



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)Nos.15537 & 15327 of 2020

and

W.M.P. (MD) Nos.13046, 13047 & 12885 of 2020
(Through Video Conference)

R.Kanagasabapathy

... Petitioner in both W.P.'s

Vs

1) The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

2) The Assistant Commissioner,
Tirunelveli Ward,
Tirunelveli.

... RR1 & 2 in W.P.(MD)
No.15537 of 2020 and
RR 3 & 4 in W.P.(MD)
No.15327 of 2020

3) The Secretary to Government,
Municipal Administration and
Water Supply Department,
Chepauk, Chennai.

4) The Commissioner of
Municipal Administration,
Chepauk, Chennai

... RR 1 & 2 in W.P.(MD)
No.15327 of 2020

PRAYER in W.P.(MD) No.15537 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Tender cum auction Notice issued by the 2nd respondent published in "Dinamalar" Tamil daily dated 01.11.2020 and quash the same and consequently, direct the respondent to extend the lease period compensating the non enjoyment of the license period due to Covid-19.

PRAYER in W.P.(MD) No.15327 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to consider the petitioner's



representation dated 14.08.2020 and 04.09.2020 and to extend the lease period compensating non-enjoyment of lease due to the Covid-19 lock down period.

In both Writ Petitions:

WEB COPY

For Petitioner

: Mr.H.Arumugam

For RR 1 & 2 in
W.P.(MD) No.15537/2020
and RR 3 & 4 in
W.P.(MD) No.15327/2020

: Mr.Aayiram K.Selvakumar,
Standing counsel

For RR 1 & 2 in
W.P.(MD) No.15327/2020

: Mr.A.Muthukaruppan,
Addl., Government Pleader

C O M M O N O R D E R

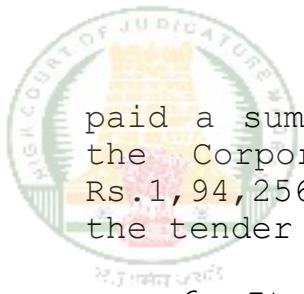
Since the issue involved in both the writ petitions are one and the same, with the consent of the learned counsel appearing for the petitioner as well as the learned standing counsel and learned Additional Government Pleader appearing for the respondents, the writ petitions are taken up together for hearing for final disposal at the stage of admission itself and are disposed of by this common order.

2. Mr.A.Muthukaruppan, learned Additional Government Pleader accepts notice for the respondents 1 & 2 in W.P.(MD) No.15537/2020 and Mr.Aayiram K.Selvakumar, learned standing counsel accepts notice for RR 3 & 4 in W.P.(MD) No.15327/2020 and RR 1 & 2 in W.P.(MD) No.15537/2020.

3. W.P.(MD)No.15327 of 2020 has been filed for a Mandamus, seeking for a direction to the respondents to consider the petitioner's representations dated 14.08.2020 and 04.09.2020 seeking for extension of the lease period due to the lock-down period, when the petitioner was unable to use the 'Pay and Use Toilets' situated at Koolakadai Bazaar as well as at Pettai Salai at Tirunelveli.

4. W.P.(MD) No.15537 of 2020 has been filed challenging the tender notification, dated 01.11.2020 issued by the second respondent and published in the 'Dinamalar Tamil Daily' with regard to the auction for the 'Pay and Use Toilets' at Koolakadai Bazaar and Pettai Salai at Tirunelveli.

5. It is the case of the petitioner that he has taken the aforementioned 'Pay and Use Toilets' in Koolakadai Bazaar and Pettai Salai, Tirunelveli on lease from the third respondent Municipal Corporation from 01.12.2019 to 04.12.2020. According to him, he has



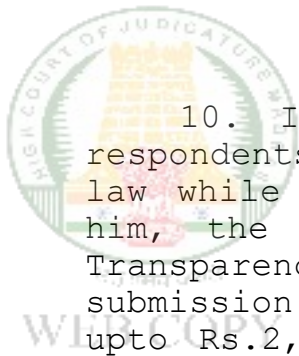
paid a sum of Rs.1,73,808/- as lease amount for the first year to the Corporation for Koolakadai Bazaar Toilets and a sum of Rs.1,94,256/- for the Pettai Salai Toilets. According to him, as per the tender condition, there shall be 5% increase of rent every year.

6. It is the case of the petitioner that he has paid for the 2nd year a sum of Rs.1,82,500/- for Koolakadai Bazaar Toilets and Rs.2,03,970/- for the Pettai Salai Toilets. According to the petitioner, similarly for the 3rd and current year, he has paid Rs.1,91,623.32 for Koolakadai Bazaar Toilets and Rs.2,14,167.24/- for Pettai Salai Toilets. According to the petitioner, he has paid the lease amount without any default upto the end of the lease period (i.e.) upto to 04.12.2020. It is his case that, with great difficulty, he was able to pay the lease amount by pledging his jewels and the sacred chain of his wife and according to him, the entire family is depending upon the income obtained from maintaining the toilets.

