

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.03.2020
Pronouncing orders on : 23.03.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.396 & 401 of 2020
and W.M.P.Nos.454, 455, 459, 460, 461 & 462 of 2019

Chennai Goods Transport Owners Service
Industrial Cooperative Society Limited., IND No.14
Rep. by its President,
R.Padmanaghan,
No.700, Kumpath Complex,
P.H.Road,
Aminjikai,
Chennai - 600 029

...Petitioner
in W.P.No.396 of 2020

Thiruvallore District Goods Transport Owners Service
Industrial Cooperative Society Limited., IND No.1870
Rep. by its President,
R.Gnanasekaran
DIC Building,
3D, 2nd Main Road,
Ambattur Industrial Estate,
Chennai - 600 028

...Petitioner
in W.P.No.401 of 2020

vs.

सत्यमेव जयते

1. The Government of Tamil Nadu
Rep by the Secretary to the Government,
Department of Animal Husbandry,
Dairy Development and Fisheries,
Fort St. George, Chennai - 6000 009.
2. The Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.

3. The Joint Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.

4. The General Manager,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.

5. Tamil Nadu Anna MGR Goods Transport Service
Industrial Cooperative Society Limited,
No.4/2, Old Natarajapuram,
Ayyavoo Colony,
Aminjikarai,
Chennai - 600 029.

Respondents
in both W.P.s

PRAYER W.P.No.396 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings dated 31.12.2019 in Ref. No.2939/P1/MKG/2019 passed by the second respondent and quash the same as perverse, arbitrary, irrational and against natural justice and further direct the second respondent to desist from passing any final order of award in favour of the 5th respondent pursuant to the provisional order dated 31.12.2019 in Ref.No.2939/P1/MKG/2019.

PRAYER W.P.No.401 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings dated 31.12.2019 in Ref. No.2939/P1/MKG/2019 passed by the second respondent and quash the same as perverse, arbitrary, irrational and against natural justice and further direct the second respondent not to pass any final order of award pursuant to the provisional order dated 31.12.2019 in Ref.No.2939/P1/MKG/2019.

For Petitioner
in both W.Ps

: Mrs.Hema Sampath
Senior Counsel for
M/s.A.Ajimath Begum

For Respondents
in both W.Ps

: Mr.L.P.Shanmuga Sundaram
Special Government Pleader
for R1

Mr.R.Bala Ramesh
Special Government Pleader
for R2 to R4

Mr.V.Raghavachari for R5

COMMON O R D E R

The issues involved in both the writ petitions are common and therefore, both the writ petitions are taken up together and a common judgment is passed by this Court.

2.The undisputed facts in the present case are briefly stated hereunder:

3.A tender was called for by the 2nd respondent on 01.07.2019 for engaging 137 insulated vehicles for collection of milk sachets from Madhavaram, Ambattur, Sholinganallur and Kakkalur diaries and for distribution to various identified outlets in Chennai and the sub-urban areas and to bring back the empty tubs.

4.The petitioner in W.P.No.396 of 2020 applied for 25 vehicles/routes and the petitioner in W.P.No.401 of 2020 applied for 51 vehicles/routes. The technical bid was opened on 22.07.2019 and the commercial bid was opened on 21.08.2019. The Board Level Technical Committee requested the 2nd respondent to negotiate the rates and the final negotiated rate was informed to the Committee by the 2nd respondent. Based on the recommendation of the Board Level Technical Committee through its proceedings dated 24.12.2019, the 2nd respondent awarded the work order for 25 vehicles/routes to the petitioner in W.P.No.396 of 2020 and 51 vehicles/routes to the petitioner in W.P.No.401 of 2020.

