



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.12.2021
PRONOUNCED ON : 13.12.2021
CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**
W.P. (MD)Nos.20398, 20437 and 20512 of 2021

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and
W.M.P. (MD)Nos.17047 to 17049, 17078 to 17080 and 17148 to 17150 of 2021

W.P. (MD)No.20398 of 2021:-

V.Senthil Kumar

... Petitioner

vs.

1.The District Collector,
Dindigul District.

2.The Commissioner,
Dindigul Municipal Corporation,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the issuance of the tender cum public notification, dated 13.10.2021 pursuant to Resolution Nos.272nd and 273rd Dindigul Municipal Corporation inviting bids for lease of shops and pay and use toilet at Gandhi Market and Kamarajar Bus Terminal at Dindigul and quash the same and to direct the respondents to issue the no due certificate of enabling the petitioner to participate in the tender process.

For Petitioner	:Mr.S.R.Rajagopal senior Counsel for Mr.S.V.Vijay Prashanth
For Respondents	:Mr.Veerakathiravan Additional Advocate General for Mr.D.Gandhiraj Special Government Pleader for R1 and Mr.J.Lawrance Standing Counsel for R2

W.P. (MD)No.20437 of 2021:-

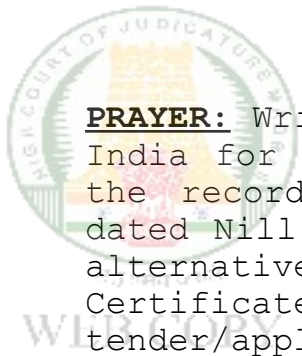
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... Petitioner

vs.

The Commissioner,
Dindigul Municipal Corporation,
Dindigul.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the impugned Notice, dated Nill on the file of the respondent and quash the same and in alternative directing the respondent to issue No Objection Certificate on receiving the money and to accept the tender/application for auction from the petitioner.

For Petitioner :Mr.G.Prabhu Rajadurai senior Counsel
For Respondent :Mr.Veerakathiravan
Additional Advocate General
For Mr.J.Lawrance
Standing Counsel for the respondent

W.P. (MD)No.20512 of 2021:-

R.Sathish Kumar ... Petitioner

vs.

1.The District Collector,
Dindigul District.

2.The Commissioner,
Dindigul Municipal Corporation.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the issuance of the tender cum public notification, dated 13.10.2021 pursuant to Resolution Nos.272nd and 273rd Dindigul Municipal Corporation inviting bids for lease of shops and pay and use toilet at Gandhi Market and Kamarajar Bus Terminal at Dindigul and quash the same and to direct the respondents to issue the no due certificate for enabling the petitioner to participate in the tender process.

For Petitioner :Mr.S.R.Rajagopal
for Mr.S.V.Vijay Prashanth
For Respondents :Mr.Veerakathiravan
Additional Advocate General
for Mr.D.Gandhiraj
Special Government Pleader for R1 and
Mr.J.Lawrance
Standing Counsel for R2

COMMON ORDER

W.P. (MD)No.20398 of 2021 had been filed in the nature of Certiorarified Mandamus relating to the issuance of Tender-cum-Public Notification, dated 13.10.2021, which notification had been issued pursuant to resolution Nos.272nd and 273rd Dindigul Municipal



Corporation and by which notification, bids were invited for lease of shops and for pay and use toilet at Gandhi Market and Kamarajar Bus Terminal at Dindigul and to interfere with the said notification and for a direction to issue No Due Certificate to enable the petitioner to participate in the tender process.

2.W.P. (MD)No.20437 of 2021 had also been filed for Certiorarified Mandamus with respect to a notice, dated Nil, on the file of the respondent/Commissioner, Dindigul Municipal Corporation and to quash the same and in the alternate, to direct the respondent to issue No Objection Certificate and to accept the tender/application for auction from the petitioner.

3.W.P. (MD)No.20512 of 2021 had been filed in the nature of Certiorarified Mandamus again relating to the very same Tender-cum-Public Notification, dated 13.10.2021, and to quash the same and also to direct the respondents to issue No Objection Certificate to enable the petitioner to participate in the tender process.

