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(1994) 07 KAR CK 0034

In the Karnataka High Court

Case No : Writ Pentn. No. 7576 of 1994

K. Dasharatha APPELLANT

Vs

Mysore City Municipal Corporation, Mysore and others RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Karnataka Municipal Corporations Act, 1977 — Section 176, 183

Citation : AIR 1995 Kar 157 : (1996) 7 KarLJ 149

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : P.S. Manjunath and Somashekar, for the Appellant; Smt. Geeta Devi for M. Papanna, for the Respondent

Judgement

1. By this petition, the petitioner has prayed for issuance of writ of certiorari or writ or order or direction in the nature of writ of certiorari to quash the notification bearing No. R8.P.R.(A)S8-6/93-94 dated 15-3-1994, Annexure-E to the writ petition. The petitioner has further prayed for quashing the endorsement dated 9-3-1994 bearing No. RS PR(A) 6/92-93, a copy of which is annexed as Annexure-F to the writ petition, as well as quashing of endorsement dated 21-3-1994 bearing No. R8 PR(A) 6/92-93, a copy of which is Annexure-G to the win petition. The petitioner has further prayed for the issuance of writ of mandamus or writ or order or direction in the nature of writ of mandamus to the first respondent to confirm acceptance of the highest bid of the petitioner of Rs. 18.000/- per month in respect of (he slaughter house in Lushker Mohalla in the City of Mysore, which according to the petitioner, has been accepted by second respondent on 8-3-1994.

2. Facts of the case in brief are that the first respondent, Mysore City Municipal Corporation, had issued a notification bearing No. R8 PR(A) 88/93-94 dated 23-2-1994 intimating the public that the right of collection of daily gate fee for the financial year 1994-95 in respect of slaughter house at Lushker Mohalla is

proposed to be disposed of by way of public auction and that the public auction in that regard is to be held on 8-3-1994. It may be mentioned here that Annexure-A deals with the proposed auction relating to other items also with which we are not concerned in the writ petition. Here it relates only to the collection of the slaughter fee at slaughter house at Lushker Mohalla. The first notification further provided that persons desirous of participating in that auction may deposit earnest money of Rs. 5,000/- in respect of the item concerned with the Officers conducting auction on the date of auction and obtain the right of bidding (chada sawal) at auction. TW petitioner has annexed the copy of the notification as Annexure-A to the writ petition. In Annexure-A, it is also been indicated with the details regarding conditions of auction and information in regard to other matters can be obtained from the revenue Officers of the Corporation during office hours. The petitioner''s case is that he approached the second respondent for full details of the conditions of auction and he was furnished with photostat copy of the auction notice, which the petitioner has annexed as Annexure-B to the writ petition. The petitioner''s case is that in pursuance of the said notification, the petitioner made a deposit of Rs. 5,000/- as the earnest money and thereafter he participated in the auction that was held on March 8, 1994. According to the petitioner in that auction held at 12.00 noon on 8-3-1994, he had been the highest bidder having offerred the bid amount of Rs. 18,000/- per month. The bids of others bidders according to the petitioner has been as under:

(a) Harsha Rs. 17,000/- per month (b) A.M. Susheela Rs. 16,500/- per month (c) B.P. Prabhuswamy Rs. 15,000/- per month (d) Basavadevaru Rs. 13,000/- per month

3. According to the petitioner''s case vide paragraph 7 of the writ petition, the petitioner was informed by the second respondent, Revenue Officer, as well as two Corporators present that since his is the highest bid, his bid is accepted and he must deposit immediately Rs. 54,000/- which is equivalent to three months'' bid amount as stipulated in paragraph 2 of the notification. According to his case, he made a deposit of Rs. 54,000/- and he was issued with a receipt in token of having received the deposit. A copy of the said receipt is annexed as Annexure-C to the writ petition. According to the petitioner''s case, other unsuccessful bidders thereupon drew their earnest money amounting to Rs. 5,000/-which they had deposited earlier and thereby they signify they do not intend to challenge the acceptance of the highest bid of the petitioner. According to the petitioner, the petitioner waited for the communication to execute and register the Contract in accordance with the terms of the notification and the law. The petitioner further mentioned in the writ petition that to his utter surprise, it came to the notice of the petitioner the newspaper ''Mysore Mitra'' dated 18-3-1994 "which published" a brief news of re-auction notification No. R8 PR (A) 88-6/93/94 dated 15-3-1994 informing the public that right lo collect delegate fee in respect of slaughter house in Lushker Mohaila will be held at 1.00 p.m. on 24-3-1994. The petitioner has annexed the copy of the notification as Annexure-D to the writ

