

(2013) 10 MAD CK 0152

In the Madras High Court

Case No : Writ Petition No's. 25870 and 26447 of 2013 and M.P. No's. 1, 1, 1 and 2 of 2013

Chennai Fire Works Dealers Welfare Association

APPELLANT

Vs

Tamil Nadu Tourism Development Corporation Limited

K.R. Ramaswamy Alias Traffic Ramaswamy Founder
Chairman TANSWO Vs The Chief Secretary Government of
Tamilnadu and Others

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0152

Hon'ble Judges : R.K. Agrawal, Acting C.J.; M. Sathyanarayanan, J

Bench : Division Bench

Advocate : K.M. Vijayan, for E. Vijay Anand in WP 25870 and 259871/2013 and Mr. T. Sundaravadanam in WP 26447/2013, for the Appellant; P.H. Arvind Pandian, Additional Advocate General Assisted by Mr. R.A.S. Senthilvel for TTDC for R1 in WP 25870 and 25871/2013 and for R6 in WP 26447/2013, Mr. K. Mohana Murali for R1 in all WPs, Mr. S.T.S. Moorthy, Government Pleader for RR3 and 4 in WP 25870 and 25871/2013 and for RR3 and 5 in WP 26447/2013 and Dr. C. Ravichandran for R4 in WP 26447/2013, for the Respondent

Final Decision : Dismissed

Judgement

1. In W.P. Nos. 25870 and 25871/2013, challenge is made to the tender notification dated 5.9.2013, issued by the first respondent viz. Tamil Nadu Tourism Development Corporation Limited (in short, TTDC), for conduct of Mega Diwali Fair 2013, for sale of Crackers/Food items/Garments/Car Parking/Amusement Park, for 23 days from 12.10.2013 to 3.11.2013, at Island Grounds, Chennai 9. W.P. No. 26447/2013 is filed by Mr. K.R. (Traffic) Ramaswamy as a Public Interest Litigation, praying for the quashment of the above said Tender Notification and a consequent direction to the respondents 3 to 5 to adopt safety measures for sale of crackers both by way of retail and wholesale, and prevent the loss being caused to the life.

2. W.P. Nos. 25870 and 25871/2013 were listed before the Hon''ble Mr. Justice K.K. Sasidharan and the learned Judge, after hearing the submissions made by the respective learned Counsel appearing for the parties, has expressed the opinion that the matter should be heard by a Division Bench and accordingly, both the writ petitions are listed before this Court and since the Public Interest Litigation in W.P. No. 26447/2013, is also connected with the said writ petitions, all writ petitions are taken up together and disposed of by this common order.

3. This Court before proceeding to dispose of these writ petitions, has found that there is mace of facts; but, none of the petitioners had filed dates and events, which if filed, would have enabled this Court to save some precious time while dealing with the facts of this case, and hence, expresses displeasure in this regard.

4. The petitioners in W.P. Nos. 25870 and 25871/2013, had averred among other things, that the members of their association, are traders belonging to the lowest strata of the society and were operating small stores/shops for decades in Bunder Street, Badrian Street, Anderson Street, Malayaperumal Street, Umpherson Street, and NSC Bose Road, Chennai 1 and during Diwali season, used to put up small stalls in front of their shops, for sale of fire crackers and in order to supplement their meagre income by taking advantage of the festival season, it is being done, and normally, 150 shopkeepers were in the habit of selling crackers during Diwali season, after obtaining temporary licence issued by the concerned authorities.

5. It is stated by the petitioners that Mr. K.R. Ramaswamy alias Traffic Ramaswamy filed W.P. No. 38180/2005 against the Chief Controller of Explosives, Director of Fire Services, Commissioner of Police, Greater Chennai City, Commissioner of Chennai Corporation and Chennai Fire Works Dealers'' Welfare Association-petitioner in W.P. No. 25870/2013, praying for the issuance of a writ of mandamus directing the official respondents therein to reconsider the grant of licences for storing and selling crackers in the above said Streets and directing the first respondent therein to fix the venue for storage and sale of crackers in the Island Grounds, MUC Ground or any other place of safety. A Division Bench of this Court passed a detailed interim order dated 29.9.2006, with certain directions numbering to 25.

