
(2014) 06 MAD CK 0243

In the Madras High Court

Case No : W.A. No. 2842 of 2012, W.P. No. 33355 of 2013 and M.P. Nos. 1/12, 1, 1/13 and 2/13

Coimbatore District Wholesale All Vegetables Merchants Association

APPELLANT

Vs

Coimbatore City Municipal Corporation

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 260, 260(2), 6(2)

Citation : (2014) 06 MAD CK 0243

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—The petitioner in W.P. No. 17755/2011 is the appellant and the appellant Association filed the said writ petition praying for issuance of a Writ of Mandamus forbearing the respondents 1 and 3 from levying, imposing or collecting any fee or sum on the goods carried into the market in vehicles, or by animal-drawn carriages or persons, other than or in addition to the levy on the entry of such vehicles, animal-drawn carriages or persons. Similarly, Coimbatore District Wholesale All Vegetable Merchants Association has also filed W.P. No. 17756 of 2011 praying for the very same relief and both the writ petitions, after contest was dismissed on 27.02.2012. The petitioner in W.P. No. 17755/2011 alone has filed this writ appeal and the petitioner in W.P. No. 17756/2011 did not file any appeal challenging the order dismissing the writ petition and therefore, the order insofar as they are concerned, becomes final.

2. One A. Abdul Hakeem has filed W.P. No. 33355/2013 praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to Resolution No. 226 dated 29.01.2010 as amended by Resolution No. 242 dated 02.03.2010 and quash the same and forbear the respondents 1 and 3 from levying, imposing or

collecting any fee or sum on the goods carried into the market in vehicles, or by animal-drawn carriages or persons, other than or in addition to the levy on the entry of such vehicles, animal-drawn carriages or persons.

3. Since the writ appeal as well as the writ petition pertain to the very same issue with regard to the levying, imposing or collecting any fee or sum on the goods carried into the market in vehicles, or by animal-drawn carriages or persons, both the cases are disposed of by this common judgment.

4. The appellant, in the affidavit, filed in support of W.P. No. 17755/2011 stated among other things that in terms of Section 379(2) of the Coimbatore City Municipal Corporation Act, 1981 [hereinafter referred to as "Act"], the Commissioner of the said Corporation may in any public market charge and levy and one or more of the following fees at such rates as the standing committee may determine as may appear to him proper or may farm out such fees on such terms and subject to such conditions as he may deem fit and the contract of collecting fees has been granted in favour of the third respondent and the third respondent apart from levying fee in respect of vehicles such as motor vehicles or animal drawn carriages which are bringing goods into the market, also illegally collecting additional charges on the goods carried in the said vehicle and it amounts to double levy.

5. The Resolution No. 168 dated 28.12.2009, which was amended by Resolution No. 242 dated 02.03.2010 is also in violation of the above said provision and the action of the third respondent in collecting fees on the vehicles as well as the goods carried in the said vehicles amounts to unjust enrichment and without authority of law and inspite of the said fact being brought to the knowledge of the respondents 1 and 2 by means of representations, they have not chosen to take cognizance and therefore, filed the writ petition. As already pointed out, the Coimbatore District Wholesale All Vegetable Merchants Association has also filed W.P. No. 17756/2011 making a similar challenge.

6. The first respondent has filed a counter in W.P. No. 17755/2011, which is the subject matter of challenge in this writ appeal, wherein it is contended that right from the inception of Corporation of Chennai, appropriate fee is being levied on the goods namely fruits and vegetables as well as the vehicles and even on persons who are bringing those goods and the rates so fixed were not regularly revised and under those circumstances, the contractors who have been awarded the contract to collect such rates represented for enhancement in the rates and it was considered by the Taxation and Finance Committee of the Corporation and the said Committee vide Resolution No. 2 dated 11.01.2010 had resolved to recommend for the revision of rates. The resolution of the Committee was placed before the Council meeting of the Corporation and by way of various resolutions, the Council had resolved to revise various rates to the various public markets and one such resolution is Resolution No. 226 dated 29.01.2010, wherein it was resolved to revise the rate for the public markets situated within the west zone of the Corporation.

