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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :15.03.2019

Delivered on : 05.04.2019

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**

**W.A. (MD) Nos.1503, 1516 and 1590 of 2018
and
C.M.P (MD) Nos.10687, 10809 & 11383 of 2018**

W.A. (MD) No.1503 of 2018

Thanga Madhavan @ T.Madhavan ... Appellant/Respondent No.3
Vs.

1.C.Periyathambi ... 1st Respondent / Writ Petitioner

2.The Commissioner of Fisheries,
Fisheries Department (Inland)
Administrative Building,
D.M.S. Compound,
Tenampet,
Chennai.

3.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Vaigai Dam, Theni,
Theni Distrit.

...Respondents 2 and 3/ Respondents 1 and 2

PRAYER: Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P(MD)No.22356 of 2016 dated 18.09.2018.

Prayer in WP(MD) No.22356 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, direct the respondents to issue confirmation order infavour of Petitioner name based on the bid amount quoted in the Fishing Rights Tender Application for the years 2016-2019 in respect of in respect of Meenakshi Amman Tank, Bodinaickanoor Village, Theni District is concerned.



For Appellant : Mr.T.Lajapthy Roy
For Respondents : Mr.M.Saravanakumar (for R1)
Mr.VR.Shanmuganathan
Spl. Govt. Pleader (for R2 & R3)

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W.A. (MD) No.1516 of 2018

M.Prabhu ... Appellant/Petitioner
Vs.

- 1.The Commissioner of Fisheries,
Fisheries Department (Inland)
Administrative Building,
D.M.S. Compound,
Tenampet,
Chennai.
- 2.The Deputy Director of Fisheries (Regional)
58. 2nd Main Road, Vanamamalai Nagar,
Byepass Road, Madurai - 625 016.
- 3.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
Theni Distrit.
- 4.Thanga Madhavan @ T.Madhavan

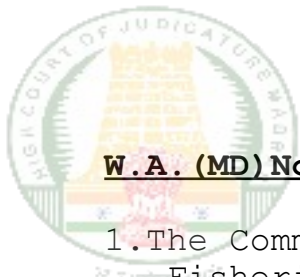
...Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 18.09.2018 in W.P(MD)No.21498 of 2017.

Prayer in WP(MD) No.21498 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 3rd respondent in Na.Ka.No.581/AA/2016 dated 22.11.2016 and quash the same and further directing the 3rd respondent to confirm the petitioners tender process for lease of the Fishery Right in respect of Meenakshiamman Kanmai in the Bodi Ammapatti Village, Bodinayakkanur Taluk.

For Appellant : Mr.M.Saravanan
For Respondents : Mr.VR.Shanmuganathan
Spl. Govt. Pleader (for R1 to R3)
Mr.T.Lajapthy Roy (for R4)

**W.A. (MD) No.1590 of 2018**

1.The Commissioner of Fisheries,
Fisheries Department (Inland)
Administrative Building,
D.M.S. Compound,
Tenampet,
Chennai.

2.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
Theni Distrit.

... Appellants/Respondents 1 and 2
Vs.

1.C.Periyathambi

... 1st respondent / Writ Petitioner

2.Thanga Madhavan @ T.Madhavan

... 2nd Respondent / 3rd Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P(MD)No.22356 of 2016 dated 18.06.2018.

Prayer in WP(MD) No.22356 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, direct the respondents to issue confirmation order infavour of Petitioner name based on the bid amount quoted in the Fishing Rights Tender Application for the years 2016-2019 in respect of in respect of Meenakshi Amman Tank, Bodinaickanoor Village, Theni District is concerned.

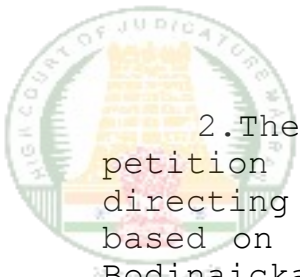
For Appellant : Mr.VR.Shanmuganathan
Spl. Govt. Pleader

For Respondents : Mr.M.Saravanakumar (for R1)
Mr.K.Safar Badhusha (for R2)

COMMON JUDGMENT

(Common Judgment of the Court was delivered by
K. KALYANASUNDARAM, J.)

These Writ Appeals have been preferred against the order passed in W.P(MD)No.22356 of 2016 and W.P.(MD).No.21498 of 2017, dated 18.09.2018.