6. Mr. (Traffic) Ramaswamy alleging non-compliance of the above said interim order, filed contempt petition in Contempt Petition No. 833/2006, and the main writ petition in W.P. No. 38180/2005, was also tagged along with the contempt petition. The First Bench of this Court vide common order dated 20.10.2008, has disposed of the writ petition as well as the contempt petition by directing the Commissioner of Police, Greater Chennai City, to strictly adhere to all the Rules and Regulations under the Explosives Act as amended from time to time, and to ensure other safety measures as suggested by this Court in its earlier orders dated 4.10.2007 and 24.10.2007, while granting temporary licences for storage and sale of fire crackers.

7. Mr. (Traffic) Ramaswamy filed W.P. No. 17040/2009 praying for issuance of a writ of mandamus directing the above said official respondents to arrange and to shift the sale of fire crackers in the above said streets to Island Grounds or any other open ground as done in Bengaluru and Kolkata. The First Bench of this Court has disposed of the said writ petition on 24.8.2009, by directing the Commissioner, Corporation of Chennai, and the Commissioner of Police, Greater Chennai City, to consider the proposal for shifting the temporary shops selling fire crackers to Island Grounds or to any other suitable place in the City and they should frame a scheme and explore the possibility of settling the issue if not during that festival season or at least, before the subsequent festival season.

8. Chennai Fire Works Dealers' Welfare Association (petitioner in W.P. No. 25870/2013) filed W.P. No. 23471/2010 praying for issuance of a writ of mandamus directing the Director of Fire Service to issue No Objection Certificate to the members of their association in respect of the applications submitted and process the same and grant temporary licence, until a valid scheme is formulated for shifting the temporary shops for sale of fire crackers in terms of the orders dated 29.9.2006 and 20.10.2008, made in W.P. No. 38180/2005. A Single Bench of this Court has disposed of the said writ petition on 19.10.2010, by directing the respondents therein to consider and to issue temporary licences to the members of the petitioner's association in accordance with law, within a stipulated timeframe.

9. Mr. (Traffic) Ramaswamy alleging non-compliance of the order dated 24.8.2009, made in W.P. No. 17040/2009 filed Contempt Petition No. 1319/2010 and the First Bench of this Court has directed the respondents therein viz. The Commissioner, Corporation of Chennai and the Commissioner of Police, Greater Chennai City, to see to that during festival seasons, licence is not issued for sale of fire crackers in narrow streets or bylanes of Chennai City.

10. The petitioner in W.P. No. 25870/2013, filed W.P. No. 23085/2011 and Chennai Metro City Crackers Dealers Union (petitioner in W.P. No. 25871/2013) filed W.P. No. 23042/2011, both praying for the issuance of writs of mandamus directing the respondents therein to take suitable action on their representation and issue No Objection Certificates to its members on the applications for grant of temporary fire work licence until a regular scheme is framed in terms of the orders dated 29.9.2006 and 20.10.2008, made in W.P. No. 38180/2005. A Single Bench of this Court has disposed of the said writ petitions vide common order dated 11.10.2011, by granting liberty to the individual members of the petitioners' association to apply before the Commissioner of Police, Chennai City for grant of temporary licence to run a fire cracker shop and directed the said official to inspect the same and issue temporary licence within a stipulated timeframe.

11. Chennai Fire Works Dealers' Welfare Association challenging the order passed in W.P. No. 23085/2011, filed W.A. No. 1977/2011 and the First Bench of this Court along with the said writ appeal, has also taken up W.P. No.

22991/2011, filed by Mr. (Traffic) Ramaswamy, for issuance of a writ of mandamus directing the respondents therein to take suitable action on his representation dated 27.9.2011, and disposed of the same by a common judgment dated 18.10.2011, with certain directions. Thereafter, Chennai Fire Works Dealers' Welfare Association filed Review Application No. 189/2011 to review the said order and it was disposed of on 21.10.2011, with certain modifications by taking into consideration the submission made by the learned Advocate General that 102 numbers of temporary cracker shops have been permitted and the remaining 18 numbers were also to be measured and earmarked.

12. Tvl. Syed Sulthan and others aggrieved by the order dated 4.1.2011, made in Contempt Petition No. 1319/2010, filed SLP (Civil) before the Hon'ble Supreme Court of India and it was represented that the High Court has passed the order without affording opportunity to them. The Hon'ble Supreme Court of India taking into consideration the said submission, has granted liberty to the petitioners therein to move the High Court by filing an appropriate application and disposed of the SLP accordingly, vide order dated 15.10.2012.

