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W.P(MD)No.21

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.21958 of 2022

and

W.M.P.(MD)Nos.16098, 16100 & 16102 of 2022

Kamardheen

... Petitioner

Vs

1.Karambakudi Town Panchayat,
Rep. by its Chairman,
Karambakudi,
Pudukkottai District.

2.Karambakudi Town Panchayat,
Rep. by its Executive Officer,
Karambakudi,
Pudukkottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents in connection with the impugned Notification issued by them in na.Ka.No.1/2022/A1 dated 30.08.2022 (displayed on 07.09.2022) and quash the same as illegal and ultravires and consequently direct the respondents to re-allot the Shop No. 6 or any one of the shop in the newly constructed premises at Karambakudi Bus Stand to the petitioner so as to continue his business.



For Petitioner : Mr.K.Gurunathan
For Respondents : Mr.D.Gandhiraj
Special Government Pleader

ORDER

The petitioner has prayed for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents in connection with the impugned Notification issued by them in na.Ka.No.1/2022/A1 dated 30.08.2022 (displayed on 07.09.2022) and quash the same as illegal and ultravires and consequently direct the respondents to re-allot the Shop No.6 or any one of the shop in the newly constructed premises at Karambakudi Bus Stand to the petitioner so as to continue his business.

2.Heard Mr.K.Gurunathan, learned Counsel appearing for the petitioner, Mr.D.Gandhiraj, learned Special Government Pleader appearing for the respondents.

3.The learned counsel appearing for the petitioner would submit that the petitioner was a lawful Licencee conducting Mobile shop business in Shop No.6 situated at Karambakudi Bus Stand since 1998 and paid all the rent fixed by the Respondents and they have no arrears on his part as on date. In this juncture, due to dilapidated condition of the shops and in the interest of the general public at large, the second respondent issued a notice on 24.10.2017 directing to evict the shops and the



W.P(MD)No.21:

petitioner and other similarly placed persons were allotted with alternative place in and around the Bus Stand itself with no facility like electricity, sanitation facilities. But, in spite of the same, considering the interest of the general public at large, the petitioner and the similarly placed persons vacated the shops and paid the same rent that was levied for the concrete building provided by them, in spite of that, they were continuing in temporary Tin Shed.

4. He would further submit that the respondents had given oral assurance that after completion of the new construction of the shop in the Bus Stand, the same will be allotted to them on priority basis and believing their words in a legitimate expectation they vacated the premises without any protest or obstruction. But to his shock and surprise, the respondents herein have jointly issued notification calling for Public Auction for all 16 shops vide their impugned Notification in Na.Ka.No.1/2022/A, dated 30.08.2022. However, the said notification was neither affixed in the Notice Board of the Town Panchayat immediately nor published in a leading local Tamil Newspaper, but the same was affixed only on 07.09.2022. Immediately, they met the second respondent in person and at that time, he gave evasive reply and therefore, the petitioner and other lessees sent representations through registered post on 07.09.2022 itself but no orders were passed on it. But, on 10.09.2022 the auction date is been postponed without mentioning the specific date. The impugned notification fixed the cut-off date for



W.P(MD)No.21

payment of fees and application as 13.09.2022 and the auction date is scheduled to be held on 14.09.2022.

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5. He would further submit that the issuance of Notification is not only arbitrary and unjustifiable but also an colourable exercise of power. Therefore, the impugned notification is liable to be stayed and respondents may be directed to keep one shop vacant for him in the newly constructed building at Karambakudi Bus Stand. Challenging the impugned notification dated 07.09.2022, the petitioner has approached this Court by way of filing the present Writ Petition for the relief stated supra.