4.A reading of the reliefs sought would indicate that the three petitioners seek interference with a notification, which had been issued by the Dindigul Corporation for lease-cum-tender of shops and pay and use toilet. In the same breath, the petitioners also claim that they must be granted No Objection Certificate to enable them to participate in the auction. It is thus seen that they have sought a relief, which cannot be granted in entirety. Either the notifications are interfered by this Court or the petitioners are granted the alternate, namely, No Objection Certificates to participate in the auction process.

5.Be that as it may, in the affidavit filed in support of W.P. (MD)No.20398 of 2021, the Writ Petitioner had alleged that there should be interference by stating that the Tender-cum-Public Notification, dated 13.10.2021 had not been affixed in the notice board of the Dindigul Municipal Corporation and it was also not notified in the news papers having circulation in Dindigul. It was claimed that these are violations of the provisions of Tamil Nadu Transparency in Tenders Act, 1998. It was further claimed that the respondent by this particular act, had turned the clock back to the feudal days.

6.The petitioner had, however, obtained a copy of the notification. He had given a representation to the Commissioner of Dindigul Municipal Corporation, to issue a No Objection Certificate or No Due Certificate to participate in the tender process. He claimed that it was not provided to him and further stated that this was to eliminate him from participating in the tender process.

7.He had also enlightened the Court by quoting the provisions of Tamil Nadu Transparency in Tenders Act, 1998, and Rules thereof, claiming that the notification had been issued in



violation of the aforesaid provision, and at the same time, also claiming that he wants to participate in the notification, even though the entire process was, according to him, in violation of the aforesaid provisions the Writ Petition has been filed.

8. In the affidavit filed in support of W.P.(MD)No.20437 of 2021, the Writ Petitioner had stated that he was a Councillor in Dindigul Municipal Corporation and was not due in payment of property tax or any other charge. He had also enlightened the Court the fact that the Dindigul Municipal Corporation had adopted the provisions of Coimbatore City Municipal Corporation Act, 1981, as its guidelines. He had further stated that the Corporation had constructed 34 shops in Dindigul Kamarajar Bus Terminal and that the petitioner was very much interested in taking any one of the shops for lease.

9. He came to know from his friends on 10.11.2021 that secret arrangements have been made to auction the shop to a certain syndicate and to exclude others. He did not find any publication in newspapers having circulation in Dindigul regarding the auction process. He rushed to the office of the respondent. He claimed that he had to struggle and to fight to get a copy of the notification. He also pointed out a contradiction in the notification with respect to the time when it should be submitted and with respect to obtaining No Objection Certificate by paying Rs.5,000/- and that the No Objection Certificate should be obtained three days prior.

10. He had, however, reconciled himself to participate in the auction and obtained two Demand Drafts for Rs.5,00,000/- for that purpose. He claimed that he went back to the office of the respondent on 11.11.2021 at 02.45 pm and struggled till 05.00 pm to get No Objection Certificate. At 05.00 pm, he rushed back to the office of his Advocate and filed the Writ Petition.

11. In the affidavit filed in support of W.P.(MD)No.20512 of 2021, the Writ Petitioner stated that he intended to participate and place his bids in response to a tender-cum-public notification issued by the second respondent/Dindigul Municipal Corporation, which was dated 13.10.2021. He further claimed that the notification was bereft of mandatory details, such as, where the tender documents could be obtained, the amount of application fees, the last date and time for submitting the bids, the date and time when the bids would be opened, the amount of Earnest Money Deposit to be paid and therefore, claimed that the entire notification was in violation of Rule 10 of the Tamil Nadu Transparency in Tenders Rules, 2000.

12. It was also claimed that the notification was not published in regional newspapers and was not affixed in the notice board. It was not put on public notice or notified in the website of Dindigul Municipal Corporation. He claimed that the notice was in violation of Tamil Nadu Transparency in Tenders Act, 1998. He



also claimed that it was in violation of Rules 15 and 16 of Tamil Nadu Transparency in Tender Rules, 2000.

13.He also stated that he had made a representation to the second respondent to issue No Objection Certificate/No Due Certificate but there was no response from the second respondent. He had therefore filed the Writ Petition seeking the relief as stated above.

