Erode Junction Railway Station in compliance with Circular No.22/17.

3.6 By order dated 12.01.2018, the learned Single Judge dismissed the aforesaid writ petition. Hence, this writ appeal.

4.Heard the learned counsel for the petitioner and the learned Standing Counsel taking notice for the respondents.

5.Concededly, the petitioner was initially granted licence for running a catering stall at Erode Junction Railway Station, for a period of five years, which was subsequently renewed for a further period of three years. The application submitted by her seeking further renewal was rejected by the second respondent vide order dated 08.03.2017, which was affirmed by the learned Single Judge in the writ petition instituted by the petitioner.

6.While affirming the rejection order, the learned Single

Judge dismissed the writ petition on the ground that the renewal once granted cannot be sought again, as a matter of right, more particularly, when the petitioner's husband is having 9 Catering Stalls in the same Division. Further, in WP.No.29926 of 2017, the learned Single Judge took a similar view on an earlier occasion in respect of a similarly situated person, vide order dated 22.11.2017, which order was confirmed by a Division Bench of this Court in WA.No.1645 of 2017 vide judgment dated 11.12.2017.

7.The learned counsel for the petitioner tried to convince this Court, arguing that if the petitioner is denied further renewal, her very livelihood will be in peril.

8.On the contrary, the learned Standing Counsel appearing for the respondents vehemently opposed the claim of the petitioner, contending that the petitioner has already enjoyed the right of licence for a certain period and thereafter, the benefit of extension; her husband is running 11 other stalls in the same division; and hence, she is not entitled to further renewal. The learned Standing Counsel further contended that as per the directions of the Apex Court, the Railway Department has decided to lease out the stall in question through public auction and as such, the petitioner has no right to seek renewal of licence granted to her.

9.In our opinion, the argument advanced by the learned counsel for the petitioner that if the licence is not renewed, the petitioner's very livelihood will be affected, cannot be accepted. There is no right inhering the petitioner to demand further renewal in her favour. The properties of the Government cannot be allowed to be fettered by perpetuity. By clinging to the stall eternally, the petitioner will be only depriving the opportunity of others. Having had her fingers in the pie, she would only like to cling to it and have the whole pie for herself. It is in the fitness of things that everybody has a taste of the pie. Therefore, there is no uprooting of the petitioner, but there is only uprooting of avarice of the individuals.

10.That apart, the decision taken by the Railway Department to lease out the stall through public auction is in larger interest of the public. The competition will bring the best price, which will only ultimately enure to the benefit of the public. Further, if the right is leased out by public auction, everyone will have a chance to participate, including the petitioner and there would be more transparency. Such public auction is likely to yield higher income. On the other hand, if it is renewed in favour of the petitioner, who was already there, the right of others to participate in the auction would

be taken away and an equal opportunity to everyone will be denied.

11.It has been time and again held by the Apex Court that in tender matters, the Court has to take into consideration the interest of the people at large or the society; public bodies have the right to put the properties belonging to them in auction and augment their income and thus, deal with it in a manner more advantageous to them; any direction not to hold auction or to renew the lease will not only put an unwarranted limit on their right, but also work against the larger interest of the society; it will further lead to monopoly; if such a right is allowed, it would amount to nudging out other co-tenderers; on the other hand, public auction is a policy decision of the authority to enable the new persons to enter into the business and to discourage the monopoly of the old and established method of earning more income; in fact, such public auction would put an end to monopoly; thus, it is always necessary and desirable that such right is granted by way of public auction.

12.In the given case, having regard to the fact that the petitioner's husband already possesses licence for 11 other stalls in the same division, the claim of the petitioner seeking further renewal is nothing but an attempt to monopolize the entire business. Further, the Railway Department has taken a policy decision to lease out the stall through public auction in accordance with the direction of the Supreme Court, interference of which, in our view, is very limited.

13.In such perspective of the matter, we do not find any illegality or infirmity in the order so passed by the learned Single Judge, which is perfectly right and is hence, confirmed. Needless to state that there is no embargo on the petitioner to participate in the future auction proceedings, as observed by the learned Single Judge in the order impugned in this writ appeal.

14.In fine, the writ appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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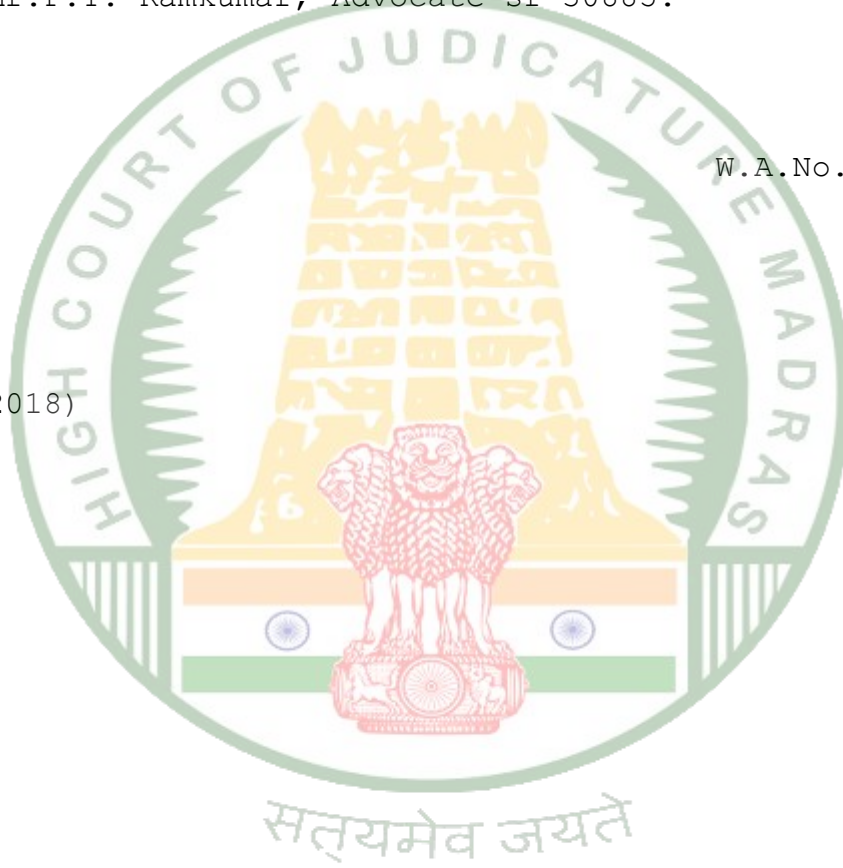
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+1 CC to M/s.Janani Shankar, Advocate sr 30792.

+1 CC to Mr.P.T. Ramkumar, Advocate sr 30885.

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SVN(CO)
SP(21/06/2018)



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