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W.P. No. 32408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

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

**W.P. No. 32408 of 2023
and
W.M.P. No. 32040 of 2023**

1. Jayaraman
2. Abdul Latif
3. Priya @ Saranya

... Petitioners

-VS-

1. The Executive Officer
Selection Grade Town Panchayat
Parangipettai & Post
Bhuvanagiri Taluk
Cuddalore District – 608 502.

2. The President
Parangipettai Town Panchayat
Bhuvanagiri Taluk
Cuddalore District – 608 502.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to dispose of the Petitioners representation dated 12.08.2023 creation of lease agreement and renewal of license for their Tiffin shop, Tea Stall and Tiffin Shop respectively running in a land belonged to the Respondent – Government situated at Peria Aazar Khan Street, Parangipettai, Bhuvanagiri Taluk, Cuddalore District, within a time fixed by this Court.



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W.P. No. 32408 of 2023

For Petitioners : Mr. S.Vijayanand

For Respondents : Mr. K.Karthikeyan (for R1 & R2)

ORDER

Heard Mr. S.Vijayanand, Learned Counsel for the Petitioners and Mr. K.Karthikeyan, Learned Counsel, who takes notice for the First and Second Respondents and perused the materials placed on record, apart from the materials placed on record.

2. It is the case of the Petitioners that they are running Tiffin Shop/Tea Stall in Peria Aazarkhan Street, Parangipettai, Bhuvanagiri Taluk, Cuddalore District, in the land belonging to the Second Respondent, which is a local authority, for the past 25 years and that licence fee is regularly collected from them by the Second Respondent. In that backdrop, the Petitioners had made a representation dated 12.08.2023 to the Respondents for executing lease agreements with them in respect of the said place and grant renewal of licence for their Tiffin Shop/Tea Stall, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.



W.P. No. 32408 of 2023

WEB COPY

3. It is evident from the facts narrated by the Petitioners in the affidavit filed in support of the Writ Petition that they have been carrying on business occupying the property belonging to the Second Respondent without any lease agreement till date. The licence fee said to have been collected from them by the Second Respondent is in the nature of a statutory levy akin to a tax in terms of Section 102 of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the Act' for short), but it cannot be treated as 'rent' so as to create a relationship of lessor and lessee between the Second Respondent and the Petitioners. It requires to be pointed out here 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, 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



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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



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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 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 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



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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



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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.

Viewed from this perspective, any decision granting such allotment of the public property to the Petitioners at their mere asking on representation made on irrelevant considerations to suit the convenience of the Petitioner, just because they happen to occupy that property, would be contrary to law and defeat public interest, which cannot be countenanced.



W.P. No. 32408 of 2023

4. It is evident that neither the Petitioner has any legally enforceable right to claim transfer of the public property by the Respondents, nor the Respondents have any legal obligation to be compelled to take decision on granting the same in favour to the Petitioner. At this juncture, it would be beneficial to refer to the decision of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads 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



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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....

5. In such circumstances, there is absolutely no justification for issuing any direction to dispose the futile representation in which the relief claimed by the Petitioners cannot be considered by the concerned authorities. Though obvious, it is clarified that refusal by the Court to grant the relief sought in this Writ Petition shall not be construed as precluding the Petitioners, if they are otherwise eligible and not disqualified, to participate in any tender or public



W.P. No. 32408 of 2023

auction whenever conducted for lease of any public property belonging to the Second Respondent for the business of the Petitioners following the prescribed procedure. It is hastened to add here that if the places occupied Petitioners for their business is on road or road margin as held by the Full Bench of this Court in *Ramaraju -vs- State of Tamil Nadu* [(2005) 2 SCC 741], the Second Respondent is not precluded from taking appropriate action for its removal in accordance with law.

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

20.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

Maya

To

1. The Executive Officer
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W.P. No. 32408 of 2023

P.D. AUDIKESAVALU, J.

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