14.Even before entering into the contention of the respondents, one fact will have to be clarified at the first instance itself. That is with respect to the claim of the Writ Petitioner in W.P.(MD) No.20437 of 2021, who alone had stated that he had also purchased two demand drafts for Rs.5,00,000/- for participating in the tender process.

15.In the documents filed by the respondents, the details with respect to the said two demand drafts had also been filed and it is seen that one of the demand drafts was actually used by one Veeramambaran, who is a stranger and had independently purchased the same to participate in the auction and the other was used by one N.Pandeeswaran for similar purpose. The statement of the petitioner that he had purchased the demand drafts is evidently false to the knowledge of the petitioner. I am deeply pained to note that a brazen falsity has been stated before the Court. On this one ground alone, the Writ Petition should be rejected. However, let me examine the points raised in deference to the arguments advanced during the course of hearing.

16.Counter affidavits were also filed. In the counter affidavit filed by the second respondent, the Commissioner of Dindigul Municipal Corporation, after denying the averments stated in the affidavits filed in support these Writ Petitions, it had been stated that the notification for the tender process was given wide publicity by affixing copies of the notification at prominent places of the Corporation office, Main gate and Kamarajar Bus Stand Premises, to enable the public to take part in the tender process. It was also stated that the notification was also published in the Tamil Daily, "Dinakural", by the first respondent on 29.10.2021. It had been further stated that many applicants applied for the tender documents and also received the same.

17.With respect to the averments made in the affidavit that No Due Certificate had not been granted, it had been very specifically stated in the counter affidavit that details as to the officials whom the Writ Petitioners approached for receipt of No Due Certificate had not been given. It had also been stated that all the necessary guidelines have been followed. It had been further stated that on 12.11.2021, the Commissioner, Dindigul Municipal Corporation, was present in his office till 12.30 pm. Since

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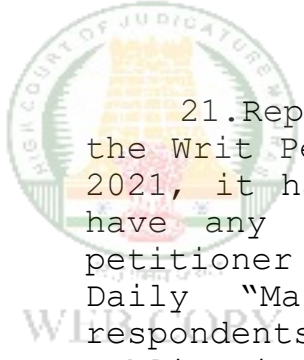


from the general public, the Commissioner had to leave the office to monitor the draining of rain water. He came back to the office in the evening hours.

18.It was further stated that by office order, dated 19.07.2021, the Assistant Revenue Officer of the Corporation, had been authorised to do certain duties of the Commissioner, including the matters pertaining to lease. It had been stated that the said provisions had been mentioned in the notification itself. He had also issued a note order in the name of Assistant Revenue Officer with respect to the tender notification. Resolution had been earlier passed on 13.10.2021 to bring the 32 shops in Gandhi Maidan Market Complex for public auction/tender. The notifications were also affixed in all the places in Corporation Office, bus stand premises and market premises.

19.It had also been stated that the second respondent requested the Information and Public Relation Officer, Dindigul to publish the tender notification in Tamil Dailies and they were also published on 29.10.2021. It was also stated that for 32 shops, 86 sealed covers were received from intending auction bidders. It had been further stated that it was not the case of the Writ Petitioners that they have made payment of Rs.5,000/- in the respondent Office to get No Objection Certificate. The Writ Petitioners have not produced any proof to support this allegation. It had been stated that on 12.11.2021, the officials of the second respondent made efforts to reach out the Writ Petitioners. But, there was no response. It had also been stated that the tender notification was not uploaded in the website of the respondent Corporation, since there were no proper facilities available in this regard.