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petition. The petitioner''s, case is that when once his bind has been accepted, he was surprised to see how the same right in property was being put to auction afresh for the same yard. The petitioner''s case is that prior to his coming to know through the newspaper news, he bid not have any notice of cancellation of his bid. The petitioner''s case is that by this news published in the newspaper ''Mysore Mitra'', conveying the information regarding notification dated 15-3-1994 he really came to know about it for the first time. The petitioner''s case is that he made enquiries with respondent-2 as to why re-auction was going to be held and second respondent did not furnish any explanation, but issued the copy of the notification dated 15-3-1994 and advised the petitioner to participate in the auction to be held on 24-3-1994. The petitioner has annexed that copy of the notification as Annexure-E as well. Having felt aggrieved from the issuance of notification dated 15-3-1994 for holding the auction of the aforesaid right to collect gate fee at the slaughter house, the petitioner has filed this petition under Article 226 of the Constitution of India challenging the said notification. Learned counsel for the petitioner has pointed out that subsequent to the filing of the writ petition, the petitioner had been served with the copy of the order whereby the petitioner''s highest bid had been rejected and the copy has been served on him on 27-3-1994 vide communication dated 21-3-1994 and the petitioner has filed the said copy as Annexure-G to the writ petition and has challenged the said order by way of amendment to the writ petition. I may mention it here that reliefs Nos. 3 & 4 in the writ petition have been added subsequently by way of amendment on the basis of the application moved on 30-3-1994.

4. On behalf of the Mysore City Corporation, the statement of objections supported by an affidavit has been filed. As per the counter affidavit, the defence plea on behalf of the opposite parties is that the petitioner is not entitled to claim the reliefs mentioned in the writ petition and the Commissioner had acted in the best interest of the Corporation. The opposite parties further submitted in the counter affidavit that though the petitioner''s offer was the highest but was not advantageous to the Corporation and the Commissioner was right in rejecting the same. It has also been stated at para 1 in the counter affidavit that the highest bid offered in the auction held on 8-3-1994 was Rs. 18,000/ - per month and this bid was less than the bid offered during the previous year and the previous year''s bid was for Rs. 24,000/- per mensem and that bid which made in the previous year was also that of the petitioner; so, it was in the knowledge of the petitioner that the highest bid for the last year was for Rs. 24,000/ - and this year''s bid has been lesser than that of the earlier year. Considering this aspect of the matter and having found that the highest bid offered was less than that of the earlier year which itself had been offered by the petitioner, the Commissioner, who has the power to accept or reject the bid, rejected the petitioner''s bid and then, a fresh auction was notified vide Annexure-E to the writ petition. The case of the opposite parties is that right to accept or reject a bid highest or otherwise had been kept in reserve by virtue of the provisions of sale notification, vide Annexure-B to the writ petition and the opposite parties were not bound to

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accept the highest bidders bid and if there was anything wrong alleged in rejection of the petitioner''s bid, the petitioner is not entitled to challenge the same by the petition under Article 226 of the Constitution of India and it is liable to be dismissed. 5. The opposite parties case is that second respondent did not make any such representation to the petitioner nor any Corporator made such representation that the bid of the petitioner shall be accepted or is accepted nor they had any right or authority to make such representation or such assurance; the right to accept or reject the bid exclusively vested in the Commissioner and the Commissioner exercised that power in the best interest of the Corporation by rejecting the petitioner''s highest bid which was too less than the petitioner''s own bid of the previous year. The opposite parties have taken further defence that allegations in para 20A to the effect that reject ion of the petitioner''s bid was illegal and the Commissioner has not power to accept or reject the bid in view of Section 183 of the Karnataka Municipal Corporation Act, is without substance and the said section is not applicable. It is further stated that by having offered the highest bid, the petitioner did not acquire any right and therefore, the writ petition is not maintainable.