5.These petitioners did not participate in the tender with regard to the other routes. The 5th respondent, along with M/s.Deepika Transports, participated in the tender and gave their offer for 52 route/vehicles. The rates quoted by them were not agreeable to the 2nd respondent. In the meantime, both the writ petitioners, by their letter dated 23.12.2019, agreed to operate their vehicles in these 52 routes. This was accepted and each of the petitioner was given a contract to operate in 26 routes w.e.f. 27.12.2019. The petitioners also started the operation which went on for five days. All of a sudden, by means of the impugned proceedings dated 31.12.2019, the 5th respondent has been awarded the operation of 46 routes for a period of two years from 01.01.2020 to 31.12.2021. This order, according to the petitioners, was passed without notice to them and without cancelling the earlier order passed in

favour of the petitioners. Aggrieved by the same, the above writ petitions have been filed before this Court challenging the impugned proceedings dated 31.12.2019.

6.The 2nd respondent has filed counter affidavit in both the writ petitions. The relevant portions in the counter affidavit are extracted hereunder:

11.It is respectfully submitted that based on the recommendation of the Board Level Technical Committee (BLTC) Circulation minutes dated: 24.12.2019, 2nd respondent has awarded work order to 80 insulated vehicles (i.e., M/s. Tiruvallur Society for 51 vehicles, M/s.Chennai society for 25 vehicles, V.Rajkumar for 2 vehicles, B.Venkatesan for 1 vehicle and R.Moorthy for 1 vehicle) to operate with effect from 24.12.2019.

12.It is respectfully submitted M/s.Tamil Nadu Anna MGR Goods Transport Owners Service Industrial Co-operative Societies Ltd., 5th respondent herein and M/s.Deepika Transports offered for 52 route vehicles have not agreed to reduce their offer rate. At that time, M/s.Thiruvallur District Goods Transport Service Industrial Co-operative Society and M/s.Chennai Goods Transport Owners Service Industrial Co-operative Society made a request to the 2nd respondent through their letter dated 23.12.2019 to agree to operate the vehicles in these 52 routes. Hence to overcome the short fall and carryout need to the public to ensure the supply of milk without any delay an additional work order has been issued to the petitioner for 52 routes to the petitioner's societies for each 26 routes to ply their vehicles w.e.f 27.12.2019 to tide over the situation as a temporary arrangement.

13.It is further submitted that the tender for above said 52 routes the 5th respondent herein is participated and quoted price and awarded as successful bidder. Thereafter, price negotiation among the 5th respondent society and M/s.Deepika Transports for 52 route vehicles have not agreed to reduce their offer rate. In such situation the M/s.Thiruvallur District Goods Transport Owners Service Industrial Co-operative Society and M/s.Chennai Goods Transport Owners Service Industrial Co-operative Society approached the 2nd respondent through their letter dated 23.12.2019, made a requested to operate the 52 route vehicles which is belongs to the M/s.Tamil Nadu Anna MGR Goods Transport Owners Service Industrial Co-operative Societies Ltd., 5th respondent herein and M/s.Deepika Transports as the successful bidder. As

the milk is an essential commodity and in order to ensure serving milk to the general public without any dislocation the period.

14.It is respectfully submitted that in mean time, in its letter dated 30.12.2019, M/s.Tamil Nadu Anna MGR Goods Transport Owners Service Industrial Co-operative Societies Ltd., has agreed to operate their 46 vehicles at the reduced rate vis., Estimate rate + 9% as per the rate approved by BLTC who have already participated in the tender floated for the 52 routes and also tender was awarded to them.

15.It is respectfully submitted that since M/s.Tamil Nadu Anna MGR Goods Transport Owners Service Industrial Co-operative Societies Ltd., original successful bidder has agreed to operate their 46 vehicles at the reduced rate, the cancellation order was issued to M/s.Thiruvallur District Goods Transport Owners Service Industrial Co-operative Society and M/s.Chennai Goods Transport Owners Service Industrial Co-operative Society for 52 vehicles vide proceedings letter No.939/P1/MKG/2019, dated 31.12.2019.

16.It is respectfully submitted that the Tender Inviting Authority has every rights to cancel a tender. In the General Terms and conditions of tender clause 27(3) Page No.36 is clearly stating that, "The Federation reserves the right to rescind the contract according to the exigency without assigning any reasons".

