

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON: 06.02.2018
PRONOUNCED ON: 09.02.2018

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CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P. (MD) Nos.19412, 23241 and 23242 of 2017
and

W.M.P. (MD) Nos.15722, 20269 and 19536 to 19539 of 2017

P.Ramamoorthy

... Petitioner in all W.Ps.

-Vs-

1. The Assistant Director of Town Panchayat,
Trichy District, Trichy.

2. The Executive Officer,
Ponnampatti Town Panchayat,
Thuvarankurichi,
Trichy District.

3.P.Chinnu

... Respondents in all W.Ps.

Prayer in W.P. (MD) No.19412 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from commencing the business of Bakery and Sweets Stall in Shop Nos.1 and 2 of Thuvarankurichi Bus Stand Complex, Thuvarankurichi, Ponnampatti Town Panchayat, Trichy District which belongs to the respondents 1 and 2.

Prayer in W.P. (MD) No.23241 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.335/2016 dated 30.05.2017 passed by the second respondent with respect to Shop No.1, Thurvarankurichi Bus Stand Complex, Thuvarankurichi, Ponnampatti Town Panchayat, Trichy District and quash the same insofar as Condition No.7 and consequently restore the original Condition No.7 imposed in proceedings in Na.Ka.No.335/2016 dated 03.05.2017.

Prayer in W.P. (MD) No.23242 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.335/2016 dated 30.05.2017 passed by the second respondent with respect to Shop

No.2, Thurvarankurichi Bus Stand Complex, Thuvarankurichi, Ponnampatti Town Panchayat, Trichy District and quash the same insofar as Condition No.7 and consequently restore the original Condition No.7 imposed in proceedings in Na.Ka.No.335/2016 dated 01.04.2017.

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For Petitioner : Mr.AN.Ramanathan
 For Respondents 1&2 : Mr.M.Rajarajan,
 Government Advocate.
 For 3rd Respondent : Mr.AR.L.Sundaresan,
 Senior Counsel,
 (In all Writ Petitions) for Mr.J.Anand Kumar

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, the writ petitions are disposed of by way of a common order.

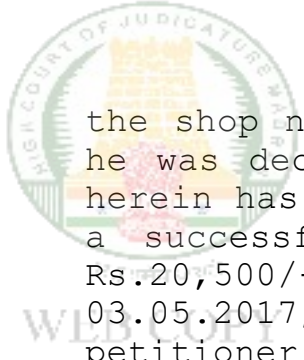
2.W.P.(MD)No.19412 of 2017 has been filed by the petitioner seeking to forbear the third respondent from commencing the business of Bakery and Sweets Stall in Shop Nos.1 and 2 of Thuvarankurichi Bus Stand Complex, Thuvarankurichi, Ponnampatti Town Panchayat, Trichy District which belongs to the respondents 1 and 2.

3.W.P.(MD)No.23241 of 2017 has been filed challenging the order passed by the Executive Officer, Ponnampatti Town Panchayat, Thuvarankurichi, the second respondent herein, dated 30.05.2017 thereby deleting a specific condition imposed in the original order of the confirmation of lease in favour of the third respondent prohibiting him from running the bakery in shop No.1 for which, the third respondent was granted lease.

4.W.P.(MD)No.23242 of 2017 has been filed, challenging the another order passed by the Executive Officer, Ponnampatti Town Panchayat, Thuvarankurichi, the second respondent herein, dated 30.05.2017 issuing fresh confirmation order in favour of the third respondent, after deleting the conditions that the third respondent should not run a bakery in the shop No.2.

5.The common facts for filing all these writ petitions in brief are as follows:-

The Ponnampatti Town Panchayat has conducted a public auction for granting lease in respect of the five shops situated at Thuvarankurichi Bus Stand. Out of the five shops, the first shop is a hotel, the other shops are adjacent to the hotel and the <https://hcservices.shops.in/hcservices/> is a single complex. The petitioner participated in the tender cum auction proceedings and he has offered a sum of Rs.1,11,000/- (Rupees One Lakh Eleven Thousand Only) per month for