2.The first respondent, namely, C.Periyathambi filed the writ petition W.P(MD)No.22356 of 2016 for issuance of Writ of Mandamus directing the respondents to issue confirmation order in his favour based on the bid amount quoted in respect of Meenakshiamman Tank, Bodinaickanoor Village, Theni District.

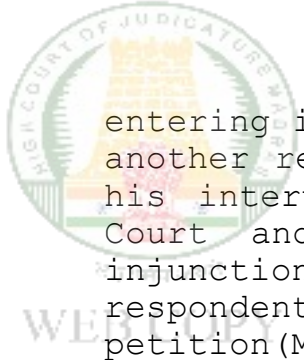
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3.The case of the writ petitioner was that the Assistant Director of Fisheries issued a Tender Notification for fishing rights in respect of 8 tanks in Theni District. As per notification, applications will be supplied from 01.11.2016 and last date for submitting the applications was 16.11.2016 till 13.00 hours. It is further stated that he had received the application and he had gone to submit the application within the stipulated time on 16.11.2016, but the tenderers were prevented by the goondas of one Thanga Madhavan @ T.Madhavan. On enquiry, he came to know that the said Madhavan's brother is working as Assistant Director of Fisheries and they have already selected persons. Though, he quoted Rs.31,00,000/- for fishing rights in respect of Meenakshiamman Tank, but unfortunately, his application was not received. It is further alleged that the respondent has also not followed the provision of Tamil Nadu Tender Transparency Act.

4.A detailed counter was filed by the Assistant Director of Fisheries contending that the Tender Notification was published in Thinamani, Dinakaran and *The Hindu* newspapers on 13.10.2016 calling for tenders for grant of lease hold fishing right in respect of 8 tanks including Meenakshiamman Tank situated at Bodinayakkanaur for three Fasli year (1426 to 1428), namely, 2016-2017, 2017-2018 and 2018-2019 and that for Meenakshiamman Tank, though 21 persons had received tender forms, but only 3 tender bids were received by the Assistant Director of Fisheries. The upset price for the tank was Rs.11,00,000/-. The other two tenderer, namely, K.Thangadurai offered Rs.11,01,000/- and one M.Prabhu had offered Rs.11,10,505/- and Thanga Madhavan @ T.Madhavan offer was Rs.24,00,000/-. Hence, he was declared as highest bidder.

5.In the counter, the Assistant Director of Fisheries denied the allegations made in the writ petition and it is stated that the writ petitioner had failed to file his tender application within the stipulated date and time and on the final day of submitting the application i.e., on 16.11.2016, about 50 policemen were deployed in front of the second respondent office. The Deputy Director of Fisheries, Madurai and the Tahsildar, Periyakulam were also present in the second respondent office at the time of opening the tender forms. According to the Assistant Director, no such occurrence was happened as alleged by the writ petitioner and on the same day, the writ petitioner had participated in the tender process in respect of Kottur Narayanasamuthiram Tank.

6.It is to be noted that on 16.11.2016, the first respondent herein, namely, C.Periyathambi submitted a representation to the Assistant Director of Fisheries alleging that he was prevented from



entering into the office of the Assistant Director of Fisheries and another representation was given to the District Collector seeking his intervention in the matter. Thereafter, he approached this Court and filed the writ petition and an order of interim injunction was granted on 22.11.2016 restraining the official respondents from confirming the auction. He filed a contempt petition(MD)No.196 of 2018 on the ground that despite the interim order, confirmation of auction was made in favour of the said Thanga Madhavan. The learned Single Judge, taking note of the conduct of the Assistant Director of Fisheries/second appellant herein and accepting the case of writ petitioner that he submitted a tender application quoting Rs.31,00,000/-, but he was prevented from participating in the auction, had allowed the writ petition directing the authorities, namely, the appellants herein to grant fishing right to the first respondent C.Periyathambi.

7.The writ petition in W.P(MD)No.21498 of 2018 was filed by M.Prabhu/appellant in W.A(MD)No.1516 of 2018 for issuance of Writ of Certiorarified Mandamus to quash the order of the Assistant Director of Fisheries granting lease hold right in favour of the said Thangamadhavan and for a direction to the Assistant Director of Fisheries to confirm his tender process for lease of fisheries right in respect of Meenakshiamman Kanmai in Bodi Ammapatti village. According to the writ petitioner, namely, M.Prabhu, as per the tender notification dated 31.10.2016, he purchased an application on 02.11.2016 and he quoted Rs.29,90,505/- in respect of fishing right of Meenakshiamman Kanmai. The Assistant Director of Fisheries had pre-planned to declare the said Thangamadhavan as a highest bidder and hence, he was pressurised to correct the quoted amount as Rs.11,10,505/-. Hence, he made a representation on 24.05.2017 to the Commissioner of Fisheries explaining the happening in the tender process and the fraud played by the Assistant Director of Fisheries.