17.It is respectfully submitted that M/s.Thiruvallur District Goods Transport Owners Service Industrial Co-operative Society and M/s.Chennai Goods Transport Owners Service Industrial Co-operative Societies have arranged only for 25 vehicles and not operated in the stipulated time to supply the milk to the General Public. In the above 25 vehicles, some vehicles were non-insulated and opened type operated in these days i.e., 27.12.2019 to 31.12.2019. Also insufficient insulated vehicles in the petitioner's societies, meanwhile M/s.Tamil Nadu Anna MGR Goods Transport Service Industrial Co-operative Society, Secretary has come to agreed to operate the tendered vehicle for the BLTC approved rate i.e., Estimated + 9%, they have given an acceptance letter to operate the balance 27 insulated vehicles w.e.f. 27.12.2019.

18.It is respectfully submitted that the M/s.Thiruvallur District Goods Transport Service Industrial Co-operative Society Ltd., and

M/s.Chennai Goods Transport Owners Service Industrial Co-operative Society Ltd., had stopped placing the vehicle. They have also not reported to the dairy on 31.12.2019 night. Hence allegation of stopped vehicle by the Federation is a wrong claim. As the milk is an essential commodity and in order to ensure serving milk to the general public without any dislocation the period, hence the work order has been awarded to M/s.Tamil Nadu Anna MGR goods Transport Service Industrial Co-op. Society Ltd.

7.Mrs.Hema Sampath, learned Senior Counsel appearing on behalf of the petitioners submitted that the impugned proceedings of the 2nd respondent dated 31.12.2019 smacks with malafide. The learned Senior Counsel submitted that the 2nd respondent, having awarded the contract for operation of additional 26 vehicles for each of the petitioners on the ground that the rates quoted by the 5th respondent are not acceptable, cannot unilaterally cancel the contract and the 5th respondent cannot be given the contract for those rates. The learned Senior counsel submitted that the impugned proceedings of the 2nd respondent is violative of the principles of the natural justice, since the contract was awarded in favour of the 5th respondent even without cancelling the allotment made in favour of the petitioners. The learned Senior Counsel further submitted that the petitioners started operating the additional vehicles from 27.12.2019 onwards up to 31.12.2019 and their operations cannot be stopped unilaterally and such a decision results in civil consequences. Therefore, without giving an opportunity to the petitioners, the 2nd respondent ought not to have issued the impugned proceedings dated 31.12.2019 in favour of the 5th respondent.

8.Mr.R.Bala Ramesh, the learned Special Government Pleader appearing on behalf of the 2nd respondent, apart from reiterating the contentions raised in the counter affidavit, submitted that the petitioners were given the additional work order for the routes in which they did not even participate in the tender, only as a temporary arrangement to tide over the situation. The learned counsel submitted that the price quoted by the 5th respondent was under negotiation and supply of milk to the general public could not be delayed and therefore, the petitioners were asked to carry out the additional work. The learned counsel submitted that the petitioners, who did not participate in the tender for these routes, cannot have a right more than the 5th respondent who actually participated in the tender for these routes. The learned counsel further submitted that the tender offer submitted by the 5th respondent was not cancelled and it was very much alive and therefore, the 5th respondent, having offered an acceptable price, was awarded the contract. The learned counsel, therefore, submitted that there are absolutely no grounds to interfere with the proceedings of the 2nd respondent dated 31.12.2019.

9.Mr.V.Raghavachari, learned counsel appearing on behalf of the 5th respondent, submitted that the petitioners do not have the locus standi to question the contract awarded in favour of the 5th respondent, since they did not even participate in the tender for the 52 routes. The learned counsel further submitted that a negotiation was held with the Committee on 19.11.2019 and the 2nd respondent was insisting the contractors to supply their vehicles as per the rates declared by them. The 5th respondent was called for further negotiation and was expecting the final orders to be passed. While so, orders were issued insofar as the other contractors for the other routes were concerned. The learned counsel submitted that the action of the Managing Director, temporarily awarding a contract in favour of the writ petitioners, was illegal, since, the negotiations were pending with the 5th respondent who actually participated in the tender. The learned counsel, therefore, submitted that the relief sought for in both the writ petitions will actually revive the earlier illegal orders passed in favour of the petitioners. In order to substantiate his submissions, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and others reported in (1999) 8 SCC 16.