7. It is further stated by the first respondent in its counter that various Traders Associations like the petitioner in W.P. No. 17755/2011/appellant herein submitted various representations for the revision of rates and it was considered by the Council by passing Resolution No. 242 dated 02.03.2010 and resolved to reduce the rates for certain items and for other items, the rate as it was fixed in the earlier Resolution No. 226 dated 29.01.2010 was confirmed. As per Resolution No. 242 dated 02.03.2010, it was resolved that the rates as fixed for the Anna Daily Market Mettupalayam Road are equally applicable to Dr. M.G.R. Wholesale Market also.

8. The first respondent, based on the said resolutions, invited tenders for collection of fees and insofar as Dr. M.G.R. Wholesale Market is concerned, the third respondent has offered higher rate of Rs. 1,08,01,000/- and the said offer was placed before the Council, which passed Resolution No. 290 dated 31.03.2010, accepting the offer of the third respondent and consequently granted the right to collect fee at the rate as it was already fixed by the Corporation for the period from 01.04.2010 and 31.03.2013 and appropriate administrative order was also passed by the Assistant Commissioner, West Zone, vide proceedings dated 31.03.2010. Accordingly, the third respondent, who has been awarded the contract has submitted a representation dated 04.04.2011 stating that the vendors are refusing to pay the fees as it was fixed by the Corporation and therefore, a joint meeting was convened on 05.04.2011 by the Assistant Commissioner, West Zone and both the writ petitioner as well as the third respondent had participated and they agreed to resolve the dispute amicably and since it was amicably settled, the third respondent once again submitted a representation dated 25.04.2011 stating that the rates fixed are very low and they are incurring loss and hence, prayed for revision of rates. Insofar as the legal plea as to the competence to collect fee in respect of entry of vehicles into the market as well as the goods and also the goods carried on by persons is concerned, submitted that it is empowered to levy fees as per Section 379(2)(a) of the Act and as per the said provision, it is having power to levy fee on goods also. It is further contended by the first respondent that the members of the petitioner Association in W.P. No. 17755/2011 are traders doing business in shops allotted to them within the public market and the fees now sought to be levied is one payable by the persons who is bringing the goods into the market for the purpose of sale and therefore, they cannot be termed as "aggrieved persons" and hence, they are not competent to challenge the impugned resolution as well as the award of contract in favour of the third respondent and therefore, prayed for dismissal of the writ petition.

9. The third respondent/contractor has also filed his counter contending that as per the terms of contract awarded to him, he has to deposit a sum of Rs. 1,15,97,357/- and he has also deposited Rs. 3,00,000/- towards security deposit and after receipt of the full amount for the 2nd period i.e., upto 31.3.2012, the first respondent by his proceedings dated 31.03.2011 passed an confirmation order for the 2nd year and for that period, the members of the petitioner

Association refused to pay as per the resolution passed by the first respondent and it was also brought to the knowledge of the first respondent and a joint meeting was convened to resolve the dispute and all of a sudden, both the Associations had filed writ petitions on untenable grounds. The third respondent would further state that the members of the petitioner Association had paid the fees between 01.04.2011 and for the earlier years, but refused to pay the fees for the next year and apart from depositing a huge sum of money, he has spent a sum of Rs.50,000/- towards cleaning the garbage and waste materials from the market premises and also took a stand that he is collecting fees strictly as per the resolution passed by the Corporation.

10. The learned Judge has analyzed the factual as well as legal submissions in details and after referring to the judgments in *The Commissioner of Income Tax, West Bengal II, Calcutta Vs. Naga Hills Tea Co. Ltd.*, *The Chief Commissioner, Delhi and Another Vs. The Delhi Cloth and General Mills Co. Ltd. and Others*, and *Arumugha Kone Vs. The Palayamcottai Municipal Council and Others*, has held that in terms of Section 379(2) of the Act, in addition to the fees for the use of the shops, stalls, pens or stands in such market, fees on vehicles or pack animals carrying, or on persons bringing, goods for sale in such market and the commissioner may, in any public market, charge and levy fee for the use of, or for the right to, expose goods for sale, in such market, if the goods are brought into such markets, at the rate as the standing committee may determine. The learned Judge has also found that ever since the inception of the first respondent Corporation, appropriate fee is being levied on the goods viz., the vegetables and fruits as well as on vehicles and even on the persons who are bringing those goods and since the rates so fixed were not regularly revised and that the contractors who have been awarded contract represented that the rates fixed were very meager, it was placed before the Taxation and Finance Committee and it passed Resolution No. 2 dated 11.01.2010 recommending for revision of rates and it was placed before the Council meeting of the first respondent Corporation and by way of various resolutions, it was resolved to revise various rates to various public markets and one such resolution is Resolution No. 226 dated 29.01.2010, wherein the Council had resolved to revise the rate for the public markets situated within the West Zone of the Corporation and since various Associations aggrieved by the rates fixed, had approached the first respondent Corporation for revision of rates and it was placed before the Council meeting of the Corporation at Chennai and by Resolution No. 242 dated 02.03.2010 (impugned resolution), it was resolved to reduce the rates for certain items and for other items, the rates, as it was fixed in the earlier Resolution No. 226 dated 29.01.2010 (impugned resolution) was confirmed. The learned Judge, in respect of the challenge made to the competence of the respondents 1 and 3 to levy fees on entry of motor vehicles or on persons bringing the goods etc., has found that the first respondent is having power u/s 379(2) of the Act and in the absence of any challenge made to the said provision, levy of fees on the part of the first respondent is sustainable and citing the said reason, has dismissed both the writ