6. No rejoinder affidavit has been filed in respect of the allegations made in the counter affidavit. I have heard Sri P. S. Manjunath, learned Advocate, assisted by Sri Shivaram, Advocate for the petitioner and Sri. M. Papanna, learned Advocate, assisted by Smt. Geetha Devi, learned Advocate, on behalf of respondents-1 & 2. It may be mentioned here and it is also noted in the paper book that the names of respondents-3 to 6 have been deleted vide the order of the Court.

7. Sri Manjunath, learned counsel for the petitioner, has submitted before me that once the auction had taken place on 8-3-1994 as mentioned earlier and the bids were offerred and his bid of Rs. 18,000/- per month being the highest bid, which had been knocked down and thereafter, he was required to deposit three months amount, amounting to Rs.54,000/- at the rate of Rs. 18,000/- per month, and he having done so, his bid has to be taken to have been accepted and respondents could not hold a fresh auction of the same property or right in property. Sri. Manjunath further submitted that really the next step of entering into contract should have taken place. While making this submission, he referred to the provisions of S. 183 of the Karnataka Municipal Corporation Act, 1976 and relying on that provision, he submitted that Commissioner had no power to reject all lenders without the sanction of the Standing Committee of the Corporation and as such, the rejection order contained in Annexure-G is bad in law and is a document or order amounting to nullity as having been passed in breach of the provisions of the Act. He further submitted that in accordance with the terms and conditions included in the notification itself, the petitioner, being a successful bidder and successful bidder according to him, indicated as that his bid had been accepted by the officer conducting the sale or authorised to conduct the sale and he having been called upon to make deposit as mentioned above and he having done so, the auction of the said right had become final and only it had to be confirmed by the Corporation and therefore, the Commissioner could

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not cancel the highest bid in the earlier auction and he was not authorised to issue fresh notification calling for fresh public auction of the same property or right in property by the notification dated 15-3-1994 and such notification is also illegal and null and void. Sri Manjunath further submitted that no reserve or minimum sale price had been indicated in the notification dated 25-2-1994 and as such, the petitioner''s highest bid even if it was lesser than Rs. 24,000/-, could not be rejected. He also tried to place reliance on S. 364 of the Act as well.

8. On behalf of the opposite parties, Smt. Geetha Devi, learned counsel, submitted that offering of the highest bid itself does not result in conferring a right enforceable by law unless that is finalised and given the form of a contract; the fact that the petitioner had made highest bid in the auction held on 8-3-1994 and as his bid had not been accepted, the petitioner cannot claim an enforceable right under Art. 226 of the Constitution of India and as such, the present petition is misconceived and is liable to be rejected. Smt. Geetha Devi made reference to certain cases on this aspect of the matter which I may be referring while dealing with the points involved. Smt. Geetha Devi further submitted, that apart, the Commissioner had full power to accept or to reject the highest bid or any other bid or to reject every bid and to direct for holding fresh auction. She further submitted that S. 183 of the Karnataka Municipal Corporation Act did not apply to the present case. She submitted that really the provision of the Act that covers the Present case is S. 176 read along with S. 67 of the Act. Learned counsel for the Opposite parties further submitted that S. 171 did apply; the question of sanction of the Standing Committee does not come in the matter of acceptance or rejection of the bid and she submitted that in view of the provisions of S. 176 read with S.67 of the Act as well as clause (2) of the notification dated 24-3-1994, the Commissioner had full power to accept or reject the bids or even the highest bids and therefore, when the Commissioner rejected the petitioner''s highest bid as per Annexure-G, on the ground that it was not in the interest of the Corporation to accept the same as the present highest bid of Rs. 18,000/- was lesser than that of the previous year''s bid and the Commissioner acted rightly and within his jurisdiction; the order of the Commissioner rejecting the petitioner''s bid of Rs. 18,000/-per month did not suffer from any error of law or jurisdiction, instead, it was in the best interest of the Corporation.