13. Thereafter, Tvl. Syed Sulthan and others filed Sub Application Nos. 501 and 502/2012 in Contempt Petition No. 1319/2010, for reopening and recalling the order dated 4.1.2011, made in Contempt Petition No. 1319/2010, and to grant them leave to intervene as a third party in the said contempt petition. The said sub applications were dismissed on 6.11.2012, observing that there is absolutely no merit in it.

14. The first respondent viz. TTDC, has issued the Tender Notice dated 5.9.2013, inviting sealed tenders from reputed Event Managers/Organisers for organising Mega Diwali Fair 2013, for sale of Crackers/Food items/Garments/Car Parking/Amusement Park at Island Grounds, Kamarajar Salai, Chennai 9, for a period of 23 days from 12.10.2013 to 3.11.2013.

15. Mr. K.M. Vijayan, learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, has invited the attention of this Court to the series of orders passed by this Court as stated above, and vehemently contended that the members of the petitioners' association are small traders and they belong to lowest strata of the society and in order to augment their meagre income, they used to sell fire crackers during Diwali season by putting up small shops and in view of the orders passed by this Court, the venue was shifted to Island Grounds during 2011, wherein they were allowed to put up 114 temporary shops, each admeasuring 100 sq. ft. at the rate of 50 N.P. per sq. ft. and during 2012 also, such a kind of allotment was made on the same rate and by virtue of the present Tender Notification, the rate per sq. ft., is sought to be increased by manifold and in that event, the members of the petitioners' association will definitely be out of business as they will not be in a position to pay the same.

16. It is the further submission of the learned Senior Counsel appearing for the

petitioners, that within a close proximity, stalls selling food items and garments, are also sought to be put up by the first respondent-TTDC, taking advantage of the sale of crackers and in the event of any mishap, the members of the petitioners' association will definitely be blamed and from the safety angle also, and putting up of shops selling food items and garments, is in gross violation of Explosives Act and Rules framed thereunder and in the event of any mishap, no adequate escape route is available.

17. Lastly, it is the submission of the learned Senior Counsel appearing for the petitioners, that in any event, the tender conditions are onerous and if it is allowed, it would be nothing but penalising the members of the petitioners' association, who, in compliance of the orders passed by this Court, had shifted their shops to Island Grounds and if the rate per sq. ft. for putting up a temporary shop, is sought to be increased by manifold, they will be deprived of their business and legitimate expectation of their income during that period and further, the respondents are also estopped from floating tenders with onerous conditions and hence, prays for the quashment of the impugned Tender Notification.

18. Mr. T. Sundaravadanam, learned Counsel appearing for the petitioner in W.P. No. 26447/2013, which is filed as a public interest litigation, would submit that the petitioner was instrumental by moving this Court by way of public interest litigation as well as contempt petitions and due to the efforts taken by him only, the venue for sale of fire crackers has been shifted from the small lanes and bylanes to Island Grounds and the sixth respondent - TTDC without adopting any ethical means, is acting as a commercial enterprise and sought to put up food courts and shops for selling garments also, which lies very close proximity to temporary shops selling fire crackers, and the portions selling fire crackers and food items/garments, are divided by Coovam River and both places are sought to be connected by putting up four wooden bridges and in the event of fire mishap, there is likely to be exodus of crowd used to assemble in large numbers, and there is likely to be a stampede and the possibility of collapse of the temporary wooden bridges is not ruled out and there is every likelihood that a few of the public may also fall to the Coovam River, which admittedly, carries sewerage water only. Therefore, it is vehemently contended by the learned Counsel appearing for the petitioner, that at least the tender for putting up food courts as well as garment shops, is to be quashed and has also drawn the attention of this Court to the various orders passed by this Court as stated in the earlier paragraphs.

19. Mr. P.H. Arvind Pandian, learned Additional Advocate General appearing for the first respondent TTDC, has invited the attention of this Court to the counter affidavit filed by TTDC in W.P. No. 25871/2013 and the common counter affidavit filed in all the writ petitions, and would submit that the impugned Tender Notification is in full compliance of the provisions of the Explosives Act and the Rules framed thereunder and also the judgment of this Court passed in W.P. No.

38180/2005. It is further submitted by the learned Additional Advocate General that the first respondent - TTDC has allotted 86400 sq. ft. of open space in one place near the War Memorial, to the members of the petitioners' association in W.P. Nos. 25870 and 25871/2013, based on the No Objection Certificate obtained from Fire and Rescue Services Department as well as the Department of Explosives.