10.Mr.V.Raghavachari, further developed his arguments by submitting that a person can participate in the negotiations only if such a person is a tenderer. The petitioners did not participate in the tender insofar as the 52 routes are concerned and it was the 5th respondent who was declared successful and it was pending at the stage of final negotiation of price. At that point of time, the petitioners should not have been called for negotiation. The learned counsel placed reliance upon Section 10(3) of the Tamil Nadu Transparency in Tenders Act, 1998 to substantiate this submission. The learned counsel also placed reliance upon Rule 22 of the Tamil Nadu Transparency in Tender Rules, 2000 in this regard.

11.The learned counsel placed reliance upon the judgment of this Court in W.P.(MD)Nos.9203 of 2015 etc., batch, dated 28.08.2015 and submitted that, persons who have not participated in the tender will not have the locus standi to question the tender which is finally awarded in favour of the successful bidder. The learned counsel specifically relied upon Paragraph 17 of the judgment and the same is extracted hereunder:

17.Admittedly, even according to the petitioners, they have not taken participation in the tender process. It is also not the case of the petitioners in the affidavit that they were prevented by the respondents from participating in the tender. In fact, from the affidavits of the

petitioners, it could be seen that they were well aware of the tender process. Even according to the petitioners, they were present on 07.04.2015 and public gathered before the Pachayat office on that date and requested the Panchayat President not to open the tender. The petitioners herein were also present at that time. Therefore, the averments in the affidavits would show that they were well aware of the public auction on 07.04.2015 and in spite of the same, they have not chosen to buy the tender forms. Now, after completion of all the process, the present writ petitions have been filed by the petitioners. When the petitioners have not taken any part in the public auction, I am of the opinion that they have no locus standi to challenge the impugned notification dated 19.03.2015. In this regard, it would be appropriate to place reliance on the judgment of Bombay High Court in W.P.No.2415 of 2010, dated 29.04.2010, in the case of S.Motilal Plywood House Vs. The State of Maharashtra and other, wherein it has been held as follows:-

"14.The foremost question that needs to be considered is whether the Petitioners in the respective Petitions have locus standi to maintain the challenge before this Court in respect of the tender conditions. In so far as Petitioner in Writ Petition No.2415/2010 is concerned, it is noticed that he has not even enlisted himself after the publication of 2nd tender notice. If it is so, there is force in the argument of the Respondents that such person cannot be permitted to assail the terms and conditions which are essentially a contractual matter.

15.To get over this position, it was argued on behalf of said Petitioner that he had enlisted himself after publication of the first tender notice and immediately thereafter challenged the terms and conditions of the first tender notice which are parameteria with the 2nd tender notice. In other words, the basis of challenge is common in respect of both the tender notices. We are not impressed with this submission. So long as the Petitioner is not participating in the tender process, it cannot be heard to question the validity of the tender process in

question."

In the case of M/s.A.M.Yusuf vs. Mumbai Municipal Corporation and others in W.P.(Lodging).No.2666 of 2008, dated 11.12.2008, it has been held by the Bombay High Court as follows:-

