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W.P. No. 5615 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

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

W.P. No. 5615 of 2023

and

W.M.P. Nos. 5645 and 5646 of 2023

S.Hemalatha

... Petitioner

-VS-

1. The Director,
The Directorate of Medical Service,
DMS, Tenampet,
Chennai 600 006.
2. The Joint Director,
Medical and Health Department,
Thiruvallur.
3. The Medical Superintendent,
District Government Hospital,
Thiruvallur.
4. Aavin Kancheepuram-Thiruvallur Co-operative
Society Milk Products Ltd.,
Rep. By its General Manager,
No.X-37, Head Office, 55, Kuruvappa Street,
Ayanpuram,
Chennai 600 023.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records and quash the order of the 4th respondent Na.Ka.No.7241/Pa.Vi/2013



W.P. No. 5615 of 2023

dated 19.09.2022 and consequently directing the 1 to 3rd respondents to consider the written representation dated 03.02.2023 within a stipulated period.

For Petitioner : Mr. R.Sasikumar

For Respondents : Mr. V.Ravi (for R1 to R3)
Special Government Pleader

Mr. P. Sathish (for R4)

ORDER

Heard Mr. R.Sasikumar, Learned Counsel for the Petitioner, Mr. V.Ravi, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. P.Sathish, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had been granted license to carry on selling milk products manufactured by Aavin within the Government Medical College Hospital, Thiruvallur. On the expiry of the period of license, she had made a representation dated 23.04.2019 to continue to carry on that business in the said premises, but as it did not evoke any response, she has filed the Writ Petition in W.P. No. 13268 of 2019, which was disposed by this Court by order dated 04.02.2020 holding as follows:-



W.P. No. 5615 of 2023

WEB COPY

"7. *The only reason stated to direct the petitioner to be evicted is that, she has no renewal of the licence by Aavin. However, in the affidavit filed, it has been stated that the permission shall be granted subject to the acceptance of the above conditions by the petitioner.*

8. *In the counter affidavit of the 2nd respondent, it is also stated that the Aavin Booth is situated near MRI and CT Scan Centres and due to the dearth of place in hospital premises, 5 storied CEMONC building and 2 storied Trauma Care Buildings are being constructed as multi storied buildings and for the construction of the above buildings, heavy vehicles are frequently coming and going in Government Headquarters Hospital Premises. Further, it is also stated that there are average number of 3029 out patients, 278 In Patients per day and more than 500 deliveries are conducted. If that is the case, the respondent should relocate the petitioner within the premises. They cannot evict the petitioner from the workshop. It is also seen that the respondents have not complained that the petitioner has been*



W.P. No. 5615 of 2023

WEB COPY

selling substandard quality of the products or that there is a lack of serving place.

9. *In view of all those, this Court is inclined to allow the Writ Petition as prayed for by the writ petitioner. The 1st respondent is directed to issue an order, granting permission to continue the Aavin Milk Parlour inside the campus in the same location or in any other location within the campus. No costs."*

It requires to be pointed out that the directions in the said order had been forwarded to the Director of Medical Service in whose control the said premises is situated. Thereafter, in compliance of the said order, the Petitioner was granted renewal of license for a period of one year from 20.01.2021 by Proceedings in Ref.No.374/P&D/2018 dated 20.01.2021 issued by the Dean, Government Medical College Hospital, Thiruvallur, which reads as follows:-

" In view of the above permission is hereby granted to Tmt.S.Hemalatha, to continue the Aavin Parlour inside the campus of Government Medical College Hospital, Thiruvallur on temporary basis for a period of one year, in the site allocated by the PWD authorities and subject to the



W.P. No. 5615 of 2023

WEB COPY

condition that the individual should execute a bond in Rs.50/-

stamp paper as follows:-

- a) Aavin Milk booth should be formed in the location identified by the PWD authorities in the campus of Government Medical College Hospital, Thiruvallur.*
- b) The individual should not according to the condition laid down by the Government, Dean, PWD authorities then and there.*
- c) The Dean, has power to cancel such temporary permission even before the expiry of the period permitted due to administrative reasons. On such occurrence, the individual has no right to bring the above matter to the Court. Further if such place is required for the hospital in future the individual should vacate it at his own cost.*
- d) Renewal application should be sent before two months from the date of expiry of term. Permission will not be granted to run shop after the permission period get expiry, if fails to apply within the stipulated period.*



W.P. No. 5615 of 2023

WEB COPY

e) *Rent fixed by the PWD for allocation of land/Electricity charges/water charges should be paid without default.*

f) *Permission letter from the Managing Director, Tamil Nadu Co-operative Milk Producers Federation Ltd., Chennai, should be submitted before installation of Aavin Parlour.*

g) *The permission will not be considered as automatically if it is not renewed every year.*

h) *No furniture and fixtures should be spread in and around the surrounding of the Aavin Booth.*

i) *Electricity should be obtained by the individual at her own cost.*

j) *The adjacent place of Aavin Booth should be kept clear properly and there by no harm should be caused to the environment.*

k) *No Radio. TV tape recorder should be used in the Aavin Booth.*

l) *the wastage should be segregated separately and should be removed by her own responsibility.*



W.P. No. 5615 of 2023

m) *At any cost the product other than Aavin should not be sold.*

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Subsequently, when the authorities of the Aavin had inspected the premises on 13.06.2022, it had been noticed that the Petitioner in violation of the terms of the licence granted by the Aavin, had been selling tea, coffee, biscuits and other products which are not manufactured by Aavin. In the said circumstances, the Fourth Respondent by Proceedings in Na.Ka.No.7241/Pa.Vi/2013 dated 19.09.2022 has cancelled the licence, which is assailed in this Writ Petition.

3. It has been brought to the notice of the Court that by G.O. Ms.No.93, Health and Family Welfare (H2) Department dated 25.03.2015 guidelines have been laid down for locating stalls for sale of food and food products in the various Government Hospital premises across the State, which continues to be in force. That apart, the license of the Petitioner has also lapsed on 20.01.2023 and the Petitioner cannot have any right to continue to remain in the same premises indefinitely. The law in relation to 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



W.P. No. 5615 of 2023

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



W.P. No. 5615 of 2023

WEB COPY

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 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.



W.P. No. 5615 of 2023

WEB COPY

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 test, 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.



W.P. No. 5615 of 2023

WEB COPY

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*



W.P. No. 5615 of 2023

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 No. 1 of 2012*** [(2012) 10 SCC 1] has reiterated the said view, which continues to hold the field.

4. Having regard to the aforesaid incontrovertible legal position coupled with the facts of this case, when the period of the licence of the Petitioner has already lapsed, the question of allowing the Petitioner to continue to carry on business in the said premises does not arise. Further, on inspection, it has been noticed that the Petitioner has violated the terms and has sold other products in justification of the cancellation of the licence. In such circumstances, this Court does not find any reason to interfere with the impugned order and the relief claimed by the Petitioner cannot be granted. 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 that public property following the prescribed procedure.



W.P. No. 5615 of 2023

WEB COPY

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

12.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

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To

1. The Director,
The Directorate of Medical Service,
DMS, Tenampet,
Chennai 600 006.
2. The Joint Director,
Medical and Health Department,
Thiruvallur.
3. The Medical Superintendent,
District Government Hospital,
Thiruvallur.
4. Aavin Kancheepuram-Thiruvallur Co-operative
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Rep. By its General Manager,
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WEB COPY



W.P. No. 5615 of 2023

P.D. AUDIKESAVALU, J.

gsa

W.P. No. 5615 of 2023

12.02.2024