20. Insofar as the stand taken by the petitioner in W.P. No. 26447/2013, it is submitted by the learned Additional Advocate General that 3,00,000 sq. ft. of land is available on the other side of the Island Grounds, wherein it is proposed to temporarily put up food courts and garment shops and also amusement park for the purpose of entertainment of the visiting public and it is away from the place, where temporary shops selling crackers are going to be put up, and for the smooth passage, four wooden bridges are also being put up with adequate safety measures across Coovam River, and all possible eventualities in the event of any mishap, have also been taken into consideration in consultation with the Fire and Rescue Services Department and Explosives Department and accordingly, all the safety measures are in place.

21. It is also submitted by the learned Additional Advocate General that with regard to the tender conditions, the members of the writ petitioners' association cannot raise any objection as it is in the exclusive domain of the first respondent TTDC to prescribe necessary tender conditions and in fact, during last two years, the rate per sq. ft. was calculated in respect of the entire area allotted for putting up temporary shops for selling fire crackers and not the particular area, in which, shops have been put up and the same procedure and criteria are being followed this year also.

22. It is the further submission of the learned Additional Advocate General that in response to the Tender Notification, the bid of a particular person has been received quoting Rs. 44.85 lakhs for allotment of 3,00,000 sq. ft., which works out to 65 paise per sq. ft. per day and the evaluation of the tenders received, will be in strict conformity with the provisions of Tamil Nadu Transparency in Tenders Act, 1998, and the Rules framed thereunder and the amendments made to the said Rule, and therefore, there is no need for apprehension on the part of the respective writ petitioners with regard to the terms and conditions of the tender and the safety measures.

23. Mr. S.T.S. Moorthy, learned Government Pleader appearing for the respondents 3 and 4 in W.P. No. 25870 and 25871/2013 and for the respondents 3 and 5 in W.P. No. 26447/2013, has submitted that while W.P. Nos. 25870 and 25871/2013 were pending before the learned Judge, the Joint Chief Controller of Explosives was asked to appear before the Court, on 19.9.2013, and he has also filed a report containing the safety measures to be adopted, and the Fire and Rescue Services Department was also contacted, wherein they have also offered their opinion and the sale of fire crackers as well as running of food courts, garment shops and amusement park will be subject to strict compliance of the

norms prescribed by the Explosives Department as well as by the Fire and Rescue Services Department.

24. This Court paid its best attention to the submissions made by the learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, and the learned Counsel appearing for the petitioner in W.P. No. 26447/2013 and also the submission of the learned Additional Advocate General appearing for the first respondent in W.P. Nos. 25870 and 25871/2013 and for the sixth respondent in W.P. No. 26447/2013 and the learned Government Pleader appearing for the respondents 3 and 4 in W.P. Nos. 25870 and 25871/2013 and for the respondents 3 and 5 in W.P. No. 26447/2013 and the learned Counsel appearing for the second respondent in all the writ petitions and the learned Counsel appearing for the fourth respondent in W.P. No. 26447/2013, and also perused the earlier orders passed by this Court as enumerated in the earlier paragraphs.

25. The fact remains that in compliance of the orders passed by this Court, the venue of sale of fire crackers during Diwali season, was shifted to Island Grounds during 2011 and 120 shops were put up and the total area occupied by the stalls was 28,800 sq. ft. and the total space between each shop was 24,000 sq. ft. and the walking space for public movement was 33,600 sq. ft., in all aggregating to 86,400 sq. ft., and the rate was fixed at 50 paise per sq. ft. by taking into consideration the entire area and apart from the said charge, dismantling charges, electricity charges, gate repair charges, car parking charge and cleaning charges were also included. For the year 2012 also, 114 shops were put up in the Island Grounds and it was charged at the rate of 50 paise per sq. ft. per day and the temporary shops conducted business for five days. The first respondent TTDC has floated the impugned tender for organising Mega Diwali Fair 2013, for sale of Crackers/Food items/Garments/Car Parking/Amusement Park at Island Grounds, Kamarajar Salai, Chennai 9, for a period of 23 days from 12.10.2013 to 3.11.2013, vide Tender Notification dated 5.9.2013.