petitions, vide common order dated 27.02.2012.

11. The petitioner in W.P. No. 33355/2013 claims that he has given licence in respect of Shop No. 64 in Dr. M.G.R. Wholesale Market and would contend that the levy is in the nature of fee and not a tax and the impugned resolutions dated 29.01.2010 and 02.03.2010 are passed without jurisdiction and the action of the third respondent is illegal and he being a small trader is also affected financially.

12. The first respondent has filed counter as well as additional counter and submitted that similar challenge made in W.P. Nos. 17755 and 17756/2011 has ended in dismissal and the petitioner is none other than the son of Mr. A.Abdul Kakeem, General Secretary of the petitioner Association in W.P. No. 17755/2011/appellant in W.A. No. 2842/2012 and though the petitioner and his father may be having different shops, their business is one and are jointly doing business on both shops. It is further contended by the first respondent that challenge made to the resolutions is highly belated for the reason that both the resolutions came to be passed as early as in the year 2010 and further that the petitioner is also one of the applicant for collection of rates and he actually participated in the tender and in fact he was the second highest bidder in the auction held on 17.03.2010 and he has made an offer of Rs. 108 lakhs for the year 2010-2011 and he has been set up by the petitioner in W.P. No. 17755/2011 and he chosen to make a challenge to both the resolutions only after the dismissal of W.P. No. 17756/2011. Insofar as the legal plea is concerned, it is the stand of the first respondent that the fee which is charged u/s 379(2)(c) of the Act, is for entry of goods and vehicle into the market and the fee is being paid by the concerned vehicle owners and not by the traders like the petitioner and therefore, the charges u/s 379(2)(a) and 379(2)(c) are for totally different and distinct purposes and on different persons and hence prays for dismissal of the writ petition.

13. The petitioner, in response to the counter and additional counter, filed a rejoinder admitting that he, being the secretary of one of the Association and an independent license holder, is entitled to make a challenge to the impugned resolutions and reiterated the stand taken in the writ petition.

14. The learned counsel appearing for the appellant in W.A. No. 2842/2012 and the learned counsel appearing for the petitioner in W.P. No. 33355/2013 has drawn the attention of this Court to Section 379 of the Coimbatore City Municipal Corporation Act, 1981 and would contend that as per sub-section 2 of Section 379 of the said Act, the Commissioner alone is competent to charge and levy one or more of the following fees contemplated under Sections 2(a) to 2(e) and it is for the Commissioner to form satisfaction before levying such fee and in the case on hand, admittedly, based on the resolutions only such a fee is being collected on the vehicles as well as on the goods carried on the vehicles as well as the persons bringing the goods into the market and since such act has not been done by the Commissioner, the collection of such fee by the third respondent is unsustainable in law.