20.Separate counter affidavits were also filed with respect to other Writ Petitions and the same aspects had also been stated in the counter affidavit and additional affidavit had also been filed by Commissioner, Dindigul Municipal Corporation, stating very specifically that the Writ Petitioners did not come forward to obtain the No Objection Certificate by making the payment of Rs.5,000/-. With respect to the averments made in W.P.(MD)No.20437 of 2021, it had been stated that the two demand drafts mentioned by said Writ Petitioner relate to one N.Pandeeswaran and one Veeramarban. Similarly, one Manikandan had also submitted a tender application by enclosing the demand drafts. Therefore, it had been stated that the petitioners had come to Court with false allegations and had actually produced documents, which did not relate to him. It had been stated that the named persons could not succeed in the tender process and they had taken away the demand drafts from the second respondent and the copies of those demand drafts had been used by the Writ Petitioner claiming that he had purchased the said demand drafts. As a matter of fact, he had not done so. It had been further stated that the Writ Petitioner had come to Court with false



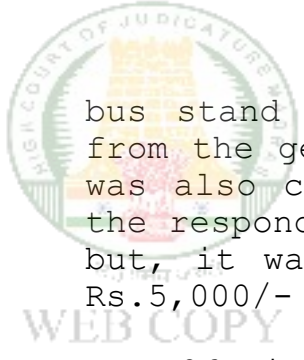
21.Reply affidavit and additional affidavits were also filed by the Writ Petitioners. In the reply affidavit in W.P.(MD)No.20398 of 2021, it had been stated that the news paper, "Dinakural" did not have any circulation in Dindigul. It had been stated that the petitioner was informed that the publication was actually in Tamil Daily "Malaichudhar". It had been further stated that the respondents themselves did not know the news paper in which publication was made. It had also been stated that the delegation of powers, as stated by the second respondent, was not proper and there was no such authority to delegate the powers. The statement that 86 sealed tenders were also received was also questioned and disputed by the Writ Petitioner. It had been stated that since the Writ Petition was pending, the Writ Petitioner had opted not to participate in the auction. It had been reiterated that notification had not been put up on the website.

22.An additional affidavit was also filed, wherein, it had been stated that the second respondent was present in Office at 12.30 pm on 12.11.2021 and thereafter, suddenly left. This was with respect to the statement made by the second respondent that he had left office, since complaints were received about the water logging from the general public. The Writ Petitioners reiterated that the Writ Petitions should be allowed, while the respondents contended that the Writ Petitions should be dismissed.

23.Heard arguments advanced by Mr.S.R.Rajagopal and Mr.G.Prabhu Rajadurai, learned Counsels for the petitioner and Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents.

24.The learned Counsels for the petitioners contended that the entire notification had not been given due publicity, as is required, under the Tamil Nadu Transparency in Tenders Act, 1998. They stated that the notification had not been published in the website and it had not been published in the local daily, as is required. They also stated that though the Writ Petitioners desired to participate in the tender auction, they were not given No Due Certificate, even though they were ready to pay a sum of Rs.5,000/- for such certificate. The Writ Petitioner in W.P.(MD)No.20437 of 2021 also contended that he had also purchased two demand drafts for a sum of Rs.5,00,000/- as earnest money deposit for participating in the tender process, but was not permitted to participate. In fact, the learned Counsels contended that this Court should interfere with the tender process owing to the fact that there has been violation of rules governing issuance of such tenders.

25.The learned Additional Advocate General, on the other hand, seriously disputed all these facts and contended that publication was made by the first respondent/District Collector in Dinakural on 29.10.2021. He also stated that the notification was affixed in



bus stand and such other places and there has been good response from the general public for participating in the tender process. It was also contended by the learned Additional Advocate General that the respondents had never denied the issuance of No Due Certificate, but, it was only the petitioners, who did not come forward to pay Rs.5,000/- to obtain No Objection Certificate.

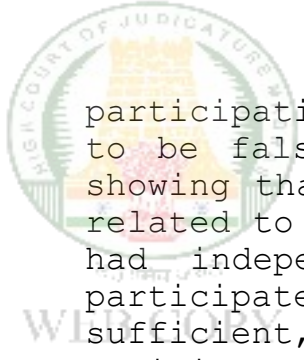
26. With respect to the specific contention of the Writ Petitioner in W.P.(MD)No.20437 of 2021 that he had purchased two demand drafts, the learned Additional Advocate General stated that those demand drafts relate to two other unrelated persons, who were not successful in the tender process and therefore, those two demand drafts have been used by the Writ Petitioner and the same were also filed as documents in Court. The learned Additional Advocate General also stated that there was no provision to put up the notification in the web site and finally contended that the Writ Petitioners were not at all interested in participating in the tender process, but only in derailing the entire process. He contended specifically that auction had been conducted, but results have not been declared in deference to the directions of this Court.