8.Another writ petition W.P(MD)No.13188 of 2017 was filed by the said Thangamadhavan to quash the order of the Assistant Director of Fisheries dated 18.05.2017.

9.Since the issues involved in the writ petitions were same, they were taken up together and disposed of by a common order. The learned Single Judge allowed the writ petition in W.P(MD)No.22536 of 2016 while dismissing the other two writ petitions. Assailing the order, these writ appeals have been filed.

10.We have heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellant in W.A(MD)No.1590 of 2018 and Mr.T.Lajapathy Roy, learned counsel appearing for appellant in W.A(MD)No.1503 of 2016 and the fourth respondent in W.A(MD)No.1516 of 2018 and Mr.K.Safar Badhusha, learned counsel appearing for the second respondent in W.A(MD)No.1590 of 2018 and Mr.P.Venkatasubramaniam learned counsel for Mr.M.Saravanakumar, learned counsel appearing for the first respondent in W.A(MD)



Nos.1503 and 1590 of 2018 and Mr.M.Saravanan, learned counsel appearing for the appellant in W.A(MD)No.1516 of 2018 and perused the records.

11.Learned Special Government Pleader and the learned counsels for the successful bidder would submit that the learned Single Judge allowed the writ petition filed by the first respondent C.Periyathambi on the assumption that he submitted the tender application in time. According to the learned counsels, the first respondent had not submitted the tender application as per the notification and further no materials were produced to show that he was prevented from submitting his application in time. Both counsels have relied upon the lease hold right granted in favour of the writ petitioner in respect of Kottur Narayanasamuthiram Tank to non suit him.

12.Per contra, Mr.P.Venkatasubramaniam, learned counsel for Mr.M.Saravanakumar, learned counsel for the first respondent would urge that the officials in order to due favour in favour of the said Thangamadhavan prevented C.Periyathambi from submitting tender application and the learned Single Judge, after considering the conduct of the official respondents in confirming the auction and executing the lease deed despite the order of interim injunction, has rightly allowed the application, which does not warrant interference of this Court.

13.Mr.T.Lajapathy Roy, learned counsel for the successful bidder would state that in respect of Meenakshiamman Tank, Rs.25,00,000/- was the highest bid amount comparing to the lease amount of previous years. It is further stated that for the second year i.e., 2017-18 the successful bidder has remitted Rs.26,00,000/- and the lease amount for the year 2018-19 was not accepted by the authorities in view of the pendency of the writ petitions. It is further stated that the successful bidder had already left fingerlings in the tank and now they are ready for harvesting. According to the learned counsel, due to drought the lessee had suffered a huge loss, however despite the same, he is ready to pay Rs.40,00,000/- for harvesting the fish as he had spent substantial amount.

14.According to the learned Special Government Pleader and the counsels for the successful bidder, the interim injunction was subsequently modified and even before the interim order was communicated to the official respondents, the tender was confirmed and there was no wilful disobedience of the order of this Court.

15. It is settled law that in respect of tender matters, the scope of judicial view is in narrow campus. It is useful to refer the decision of the Hon'ble Apex Court in **Tata Cellular vs. Union of India** reported in (1994) 6 SCC 651, wherein it has been held as follows.



"94. (1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

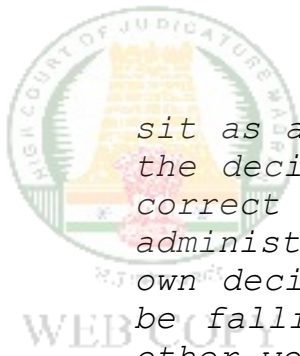
(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure".

16. In Master Marine Services (P) Ltd. v. Hodgkinson (P) Ltd. and Anr. MANU/SC/0300/2005 : AIR2005SC2299, it was observed as follows:

11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in Tata Cellular v. Union of India MANU/SC/0002/1996 : AIR1996SC11. It was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised of that power will be struck down.