26. As per the Tender Notification, the following is the schedule:

Sale of Tender Documents: From the date of Advertisement to 23.9.2013 on all working days between 10 a.m. to 3 p.m. at Fair Office, Island Grounds, Chennai 9.

Last Date and Time for submission of Technical Bid & Financial Bid: 24.9.2013 upto 11.00 A.M.

Date & Time of Opening of Technical Bid and Venue Tamilnadu Tourism Development Corporation Ltd., No. 2, Wallajah Road, Chennai-600 002. : 24.9.2013 at 12.00 Noon.

Date & Time of Opening of Financial Bid and Venue Tamilnadu Tourism Development Corporation Ltd., No. 2, Wallajah Road, Chennai-600 002. : 24.9.2013 at 2.00 P.M.

27. Along with the tender documents, tender conditions for submission of

technical bid and financial bid and other terms and conditions are also available and according to the first respondent TTDC, the evaluation of the tenders would be in accordance with the provisions of Tamil Nadu Transparency in Tenders Act, 1998, and the Rules made thereunder and the Amendment made to it. The primordial submission of the learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, is with regard to the increase in the rate per sq. ft. of space to be occupied by the temporary stalls put up for sale of fire crackers and since the members of the petitioners' association had moved out from their own place to the place suggested by this Court, they should be given concession or leverage. Secondly, it was submitted that the location of the food courts, garment shops and amusement parks will be in close proximity to the location of the temporary shops selling fire crackers and in the event of any mishap, no proper or adequate escape routes are available and in that event, the entire blame is likely to be fell upon the members of the petitioners' association.

28. The sum and substance of the submission made by the learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, appears to be that the members of the petitioners' association legitimately expect that the same rates as adopted during both the years 2011 and 2012, have to be fixed and having complied with the order passed by this Court by shifting their location from their own place to the Island Grounds, they should be shown leniency/concession.

29. In *Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another*, , challenge was made to a notification, by which, the sugar industry was delicensed and the Hon'ble Supreme Court of India held that the doctrine of legitimate expectation plays no role and the appropriate authority is empowered to take a decision by an executive policy or under law.

30. The petitioners in W.P. Nos. 25870 and 25871/2013 also made an attempt that the shifting of the shops from their own place to the Island Grounds is in compliance of the Court order and also from the safety angle and since the shifting of the venue was compulsory in nature, they should be given some leverage or concession in the rate for locating the temporary shops in the Island Grounds and since the said rate is going to be increased manifold on account of the impugned tender notification, the first respondent TTDC is estopped from doing so.

31. In the decision reported in *State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd.*, , it has been held, "The Doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard-and-fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties i.e. both the petitioner and the promisee."

32. Admittedly, the members of the petitioners' association are carrying on a

commercial activity with a profit motive and the first respondent TTDC, apart from promoting tourism in the State, wants to run food stall/garment shops/ amusement park for a temporary period and the conditions of the impugned tender notification would also disclose that the first respondent is going to process the tenders strictly in accordance with the Tamilnadu Transparency in Tenders Act, 1998, and the Rules framed thereunder. There is nothing wrong on the part of the first respondent TTDC to take advantage of the location of the temporary shops for selling fire crackers and earn something through legitimate means.

33. It is not the case of the members of the petitioners' association in W.P. Nos. 25870 and 25871/2013, that they have been treated indifferently; but, the fact remains, the same number of shops as that of the earlier period, are going to be allotted this year also.

34. In *Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others*, , Karnataka State Road Transport Corporation floated a tender for supply of tyres, etc., specifying certain pre-qualification criteria and challenging the vires of the same, a company which is engaged in the said line of activity, filed a writ petition before the High Court of Karnataka and it was withdrawn and subsequently, the pre-qualification criteria was modified, which was put to challenge by filing a writ petition. That writ petition was dismissed and so also the appeal and hence, the matter was taken up to the Hon'ble Supreme Court of India by way of Special Leave Petition. The Hon'ble Supreme Court of India, after taking into consideration its earlier decisions, found that the following principles emerged:

23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to

ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached? and

(ii) Whether the public interest is affected?