27. I have given careful consideration to the arguments advanced on either side and the documents available on record.

28. W.P.(MD)No.20398 of 2021 came up for consideration on 15.11.2021. On that date, it was contended by the learned Counsel for the petitioner that a representation had been given by the Writ Petitioner on 09.11.2021. It was disputed by the learned Additional Advocate General. It had been informed on that date that auction had been scheduled on 12.11.2021 and a representation had been made seeking to move the Writ Petition as a lunch motion. The petitioner had been given permission to participate in the auction process. It was informed that if the petitioner was willing to actually participate in the auction process, then he can approach the respondent and they would give No Objection Certificate to the petitioner herein on making Rs.5,000/- as is required under the Rules.

29. There has been a very specific statement made by the respondent, and as a matter of fact, records of telephone calls have been given, indicating that the respondent had tried to contact the Writ Petitioner. They had not responded and they did not actually obtain a No Objection Certificate. In fact, the Writ Petitioners, though given an opportunity by this Court to participate in the auction process had actually not participated in the process.

30. It must also be stated that one of the Writ Petitioners, namely, the Writ Petitioner in W.P.(MD)No.20437 of 2021, had stated that apart from Rs.5,000/- towards No Objection Certificate, he had also purchased two demand drafts for Rs.5,00,000/-, with specific intention to participate in the auction, but was prevented from



participating. This statement by the Writ Petitioner has been found to be false in view of the documents produced by the respondent showing that the demand drafts mentioned by the petitioner actually related to two unknown strangers N.Pandeeswaran and Veeramarban, who had independently purchased those demand drafts and had also participated in the auction, but since their bids were not sufficient, they had taken back the demand drafts and the Writ Petitioner had used those Demand Drafts. The copies of those demand drafts have been filed as documents by the petitioner as if he had purchased the said demand drafts. Any individual, who approaches a Court with false documents, as its basis, can never expect relief from the Court.

31.Be that as it may, the fundamental premise, on which the petitioners rested their case, was that the notification was not given due publicity. This was denied by the respondents, who also produced documents to show that the notification had been put up at authorised places. The Writ Petitioners have not contended that they were totally unaware of the notification process. They were aware of the notification process. They deliberately did not come over to obtain No Objection Certificate, but delayed till the last minute claiming that notification was not put up in the website. It is contended by the respondent that there was no website for the Corporation. These are all facts, which can never be determined by this Court.

32.In **(2007) 14 SCC 517** in the case of **Jagdish Mandal vs State of Orissa and others**, the Honourable Supreme Court had very clearly stated as follows:

"22.Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with



imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

33. In the instance case, it is not the case of the petitioners that the process adopted was intended to favour select persons alone. It is seen that 86 applicants participated in the auction for 32 shops. The choice was not limited to one single individual. The participants had all participated on equal footing. None of them had approached this Court. It is, therefore, very clear that the process adopted by the authorities cannot be faulted by stating that it was to benefit only some specific individual or group of persons.

34. Further, while examining whether public interest was affected, it has to be held that the answer should be in the negative, since there has been general participation of the public in the auction process. The very fact that the shops were auctioned indicated that the respondent had taken care of public interest to generate income for the second respondent. I, therefore, hold that while examining the two questions as stated in the judgment referred to above, the answer is an emphatic "No".



35. In **2021 SCC Online SC 738**, in the case of **Uflex Limited vs Government of Tamil Nadu and others**, the Honourable Supreme Court had held as follows:

"6. The burgeoning litigation in this field and the same being carried to this Court in most matters was the cause we set forth an epilogue in **Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited**. Even if it amounts to repetition, we believe that it needs to be emphasized in view of the controversy arising in the present case to appreciate the contours within which the factual matrix of the present case has to be analysed and tested.

"37. We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. In view of Government and public sector enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the public sector.

38. In **Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited**, this Court has expounded further on this aspect, while observing that the decision-making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision-making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a



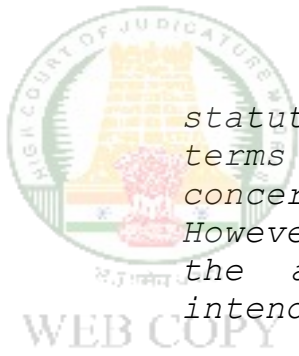
decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision-making process would not suffice.

39. Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of the present case, the view, on interpreting the tender documents, of Respondent No. 1 must prevail. Respondent No. 1 itself, appreciative of the wording of Clause 20 and the format, has taken a considered view. Respondent No. 3 cannot compel its own interpretation of the contract to be thrust on Respondent No. 1, or ask the Court to compel Respondent No. 1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:

"15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

40. We may also refer to the judgment of this Court in **Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL)**, authored by one of us (Sanjay Kishan Kaul, J.). The legal principles for interpretation of commercial contracts have been discussed. In the said judgment, a reference was made to the observations of the Privy Council in **Attorney General of Belize v. Belize Telecom Ltd.** as under:

"45. ... 16. Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a



statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. ..."

.....

"19.In **Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board** Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:

"...the court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings : the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract : it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them : it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves."

41. **Nabha Power Limited (NPL)** also took note of the earlier judgment of this court in **Satya Jain v. Anis Ahmed Rushdie**, which discussed the principle of business efficacy as proposed by Bowen, L.J. in **the Moorcock**. It has been elucidated that this test requires that terms can be implied only if it is necessary to give business efficacy to the contract to avoid failure of the contract and only the bare minimum of implication is to be there to achieve this goal. Thus, if the contract makes business sense without the implication of terms, the courts will not imply the same.

42. The judgment in **Nabha Power Limited** concluded with the following observations in para 72:

"72. We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to implied terms of contract. In the current day and age, making of contracts is a matter



of high technical expertise with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally a contract should be read as it reads, as per its express terms. The implied terms is a concept, which is necessitated only when the Penta-test referred to aforesaid comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any 'implied term' but from the collection of clauses, come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in accordance to its natural grammatical contour, keeping in mind the nature of the contract."

43. We have considered it appropriate to, once again, emphasise the aforesaid aspects, especially in the context of endeavours of courts to give their own interpretation to contracts, more specifically tender terms, at the behest of a third party competing for the tender, rather than what is propounded by the party framing the tender. The object cannot be that in every contract, where some parties would lose out, they should get the opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party floating the tender finds no merit."¹⁴

7. It may also be pertinent to note the principles elucidated in the case of **Tata Cellular v. Union of India**:

"94. The principles deducible from the above are:

(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. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.



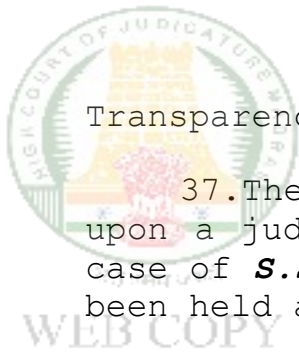
(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle 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."

.....

42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for down playing the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. We have already noted that element of transparency is always required in such tenders because of the nature of economic activity carried on by the State, but the contours under which they are to be examined are restricted as set out in **Tata Cellular** and other cases. The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them."

36. The learned Counsel for the petitioner relied on the judgment of a learned Single Judge of this Court in **W.P.No.14981 of 2016**, in the case of **P.Srinivassan, vs the Commissioner, Dharmapuri Municipality**, wherein, the learned Single Judge, while examining the case of the Writ Petitioner therein, who had participated in a tender and sought a direction against the respondent therein to conduct the process in a transparent manner by following the provisions of Tamil Nadu Transparency in Tenders Act, 1998 and the Rules framed therein, had stated that when the respondent proposed to conduct process, it has to issue fresh notification by following the provisions of Tamil Nadu Transparency of Tenders Act, 1998. This order was relied upon by the learned Counsel for the petitioner to



Transparency of Tenders Act, 1998.

37. The learned Additional Advocate General, however, relied upon a judgment of this Court reported in **2005 (1) CTC 81**, in the case of **S.Selvakumar Vs the Commissioner, Karaikudi**, wherein, it had been held as follows:

"13. Apart from what is stated above, we are of the opinion that The Tamil Nadu Transparency in Tenders Act, 1998, may not be applicable to the facts of the present case, because the word "Procurement" in the afore said Act has been defined in Section 2(d) as follows:

" 'Procurement' means acquisition by any means by purchase of goods or services and also of construction."