15. Per contra, Mr. R. Yashod Varadhan, learned Senior Counsel appearing for the first respondent would contend that Section 379(2)(a) and 2(c) of the Act operate in different field and as per sub-section 2(a), fees for the use of, or for the right to, expose goods for sale and as per sub-section 2(c), fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets is permissible and the request for revision of rates made by the contractors was considered by the Taxation and Finance Committee, wherein a recommendation has been made for revision of rates and it was placed before the Council meeting wherein a decision has been taken to revise the rates and accordingly, resolutions were also passed and aggrieved by the quantum of rates fixed, number of representations were received including from the appellant Association and a decision has been taken to revise rates for certain items and confirmed the rates for certain items and in fact, for one year the members of the association were also agreed to the same, but chosen to make a challenge belatedly. The learned Senior Counsel appearing for the first respondent has also invited the attention of this Court to the decision in *Arumugha Kone Vs. The Palayamcottai Municipal Council and Others*, and would submit that a Division Bench of this Court has considered the scope of Section 260 of the District Municipalities Act, 1920 which is *pari materia* to Coimbatore City Municipal Corporation Act, 1981 and held that such a levy is permissible and without making a challenge to the vires of the said provision, it is not open to the appellant/writ petitioner to contend otherwise. The learned Senior Counsel appearing for the first respondent has also produced the original files regarding the resolutions passed by the Coimbatore City Municipal Corporation and would submit that while passing Resolution No. 226 dated 29.01.2010, the Commissioner in-charge of the Corporation was also present and so also while passing Resolution No. 242 dated 02.03.2010 and in terms of Section 379(2) of the Act, if it appears to the Commissioner that the rates fixed by the standing committee is proper, he may levy such fee on such terms and subject to such conditions as he may deem fit and since the Commissioner in-charge as well as the Commissioner had participated in both the meetings, it cannot be contended that such levy was made by the Coimbatore Corporation Council only and not by the Commissioner and hence, prays for dismissal of the writ appeal as well as the writ petition.

16. In reply to the submissions made by the learned Senior Counsel appearing for the first respondent, the learned counsel appearing for the appellant has invited the attention of this Court to the judgments in (i) *The Commissioner of Income Tax, West Bengal II, Calcutta Vs. Naga Hills Tea Co. Ltd.*, , (iii) *Mohammed Faruk Vs. State of Madhya Pradesh and Others*, , (iv) *State of Bihar v. Bata Shoe Co. Limited* [AIR 1958 SC 1018] and (v) *Sadhu Singh Vs. Delhi Administration*, .

17. This Court has carefully considered the submissions made by the respective learned counsel appearing for the appellant and the writ petitioner, the learned Senior Counsel appearing for the first respondent, the learned Special

Government Pleader appearing for the second respondent and also the learned counsel appearing for the third respondent and perused the materials available on record.

18. It is relevant to extract Section 379 of the Coimbatore City Municipal Corporation Act, 1981:

379. Powers of municipal authorities in respect of public markets.-

(1) The council may provide places for use as public markets.

(2) The commissioner may in any public market charge and levy and one or more of the following fees at such rates as the standing committee may determine as may appear to him proper or may farm out such fees on such terms and subject to such conditions as he may deem fit-

(a) fees for the use of, or for the right to, expose goods for sale, in such markets;

Explanation- The fees under this clause shall not be levied unless the goods are actually brought into such markets;

(b) fees for the use of shops, stalls, pens or stands in such markets;

(c) fees on vehicles or pack-animals carrying, or on persons bringing goods for sale in such markets;

(d) fees on animals brought for sale into, or sold in, such markets; and

(e) licence fees on brokers, commission agents, porters, weighmen and measurers practising their calling in such markets.

(3) Such fees shall be recoverable in the same manner as the property tax.

(4) The council may, with the sanction of the Government, close any public market or park thereof.

As per sub-section (2) of Section 379, if it appears to the Commissioner that the rates as prescribed by the standing committee are proper, he may levy the same subject to such conditions as he may deem fit. Sub-section 2(a) of Section 379 enables the Commissioner to levy fees for the use of, or for the right to, expose goods for sale, in such markets and as per sub-section 2(c), fees on vehicles or pack-animals carrying, or on persons bringing goods for sale in such markets can also be levied. Explanation to sub-section 2(a) says that the fees under this clause shall not be levied unless the goods are actually brought into such markets.