9. Smt. Geetha Devi, further submitted that the petitioner''s bid had not been accepted and the person holding the auction through revenue officer as well as corporators, had no authority to give any assurance to the petitioner; it was for the Commissioner to accept or to reject the bids. She further submitted that it is wrong to submit that when the petitioner was required to deposit a sum of Rs. 54,000/-, the petitioner''s bid was accepted by the competent authority. She submitted that, here, the expression ''successful bidder'' shall mean that immediately after the conclusion of auction, that is, when the bidding comes to an end and bidding is knock down, then he is required to make deposit, i.e.. he is the successful bidder in the sense that he, is the highest bidder and no one is

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there to compete with him and that bear deposit of that amount should not be taken to be acceptance or prior acceptance of the bid of the petitioner by the Commissioner. She invited my attention to another part of clause (2) which I will refer later on. Dealing with the contention of the petitioner''s counsel to the effect that, minimum price has not been mentioned and the Commissioner could not reject the petitioner''s bid, learned counsel, Smt. Geetha Devi, submitted "that if the minimum price has been mentioned and if that minimum price had been offered, then, the Commissioner could not reject. Therefore, without mentioning the minimum price, the Commissioner has a right to reject the bid if it was not in the interest of the Corporation and it did not tie down his hands on the matter. In the alternative, she tried to submit that if that is the essential ingredient to be mentioned in the notification, then, in spite of the petitioner, being a highest bidder, he cannot be entitled to get any relief which he claims in the present petition because, if it is taken as an essential ingredient to mention, minimum price, in the notification, then, auction proceedings under that notification would be illegal and void and in that case, the highest bidder cannot claim any right thereunder and on this ground, she submitted that the petition is liable to be dismissed. She submitted, instead of going to that extent, it may not be an essential ingredient and the Commissioner, without mentioning the minimum sale price or auction price, can reject the highest bid.

10. I first propose to deal with the contention of the learned counsel for the petitioner as to whether the opposite party No. 1, the Commissioner, had the power to reject the highest bid of the petitioner or not. In the circumstances of the case, as I have mentioned earlier, the petitioner''s contention that his bid being the highest and he having been deposited Rs. 54,000/- as a successful bidder, his bid is stated to have been accepted, it could not be rejected particularly in view of the provisions of S. 183 as well. Before I proceed further, I think it would be just and proper to decide the controversy whether the provisions of S. 183 will apply or S. 176 read with S. 364 apply to the facts of the case. Here is a case of auction of right to collect the gate fee at the slaughter house in respect of the catties for being slaughicd. The provisions of Ss. 182 and. 183 of the Karnataka Municipal Corporation Act, 1976, reads as under:

"182. General provisions relating to contracts:-- (1) The corporation may enter into any contract and perform such contracts as it may consider necessary or expedient for carrying into effect the provisions of this Act.

(2) Subject to the rules made in this behalf, the following provisions shall apply with respect to the making of contract for any of the purposes of this Act, namely:-- ?

(a) every contract shall be made by or on behalf of the corporation by the Commissioner;

(b) no contract for any performance which, in accordance with the provisions of this Act, the Commissioner may not carry out without the sanction of one or

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other municipal authorities or of the Government shall be made by him unless such sanction has been given;

(c) any contract involving any expenditure exceeding such limits as may be specified in the flues shall be made by the Commissioner unless the requirement regarding the procedure to be followed has been followed, and unless the authority which is competent to accord sanction has accorded such sanction and where the sanction to be accorded is by the Government unless such sanction has been accorded by the Government.

(3) These provisions shall apply to any variation of the contract involving an increase of such percentage over the expenditure involved in the original contract as may be prescribed.

(4) Subject to such rules as may be made in this behalf every contract to be entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged :

Provided that

(a) the common seal of the corporation shall be affixed to every contract, which, if made between private persons, would require to be under seal; and

(b)every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing and shall be sealed with the common seal of the corporation and shall specify,--

(i) the work to be done or the materials or goods be supplied, as the case may be;

(ii) the price to be paid for such work, materials or goods, and

(iii) in the case of a contract for work, the time within which the work or specified portions thereof shall be completed.

(5) The common seal of the corporation shall remain in the custody of the Commissioner and shall not be affixed to any contract or other instrument except in the presence of the Commissioner and the Commissioner shall sign the contract or instrument in token that the same was sealed in his presence.

(6) No contract executed otherwise than as provided in this section shall be binding on the corporation.

183. Invitation of tenders:-- (1)At least seven days before entering into any contract or the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding ten thousand rupees, the Commissioner shall give notice by advertisement inviting tenders for such contract :

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Provided that such advertisement shall be published only in such newspapers having such circulation as may be prescribed :

Provided further that the Standing Committee may, at the instance of the Commissioner and for reasons which shall be recorded in its proceedings, authorise the Commissioner to enter into a contract without inviting tenders.

