



W.P.(MD)Nos.9533 and 9987 of 2021

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Reserved on : 08.04.2024

Pronounced on : 18.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)Nos.9533 and 9987 of 2021

and

W.M.P.(MD)Nos.7272, 7273, 7705, 7708, 7729 and 8019 of 2021

W.P.(MD)No.9533 of 2021

M.Vinod

... Petitioner

Vs.

1. The Commissioner of Municipal
Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai-625008.
2. The Commissioner,
Bodinayakkanur Municipality,
Bodinayakkanur.
3. Revathi
President,
Sugamathi Self Help Group,
13th ward, Municipal Colony,
Bodinayakkanur.



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4. Shanthi

President,
Amudhasurabi Self Help Group,
13th ward, Municipal Colony,
Bodinayakkanur.

... Respondents

For Petitioner : Mr.R.Suriyanarayanan

For R1 : Mr.A.K.Manikkam
Special Government Pleader

For R2 : Mr.A.Kannan
Standing Counsel

For R3 & R4 : Mr.Mahaboob Fazil
for M/s.Lajapathi Roy and Associates

W.P.(MD)No.9987 of 2021

S.Revathi
President,
Sugamathi Self Help Group,
13th ward, Municipal Colony,
Bodi Taluk,
Theni District.

... Petitioner

Vs.

1. The Commissioner of Municipal
Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai-600008.

2. The Commissioner,
Bodinayakkanur Municipality,
Bodinayakkanur, Theni District.

3. M.Vinod

... Respondents



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For Petitioner : Mr.Mahaboob Fazil
for M/s.Lajapathi Roy and Associates

For R1 : Mr.A.K.Manikkam
Special Government Pleader

For R2 : Mr.A.Kannan
Standing Counsel

For R3 : No appearance

Prayer in W.P.(MD)No.9533 of 2021 : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating with the order of the second respondent made in Na.Ka.No.4530/2017/A2, dated 07.05.2021, granting licenses to the respondents 3 and 4, for collecting the users' fee from the users of public toilets situated in Ward No.2, 7, 10, 27 and 23 in Bodinayakkanur, without conducting public auction and quash the same as it is arbitrary and illegal and in consequence to direct the second respondent to conduct the public auction for granting the licenses to collect the users' fee in the public toilets belong to the Bodinayakkanur Municipality.

Prayer in W.P.(MD)No.9987 of 2021 : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.4530/2017/A2 dated 02.06.2021 on the file of the second respondent in so far as the petitioner is concerned and quash the same as illegal.



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COMMON ORDER

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The Writ Petition in W.P.(MD)No.9533 of 2021 is directed against the order passed by the second respondent dated 07.05.2021 granting licenses to the respondents 3 and 4 for collecting the users' fee from the users of public toilets in Bodinayakkanur and for direction to the second respondent to conduct public auction for granting licenses to collect the users' fee in the public toilets belonging to the Bodinayakkanur Municipality.

2. The Writ Petition in W.P.(MD)No.9987 of 2021 is directed against the order passed by the second respondent dated 02.06.2021.

3. The writ petitioner in W.P.(MD)No.9533 of 2021 is the third respondent in W.P.(MD)No.9987 of 2021 and the writ petitioner in W.P.(MD)No.9987 of 2021 is the third respondent in W.P.(MD)No.9533 of 2021.

4. It is not in dispute that there are 27 public toilets in various wards belonging to the Bodinayakkanur Municipality.



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5. The case of the writ petitioner in W.P.(MD)No.9533 of 2021 is that the writ petitioner was successful bidder in a public auction conducted by the second respondent on 22.02.2018 for collecting users' fee from the users of the combined public toilets situated in Ward No.10, S.S.Puram Road, Bodinayakkanur, vide order dated 22.03.2018 for the period upto 31.03.2019, that though the license was given for one year initially, ending with 31.03.2019, that auction was for three years and the license was extended for three years by paying with an additional sum of rupees at 5% to the previous year amount and the writ petitioner paid the same and entitled to collect users' fee till 31.03.2021, that the second respondent, without any notice and enquiry, unilaterally cancelled the license given to the writ petitioner and granted the said license to the Self Help Group vide order dated 27.04.2018, that the writ petitioner and the other affected parties filed writ petitions in W.P.(MD)No.12130, 12668, 12202 and 12129 of 2018 challenging the cancellation, that the respondents 3 and 4 have filed applications to implead themselves as parties in the said writ petitions, but the same were rejected, that thereafter, the said writ petitions were allowed on 25.03.2019 and thereby quashing the order of the second respondent dated 27.04.2018, that the third respondent has filed writ



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appeals along with delay excuse petitions in W.A.(MD)Nos.475 to 478 of 2021 and that since the licence period was already over on 31.03.2021, the writ appeals were ordered to be closed on 05.03.2021 as no further orders were necessary.

6. It is the further case of the writ petitioner in W.P.(MD)No.9533 of 2021 that due to national lockdown declared in view of Covid-19 pandemic, the said toilet has been locked on and from 23.03.2020 till 01.10.2020 and hence, he was not in a position to collect the fee, that the writ petitioner made a representation to the second respondent to extend the period of license for a year as he was loosing six months period, that the second respondent, without sending any reply and without taking any steps for conducting auction, has been attempting to grant license to the Self Help Group arbitrarily and that therefore, the writ petitioner was constrained to file the above writ petition.

7. The case of the writ petitioner in W.P.(MD)No.9987 of 2021 is that 12 toilets were handed over to the writ petitioner's Self Help Group for maintenance in the year 2009 including the toilet situated at Ward No.