"13. Another important facet which requires examination by the Court is the conduct of the Petitioner. The Petitioner claims to have purchased the tender document in response to the notice dated 20th October, 2008. However, till 11th November, 2008, the petitioner did not submit the tender documents. Vide Corrigendum dated 11th November, 2008, the deposit of EMD was increased and the parties were given one week time for depositing the amounts. The petitioner admittedly took no steps to deposit the amount as per the conditions of notice inviting tenders. The Petitioner did not move his little finger in the entire one week and did not approach the Respondents raising his grievance before them that the condition was likely to cause any prejudice to the Petitioner or other Applicants. While number of other Applicants including Class-A Contractors of the Corporation complied with the condition and deposited the amount, the Petitioner despite issuance of tabulated statement dated 14th November, 2008 did not deposit any amount nor had he raised any protest. The Petitioner just at the nick of time on 17th November, 2008 lodged the Writ Petition in this Court which came up for hearing on 19th November, 2008 and interim order was granted by the Court. Even at that stage, the Petitioner neither showed any intention to comply with the terms and conditions of the tender nor did he deposit money at the rate of 0.5% and/or 2% at any point of time. The Petitioner has challenged the tender process before this Court without even submitting tender and being an Applicant ineligible or otherwise. The very locus standi of the petitioner in filing this petition would be looked upon with some suspicion by the Court. This is cause of action, which is a private cause of

action, if at all available to the petitioner, is not an action in public interest.

14. The doctrine of Locus Standi is well established in administrative law, law of contract and other allied laws. A person prejudicially affected would have a cause of action while in the specified class of cases a third party may be able to bring an action in public interest despite the fact that he may not have personal interest. But in the cases of present kind, the cause of action would be personal to the aggrieved party and not a cause of action in rem. Even if Litmus Test Principle is not strictly applied keeping in view the developing law, still it is difficult for us to hold that the Petitioner without being an Applicant to the tender process could maintain the present Writ Petition, in the peculiar facts and circumstances of the case. As such an approach would neither subserve the public interest and would also hold in avoidance of public mischief.

15. Examined from the view of public interest, we see no infirmity. The Corporation has admitted to protect the larger interest by raising EMD deposit. The Petitioner having opted of his own accord not to participate in the tender process can hardly be permitted to challenge the said process now at this stage. It is expected of every vigilant litigant or whose rights are effected to approach the Court at an appropriate time. Firstly, there is no indefeasible right vested in the Applicant and secondly, even if right of participation/ consideration was available to the Petitioner, the Petitioner has voluntarily given up such right by his conduct. No reason whatsoever has been stated as to why the Applicant did not participate in the tender process or raise protest at an appropriate stage. Despite the fact that the concept of locus standi has since undergone a substantial change, still the basic rule that the person aggrieved or a person directly affected is the person who has right to

invoke jurisdiction of the Court under Article 226 of the Constitution holds good. The impugned action normally should produce a change in the Petitioner's legal right and more particularly adversely. We have already discussed that the variation effected by Corrigendum dated 11th November, 2008 has no way prejudicially effected any of the applicants and it provided a fair and equal opportunity to the Applicants to participate in the tender process. The Petitioner having lost that opportunity of his own accord can hardly be permitted to raise a grievance now.

16. In the facts and circumstances of the case, we see no reason to interfere with the Writ Petition. The same is dismissed, leaving the parties to bear their own costs. Rule discharged. Interim relief stands vacated."

The dictum laid down in the above said judgments is squarely applicable to the present facts of the case. Without participating in the tender, now the petitioners cannot claim that they suffered due to the confirmation of the tender in favour of the successful bidder. Therefore, I am of the opinion that the petitioners in W.P.(MD).Nos. 9203, 9587 & 10116 of 2015 have no locus standi to challenge the impugned notification. Therefore, on the ground of locus standi, the writ petitions in W.P.(MD). Nos.9203, 9587 & 10116 of 2015 are liable to be dismissed.

12. The learned counsel submitted that the petitioners are the beneficiaries of an illegal order passed by the 2nd respondent and they cannot seek to revive the said illegal order by filing the present writ petitions and the real contest in the present writ petitions is between the person who participated in the tender and the persons who did not even participate in the tender and such non participants are questioning the tender awarded in favour of the successful bidder. The learned counsel, submitted that both the writ petitions are therefore liable to be dismissed.