7. According to the petitioner, due to COVID-19 Pandemic, national lock down was announced by the Government of India with effect from 24.03.2020 till 30.06.2020 and all public places were ordered to be closed. Therefore, according to him, the 'Pay and Use Toilets' which were taken on lease by him were also closed and he was unable to enjoy the fruits of the lease.

8. According to the petitioner, he made representations on 14.08.2020 and 04.09.2020 to the respondents to extend the lease for another period of three months in view of the lock down imposed by the Government. According to the petitioner, the second respondent gave a reply on 28.08.2020 stating that there is no circular or Government orders issued with respect to extension of lease period and also informed the petitioner that if any circular is issued before the expiry of lease, his request for extension of lease will be considered.

9. According to the petitioner, subsequent to the receiving of the aforementioned communication, he had also made a representation on 05.09.2020 for refund of the lease amount for unused period including refund of the proportionate security deposit for the corporation toilets at both places. It is his case that there was no response from the second respondent for the said request. The petitioner has filed W.P.(MD)No.15537 of 2020 challenging the impugned tender cum auction notice issued by the second respondent on 01.11.2020, which was published in the 'Dinamalar Tamil Daily' wherein, the respondents have decided to auction the same 'Pay and Use Toilets', which were given to the petitioner on lease. According to the petitioner, without considering his representation seeking for extension of lease due to the lock down, the respondents cannot auction the same 'Pay and Use Toilets'.



10. It is also the contention of the petitioner that the respondents have not followed the due procedure established under law while issuing the impugned auction notification. According to him, the respondents have violated Rule 20 of the Tamil Nadu Transparency in Tender Rules, 2000 which mandates that, the time for submission of tender shall be minimum of 15 days in case of auction upto Rs.2,00,00,000/- in value. According to him, in the instant case, the tender notification was issued in the 'Dinamalar Tamil Daily' dated 01.11.2020 fixing the tender cum auction on 10.11.2020, which is in clear violation of Rule 20 of the Tamil Nadu Transparency in Tender Rules, 2000.

11. According to the petitioner, the second respondent calling for tender cum auction in one stretch, is also not permissible under law as per Rule 52.6A of the Madras District Municipalities Act. According to him, under the said Rule, the tender shall be permitted only in exceptional cases, where, auction proved unsuccessful on two occasions. According to the petitioner, calling for open and sealed tender is impermissible under law. In the aforementioned circumstances, both the writ petitions have been filed.

12. Heard Mr.H.Arumugam, learned counsel for the petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader for the respondents 1 & 2 in W.P.(MD) No.15537/2020 and Mr.Aayiram K.Selvakumar, learned standing counsel for Respondents 3 & 4 in W.P.(MD) No.15327/2020 and Respondents 1 & 2 in W.P.(MD) No.15537/2020.

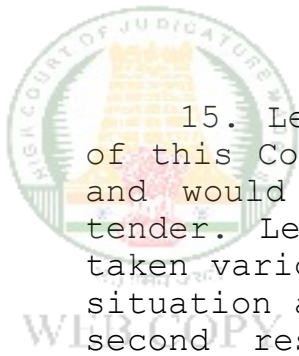
13. Learned counsel for the petitioner drew the attention of this Court to the following Authorities:-

(a) A Single Bench Judgment of this Court in the case of **K.Veeraputhiran vs. the District Collector, Collectorate Office** reported in 2015 (1) CWC 237;

(b) A Single Bench Judgment of this Court dated 18.03.2003 passed in W.P..Nos.7050 and 7222 of 2003 in the case of **N.Mani Selvam vs. the Commissioner, Corporation of Madurai**; and

(c) A Division Bench Judgment of this Court dated 19.02.2008 in the case of **the Commissioner, Madurai City Municipal Corporation vs. N.Mani Selvam and one another** in W.A.Nos.1489 & 1490 of 2003.

14. Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that, since the respondent Municipal Corporation has not followed Rule 20 of the Tamil Nadu Transparency in Tenders Rules 2000, the impugned tender notification, dated 01.11.2020 issued by the second respondent Municipal Corporation is bad in law.



15. Learned counsel for the petitioner also drew the attention of this Court to the impugned tender notification, dated 01.11.2020 and would point out that there cannot be both open and sealed tender. Learned counsel would also submit that the Government has taken various steps to protect the economy, considering the COVID-19 situation and *de hors* the closure of toilets by the Corporation, the second respondent has issued the impugned tender notification without considering the plight of the petitioner due to the lock down. He would also point out that the Department of Hindu Religious Endowment Board has issued guidelines for extending the lease period for 110 days due to COVID 19 lock down. But no order has been passed in respect of the similar license granted to the petitioner, which, according to him, is a clear case of discrimination.

16. Mr.Aayiram K.Selvakumar, learned standing counsel appearing for the Tirunelveli Municipal Corporation would submit that the tender notification has been issued only in accordance with law and there is no violation of any statutory procedure. The tender notification has been issued only for the period after the expiry of the lease granted to the petitioner. According to him, no Government Orders have been passed permitting extension of lease in view of the lock down. On instructions, he would also submit that the petitioner can give a representation to the respondent Corporation seeking for refund of the money during the period of lock down, which will be considered by the Corporation on merits and in accordance with law. He would also submit that the petitioner is at liberty to participate in the impugned tender and hence, his legal rights to continue with the lease has not been prevented by the respondent Municipal Corporation.

