



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.02.2019
CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 1678 of 2019 and
W.M.P. (MD) No. 1437 of 2019

M.V. Pandian

... Petitioner

Vs.

1. The Assistant Director of Town Panchayats,
Dindigul Region, Collectorate,
Dindigul District.

2. The Executive Officer,
Nilakottai Town Panchayat,
Nilakottai Post,
Dindigul District.

... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to consider the petitioner's representation dated 11.01.2019 and to extend the lease for further period of three years in the light of G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007 in respect of water tanks used for dip of flowers.

For Petitioner : Mr.M.Saravanakumar

For R-1 : Mr.M.Rajarajan,
Government Advocate.

For R-2 : Mr.M.Murugan

ORDER

Heard the learned counsel appearing for the Writ petitioner and the learned Standing counsel appearing for the second respondent Panchayat.

2. In Nilakottai Panchayat, the Panchayat had constructed two water tanks to enable the traders and agriculturists to dip their flowers. The Panchayat had granted licence to the petitioner to collect dipping charges. The licence period is going to expire on 31.03.2019. The petitioner had earlier submitted a request for extension of the licence. The second respondent has not taken any decision on the petitioner's representation dated 11.01.2019. Therefore, this Writ petition has been filed for directing the second respondent to take a decision in this regard.



3. The learned counsel appearing for the Writ petitioner placed reliance on G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007.

4. When the matter was taken up for hearing, the learned Standing counsel appearing for the second respondent submitted that already a tender notification has been issued in this regard. Thus, there has been an implicit rejection of the petitioner's request. Therefore, the remedy open to the petitioner is either to take part in the tender process or challenge the tender notification.

5. The learned counsel appearing for the petitioner placed reliance on the deeming provision set out in Section 321(11) of the Tamil Nadu District Municipalities Act 1920. The said provision reads as under:-

"(11) The acceptance by the municipal council of the pre-payment of the fee for a licence or permission or for registration shall not entitle the person making such pre-payment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration; but an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not [received by the applicant within sixty days after the receipt of the application] by the [executive authority], the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules, by-laws, regulations and all conditions ordinarily imposed."

6. I am of the view that the reliance on the aforesaid deeming provision is totally misplaced. Chapter XII of the Tamil Nadu District Municipalities Act 1920 contains provisions regarding licences and fees. There are a number of provisions which stipulate taking of licences for certain activities. For instance, the owner or occupier of any stable, veterinary infirmary, stand, shed, yard, or other place in which animals are kept will have to obtain licence as per Section 245 of the Act. Section 249(1) of the Act states that the municipal council may publish a notification in the District Gazette that no place within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the licence of the executive authority and except in accordance with the conditions



specified therein. As per Section 255 of the Act, the owner of any place which is used as a slaughter-house shall apply to the executive authority for a licence. One can engage in milk trade only with licence. For running a private market, licence must be taken. The statute is having a number of such provisions. The aforesaid deeming provision can apply only in such cases. The case on hand is quite different. It is about granting largesse. If the municipality is the owner of two water tanks in question, their use will generate revenue. Therefore, the Panchayat auctioned the right to collect dipping charges. The Panchayat could not have given it arbitrarily to a person of their choice. That would be violative of the mandate set out in Article 14 of the Constitution of India. One can refer to the decision reported in AIR 1979 SC 1628 (Ramana Dayaram Shetty V. International Airport Authority of India). If the argument of the petitioner's counsel is accepted, the entire law evolved from Ramana Dayaram Shetty case can be subverted by simply engineering inaction on the part of the Panchayat officials. The petitioner was the highest bidder during the last year. His licence period had come to an end. The petitioner wants renewal. He had given an application in that regard. The authority had not passed any order on his request. If the deeming clause is applied, then the petitioner would get licence for one more year, even without there being a public auction. This provision can be applied only in respect of those licences which have been directed to be taken under the provisions of the Tamil Nadu District Municipalities Act. This deeming provision will not have any application in matters involving grant of largesse. I find no merit in the contention of the petitioner's counsel.

7. This Writ petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS)

pmu

To

1. The Assistant Director of Town Panchayats,
Dindigul Region, Collectorate,
Dindigul District.

2. The Executive Officer,
Nilakottai Town Panchayat,
Nilakottai Post,
Dindigul District.



+1 CC to M/s.M.SARAVANA KUMAR, Advocate
(SR-45080[F] dated 06/02/2019)

+1 CC to M/s.SPL GP (SR-45179[F] dated 06/02/2019)

WEB COPY

W.P.(MD)No.1678 of 2019 and
W.M.P.(MD)No.1437 of 2019
05.02.2019

ES/04.06.2019/4P/5C