35. Therefore, from the above said decision, if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by the Court is very restrictive, since no person can claim a fundamental right to carry on business with the Government and in that event, there cannot be any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

36. It is also useful and relevant to extract the earlier decision of the Hon'ble Supreme Court of India reported in *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, hereunder:

7. The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it

comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

37. The apprehension expressed by the petitioners in W.P. Nos. 25870 and 25871/2013, that there is a likelihood of increase in rate per sq. ft. and in that event, they have to make more sales and consequently, their profit margin is likely to take a nosedive or they may incur loss, in the considered opinion of the Court, lacks merit and substance for the reason that while running a commercial enterprise or venturing into a commercial activity, earning profit or suffering loss is a part and parcel of the business and they cannot always expect to earn profit, as it depends upon various factors.

38. All the writ petitioners also expressed that on account of location of food stalls/garment shops/amusement park very near to the place of location of the temporary shops selling fire crackers, the safety of the public is compromised for the reason that in the event of any mishap, including fire mishap, number of lives are likely to be lost and ultimately, the members of the petitioners' association have to take up the blame.

39. The controller of Explosives pursuant to the order dated 19.9.2013, passed by the learned Judge in W.P. Nos. 25870 and 25871/2013, has convened a joint meeting inviting the Commissioner of Police, Greater Chennai, who is the licensing authority for temporary shops selling fire crackers under Explosive Rules, 2008, Officers of the Tamil Nadu Tourism Development Corporation first respondent, who is offering their land for locating the shops and all of them made a physical inspection of the Island Grounds on 20.9.2013. Subsequently, another meeting was called on 21.9.2013, and after taking into consideration all the relevant aspects, the Joint Controller of Explosives suggested the following requirements:

1. Each shed (shop) shall be independent and made up of non-flammable material which is closed and secured so as to prevent unauthorized persons having access thereto.
2. The sheds shall be at a distance of at least three meters from each other and fifty meters from any protected works (Protected work is defined under Rule 2(43) of Explosive Rules, 2008).
3. All the sheds in a cluster shall be in a single row.
4. There shall not be any running roof for connecting all such sheds. Each shed shall be an independent structure with roof.
5. The sheds shall not face each other.
6. No oil burning lamps, gas lamps or naked lights shall be used in the shed or within the safety distance of the sheds.
7. Electrical lights, if used, shall be fixed to the wall or ceiling and shall not be suspended by flexible wire.

8. Electrical switches for each shed shall be fixed rigidly to the wall and a master switch shall be provided for each row of sheds.
9. Display of fireworks shall not be allowed within fifty meters of any shed.
10. Smoking is prohibited in the area.
11. Adequate number of fire extinguishers, fire tenders, fire buckets and any other safety precautions as prescribed by the Tamil Nadu Fire and Rescue Department shall be provided at the location.
12. Emergency exits adequately shall be provided in the location for easy and convenient escape of public in case of any emergency.
13. Adequate number of Ambulance services/First-aid Counters may be provided for immediate service in case of emergency.

It is submitted before the Honourable High Court that Notification GSR.687(E) dated 27.09.1984 was issued when there was no specific rule governing temporary shops requirements in Explosive Rules, 1983. Now Explosives Rules, 2008 is in force and a specific Rule 84 has been provided.

40. Similarly, the team attached to the Tamil Nadu Fire and Rescue Services Department, also inspected the Island Grounds on 27.9.2013, along with the Trade Fair Authorities and filed their inspection report and the same is extracted below:

- a. The proposed location of the cracker shops are shifted from the last year to the new location away from the main grounds and on the other side of the Coovum River and the shops are arranged in a row as per the guidelines of the Explosives Department. The amusement park, garment stores and food fair is located on the main island grounds away from the cracker shops across the Coovum River. The gap between the cracker shops and the Fair area is about 70 m. Rule No. 84 of the Explosives Rules requires that the temporary shops should be at least fifty meters away from any protected works like persons where dwell, work or assemble.
- b. The Coovum River separates the fair area and the cracker shops and acts as safety distance between the two places. As there is only entry and exit point for the cracker shop area, they have proposed six foot over bridges along the Coovum River to connect the two places so as to people cross over and TTDC also proposed to barricade the banks of the Coovum River with tin sheets.
- c. They have also requested that as it is a Fair organized by the Government, it may be allowed from the fire safety point of view and assured to follow the conditions put forth by the Department.