17. Admittedly, the impugned tender notification, dated 01.11.2020 has been issued by the Tirunelveli Municipal Corporation only for the period subsequent to the expiry of the lease in favour of the petitioner, which expires on 04.12.2020. The petitioner claims that he was unable to generate income, out of the leased toilets during the period of lock down from 24.03.2020 till 30.06.2020. He himself has sought for the refund of the lease amount paid for the said lock down period, by his representation, dated 05.09.2020 to the second respondent. Even though he has given his representation on 05.09.2020 seeking for refund of the lease amount, in W.P(MD) No.15537 of 2020 he has challenged the impugned auction notification, dated 01.11.2020 issued by the second respondent on the ground that the said notification has been issued without following the due procedure established under law namely Rule 20 of the Tamil Nadu Transparency in Tenders Act, 1998.

18. **Rule 20** of the Tamil Nadu Transparency in Tenders Rules, 2000 reads as under:-

"20. Minimum time for submission of tenders: (1) The Tender inviting Authority shall ensure that adequate



time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice inviting Tenders in the relevant Tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows:-

(a) For tenders up to rupees two crores in value, fifteen days; and

(b) For tenders in excess of rupees two crores in value, thirty days.

(2) Any reduction in the time stipulated as per sub-rule (1) has to be specifically authorised by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.

19. As seen from the aforementioned rules, in respect of tenders upto Rs.2,00,00,000/- in value, 15 days time shall be provided between the date of publication of the notice inviting tenders in the relevant tender bulletin and the submission of tenders. In the case on hand, the tender notification has been issued on 01.11.2020, whereas, the date for submission of the tender has been fixed as 10.11.2020 and 15 days time has not been granted as per the requirements of Rule 20(1)(a) of the Tamil Nadu Transparency in Tender Rules, 2000.

20. Learned counsel for the petitioner has also relied upon the authorities referred to supra, wherein, the learned Single Judges of this Court as well as the Division Bench of this Court have held that, when the tender notification has been issued in violation of the statutory provisions, it has to be struck down. In the case on hand, as observed earlier, the respondent Municipal Corporation has not followed the procedure contemplated under Rule 20 of the Tamil Nadu Transparency in Tender Rules, 2000 since the date between the tender notification and the date of submission of bids is only 10 days and not 15 days, which is the minimum required period. Therefore, necessarily the tender notification, dated 01.11.2020 issued by the second respondent which is the subject matter of W.P. (MD) No.15537 of 2020 has to be quashed, as it has not followed the procedure contemplated under Rule 20 of the Tamil Nadu Transparency in Tender Rules, 2000. However, it does not preclude the second respondent from issuing a fresh tender notification by following Rule 20 of Tamil Nadu Transparency in Tender Rules, 2000.

21. Admittedly, the 'Pay and Use Toilets' which were leased to the petitioner were not put to use during the lock down period (i.e.) from 24.03.2020 to 30.06.2020. The petitioner has admittedly given representations on 14.08.2020 and 04.09.2020 seeking for extension of lease due to the non-enjoyment of the lease period during the lock down period by another period of 110 days.



22. This Court is of the considered view that the said representations will have to be considered by the respondents on merits and in accordance with law.

23. For the foregoing reasons, the impugned auction notification, dated 01.11.2020 issued by the second respondent, which is the subject matter of W.P.(MD) No.15537 of 2020 is hereby quashed. However, it shall not preclude the Tirunelveli Municipal Corporation from issuing a fresh notification by adhering to Rule 20 of the Tamil Nadu Transparency in Tender Rules, 2000. Accordingly, W.P.(MD) NO.15537 of 2020 is allowed.

24. Insofar as W.P.(MD) No.15327 of 2020 is concerned, the respondents shall consider the petitioner's representations dated 14.08.2020 and 04.09.2020 seeking for extension of the lease period by another period of 110 days due to the non-enjoyment of lease during the period of lock-down from 24.03.2020 till 30.06.2020 on merits and in accordance with law and pass final orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the respondents are at liberty to issue a fresh auction notification even before the passing of final orders in the petitioner's representations dated 14.08.2020 and 04.09.2020. With the aforesaid directions, the writ petition in W.P.(MD) No.15327 of 2020 stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.
- 2) The Assistant Commissioner,
Tirunelveli Ward, Tirunelveli.



3) The Secretary to Government,
Municipal Administration and
Water Supply Department,
Chepauk, Chennai.

4) The Commissioner of Municipal Administration,
Chepauk, Chennai.

+1cc to Mr.H.Arumugam, Advocate SR.No.21522.
+1cc to the SPL GP SR.No.21474.

**Common Order made in
W.P. (MD) Nos.15537 & 15327 of 2020**

**Dated:
05.11.2020**

SV2 (CO)
CS (30.11.2020) 8P 7C