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W.P. No. 8434 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2023

CORAM

**THE HONOURABLE Mr. JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU**

**W.P. No. 8434 of 2022
and
W.M.P. Nos. 8380, 8382 and 8383 of 2022**

Yusuf

... Petitioner

-VS-

1. The District Collector
Office of the District Collector
Coimbatore – 641 018.

2. The Commissioner
Coimbatore Corporation
Coimbatore – 641 001.

3. Mookambikai Mani @ Iyyappan

4. R.Murugesan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned public auction/tender notice dated 21.03.2022 vide Na.Ka.No.2176/2021/A1 (c) issued by the Second Respondent and quash the same and consequently direct the Respondents to allot the subject mentioned 88 shops located behind the Thiyagi Kumaran Market (Previously Cycle Stand),



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Coimbatore to the licensed displaced vendors who are the members of Vegetables and Fruits Small Merchants Federation, T.K.Market, Coimbatore of which the Petitioner herein is also a member and licensed street vendor in accordance to Section 13 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

For Petitioner : Mr. R.Abdul Mubeen
For Respondents : Mr. N.Naveenkumar, GA (R1)
Mr. K.Magesh (R2)
R3-No appearance

ORDER

(Order of the Court was made by P.D.AUDIKESSAVALU, J.)

Heard Mr. R.Abdul Mubeen, Learned Counsel for the Petitioner, Mr. N.Naveenkumar, Learned Government Advocate appearing for the First Respondent and Mr. K.Magesh, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The earlier Public Interest Litigation in W.P. No. 4682 of 2020 filed by one Mookambikai Mani alias Iyyappan seeking a direction to remove the encroachments along T.K.Market and Periya Kadai Veethi situated within the



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limits of Corporation of Coimbatore, has been disposed by this Court by order

dated 12.03.2020 recording that the entire encroachments would be removed within a period of two weeks. It is the grievance ventilated by the Petitioner that in furtherance to that order, the shops said to have been put up by the Petitioner had been removed, but he had not been given any alternative location for carrying on vending of articles for his livelihood. At that stage, the Second Respondent had notified for allotment of 88 shops located behind Thiyagi Kumaran Market (previously Cycle Stand) Coimbatore in public auction in furtherance to the order dated 25.01.2022 in W.P. No. 884 of 2022 passed by this Court. In that backdrop, this Writ Petition has been filed challenging the said notification for public auction of the 88 shops and for consequential direction to allot those shops to the Petitioner and other members of Vegetables and Fruits Small Merchants Federation in Periya Kadai Market, Coimbatore under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

3. There is nothing available from the materials placed on record to infer that the said 88 shops in Thiyagi Kumaran Market, Coimbatore have been allocated for street vendors as claimed by the Petitioner in this case. Moreover, the notification for public auction for granting lease of those shops has been



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made pursuant to the order dated 25.01.2022 in W.P. No. 884 of 2022 passed by this Court, which binds the Respondents. As such, it would not be possible for this Court to pass any contradictory orders.

4. That apart, the allotment of shops has already been completed pursuant to the impugned notification for public auction and if the Petitioner was eligible and not disqualified, he could have participated in it and if he has not availed such benefit, he would have to only blame himself for the same.

5. At this juncture, it requires to be noticed that 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 the law in that regard 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



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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



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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 contract dealing with his property. But the Government is not free to 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 an 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,



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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*



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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.”

The Constitution Bench of the Hon'ble Supreme Court of India in Natural Resources Allocation, In ***Re, Special Reference*** [(2012) 10 SCC 1] has reiterated the said view, which continues to hold the field. In view of the aforesaid legal position, there does not appear to be any infirmity in the



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impugned notification requiring interference by the Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(R.M.D., J.)

(P.D.A., J)

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Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

Maya

To

1. The District Collector
Collectorate, Coimbatore.
2. The Commissioner
Mettupalayam Municipality
Mettupalayam
Coimbatore District.
3. The Superintendent of Police
Coimbatore (Rural), Coimbatore.
4. The Deputy Superintendent of Police
Periyanaickenpalayam Division
Periyanaickenpalayam
Coimbatore District.



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5. The Inspector
Mettupalayam Police Station
Mettupalayam
Coimbatore District.



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**R.MAHADEVAN, J.
and
P.D.AUDIKESAVALU, J.**

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