IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2821 of 2022
and
W.M.P. No. 2964 of 2022

Chinnadurai … Petitioner

-vs-

1. The Directorate of Municipal Administration,
   75, Urban Administrative Building,
   Santhome High Road,
   MRC Nagar,
   Raja Annamalaipuram,
   Chennai – 28.

2. The General Manager,
   Coimbatore District Cooperative Milk Producers Union Ltd.,
   Panchapalayam, Kalampalayam Post,
   Perur Via,
   Coimbatore – 641 010.

3. The General Manager,
   Tiruppur District Cooperative Milk Producers Union Ltd.,
   No. 710, 7th Floor, Collectorate Buildings,
   Tiruppur – 641 604.

4. The Corporation Commissioner,
   Tiruppur Corporation,
   Tiruppur.

5. The Assistant Commissioner (E),
   Zone – III,
   Tiruppur Corporation,
   Tiruppur. ...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Fifth Respondent made in proceedings in Na. Ka. No. A1/1334/2021/Ma3 dated 10.12.2021 and quash the same and direct the Fourth Respondent to earmark a place and grant license for installing Aavin Booth within the Tiruppur Old Bus Stand in the name of the Third Respondent.

For Petitioner	:	Mr. K.Kathiresan
For Respondents	:	Mr. M.Shahjahan, Special Government Pleader (for R1) Ms. P.Shanthi (for R4 & R5)

O R D E R

Heard Mr. K.Kathiresan, Learned Counsel for the Petitioner, Mr. M.Shahjahan, Learned Special Government Pleader appearing for the First Respondent and Ms. P.Shanthi, Learned Counsel for the Fourth and Fifth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that the Second Respondent by proceedings

in Na. Ka. No. 6815/Virpanai/Mu.Tha.P.Manu/2013 dated 06.12.2013 has requested the Fourth Respondent to allot a shop for vending milk in Tiruppur bus stand to be operated by the Petitioner as its licensee, but the Fifth Respondent by order in Na.Ka. No. A1/1334/2021/Ma3 dated 10.12.2021 has informed the Petitioner that after inspection of the premises, it has been decided that on completion of construction of the new bus stand under the Smart City Project, the shops would be allotted in public auction and if the Petitioner so intends, he may then participate in the same. In that backdrop, the Petitioner has filed this Writ Petition challenging the said order in Na.Ka. No. A1/1334/2021/Ma3 dated 10.12.2021 passed by the Fifth Respondent and for directing the Fourth Respondent to earmark a place and grant license for installing 'Aavin Booth' within Tiruppur old bus stand in the name of the Third Respondent. In support of the claim made for preferential allotment, reliance is placed on G.O. Ms. No. 285, Municipal Administration and Water Supply Department dated 29.04.1985 issued by the Government of Tamil Nadu in which the following clause (b) has been substituted in Rule 12(1) Sub-rule 3 of the Rules relating to the Receipts and the Expenditure of the Municipal Councils, which is extracted below:-

> *“(b) The lease of vacant lands and buildings, including bunks, and stalls etc., shall be granted only in public auction*

once in every three years in the first instance commencing from 1.4.1986. The lease-holder shall pay the lease amount for the first year, at the rate of highest bind in public auction. The lease agreement for the second year shall be at an increased rate at 15% (Fifteen percent) over and above, the lease amount for the first year in addition to the lease amount for the first year. The lease amount for the third year shall be at an increased rate at 15% (fifteen percent) over and above the lease amount for the second year, in addition to the lease amount for the second year.

Provided that the existing leases in respect of the properties mentioned above, shall be extended for the year 1985-86 and the lease amount shall be collected for 1985-86 at an increased rate at 15% more than the lease amount for 1984-85, in addition to the lease amount for that year. The lease amount for twelve months from 1.4.1985 to 31.3.1986 shall be 15%) (Fifteen percent) over and above, the lease amount for the year 1984-85.

Providing further that this sub-rule shall not apply to the

Co-operative Organisations, Government, Departments and Government undertaking, which if they so desire, can without participating in the public auction, taken on lease the lands and buildings, including bunks and stalls etc., at the lease rates fixed by the P.W. Department. "

3. At the outset, it must be recapitulated here that the legal position is well settled that the disposal of public property by the State or its instrumentalities partakes the character of a trust and the methods to be adopted for its disposal must be fair and transparent providing an opportunity to all the interested persons to participate in the process and has been lucidly explicated by the Hon'ble Supreme Court of India in ***Kasturi Lal Lakshmi Reddy –vs- State of Jammu & Kashmir*** [(1980) 4 SCC 1] in the following words:-

"10. .... There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the Welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to

recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a *private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contractor dealing with his property. But the Government is not free lo act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in and unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails* *to satisfy either best, it would be unconstitutional and invalid….*

14. …. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. ….

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in ***Ramana Dayaram Shetty –vs- International Airport Authority of India*** *[(1979) 3 SCC 489] that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its* *absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. ....”*

This would obviously mean that any decision to grant allotment of the shop by the Fourth Respondent in favour of the Petitioner at his mere asking to suit his convenience, just because the Second Respondent has made a recommendation in that regard, would be contrary to law and defeat public interest, which cannot be countenanced. On a bare reading of the rule cited in support of the claim makes it amply clear that the lease of shops, would have to be allotted only through public auction, which is in concordance with the aforesaid dictum laid down by the highest court of the land. The power conferred to allot shops to co-operative organisations without participating in public auction at the lease rate fixed by the Public Works Department as exception is merely an enabling provision, which cannot, by any stretch of imagination, be construed as an indefeasible right to grant lease in their favour without participating in public auction. It is needless to add here that the Petitioner neither has any legally enforceable right to claim lease of the shop from the Fourth Respondent nor the Fourth Respondent has any legal obligation to be compelled to grant the same to the Third Respondent for the benefit of the Petitioner. In this backdrop, reference may be made to the ruling of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], in which it has been held as follows:-

> *"17. ....One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of*

*a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh v. State of U.P.** [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus* *may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

In such circumstances, the Petitioner cannot be entitled to the relief as claimed in the Writ Petition. Though obvious, it is clarified that refusal by the Court to entertain this Writ Petition shall not be construed as precluding the Petitioner, if he is otherwise eligible and not disqualified, to participate in any tender or public auction whenever conducted for lease of the shops belonging to the Fourth Respondent following the prescribed procedure in accordance with law.

4. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.10.2022

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Index: Yes/No

Note: Issue order copy by 02.12.2022.

To

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P.D. AUDIKESAVALU, J.

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