



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.27289 to 27291 of 2022 and
W.M.P.(MD)Nos.10497, 10499, 10504 of 2024 and
CONT.P.(MD)No.856 of 2024 in
W.P.(MD)No.27291 of 2022

W.P.(MD)No.27289 of 2022

S.Jeeva Kumar

... Petitioner

Vs.

The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to award the tender with regard to the enjoyment of the leasehold right for running the shop Nos.2, 4, 5 and 8 situated in Muthu Nagar Beach / Park, Thoothukudi on the basis of the tender process which had been taken place on 25.07.2022 pursuant to the notification dated 12.07.2022 issued by the respondent in Dinathanthi Tamil Daily dated 14.07.2022 forthwith.

W.P.(MD)No.27290 of 2022

C.Karthick

... Petitioner

Vs.

The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Respondent



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to award the tender with regard to the enjoyment of the leasehold right for running the shop Nos.7, 9 and 10 situated in Muthu Nagar Beach / Park, Thoothukudi on the basis of the tender process which had been taken place on 25.07.2022 pursuant to the notification dated 12.07.2022 issued by the respondent in Dinathanthi Tamil Daily dated 14.07.2022 forthwith.

W.P.(MD)No.27291 of 2022

N.C.Chairmapandi

... Petitioner

Vs.

The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to award the tender with regard to the enjoyment of the leasehold right for running the shop Nos. 1 and 2 situated in Muthu Nagar Beach / Park, Thoothukudi on the basis of the tender process which had been taken place on 25.07.2022 pursuant to the notification dated 12.07.2022 issued by the respondent in Dinathanthi Tamil Daily dated 14.07.2022 forthwith.

CONT.P.(MD)No.856 of 2024

N.C.Chairmapandi

... Petitioner



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W.P.(MD)NO.27289 OF 2022

Vs.

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The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

... Respondent

Prayer: Contempt petition filed under Section 11 of the Contempt of Courts Act, to punish the respondent / contemnor for willful deliberate disobedience of the order passed by this Court in W.P. (MD)No.27291 of 2022 dated 02.12.2022.

(In all W.Ps. & Cont.P)

For Petitioner : Mr.R.Anand

For Respondent : Mr.Veerakathiravan,
Additional Advocate General,
assisted by,
Mr.N.Anandakumar.

* * *

COMMON ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Standing counsel appearing for Thoothukudi City Municipal Corporation.

2. The petitioners participated in the tender process floated by



the respondent Corporation. Admittedly, they were the highest tenderers for the petition mentioned shops. These writ petitions have been filed for directing the respondents to allot the shops. During the pendency of these writ petitions, the petitioners came to know that the tender process itself was cancelled on 01.09.2022. That led to the institution of contempt proceedings. When the matter came up for hearing on the last occasion, I made it clear that the main writ petitions will be taken up for disposal.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions. He drew my attention to quite a few case laws and called upon this Court to grant relief as prayed for.

4. The respondent Corporation has filed a detailed counter affidavit. The prime argument of the learned Additional Advocate General appearing for the respondents is that though the petitioners have turned out to be the highest bidders, no right as such has accrued in their favour. The tender process took place during the year 2022. During the relevant time, the provisions of the Coimbatore City Municipal Corporation Act were applicable. He drew my attention to Sections 23



and 95 and Schedule X of the Act. The learned Additional Advocate General contended that final call must be taken by the democratically elected Council. Merely because the petitioners have turned out to be the highest bidders, that would not by itself confer any right on them. The Council took a decision that the shops in question must be allotted to those hailing from economically weaker sections such as transgenders, widows etc. This is in fulfilment of the statutory obligation laid down in Section 511-B of the Act. My attention was drawn to the decisions reported in *(2017) 4 SCC 243 (HUDA V. Orchid Infrastructure Developers (P) Ltd.)*, *(1996) 4 SCC 208 (Laxmikant and Others V. Satyawar and Others)* and *(1982) 2 SCC 365 (State of Uttar Pradesh and Others V. Vijay Bahadur Singh and Others)*. He called upon this Court to dismiss the writ petitions.