the shop next to the hotel to run a bakery and sweets stall, and he was declared as the successful bidder. The third respondent herein has also participated in the auction and he was declared as a successful bidder for other two shops for monthly rent of Rs.20,500/- and Rs.10,400/- respectively. By an order dated 03.05.2017, the second respondent confirmed the auction for the petitioner and put a specific condition in condition No.7 that the petitioner should run a bakery and sweets stall and should not do other business in that shop. Likewise in the confirmation order issued to the third respondent, a specific condition has been imposed that the third respondent should not run the bakery and sweets stall in the shops allotted to him, but in violation of the confirmation order, the third respondent was running a bakery. Hence, the petitioner filed a writ petition in W.P.(MD)No.19412 of 2017, seeking direction to the respondents 1 and 2 to forbear the third respondent from running the business of bakery and sweets stall in the shop Nos.1 and 2, which was allotted to the third respondent. While the writ petition came up for admission, this Court granted interim injunction. Subsequently, by another order dated 30.05.2017, the second respondent has deleted the conditions imposed in the confirmation order dated 03.05.2017 in respect of the third respondent that he should not run the bakery or sweets stall in shop Nos.1 and 2 and issued a fresh confirmation order without any condition and therefore, the petitioner has filed W.P. (MD)Nos.23241 and 23242 of 2017 challenging the order and seeking direction to the respondents to restore the original conditions imposed in respect of shop Nos.1 and 2.

6. According to the petitioner, after imposing condition on the petitioner that the petitioner should only run the bakery and sweets stall in the shop allotted to him and imposing a specific condition that the third respondent should not conduct the business of bakery and sweets stall in the shop allotted to him, now, it is not open to the second respondent to alter the condition and permitting the third respondent to run bakery, and the second respondent has no power or authority to pass such order.

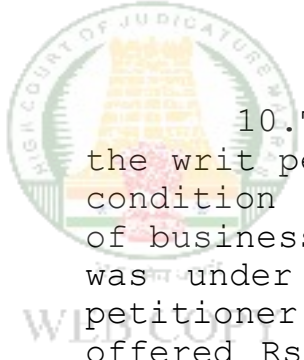
7. It is further contended that based on the earlier confirmation order issued by the second respondent, dated 03.05.2017, on legitimate expectation that the petitioner alone will be permitted to run a bakery and sweets stall in the shops allotted to him and the third respondent will not be permitted to run bakery and sweets stall, he has offered a huge amount of Rs.1,11,000/- per month. Now, the second respondent arbitrarily, without issuing any notice to the petitioner has deleted the condition in respect of the third respondent shops, thereby, the second respondent now permitted the third respondent to run a bakery and sweets stall in the shops allotted to him. This has caused heavy loss to the petitioner, the second respondent also estopped from deleting the condition that too without any enquiry. According to the petitioner, once the



confirmation order has been issued, if there is any modification or variation in the confirmation order, it is only the Government has the power to modify the same and the second respondent has no power to review his own order. Hence, the order passed by the second respondent is without jurisdiction which is liable to be set aside.

8.The second respondent/Executive Officer filed a counter affidavit stating that after conclusion of the tender cum auction proceedings, the petitioner has submitted a representation before the second respondent on 17.04.2017, stating that the petitioner participated in the auction only to run a bakery, and offered Rs.1,11,000/- per month and only on a expectation that there is no such bakery will be permitted in the complex, and if any permission is granted to the third respondent to run a bakery, the petitioner will be irreparable loss. In the said circumstances, the above said condition has been imposed. Thereafter, the third respondent has approached the District Collector, Trichy made a representation to permit him to run a bakery and in the event of the third respondent is permitted to run any business. the petitioner would likely withdraw his offer which would cause revenue loss to the second respondent. It is further stated that the second respondent cannot prevent the third respondent from running the bakery in the shops allotted to him and taking into consideration the other circumstances, the third respondent was restrained from running bakery.

9.The third respondent also filed a counter affidavit stating that the second respondent called for tenders for granting lease of the shops wherein there is no specific condition imposed in the tender notification that what are the businesses to be conducted in the respective shops. It is further stated that only, shop No.1 is earmarked for the hotel and in respect of other shops, the nature of business was not mentioned. But, subsequently, while issuing confirmation order, the second respondent imposed a specific condition preventing the third respondent from conducting hotel or bakery business. Without imposing any condition in the tender notification with regard to the nature of business to be carried out by the third respondent, the second respondent cannot impose a new condition in the confirmation order. In the above circumstances, the third respondent approached the District Collector and made a representation to delete the condition and only, thereafter, the second respondent issued a proceedings dated 30.05.2017 thereby deleting the condition No.7. It is further stated that since the second respondent has not prescribed any condition in the original tender notification, now, it is not open to the second respondent to impose any new condition while confirming the lease, the second respondent has rightly rectified the mistake and issued a fresh order and therefore, there is no infirmity in the said order.