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27, Vellayappan Street, Bodi, that there is no period mentioned in the approval order of the second respondent, that the writ petitioner's group members were maintaining the same for more than 10 years without any disturbances, that when there was some dispute created by the Commissioner in the year 2018 and they were attempting to give the said toilet through tender, the writ petitioner and other group members have raised objections for tender, that the second respondent, without considering their grievances, handed over the license to the third respondent through a public auction, that subsequently the second respondent has passed an order as against the third respondent and the work was allocated to the writ petitioner's group members vide his proceedings dated 09.05.2018, that the third respondent along with other private persons, by suppressing the real facts, had filed writ petitions in W.P.(MD)No.12130, 12668, 12202 and 12129 of 2018 and obtained interim orders dated 14.06.2018, that the third respondent has not implicated the writ petitioner in those cases, that the writ petitioner has filed applications to implead her as a respondent in the main petitions, but that were dismissed, that the third respondent has again filed a writ petition in W.P.(MD)No.7413 of 2021 by suppressing the entire previous



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litigations and sought for an injunction not to grant license to Self Help Group directly without conducting public auction and to extend his period of license for a period of one year / six months, that this Court in appeals in W.A.(MD)Nos.475 to 478 of 2021 has categorically observed that the local authority has not extended the license in favour of the private respondents and only on the basis of this Court order, the work order dated 07.05.2021 came to be issued to the writ petitioner's Self Help Group and another Self Help Group, that the third respondent, by suppressing the entire facts, has filed another writ petition in W.P.(MD)No.9533 of 2021, challenging the order dated 07.05.2021 and directing the respondents to conduct public auction and obtained interim stay for a period of one week, that the second respondent, without any notice or enquiry and without assigning any reason, has cancelled the order granted in favour of the writ petitioner's Self Help Group vide order dated 02.06.2021 and that therefore, the writ petitioner was constrained to move this Court with the above writ petition.

8. In W.P.(MD)No.9987 of 2021, it is evident from the impugned order dated 02.06.2021 that the second respondent has cancelled the order



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dated 07.05.2021 only on the ground that this Court has passed an interim order in W.P.(MD)No.9533 of 2021 dated 26.05.2021. As already pointed out, the writ petitioner in W.P.(MD)No.9533 of 2021 has obtained interim stay for a period of one week vide order dated 26.05.2021, but within a week, the impugned order dated 02.06.2021 came to be passed. Admittedly, the second respondent, without issuing any notice, without hearing the writ petitioner and without awaiting for the final decision to be passed in W.P.(MD)No.9533 of 2021, has passed the impugned order mechanically. It is not the case of the respondents that the impugned order came to be passed as per the direction of the High Court. Considering the above, the impugned order dated 02.06.2021 cannot legally be sustained. But whatever it is, the writ petitioner representing Self Help Group has been claiming license to maintain the toilets only on the ground that they are running Self Help Groups.

9. When a specific query was raised to the counsels appearing for the private parties as well as the learned Special Government Pleader and the learned Standing Counsel as to whether there was any law or rule or Government Order directing the authorities to give priority to the Self



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Help Groups in granting license to operate the toilets, the unanimous reply is in negative.

10. The learned Standing Counsel appearing for the second respondent in both the writ petitions has relied on the decision of this Court in the case of ***S.Kannammal Vs. The District Collector, Theni District (W.P.(MD)No.13684 of 2023 dated 12.06.2023)***, wherein also, writ of mandamus was claimed directing the District Collector, Theni District and the Commissioner, Bodinayakkanur Municipality, Theni District, to allot Women's Public Toilets (maintaining) to the petitioner's Women Self Help Group by considering their representation and a learned Judge of this Court, considering the submissions made on behalf of the respondents therein that maintenance of the toilet would be done only after tender is issued and prospective tenderers' submit their bids and finally chosen, by observing that the petitioner's Self Help Group cannot claim any vested right, directed the Commissioner of Municipality to proceed in a manner known to law in accordance with the provisions of the District Municipalities Act and with respect to the Women's Public Toilet and take an appropriate action while issuing a tender notice.



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11. As rightly contended by the learned counsel appearing for the writ petitioner in W.P.(MD)No.9533 of 2021, the authorities cannot grant license as per their whims and fancies and they are duty bound to conduct public auction for granting the license.

12. When the matter was taken up for final disposal on 08.04.2024, the learned Standing Counsel appearing for the second respondent in both the writ petitions would submit that the writ petitioner in W.P.(MD)No. 9533 of 2021 has been collecting the users' fee continuously and he has not paid any amount to the Municipality and that he will be directed to pay the amount due to the Municipality.

13. Considering the entire facts and circumstances and taking note of the submissions made on either side, this Court is inclined to direct the second respondent-Municipality to proceed with the public auction in accordance with law, in respect of the toilets belonging to the second respondent-Municipality and the writ petitioner as well as the private respondent(s) in both the writ petitions are at liberty to take part in the auction. The writ petitioner in W.P.(MD)No.9533 of 2021 is to be directed



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to pay the amount due to the second respondent-Municipality within a period of one month from the date of receipt of a copy of this order.

14. With the above directions, these Writ Petitions are disposed of
Consequently, connected Miscellaneous Petitions are closed. No costs.

18.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Commissioner of Municipal
Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai-625008.
2. The Commissioner,
Bodinayakkanur Municipality,
Bodinayakkanur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Common Order made in
W.P.(MD)Nos.9533 and 9987 of 2021
and
W.M.P.(MD)Nos.7272, 7273, 7705, 7708, 7729 and 8019 of 2021

Dated : 18.04.2024