5. I carefully considered the rival contentions and went through the materials on record.

6. Resolution was passed by the Council conducted by the City Municipal Corporation on 29.07.2022. The order was passed by the Commissioner of the Corporation returning EMD paid by the petitioners



vide notice dated 01.09.2022. The notice issued by the Commissioner

reads as follows:-



நாள்: 16/2301/2022

தூத்துக்குடி மாநகராட்சி
நாள்: 01.09.2022

அறிவிப்பு

பொருள்: ஏலம்/ஒப்பந்தப்புள்ளி - தூத்துக்குடி மாநகராட்சி சிமிசு நகரத்திட்டத்தின் கீழ் முத்துநகர் கடற்கரை பூங்காவில் அமைக்கப்பட்டுள்ள 10 கடைகளுக்கு 25.07.2022 அன்று ஏலம் மற்றும் ஒப்பந்தப்புள்ளி கோப்பட்டு தொடர்ந்து ஏலம் கோர எந்த நபரும் முன்வராத நிலையில் வரப்பெற்ற 10 ஒப்பந்தப்புள்ளிகள் அன்று மாலை 4.45 மணி அளவில் ஒப்பந்தப்புள்ளிதாரர்கள் முன்னிலையில் ஆணையர் அவர்களால் திறக்கப்பட்டது. மேற்படி வரப்பெற்ற ஒப்பந்தப்புள்ளிகளின் ஒப்பு நோக்கு பட்டியல் தயார் செய்யப்பட்டு உரிமம் வசூல்குவது தொடர்பாக மாமன்ற அனுமதி பெறும் பொருட்டு மாமன்றத்திற்கு பொருள் வைக்கப்பட்டது.

பார்வை இம்மாமன்ற தீர்மானம் எண். 174 நாள்:29.07.2022

தூத்துக்குடி மாநகராட்சிக்குட்பட்ட முத்துநகர் கடற்கரை பூங்காவில் சிமிசு நகரத் திட்டத்தின் கீழ் அமைக்கப்பட்டுள்ள 10 கடைகளுக்கு 25.07.2022 அன்று ஏலம் மற்றும் ஒப்பந்தப்புள்ளி கோப்பட்டு தொடர்ந்து ஏலம் கோர எந்த நபரும் முன்வராத நிலையில் வரப்பெற்ற 10 ஒப்பந்தப்புள்ளிகள் அன்று மாலை 4.45 மணி அளவில் ஒப்பந்தப்புள்ளிதாரர்கள் முன்னிலையில் ஆணையர் அவர்களால் திறக்கப்பட்டது. மேற்படி வரப்பெற்ற ஒப்பந்தப்புள்ளிகளின் ஒப்பு நோக்கு பட்டியல் தயார் செய்யப்பட்டு உரிமம் வசூல்குவது தொடர்பாக மாமன்ற அனுமதி பெறும் பொருட்டு மாமன்றத்திற்கு பொருள் வைக்கப்பட்டது.

பார்வையில் காணும் மாமன்ற தீர்மானத்தில், மேற்படி பொருள் தொடர்பாக "மாமன்ற உறுப்பினர்கள் தெரிவித்த பல்வேறு கருத்துக்கள் மற்றும் வேண்டுகோள்கள் அடிப்படையில் முத்துநகர் கடற்கரை பூங்காவில் அமைந்துள்ள மேற்படி கடைகளானது அனைத்து தரப்பினருக்கும் பரிசீலனாவுக்கும் விடையாகவும், குறிப்பாக சமுதாயத்தில் பொருளாதார ரீதியாக பின்தங்கியுள்ள மகளிர், மாற்று திறனாளிகள், ஆதரவற்ற கைப்பெண்கள், விதவைகள், திருநாயக்கை, வெளிநாடுகளில் இருந்து அகதிகளாக தாயகம் திரும்பியோர் ஆகியோர்களின் வாழ்வு தரத்தினை மேம்படுத்தும் விதமாக கடைகள் ஒதுக்கீடு செய்யும் வகையில் தொடர் நடவடிக்கைகள் மேற்கொள்ள ஏதுவாக இப்பொருள் மாமன்றத்தால் ரத்து செய்யத் தீர்மானிக்கப்பட்டுள்ளது".

தூத்துக்குடி மாநகராட்சி மாமன்றத்தில், மேற்படி பொருள் ரத்து செய்யப்பட்டதைத் தொடர்ந்து, தங்கள் முத்துநகர் கடற்கரை பூங்கா கடை எண். 1 க்காக செலுத்தப்பட்ட காப்பு மலப்பு தொகை ரூ.1,00,000/- க்கான வரலாபவோலை திரும்ப அனுப்பி வைக்கப்படுகிறது. மேலும் வரலாபவோலை பெற்றுக்கொண்டதற்கான ஒப்புதல் அளிக்க தெரிவிக்கப்படுகிறது.