13. This Court has carefully considered the submissions made on either side and also the materials available on record.

14.It is not in dispute that the petitioners had participated in the tender only with respect to 28 routes and 51 routes respectively out of the total of 137 routes for which the tender was floated. Ultimately, after price negotiation, the Board Level Technical Committee approved, by their proceedings dated 24.12.2019, the price quoted by the petitioners and the 2nd respondent awarded work order for 25 vehicles insofar as the petitioner in W.P.No.396 of 2020 is concerned and 51 vehicles insofar as the petitioner in W.P.No.401 of 2020 is concerned. There is no dispute with regard to the fact that the petitioners did not participate in the tender for the 52 routes wherein it was only the 5th respondent who had participated along with one Deepika Transports.

15.The price negotiation was going on with the 5th respondent and Deepika Transports and insofar as the Deepika Transports is concerned, their tender offer was not accepted and it was cancelled by letter dated 24.12.2019. It is the specific case of the 2nd respondent that insofar as the 5th respondent is concerned, it was kept open and the negotiation did not get finalized.

16.At this point of time, the petitioners made a request through their letter dated 23.12.2019 to the 2nd respondent to permit them to operate in 52 routes by quoting a price. According to the counter affidavit of the 2nd respondent, there was an urgent need to immediately operate in those 52 routes and therefore, as a temporary arrangement, the petitioners were given an additional work order for 52 routes by allotting 26 routes to each petitioner.

17.The work order issued to the petitioners can only be treated as a temporary arrangement, since the 5th respondent had participated in the tender for these routes and the price negotiation was yet to be finalized. Therefore, till the tender offer made by the 5th respondent is alive and it is not cancelled, there is no question of the petitioners getting into the price negotiation and getting the work order in their favour. If the petitioners had got their work order after the cancellation of the tender offer made by the 5th respondent, then there will be a vested right on the petitioners to question the work order given in favour of the 5th respondent. When the tender offer was very much alive and the price negotiation was yet to be finalized, the petitioners cannot be allowed to take a march over the 5th respondent and knock off the work order even without participating in the tender for those 52 routes.

18.It will be relevant to extract Section 10(3) of the Tamil Nadu Transparency in Tenders Act, 1998.

10.Evaluation and acceptance of tender

<https://hcservices.ecourts.gov.in/hcservices/>

(3)Notwithstanding anything contained in sub-

section (2), if the Tender Accepting Authority decides that the price of the lowest tender is higher with reference to the prevailing market rate or the schedule of rates, [the said authority] may negotiate for a reduction of price with that tenderer.

19. It is clear from the above provisions that, negotiation for reduction of price can take place only with a tenderer. Therefore, there is no question of price negotiation with the petitioners who admittedly did not participate in the tender for the 52 routes. In view of the same, the price quoted by them and the work order issued to them will not have the effect of taking away the right of a tenderer whose rate was ultimately accepted and work order was issued in his favour.

20. The 2nd respondent, while issuing the work order in favour of the petitioners, could have made this very clear without giving them any unnecessary hopes. In the considered view of this Court, the 2nd respondent should not have granted a contract in favour of the petitioners when the tender offer of the 5th respondent was pending. Such a work order issued in favour of the petitioners will not stand the test of law.

21. The price that was quoted by the 5th respondent was ultimately agreed and the 5th respondent was given the contract to operate in 46 routes for a period of two years from 01.01.2020 to 31.12.2021. By virtue of this order, the earlier orders issued in favour of the petitioners will automatically cease to exist. This impugned proceedings dated 31.12.2019, was a consequential order that was given in favour of the 5th respondent who was the successful bidder for those 46 routes covered in the said order. This Court has already held that the 2nd respondent ought not to have given a work order in favour of the petitioners for these routes, even without they participating in the tender. Therefore, if the impugned proceedings dated 31.12.2019 is interfered, it will revive the earlier order passed in favour of the petitioners, which has been held to be bad in law by this Court.