10. The learned counsel appearing for the petitioner in all the writ petitions submitted that even though there is no specific condition imposed in the tender notification regarding the nature of business to be carried out in a particular shop, the petitioner was under the *bona fide* belief that the shop for which the petitioner sought for lease, only allotted to run a bakery he has offered Rs.1,11,000/- for the above said shop. He would further submit that considering the circumstances and after imposing a specific condition in the confirmation order that the third respondent should not run bakery, it is not open to the second respondent to delete the same arbitrarily, which would cause heavy loss to the petitioner, only on a legitimate expectation that the petitioner alone will be permitted to run a bakery in the shop, he has offered huge amount as monthly rent. But, now, by virtue of the order deleting the condition, the second respondent has committed illegality which ultimately cause heavy loss to the petitioner and that the second respondent does not have any power to review his own order and the power is only vested with the Government to modify any condition.

11. Per contra, the learned Senior counsel appearing for the third respondent submitted that admittedly, in the tender notification, no specific condition has been imposed regarding the nature of business to be carried out in the shops and there is no assurance given by the authorities that the petitioner alone will be permitted to run bakery and sweets stall. Since the shop is situated in front portion of the Bus Stand and had opening on three sides, the petitioner has offered more amount than the third respondent. Apart from that it is only on the request made by the petitioner the condition has been imposed in the confirmation order, subsequently, based on the representation given by the third respondent before the District Collector and after realising the mistake, the second respondent has modified the order the second respondent has power to modify the condition already imposed in the confirmation order which is not contrary to the tender notification and the petitioner cannot claim legitimate expectation.

12. The learned counsel appearing for the second respondent would contend that even though there is no specific condition in the tender notification, since the petitioner has insisted to impose condition and he has offered more amount, condition has been imposed in the confirmation order, subsequently, it has been deleted for which the second respondent has power and there is no illegality in the order passed by the second respondent.

13. I have considered the submissions made by the learned counsel for the parties and perused the materials available on



14. It is an admitted fact that the tender notification issued by the second respondent calling for tenders does not contain any condition in respect of the nature of business to be conducted in each shop, except the shop No.1, which was reserved for running a hotel. Apart from that there is no material available on record to show that any assurance given to the petitioner that the shop allotted to him is only for the purpose of running bakery and other persons will not be permitted to run bakery. From the counter affidavit filed by the second respondent, it could be seen that before issuing confirmation order, the petitioner made a request to the second respondent to impose such condition on the ground that he has offered a sum of Rs.1,11,000/- on the premise that he will alone be permitted to run bakery. But it is also seen from the records that the second respondent imposed the new condition to the petitioner as well as the third respondent that the third respondent should not run a bakery in the shop allotted to him, which was not found place in the original tender notification.

15. It is settled law that the parties are bound by the tender condition, and the second respondent after inviting tenders with a specific conditions cannot change the condition, after the conclusion of the tender cum auction which would only cause prejudice to the tenderers. In the above circumstances, when there is no specific condition imposed in the tender notification that shop is reserved for any particular business, the second respondent ought not have imposed a new condition on the third respondent that he should not run a bakery business in the shops allotted to him. Since the condition imposed by the second respondent is contra to the tender notification, the second respondent has power to rectify the same and issue fresh notification and it cannot be held that the second respondent has no jurisdiction to pass such order. In the above circumstances, I find no illegality in the order passed by the second respondent. Hence, all the writ petitions are liable to be dismissed.

16. At this juncture, the learned counsel appearing for the petitioner submitted that now, after conducting auction, the third respondent taking steps to sub-lease the shop allotted to him to the third parties, which is not permissible as per the tender condition. The said submission was strongly refuted by the third respondent. However, when the tender notification specifically prohibited sub-leasing the shops, neither the petitioner nor the third respondent should sub-let the shops to any third parties in violation of condition No.22 stipulated in the tender notification. If any of the lessees is found to be violated the above said condition and sub-let of the shops, it is open to the second respondent to take necessary action to cancel the lease entered into in their favour.



17. With the above observations, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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/True Copy/

Sub Assistant Registrar

To

1. The Assistant Director of Town Panchayat,
Trichy District, Trichy.
2. The Executive Officer,
Ponnampatti Town Panchayat,
Thuvarankurichi,
Trichy District.

+ 1 cc TO Mr.J.Anand Kumar , Advocate in SR No. 47364
+ 3 ccs TO Mr.AN.Ramanathan , Advocate in SR No.47671,47672,47673

Myr

AE/SV MMS/SAR4/14.02.2018/7P/7c

common order made in
W.P(MD) Nos.19412, 23241 and 23242 of 2017
09.02.2018