19. A Division Bench of this Court has considered the scope of Sections 6(2) and 260(2) of the Tamil Nadu District Municipalities Act, 1920 in the decision in Arumugha Kone Vs. The Palayamcottai Municipal Council and Others, and held that stall holders are merely license holders who are allowed to occupy small portion of the market for the sale of their goods and the payments made by the

traders were fees for the purpose of shops within the meaning of Section 260(2) of the Tamil Nadu District Municipalities Act, 1920 and the traders were licensees within the meaning of Sections 52 and 54 of the Easements Act. The Division Bench of this Court further held that the fees in the Act has been used to denote also the payments in the nature of rents/charges collected from the licensees for the benefit of management of the municipality itself, provided at its own cost. As regards the competency to collect fees for the use of, or for the right to, expose goods for sale, in such markets and levy of fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets is concerned, the Division Bench of this Court has held as follows:

10. We would like to point out that the expression, "fees" as used in different clauses of Sub-section (2) of Section 260, having regard to the context in which it has been used, cannot mean the same thing. Clause (a) of sub-section (2) of Section 260 refers to the fees for the use of, or for the right to expose goods for sale in, such markets. Clause (b) uses the expression "fees" for the use of shops, stalls, pens or stands in such markets. It will be seen that the expression, "fees" in these two clauses has been used in the same sense. While clause (a) deals with the use of markets as such, clause (b) deals with the use of shops, stalls, pens or stands in the markets. With reference to clauses (a) and (b), the common feature is that the fee is for the use of the place. Under clause (c), the fee is levied on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets, whether they are sold or not. The fees on vehicles or animals will have necessarily to be paid by the person in charge of the same. Therefore, the expression, "fees" in this clause is not referable to the use of the place as such, as distinct from the fees provided for in clauses (a) and (b). From this point of view, the fees provided for in clauses (a) and (b) are analogous to stallage, while the fees provided in clause (c) are analogous to toll. Clause (d) refers to fees on animals brought for sale into, or sold in, such markets. Here again, what attracts the fees is the bringing of animals for sale into the market or the actual sale of animals in the market, even though the same might not have been brought for sale. From this point of view, the concept of fees in this clause will differ from those in clauses (a) and (b) on the one hand and clause (c) on the other. Clause (e) deals with license fees on brokers, commission agents, weighmen and measurers practising their calling in such markets. Only in this case there is the provision for the levy of license fees on the persons concerned in respect of the practice of their callings by the persons concerned, with a view to avoid any malpractice. It is significant to note that except in clause (e), even the word, "licence" does not occur in the other clauses.

11. Thus, an analysis of Sub-section (2) of Section 260 of the Act will clearly indicate that the expression "fees" has not been used in the same sense in all the clauses of the said sub-section.

12. Mr. M.K. Nambiar contended that the expression "fees" occurring in a statute should have the same meaning throughout the Act. Certainly as a general

proposition of law, no objection can be taken to the same. But at the same time, it could not be overlooked that the same expression may take different meanings and colour in the context in which it has been used. Having regard to the context in which the expression "fees" has been used in all the five different clauses, of Sub-section (2) of Section 260 of the Act, it is clear that the said expression does not mean the same thing in all the said five clauses.

13. It is in view of this alone, Ramachandra Iyer, J., as he then was, in V.S. T. Thanusthaseem Hammepalli Madarasa, Melapalayam, Tirunelveli District, represented by its Huqdar, V.S. T. Syed Thameem v. Melapalayam Municipality, represented by its Commissioner, Melapalayam, Tirunelveli District, stated that,

the levy of a fee on vehicles which bring the goods for sale in the market and on brokers, commission agents and weighmen cannot in any sense be said to be a fee in respect of the occupation of the property.

and we are in entire agreement with that statement. Admittedly, the present cases fall under clause (b) of Sub-section (2) of Section 260. From what we have indicated above, it is clear that the fees referred to in the said clause mean only the fees for the occupation of the particular stall situated in the market of which admittedly the Municipal Council is the owner and therefore there can be no question of quid pro quo in the sense of the said fees being commensurate with the cost of service; rendered by the Municipal Council either to the appellant and the petitioners or to the markets as a whole.

The Division Bench of this Court further held that the writ petitions which has been filed for the relief which are more or less similar to the relief claimed by the appellant and therefore, they are liable to be dismissed on the simple ground that by the enhancement of the fees in question, no right of the petitioners has been affected. Ultimately, the Division Bench of this Court in the above cited decision has rejected all the contentions put forward by the appellant and the writ petitioners and dismissed the writ appeal as well as the writ petition.

20. In the considered opinion of this Court, the above cited decision is squarely applicable to the facts of this case for the reason that Section 260 of the Tamil Nadu District Municipalities Act, 1920 is *pari materia* to Section 379 of the Coimbatore City Municipal Corporation Act, 1981.