22. At this juncture, it will be relevant to rely upon the judgment of the Hon'ble Supreme Court in Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and others reported in (1999) 8 SCC 16. The relevant portions in the judgment are extracted hereunder:

12. Therefore, the question is whether the order of the Member of Board of Revenue should be quashed on this ground. If the order is set aside, result would be that the notice directing the appellant to refund the additional amount of compensation assessed at ten times of net income would have to be quashed in other words, the earlier re-assessment of

compensation made by giving ten times of net income would revive. If under the law the appellant is not entitled to get compensation more than three times of the net income it would amount to restoring an illegal order.

13. In *Gadde Venkateswara Rao v. Government of Andhra Pradesh and Others*, AIR (1966) SC 828 = [1966] 2 SCR 172 this Court considered the action of the State Government under Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 and came to the conclusion that the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act but refused to interfere with the orders of the High Court on the ground that if High Court had quashed the said order, it would have restored an illegal order and, therefore, the High Court rightly refused to exercise its extraordinary jurisdictional power.

14. In *Mohammad Swalleh and Others v. IIIrd Addl. District Judge, Meerut and Another*, AIR (1988) SC 94 = [1988] 1 SCR 841, similar view was also expressed by this Court. In that case the order passed by the Prescribed Authority under U.P. (Temporary) Control of Rent and Eviction Act, 1947 was set aside by the District Judge in appeal though the appeal did not lie. The High Court came to the finding that the order of the Prescribed Authority was invalid and improper but the District Judge had no power to sit in appeal. The High Court did not interfere with the Orders of the District Judge. The order of the High Court was affirmed by this Court on the ground that though technically the appellant had a point regarding the jurisdiction of the District Judge but the order of the Prescribed Authority itself being bad, refusal of the High Court to exercise powers under Article 226 no exception can be taken.

15. Therefore, in view of the above ratio laid down by this Court, we hold that even if the Member of Board of Revenue had no power to issue direction for giving notice for refund of the excess amount paid, no exception can be taken to the said order if it is found that legally the appellant was paid excess compensation under the Act.

23. It will also be relevant to rely upon the judgment of the Hon'ble Supreme Court in *Rajkumar Soni and Another vs. State of U.P.* and another reported in (2007) 10 SCC 635. The

relevant portions in the judgment are extracted hereunder:

15. It is true in the show cause notice issued on 5.4.1999 by the District Magistrate there is no mention about the order dated 9.7.1992 withdrawing the powers conferred upon the Sub-Divisional Officer in the matter of according grant of lease of government lands. It is, however, stated that the Parganadhikari/Sub-Divisional Officer is not authorized to grant land, under the Government Grant Act, the authority to grant land to certain extent for residential purposes is vested in the District Magistrate. It is in the final order of the District Magistrate a mention is made about the proceedings under which the powers of the Sub-Divisional Magistrate had been withdrawn as early as on 9.7.1992 much prior to the Sub-Divisional Officer according grant on 20.5.1993. The appellants may be technically right in contending that the order of the District Collector is based on the grounds which were not specifically mentioned in the show cause notice issued to the appellants. But at the same time we are required to bear in mind that in the show cause notice it is clearly stated that the Parganadhikar/Sub-Divisional Officer is not authorized to grant land, under the Government Grant Act, the authority to grant land to certain extent for the residential purposes is vested in the District Magistrate. It was, therefore, incumbent upon the appellants to plead and establish that the Sub-Divisional Officer had the authority to grant the Government land on lease for residential purposes. The High Court while exercising the jurisdiction under Article 226 of the Constitution of India had come to the conclusion that the order of the Sub-Divisional Officer upon which the whole claim of the appellants rests was invalid and improper. The High Court itself could have set aside such invalid and improper order. Therefore, in our considered opinion nothing turns on this argument. Even if there was any technical violation of the rules of natural justice, this is not a fit case for interference, such interference would result in resurrection of an illegal, nay, void order.