The details of relocation of cracker shops and the permission from the conduct of fair is received by this Department only on 27.9.2013 AN. It is submitted that in view of the proposal for the re-location of the cracker shops from that of last

year to the other side of the Coovum River, as there is safety distance of 70 m. from the cracker shop area and as there is separate entry and exit points for cracker shop and fair area and of the safety measures proposed by the TTDC, the fair may be permitted subject to strict observance of public safety norms by the TTDC with the following conditions: Cracker Shop area:

1. The temporary cracker shops should be put up as per the strict guidelines of the Explosives Department and as per the provisions of the Rule No. 84 of the Explosives Rules.
2. No vehicle should be allowed to park inside the cracker shop area and the transportation and handling of cracker bundles should be done with care and supervision. Cracker bundles should not be dragged or thrown away or rough handled.
3. No wooden basement should be allowed as it is easily inflammable and instead tin sheets may be used. No loose hanging wires should be allowed.
4. No ornamental cloth or canvas materials should be allowed inside the pandal. No carpets should be used.
5. Only independent shops with 3 mt. safety distance should be allowed.
6. At least three Fire Service Water Tenders along with 3 municipal water lorries should be kept in standby at the cracker shop area as a precautionary measure. Sufficient extinguishers and sand and water buckets should be stored inside the each independent cracker shops.
7. No naked lamps or cooking should be allowed anywhere near the cracker shop area. Smoking should be completely banned. Private security guards should be posted to supervise the above arrangements.
8. At least two exits separate from each other should be provided to each shop. Welding should be completely banned in the area after cracker shops allowed to function.

Fair Area:

1. Use of LPG should be discouraged at the food court area and only the packaged sweets and savories should be allowed to sell. No cooking for inmates should be permitted. Preparing of Murukku, samosa, vadai or appalam using oil should be completely banned in the food court area.
2. For the fair area shops no entry and exit points should be allowed towards the cluster of cracker shops.
3. For children amusement park, necessary electrical safety certificate must be obtained.
4. As the garment clothes are easily inflammable and add to huge fire load, necessary fire safety measures should be in place before erection of shops.

5. At least three Fire Service Water Tenders along with 3 municipal water lorries should be kept in standby at the fair area as a precautionary measure. Sufficient extinguishers and sand and water buckets should be stores inside the each independent shop.

6. The authorities/organizers are instructed to ensure that the customers after purchase of crackers should not be permitted to enter into the amusement/fair area with the cracker parcels. The entry/exit points should be suitably manned and proper supervision should be executed so that the customers with the cracker parcels should not mingle with the public in fair area.

7. Proper public address system, separate and independent Police, Fire service and 108 ambulance control room should be in place to monitor the public and to render immediate services at times of emergency.

41. Mr. T. Sundaravadanam, learned Counsel appearing for the petitioner in W.P. No. 26447/2013, would submit that Clause No. 5(b) and Clause No. 2 regarding fair area conditions, as extracted above, run contra to each other. It is further submitted by him that the location of the foot bridges has to be done away.

42. In response to the said submission, the learned Additional Advocate General submitted that insofar as location of food courts/garment shops/amusement parks, number of exit points are available facing Kamarajar Salai and the local of four wooden bridges are only in addition to those exit points. It is further submitted by the learned Additional Advocate General that the people, who are coming from the cracker shops, will be thoroughly checked and none of them will be allowed to carry crackers while they are entering the food court, etc., and adequate safety measures will be in place. The said submission is placed on record.

43. Since the experts in the relevant field, had given their opinions and suggestions as to the fair and smooth conducting of the Fair as well as sale of fire crackers in the temporary shops to be located, with the assurance from the concerned official respondents that all safety and rescue measures will be in place, this Court is of the view that the apprehension expressed by the writ petitioners in that regard, has been answered adequately and sufficiently.

44. The learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, also brought to the knowledge of this Court that in various parts of the State, temporary shops are allowed to be put up for selling fire crackers and the concerned authorities are also to be directed to ensure that all safety and rescue mechanisms are in place in the event of any mishap in those areas. This Court appreciates the concern expressed by the learned Senior Counsel appearing for the petitioners in W.P. Nos. 25870 and 25871/2013, and directs the respondents 2 to 4 in W.P. Nos. 25870 and 25871/2013, who are arrayed as respondents 2, 3 and 5 in W.P. No. 26447/2013, to take adequate and proper safety measures with regard to the location of the temporary shops selling crackers in various parts of the State and Chennai City and see to that the

location of the shops and sale of fire crackers is in strict compliance of the relevant norms and regulations. In the light of the reasons assigned above, all the writ petitions are dismissed subject to the observations made above. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected MPs are also dismissed.