



W.P. No. 10240 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

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

W.P. No. 10240 of 2020

and

W.M.P. Nos. 12449 and 12450 of 2023

M/s. Arvind Hotels,
Rep. by its Proprietor
M.P.A. Mahalingam,
S/o. K.Muthusamy,
Plot No. J-1, SIPCOT Industrial Growth Centre,
Perundurai,
Erode District 638 052.

... Petitioner

-VS-

1. The Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited,
No.19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai 600 008.
2. The General Manager,
State Industries Promotion Corporation
of Tamil Nadu Limited,
No. 19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai 600 008.
3. M/s. Cheran Fuels,
No.15-A, Erode Road,
Perundurai,
Erode District 638 052.

... Respondents



W.P. No. 10240 of 2020

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 relating to the impugned order dated 11.06.2020 as passed by the First Respondent in Ref. No. P-1/SIGC-P/Cheran Fules/2020 and to quash the same, consequently direct the First Respondent to issue allotment order in favour of the Petitioner company in respect of the land in Plot No. P2 situate at SIPCOT Growth Centre, Perundurai, Erode District forthwith.

For Petitioner : Mr. V.Ayyathurai
Senior Counsel
for Mr. C.S. Saravanan

For Respondents : Mr. M.P. Rajavelayutham (R1 and R2)

Notice sent to R3 returned as unclaimed

ORDER

Heard Mr. V.Ayyathurai, Learned Senior Counsel for the Petitioner and Mr. M.P.Rajavelayutham, Learned Counsel for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent was allotted an extent of 2.65 acres situated in SIPCOT Industrial Growth Centre, Perundurai by Proceedings No. D1/SIGC-P/



W.P. No. 10240 of 2020

Cheran Fuels/2019 dated 21.06.2019 by the First Respondent to established petroleum outlet, which was challenged by the Petitioner in W.P. No. 22947 of 2019 before this Court. In the order dated 01.10.2019 (as modified by order dated 07.11.2019 in W.M.P. No. 31344 of 2019) disposing that Writ Petition, it has been recorded that the allotment made in favour of the Third Respondent has been cancelled and it has been decided to invite fresh offers as per the Government norms and the procedure henceforth adopted by the First Respondent, and allot the land in accordance with the tender procedure and law governing, and it has been clarified that the Petitioner along with the Third Respondent may participate in that tender.

3. The Petitioner thereafter claims to have made an online application in Reference No. POPR19200158 dated 21.02.2020 for Plot No. P2 of an extent of 2.65 acres situated in SIPCOT Industrial Growth Centre, Perundurai, and though the Second Respondent by Proceedings in Ref. No. PIII/allotment committee/2020 dated 29.06.2020 called upon the Petitioner to attend the Allotment Committee Meeting through video-conferencing held at 4.00 p.m. on 08.07.2020 and he was waiting for the same, but there was no response, and at about 5.00 p.m at that day, the Officer attached with the First Respondent informed that no meeting could be held for extraneous reasons. After coming to



W.P. No. 10240 of 2020

know that the Third Respondent has been allotted the said industrial plot by Proceedings No. P-I/ SIGC-P/Cheran Fuels/2020 dated 11.06.2020 by the First Respondent, the Petitioner has challenged the same in this Writ Petition.

4. In response, the First and Second Respondents have filed Counter-Affidavit stating that the Petitioner, who had made an application for the industrial plot, did not attend the Allotment committee Meeting along with other applicants held on 11.06.2020 and that the allotment of Plot No. P2 was made in favour of the Third Respondent following the due procedure.

5. The notice sent through Court to the Third Respondent to the address mentioned in his application has been returned undelivered with the postal endorsement that since it has been not been claimed by the addressee despite intimation given, it is returned to the sender. At this juncture, reference must be made to Section 27 of the General Clauses Act, 1897, which reads as follows:-

“27. Meaning of service by post:- Where any Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression “serve” or either of the expressions, “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be



W.P. No. 10240 of 2020

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deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post.”

The legal position in this regard has been explained by the Hon'ble Supreme Court of India in the decision in **Harcharan Singh -vs- Shivrani** [(1981) 2 SCC 535] in the following words:-

“7. Section 27 of the General Clauses Act, 1897 deals with the topic— “Meaning of service by post” and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective



W.P. No. 10240 of 2020

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of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by



W.P. No. 10240 of 2020

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refusal. In such circumstances, we are clearly of the view, that the High Court was right in coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed with the knowledge of the contents thereof and, in our



W.P. No. 10240 of 2020

view, this follows upon the presumptions that are raised under

WEB COPY Section 27 of the General Clauses Act, 1897 and Section 114 of
the Indian Evidence Act.”

In such circumstances, it must be treated that the notice has been served on the Third Respondent in this case.

6. Having regard to the rival contentions of the contesting parties on the merits of the controversy, the legal position is well settled 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 and 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 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



W.P. No. 10240 of 2020

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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.

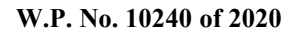
11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain



W.P. No. 10240 of 2020

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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 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 touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid....



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



W.P. No. 10240 of 2020

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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.”

In the light of the aforesaid legal position, there is nothing to show from the impugned proceedings of the First Respondent that the allotment of the industrial plot made in favour of the Third Respondent has been made following a fair and transparent manner providing equality of opportunity to all the eligible persons, especially when this Court in the order dated 01.10.2019 in W.P. No. 22947 of 2019 (as modified by order dated 07.11.2019 in W.M.P. No. 31344 of 2019) has reiterated that unexceptionable requirement. In particular, it must be noticed that the First and Second Respondents have not given any



W.P. No. 10240 of 2020

details as to when and how public notice for the allotment of the industrial plot had been made and how the Third Respondent has been found to be more suitable than all other applicants and how the best possible price for such allotment has been obtained by the First and Second Respondents.

7. In view of the foregoing discussion, the impugned Proceedings No. P-I/ SIGC-P/Cheran Fuels/2020 dated 11.06.2020 allotting Plot No. P2 in favour of the Third Respondent, which cannot be sustained, is set aside with a clarification that it would not preclude all eligible persons (including the Petitioner and the Third Respondent) from participating in any fresh tender or public auction whenever conducted for lease of the public property in accordance with law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

05.01.2024
2/2

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

Maya/Gsa



W.P. No. 10240 of 2020

To

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of Tamil Nadu Limited,
No.19-A, Rukmani Lakshmipathy Road,
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W.P. No. 10240 of 2020

P.D. AUDIKESAVALU, J.

Maya/Gsa

W.P. No. 10240 of 2020

05.01.2024

2/2