21. It is the primordial submission of the learned counsel appearing for the appellant and the writ petitioner that the Commissioner has failed to form any such opinion and the resolutions passed by the Coimbatore City Municipal Corporation Council alone has been implemented. The said submission lacks merit and substance for the reason that the files would disclose that the Commissioner in-charge had participated in the meeting held on 29.01.2010 and the Commissioner, Corporation of Coimbatore had also participated in the meeting held on 02.03.2010 and after forming opinion only, the resolutions were implemented and tender was also called for collection of rates and the third respondent namely Mr. K. A. Abhudahir has become the successful bidder.

22. It is very pertinent to point out at this juncture that the petitioner in W.P. No. 33355/2013 was also one of the bidders, but he was unsuccessful and he deliberately suppressed the said fact of participating in the said tender in the affidavit filed in support of the writ petition and though the said fact was brought to the knowledge of this Court in the counter filed by the first respondent, the writ petitioner, in the rejoinder affidavit also, did not whisper anything about his participation in the said tender and therefore, he is guilty of suppression of material facts.

23. It is also stated by the first respondent in his counter that the petitioner in W.P. No. 33355/2013 is none else than the son of the Secretary of appellant Association in W.A. No. 2842/2012 and though it is the stand of the petitioner in his rejoinder that he is a separate licensee in respect of shop No. 64 and being an independent license holder, he is entitled to challenge the resolutions dated 29.01.2010 and 02.03.2010, the suppression of his participation in the tender for collection of rates coupled with the fact that his father is also the Secretary of the appellant Association, is something which is very relevant for the purpose of deciding the writ petition.

24. The Coimbatore City Municipal Corporation based on the representation submitted by the contractors for revision of rates, has referred the matter to the Taxation and Finance Committee and it was resolved to recommend revision of rates, which was placed before the Council meeting of the Corporation held on 29.01.2010 and by Resolution No. 226, it was resolved to revise the rates and several associations including the appellant Association, aggrieved by the revision of rates, made representations to the Coimbatore City Municipal Corporation and once again it was placed before the Council meeting held on 02.03.2010 and by passing Resolution No. 242, it was resolved to revise the rates for certain items and in respect of rates fixed for Anna Daily Market and it has been further resolved that the rates fixed for Anna Daily Market are to be applicable to Dr. M.G.R. Wholesale Market also and both the resolutions were came to be passed during January 2010 and March 2010 respectively and in fact, the appellant Association has also agreed for such rates and kept quiet for one year and chosen to make a challenge belatedly and therefore, the appellant as well as the writ petitioner are guilty of delay and laches also.

25. In the decision in Arumugha Kone case (cited supra) it has been held that on account of collection of such rates and by the enhancement of the fees in question, no right of the petitioner has been affected and it is the specific stand of the first respondent in its counter filed in W.P. No. 17755/2011 that the fees now sought to be questioned is payable by the persons who is bringing the goods into the market for the purpose of sale and not by the members of the Association (appellant in W.A. No. 2842/2012) and therefore, the appellant Association cannot be termed as "aggrieved person" to make a challenge to the said levy.

26. The decisions relied on by the learned counsel appearing for the appellant

has no application to the facts of this case for the reason that the legal proposition laid down in the above cited decision in Arumugha Kone case cannot be disputed, but as per Section 379(2)(a) and (2)(c), levy of such fees for the use of, or for the right to, expose goods for sale, in such markets and levy of fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets is permissible and therefore, the first respondent is having competence to levy such fees.

27. This Court on a threadbare analysis of the factual aspects and legal position is of the considered view that the grounds of challenge made by the appellant as well as the writ petitioner lacks merit and substance.

28. The petitioner in W.P. No. 33355/2013 is guilty of suppression of his participation in the tender held on 17.03.2010 and though a specific averment was made to that effect in the counter filed by the first respondent, the petitioner, in his rejoinder, has made only general denial and has not disputed his participation in the tender floated on 17.03.2010 and for having suppressed the said material fact, the writ petition filed by him deserves to be dismissed with exemplary costs.

29. In the result,

(a) W.A. No. 2842/2012 is dismissed confirming the order dated 27.02.2012 made in W.P. No. 17755/2011. No costs. Consequently, the connected miscellaneous petitions are closed.

(b) W.P. No. 33355/2013 is dismissed with exemplary cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) payable by the petitioner to the first respondent within a period of two weeks from the date of receipt of a copy of this order, failing which it is open to the first respondent to recover the same from the petitioner in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.