இணைப்பு ரூ.1,00,000/-க்கான வரலாபவோலை

(வரலாபவோலை எண். 248634 நாள்:22.07.2022)

(ஓம்) தி. சாருஜி. இ.ஆ.ப.,
ஆணையர்
தூத்துக்குடி மாநகராட்சி

பெறுதல்
திரு. N.C. சேர்மப்பாளன்,
47, தாமோதர நகர்,
தூத்துக்குடி.

/உத்தரவுப்புடி/

உதவி ஆணையர்
தூத்துக்குடி மாநகராட்சி



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There is some controversy as to when this order was passed. The learned Additional Advocate General contended that the order was communicated by way of registered post and was returned with an endorsement “refused”. The petitioners' counsel on the other hand would contend that when the writ petitions were listed for admission, a copy of the same was placed before the Court.

7. One need not harp on technicalities. It is true that the writ petitions were filed in the nature of Writ of Mandamus. Since the entire facts have been placed, the writ Court can very well go into the merits of the matter. The question that calls for consideration is whether the Council was justified in cancelling the tender process. If the cancellation was vitiated by arbitrariness, the writ Court is obliged to intervene.

8. The case on hand pertains to allotment and leasing of shops. Interestingly, an occupant by name Baskaran filed W.P.(MD)No.15928 of 2022 seeking extension of his leasehold right for three more years. The writ petition was opposed by the respondent Corporation and it was disposed of by directing the Corporation to videograph the entire auction



process. I also made it clear that no individual will be denied the tender scheduled. Be that as it may, the petitioner's counsel had to move this Court for obtaining tender schedule. W.P.(MD)Nos.16412, 16413 and 16414 of 2022 were filed for receiving tender applications and for issuance of tender schedule. When the matter was taken up for disposal on 25.07.2022, the writ petitions were disposed of by permitting the petitioners to take photo copies of the tender schedule and dropping the same in the drop box at 3.45 p.m. on 25.07.2022. The Corporation was directed to extend time to drop the filled-in applications up to 3.45 pm on 25.07.2022. The petitioners turned out to be the highest tenderers. It is true that on 29.07.2022, the Council convened and it was decided to cancel the tender applications. It is relevant to note here that the tender notification was issued on 12.07.2022. During the period between 12.07.2022 and 29.07.2022, this Court was seized of the matter. On both the occasions, this Court was not informed that there was no change in the policy. The tender notification dated 12.07.2022 was issued in terms of the Council resolution dated 08.04.2022. Hence the tender process has to be finalised only in terms of the said resolution dated 08.04.2022. When the matter was placed for confirmation, the scope of discussion was limited. The Council was expected to see whether the persons were



the highest bidders. Of course, if there were any other vitiating factors, then certainly the Council could intervene. When there was no vitiating factor, citing policy change, the confirmation be denied. My attention is drawn to the decision of the Hon'ble Supreme Court reported in **(2003) 5 SCC 437 (Union of India V. International Trading Co.)**. The Hon'ble Supreme Court in paragraph No.15 of the said decision held as follows:-

“15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a



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given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.”

9. My attention is also drawn to the decision of the Hon'ble Division Bench reported in **2010 SCC OnLine Mad 3302 (A.R.Safiullah V. The Managing Director)**, the order dated 13.02.2023 made in W.P.No.15075 of 2010 and the recent decision of the Hon'ble Supreme Court in **2024 SCC OnLine SC 244 (Travancore Devaswom Board V. Ayyappa Spices and Others)**. They make it clear that in matters relating to confirmation of tender, this Court will have to play only a limited role. But if the cancellation is vitiated by any arbitrariness, then certainly the writ Court can intervene in exercise of judicial review. Rules of the game should not be changed after the game has started. Having floated the tender process, it was not open to the Corporation to refuse confirmation by announcing change of policy. A participant in a tender may not have a vested right to seek confirmation of his offer. But he can legitimately expect and insist that the norms that obtained at the time of floating the tender should be applied. Arbitrary policy departures are impermissible. I hold that the impugned notice dated 01.09.2022 issued by the



Commissioner of Municipal Corporation based on the resolution No.174 dated 29.07.2022 passed by the Commissioner of Municipal Corporation cancelling the tender process is patently vitiated by arbitrariness. It is set aside. These writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10. In view of the order passed in W.P.(MD)Nos.27289 to 27291 of 2022, Cont.P.(MD)No.856 of 2024 is closed.

10.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

Note : Issue order copy on 30.07.2024.

To:

The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.



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W.P.(MD)NO.27289 OF 2022

G.R.SWAMINATHAN,J.

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W.P.(MD)Nos.27289 to 27291 of 2022

10.06.2024