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W.P. No. 30751 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM

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

**W.P. No. 30751 of 2022
and
W.M.P. Nos. 30183 and 30185 of 2022**

K.Kutti @ Murugesan

... Petitioner

-VS-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St. George,
Chennai – 600 009.

2. The District Collector,
Vellore District,
Vellore.

3. The Commissioner,
Vellore City Municipal Corporation,
Vellore – 632 001.

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 of the Third Respondent insofar as the notice issued on 07.11.2022 in Na. Ka. No. 1707/A1/2022/Ma.4 and quash the same and direct the Third Respondent to allot shops to the Petitioner with reasonable conditions.



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For Petitioner : Mr. S.Thiruvengadam
For Respondents : Mr. M.Shahjahan,
Special Government Pleader
(for R1 & R2)
Mr. P.S.Prabhu (for R3)

ORDER

Heard Mr. S.Thiruvengadam, Learned Counsel for the Petitioner, Mr. M.Shahjahan, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. P.S.Prabhu, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was one of the lessees of the shops of the Third Respondent at old bus stand in Vellore and he had earlier filed the Writ Petition in W.P. No. 1039 of 2020, which has been disposed with certain directions by order dated 05.07.2022 passed by this Court. In furtherance to the said order, the Third Respondent had by Notice in Na. Ka. No. 1707/A1/2022/Ma.4 dated 07.11.2022, called upon the Petitioner to comply with the requirements for



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allotting shop constructed in the shopping complex at the new bus stand which includes furnishing of Earnest Money Deposit of Rs. 10,00,000/- along with Solvency Certificate from the Revenue Authorities by 11.30 a.m on 14.11.2022 to the Third Respondent. The imposition of that condition is challenged as onerous in this Writ Petition.

3. At this juncture, it would be necessary to refer to the principles governing prescription of conditions in a tender as summarized by the Hon'ble Supreme Court of India in ***Michigan Rubber (India) Limited -vs- State of Karnataka*** [(2012) 8 SCC 216] in the following words:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;



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(b) *Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*

(c) *In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*

(d) *Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*

(e) *If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can*



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claim a fundamental right to carry on business with the

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Viewed from that perspective, when the Third Respondent is entitled to have a free hand in setting the terms of the tender and it has not been shown that the impugned condition is arbitrary, discriminatory, malafide or actuated by bias, it is not possible for this Court to interfere with the same because some other terms in the tender would be fair, wiser or logical, as suggested by the Petitioner in this case.

4. In fine, the Writ Petition, which lacks merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.11.2022

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vjt

Index: Yes/No

Note: Issue order copy by 06.01.2023.

To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St. George,
Chennai – 600 009.



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2. The District Collector,
Vellore District,
Vellore.

3. The Commissioner,
Vellore City Municipal Corporation,
Vellore – 632 001.



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P.D. AUDIKESAVALU, J.

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