6. The learned Special Government Pleader appearing for the respondents 1 & 2 would submit that the second respondent has sent a communication in Na.Ka.No. 01/2022/A1, dated 09.11.2022 and in the said communication it is stated that auction to be conducted for construction of New Bus Stand by spending crores of rupees and the petitioner and others are having shops for many years in that place and leases were extended periodically. When the buildings are dilapidated condition for the safety of the public, they directed the petitioner and other shop owners to vacate the same and alternate shops were given for doing their business. As per the resolution of the Karambakudi Town Panchayat, dated 08.07.2022 they wanted to decide the public auction for the said shops constructed. Accordingly, the auction scheduled to be held on



W.P(MD)No.21

14.09.2022. But some administrative reasons, the same has been postponed to 22.11.2022 and proper notification has been issued in news paper. The petitioner now came and submit that he should be given preference. The respondents have more income through the said building and they have taken necessary steps to hold an auction. Accordingly auction to be held on 22.11.2022 and the petitioner may at liberty to approach the concerned authorities and he will be permitted to take part in the auction by imposing certain conditions.

7. The learned counsel appearing for the petitioner would submit that the condition No.27 imposed by the respondents is “குத்தகைதாரர் தொற்றுநோய் உடையவர்களையோ அல்லது பார்ப்பதற்கு அருவருப்பு உடையவரையோ வியாபாரம் செய்யவோ அல்லது சஞ்சாரம் செய்ய அனுமதிக்கக் கூடாது” and this condition is against the human kind.

8. Even though, the above said condition has not been challenged by the petitioner in this writ petition and this kind of condition cannot be stipulated. It is made clear that contagious disease spreads, therefore, the Government can impose such restrictions regarding this contagious disease and the other condition regarding bodyshaming of a person cannot be accepted.



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9. The Universal Declaration of Human Rights Art.1 clearly states that “ All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood.” and also the Charter of Fundamental Rights of the European Union Art.21 states that “21. Non-discrimination-forbids discrimination on grounds of sex, race, colour, ethnic or social origin, genetic, features, language, religion or other belief, political opinion, membership of a national minority, property, birth, disability, age or sexual orientation.”

10. The Hon'ble Supreme Court of India in a case of ***Erusian Equipment and Chemicals Ltd., and Ors. vs. State of West Bengal and Ors*** held that the activities of the Government have a public element and, therefore, there should be fairness and equality.

11. The Bombay High Court in a case of ***MX of Bombay Indian Inhabitant vs.ZY and Ors*** held as follows:-

“53. Thus, no person can be deprived of his right to livelihood except according to procedure established by law. Obviously, such procedure established by law has to be just, fair and reasonable. In other words, such procedure also must pass the rigour of Art.14. The rule providing that person must be medically fit before he is employed or to be continued while in employment is, obviously, with the object of ensuring that the person is



capable of or continuous to be capable of performing his normal job requirements and that he does not pose a threat or health hazard to the persons or property at the workplace. The persons who are rendered incapable, due to the ailment, to perform their normal job functions or who pose a risk to other persons at the work place, say like due to having infected with some contagious disease which can be transmitted through the normal activities at the work place, can be reasonably and justifiably denied employment or discontinued from the employment in as much as such classification has an intelligible differentia which has clear nexus with the object to be achieved, viz., to ensure the capacity of such persons to perform normal job functions as also to safeguard the interests of the other persons at the work place. But the person who, though has some ailment, does not cease to be capable of performing the normal job functions and who does not pose any threat to the interest of other persons at the work place during this normal activities cannot be included in the aforesaid class. Such inclusion in the said class merely on the ground of having an ailment is, obviously, arbitrary and unreasonable.”

12. The condition is against the right enhanced under constitution and who may be differently abled will be definitely affected.

13. In view of the above facts and circumstances of the case, this Court directs the respondents to permit the petitioner to participate in the tender along with necessary fees which is stipulated in the conditions to be paid and if the petitioner is successful bidder, shop to be allotted to the petitioner by imposing necessary conditions.



W.P(MD)No.21:

WEB COPY

14. Accordingly, the writ petition stands disposed of. No costs. consequently, connected miscellaneous petitions are closed.

Index : Yes/No
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11.11.2022

To

1. The Chairman,
Karambakudi Town Panchayat,
Karambakudi,
Pudukkottai District.
2. The Executive Officer,
Karambakudi Town Panchayat,
Karambakudi,
Pudukkottai District.



WEB COPY



W.P(MD)No.21:

V.BHAVANI SUBBAROYAN, J.

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