After an exhaustive consideration of a large number of decisions and standard books on Administrative Law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not



sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

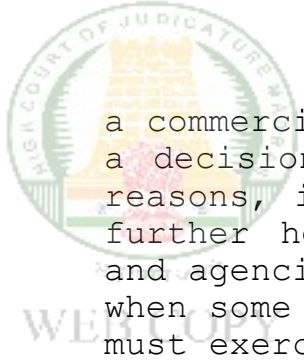
17. In *Sterling Computers Ltd. v. M.N. Publications Ltd.* MANU/SC/0439/1993 : AIR1996SC51 it was held as under:

18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process." By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time the Courts can certainly examine whether "decision making process" was reasonable rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

18. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.* MANU/SC/0770/1998 : AIR1999SC393, it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of ability to deliver the goods or services as per specifications.

19. In *Air India Ltd. v. Cochin International Airport Ltd.* MANU/SC/0035/2000 : [2000]1SCR505 it is held that the award of a contract, whether by a private party or by a State, is essentially



a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere.

20. In *B.S.N. Joshi and Sons Ltd. v. Nair Coal Services Ltd.* MANU/SC/8598/2006 : AIR2007SC437, while summarizing the scope of judicial review and the interference of superior Courts in the award of contracts, it was observed as under:

67. We are not oblivious of the expansive role of the superior courts on judicial review.

68. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under:

i) If there are essential conditions, the same must be adhered to;

ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction.

v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer



to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.

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21. In the case on hand, it is not in dispute that though the tender notification dated 31.10.2016 was issued in respect of fishing right of 8 tanks, a dispute is only with regard to Meenakshiamman Tank. Although the first respondent has submitted the representation to the Assistant Director of Fisheries and the District Collector alleging that he was prevented from participating in the tender process and the tender was confirmed despite an order of interim injunction, no materials have been brought on record to substantiate the same. It is also not in dispute that the said Periyathambi did not submit his tender applications in time.

22. It is an admitted fact that the successful bidder had paid Rs.24,00,000/- for the year 2016-17 and Rs.26,00,000/- for the year 2017-18 and the lease period will come to an end this year 2018-19. It is also not seriously disputed that rain fall was deficit for two false years and that the successful bidder let in fingerlings this year and now they are ready for harvesting. It is to be further noted that the said Periyathambi has not assailed the lease granted in favour of Thanga Madhavan, however, filed the writ petition for issuance of Writ of Mandamus. Taking note of the above facts and also keeping in view the decision of the Supreme Court referred supra, we are of the opinion that the writ petitioner C.Periyathambi is not entitled for the prayer sought for in the writ petition. In the considered opinion of this Court, in order to meet the ends of justice, it would be appropriate to permit the successful bidder to reap the fish on payment of license fee of Rs.40,00,000/- for the year 2018-19.

23. It is pertinent to note that the Tender Notification was issued on 31.10.2016, but one of the bidders, namely, M.Prabhu filed the writ petition in W.P(MD)No.21498 of 2017 after lapse of one year. Further, he has not produced any evidence to prove his allegation that he was pressurised to change the bid amount. Moreover, it is a disputed question of fact which cannot be decided in a writ petition. Hence, we find no valid ground to interfere with the order made in the writ petition. In such view of the matter, the writ appeal in W.A(MD)No.1516 of 2018 is dismissed.

24. In the result, the writ appeals in W.A(MD)Nos.1503 and 1590 of 2018 are allowed on condition that the successful bidder, namely, Thangamadhavan shall pay a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as lease amount for 2017-18, within a period of four weeks from the date of receipt of a copy of the Judgment. On such compliance, the Assistant Director of Fisheries is directed to permit him to harvest the fish in Meenakshiamman Tank. Failing



which, the Department is at liberty to issue fresh notification for grant the license of fishing right in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

skn

To

- 1.The Commissioner of Fisheries,
Fisheries Department (Inland)
Administrative Building,
D.M.S. Compound,
Tenampet,
Chennai.
- 2.The Deputy Director of Fisheries (Regional)
58. 2nd Main Road, Vanamamalai Nagar,
Bypass Road, Madurai - 625 016.
- 3.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
Theni District.

+1CC TO MR.K.SAFAR BADHU SHA, Advocate Sr. No.59336
+1CC TO MR.M.SARAVANA KUMAR, Advocate Sr. No.59357
+2CC TO MR.R.SUBRAMANIAN, Advocate Sr. No. 59488
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 59532

W.A. (MD) Nos.1503, 1516 and 1590 of 2018
and

C.M.P (MD) Nos.10687, 10809 & 11383 of 2018

05.04.2019

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