



W.P(MD)No.18015 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **07.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.18015 of 2023
and W.M.P(MD)No.15037 of 2023

T.Rajakumar

... Petitioner

Vs.

1.The Director of Town Panchatyat
7th & 8th Floor,
Urban Administrative Office Campus,
Raja Annamalai Puram,
Chennai – 600 028

2.The District Collector,
Kanyakumari District
Office at Ramavarmapuram,
K.P.Road,
Nagercoil

3.The Assistant Director of Town Panchayat,
Office at Collectorate Campus,
Ramavarmapuram,
Nagercoil,
Kanyakumari District.

4.The Executive Officer,
Kaliyakavilai Selection Grade Town Panchayat,



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Kaliyakavilai,
Kaliyakavilai Post,
Kanyakumari District

5.Rama Devi

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 4th/5th respondent herein in Na.Ka.No.188/2022/A2 dated 14.07.2023 and quash the same as illegal and further direct the respondents herein to permit the petitioner to continue the license for the entire 3 year period till 31.03.2025.

For Petitioner	: Mr.K.P.Krishna Doss
For R1 to R3	: Mr.Veerakathiravan Additional Advocate General Assisted by Mr.G.V.Vairam Santhosh Additional Government Pleader
For R4	: Mr.J.S.Senthil Ayyanar Government Advocate



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ORDER

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The petitioner is the licensee for collection of user fee for the toilet complex in the Kaliyakavilai Fish Market. The petitioner has participated in the public auction conducted by the 4th respondent and was declared as successful bidder and the license was issued to the petitioner by the 4th respondent permitting him to collect user fee for the toilet from 01.04.2022 to 31.03.2025 for a period of 3 years vide order dated 02.05.2022. Pending the license period, by issuing the order impugned in this Writ Petition, the respondents have issued a notification for conducting a fresh auction and therefore, the petitioner has filed the present Writ Petition challenging the auction notice dated 14.07.2023.

2. The learned counsel for the petitioner submits that on the frivolous complaints lodged by the business rivals, the Executive Officer issued a show cause notice to the petitioner on 11.02.2023 calling for his explanation by alleging that the petitioner is receiving



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higher amount from the toilet users and not maintaining the toilet complex properly. The petitioner has submitted his reply on 16.02.2023 to the 4th respondent stating that neither the petitioner nor his employees have ever received any amount higher than the amount fixed by the Town Panchayat. Without considering the same, the 4th respondent has issued an order cancelling the license granted to the petitioner upto the year 2025 by order dated 17.05.2023. The same was challenged by the petitioner in WP(MD)No.12484 of 2023. This Court by order dated 25.05.2023 disposed of the Writ Petition with a direction to the 4th respondent to consider the representation of the petitioner and to pass orders within a period of two weeks. Without passing any order on his representation, the respondents 4 and 5 have issued a fresh notification. Therefore, the petitioner is before this Court.

3. Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondent Town Panchayat submits that though the



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petitioner has obtained license, he has not maintained the toilets in a neat and hygienic manner, in respect of which, several complaints were received by the respondent Panchayat. Therefore an inspection was made on the public toilets and it was found that the petitioner has not maintained the toilets in a neat manner. The learned Additional Advocate General would further submit that the petitioner has also collected more amount from the users of the toilets. Therefore, a Show Cause Notice was issued on 11.02.2023 and the petitioner has sent his reply. The same was placed before the council meeting. On 16.05.2023, the council members have passed a resolution to terminate the license of the petitioner and therefore, the 4th respondent has passed an order cancelling the license of the petitioner on 17.05.2023. The same was challenged in WP(MD)No. 12484 of 2023. On the directions of this Court, once again an opportunity was provided to the petitioner and an order of rejection was passed on 14.07.2023. Since maintenance of public toilet is very much required, the respondents have proceeded further and issued a fresh notification for conducting a public auction. By putting forth his strenuous argument, the learned Additional Advocate General prays for dismissal of this Writ Petition.



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4. I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents 1 to 3.

5. Providing public toilet is one of the basic duty of any local body. However, for maintaining these public toilets, these toilets are allotted to individuals in auction. Ultimately, the public toilets are not maintained properly in a hygienic manner and the licensees are collecting user charges in an exorbitant manner.

6. A Hon'ble Division Bench of this Court, where I am a party to the Judgment, has dealt with this issue in W.P(MD)No.4959 of 2019 and passed an order as under:

“27.As discussed above, a neat and hygienic toilet is a right of the citizen. The provisions under the Tamil Nadu District Municipalities Act, Chennai City Municipal Corporation Act and the Panchayat Act also mandates the local bodies to maintain the public toilets with a neat and clean environment. Coupled with the rights guaranteed under



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Articles 21, 47 and 21(A) of the Constitution of India and the mandate on the local bodies to provide public toilet in a neat and clean condition, the State must provide neat and hygienic public toilets to its people. Therefore, the impugned communication of the 15th respondent is set aside and the following directions are issued:

(i) Public toilets, in adequate numbers, with all facility should be provided all over the State, free of cost, wherever possible;

(ii) The maintenance of public toilets shall be carried out by the local bodies by engaging NGO's and by getting sponsorship and causing advertisements on the walls of the toilets;

(iii) The users must be sensitised as to the proper usage of the public toilets for proper maintenance and instructions shall be displayed wherever possible.

(iv) A complaint mechanism must be put in place, to monitor and ensure maintenance of the public toilets clean and hygienically; and responsibility shall be fixed on the authorities for the proper maintenance of the same.

(iv) A board having the details of the charges, if any, collected should be displayed.

(v) A routine and regular cleaning shall be done.

(vi) Existing public toilets should be surveyed and be made functional, if not functional.



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(vii) The details in respect of the location of the toilets must be made available publicly.

(viii) The Government shall also consider the directions issued by the Division Bench of the Bombay High Court in Milun Suryajani and Others Vs Pune Municipal Commissioner, Shivajinagar and Others, [2016(2) ABR 105, Manu/MH/3430/2015] and find out the possibility implementing such directions in this State also and implement the same.”

7. The respondents have to work out the possibility of complying the above directions.

8. In fine, this Court is not inclined to interfere with the impugned notification and the Writ Petition is dismissed. The respondents shall proceed with the maintenance of the public toilet either by issuing a tender notification or by engaging NGOs. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No
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B.PUGALENDHI, J.

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