We are at a loss to understand as to how the right to collect rent from the road-side vendors can be said to be a 'procurement' as defined in aforesaid Act. The said right is neither purchase of goods nor of services."

This judgment was specifically followed by the Division Bench of Court in **W.P.(MD)No.15462 of 2021, dated 27.08.2021**. in **D.Sreedhar vs the Commissioner, Corporation of Madurai and others**.

38. In **(2021) 2 MLJ 325**, in the case of **State of Tamil Nadu and another vs M.Kandan**, a Division Bench of this Court held as follows:

"11. The four grounds that found favour with the learned Single Judge pale into insignificance in the backdrop of the writ petitioner having to be regarded merely as a prospective participant who otherwise appears not to have participated in the process. In the absence of the writ petitioner establishing that the writ petitioner was denied access to the tender papers or an opportunity to participate in the process, the writ petitioner must necessarily be regarded as not having participated in the process. The writ petitioner was well within his rights not to participate in the process and rest on his principled stand that the process was illegal. But the very basis of the action was that the writ petitioner could not participate in the tender process. When the writ petitioner could not affirmatively demonstrate that he had been denied access to the tender documents, the Court could not have ruled in favour of the writ petitioner. The other grounds asserted appear to run contrary to the underlying basis for the writ petitioner bringing the action. On the one hand, the writ petitioner wanted to participate in the process, yet the writ petitioner found that the entire process was illegal and could not have



been sustained."

39. Even in this case, the Writ Petitioners, who contended that they wanted to participate the tender process, had approached this Court to get No Objection Certificate and this Court had directed them to approach the respondents to get No Objection Certificate and had also directed the respondents to give No Objection Certificate provided the petitioners pay a sum of Rs.5,000/-. The petitioners never took any effort to approach the respondents, even though the officials had contacted the Writ Petitioners. I hold that the Writ Petitioners only want to put spokes in the auction process. The allegation that proper publicity was not given cannot be countenanced, since notification had been affixed at various places and on the very fact that the general public had participated in the tender process. The statement of the respondent that there was no website for putting up advertisements online can never be tested in Writ proceedings. This statement on oath is pitted against another statement on oath. A definite finding can never be given. The Writ Petitioner could have taken resort to the inbuilt appeal procedure in the Act, if they had wanted to establish facts. It is a fact that the notification was published in Dinakural News Paper. Therefore, I hold that the respondents have, to the extent possible, given wide publicity for the notification.

40. The issue of delegation of powers cannot be questioned by the petitioners, since the second respondent had only exercised existing powers vested in him in that regard. The second respondent had stated on affidavit that he was called over to attend complaints of water logging and therefore, had delegated the power to a competent official. These are facts, which stare on the face of the petitioners.

41. Primarily, the very fact that one of the petitioners had approached the Court with documents, which were false to the knowledge of the said petitioner, is alone sufficient to dismiss the Writ Petitions. The Writ Petitions are misconceived.

42. The Writ Petitions are, therefore, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

43. The respondents are permitted to declare the results of the auction.

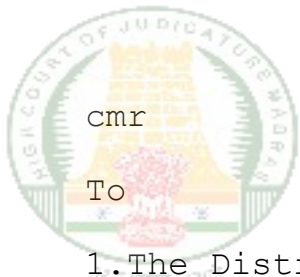
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



1.The District Collector,
Dindigul District.

2.The Commissioner,
Dindigul Municipal Corporation,
Dindigul.

+2 CC to M/s.M.RAJARAJAN, Advocate (SR-38434[F],38433 dated
13/12/2021)

+1 CC to M/s.SPL GP (SR-38838[F] dated 15/12/2021)

+3 CC to M/s.J.LAWRANCE, Advocate (SR-38528[F],38530,38529 dated
14/12/2021)

W.P. (MD)Nos.20398, 20437 and 20512 of 2021
13.12.2021

ARK(CO)
KB(23.12.2021) 18P 9C