16. In *Gadde Venkateswara Rao v. Government of A.P.*, a Primary Health Centre was formerly inaugurated at a particular village subject to certain conditions. Since those conditions are not satisfied, the Panchayat Samithi resolved to shift it to another village. The Government, in exercise of its review jurisdiction, interfered with the resolution so passed by the Panchayat Samithi without providing any opportunity whatsoever to the

Panchayat Samithi. The government's order was challenged in a proceeding under Article 226 of the Constitution of India. The A.P. High Court held, the order passed by the Government on the review to be bad, but did not interfere on merits. The Supreme Court, while confirming the order of the High Court observed that:

"if the High Court had quashed the said order, it would have restored an illegal order; it would have given the Health Centre to a village, contrary to the valid resolutions passed by the Panchayat Samithi."

The Supreme Court opined that the High Court was right in refusing to exercise its extraordinary discretionary power under Article 226 of the Constitution of India.

17. In *M.C. Mehta v. Union of India*, this Court, relying upon *Venkateshwara Rao* (1 supra) observed;

"The above case is clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 of Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law."

18. In our view, on the admitted and indisputable facts set out above, any interference with the impugned order of the District Collector would result in restoration of orders passed earlier in favour of the appellants which are otherwise not in accordance with law.

24. It is clear from the above judgments that, if the quashing of the impugned order will restore an earlier illegal order in favour of the petitioner, then this Court has

to refuse to exercise its discretion under Article 226 of the Constitution of India. In the present case, if this Court interferes with the impugned proceedings dated 31.12.2019, the earlier work order issued in favour of the petitioners, which has been held to be bad by this Court, will stand restored. Therefore, in the considered view of this Court, the impugned proceedings of the 2nd respondent does not require any interference.

25. There is yet another reason as to why this Court does not want to interfere with the impugned proceeding of the 2nd respondent. In this case, the petitioners did not participate in the tender for the 52 routes. Therefore, the question is whether they have locus standi to question the work order issued in favour of the 5th respondent who actually participated in the tender for these routes. To decide this issue, the judgment relied upon by the learned counsel for the 5th respondent in *Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and others* reported in (1999) 8 SCC 1, referred supra, will have a lot of significance. This Court, after relying upon some of the earlier judgments, came to categorical conclusion that, persons who have not participated in the tender cannot question the tender process or the ultimate order issued in favour of the successful bidder who participated in the tender. As rightly contended by the learned counsel for the 5th respondent, the petitioners who did not even participate in the tender were allowed to make price negotiation for 52 routes and after the work order was given in favour of the 5th respondent, they have proceeded to question the same on the basis of the work order given to them. In other words, non-tenderers are questioning the work order issued in favour of a tenderer and the same cannot be allowed by this Court. The petitioners do not have the locus standi to question the work order issued in favour of the 5th respondent who was the successful bidder for the 46 routes which is covered under the impugned proceedings dated 31.12.2019.

26. In view of the above discussion, this Court does not find any merits in both the writ petitions and accordingly both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Secretary to the Government,
Department of Animal Husbandry, Dairy Development and
Fisheries,
Fort St. George, Chennai - 6000 009.
2. The Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam, Chennai - 600 035.
3. The Joint Managing Director,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd., Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.
4. The General Manager,
The Tamil Nadu Cooperative Milk Producers
Federation Ltd.,
Aavin Illam,
3-A, Pasumpon Muthuramalingar Salai,
Nandanam,
Chennai - 600 035.
5. Tamil Nadu Anna MGR Goods Transport Service
Industrial Cooperative Society Limited,
No.4/2, Old Natarajapuram,
Ayyavoo Colony,
Aminjikarai,
Chennai - 600 029.

+2ccs to M/s.A.Ajimath Begum , Advocate SR.No. 24545,24544
+1cc to Mr.V.Ragavachauri , Advocate SR.No. 24540

W.P.Nos.396 & 401 of 2020
and W.M.P.Nos.454, 455, 459, 460, 461 & 462 of 2019
A.SK(24/03/2020)