(2) On receipt of the tenders made in pursuance of the notice given under sub-sec. (1), the Commissioner may, subject to the provisions of S. 182, accept any tender which appears to him, upon a view of all the circumstances, to be the most advantageous, but he shall not reject ail the tenders without the sanction of the standing committee."

Section 176 of the Act which has been referred by the learned counsel for respondents reads as under :

"176. Disposal of property and interest therein:-- (1) Subject to the provisions of S. 182, the Commissioner may dispose of by sale or exchange of any corporation movable property the value of which does not exceed two thousand rupees in each instance or grant for any term not exceeding twelve months a lease of any corporation immovable property or a lease or concession of any right of fishing or grazing or of gathering and taking fruit and the like :

Provided that such lease or concession shall be subject to the condition that the grantee shall not erect any permanent structure on the demised premises;

Provided further that every such disposal, lease or concession made or granted by the Commissioner shall be reported to the standing committee within fifteen days;

(2) With the sanction of the standing committee the Commissioner may dispose of by sale or exchange any corporation movable property the value of which does not exceed five thousand rupees in each instance, or grant for any term not exceeding three years a lease of any corporation immovable property or a lease or concession of any such right as aforesaid.

(3) With the sanction of the corporation the Commissioner may lease, sell or otherwise dispose of any corporation movable properly.

(4) The sanction of the standing committee under sub-sec. (2) or that of the corporation under sub-sec. (3) may be given either generally or for any class of cases or specially for any particular case.

(5) The Commissioner may lend or let out on hire any corporation movable property on such conditions and for such periods as may he specified in the regulations.

(6) Notwithstanding anything contained in this Act,--

(a) no movable property exceeding such sum in value as may be prescribed shall be sold otherwise than by public auction;

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(b)(i) no properly whether movable or immovable of whatever value shall be transferred free of cost or for an upset price;

(ii)no lease of any immovable properly exceeding five years shall be granted;

(iii) no immovable property shall be disposed of by sale or by other transfer, except with the previous sanction of the Government."

11. Learned counsel for the petitioner had placed a greater reliance on S. 183 which has been quoted above, A reading of the section in my opinion, first discloses a slight defect in its draftsmanship and if section as is drafted literally, particularly sub-section (1) thereof, is taken, it may lead to unexpected consequences. Sub-section (1) at its face value, if it is analytically read, then, according to the section, at least seven days before (a) entering into any contract, or (b) execution of any work or the supply of material or goods involving an expenditure prescribed in the section, the Commissioner shall give notice by advertisement inviting tenders for such contract. The expression ''or'' used in this section after the expression ''any contract'' and before the expressions ''the execution of any work or the supply of any material or goods'', how it is to be interpreted. If we interpret it as it is, then, it may mean that at least seven days before either entering of any contract or seven days before execution of any work or seven days before supply of material or goods, the Commissioner shall give notice by advertisement inviting tenders for such contract. The expression ''execution of work'' means complete execution of work. It means, before the work allotted or given to certain persons is completed or point of time by which complete work is done seven days prior to that tenders will have to be invited or seven days prior to the supply of goods by certain persons, tenders have to be invited. This draft and use of expression ''or'' in between the expression ''any contract'' and the expression ''execution of any work'' leads to such thing as it may amounts to putting the ''cart before the horse''. The expression ''or'' that has been used in S. 183 after the expression "entering into any contract" and before the expression "the execution of any work" appears to lead to utter confusion and results in something not to be intended. The legislature would not have intended that let the execution of some work be done and seven days before the completion of execution of work let the notices be issued inviting tenders from persons for the execution of the same. The question crops up unless tenders are invited for execution of work and persons are called to offer and contract is entered for the execution of work, who is required to act earlier to inviting of tenders.

If we read and we take that expression ''or'' which is referred to in between ''any contract'' or in ''any execution of work'' as ''for'' and read for the expression ''contract or execution of any work or supply of material or goods to be ''contract for execution of any work for supply of material or goods then a proper result may follow. That is, requirement under this section is that before entering into any contract for execution of any work or before entering into any contract for supply of material or goods involving an expenditure of Rs. 10,000/-or more, the

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Commissioner shall give seven days notice by advertisement inviting tenders for such contract. Here the expression ''or'' which has been used in-between ''any contract'' or ''execution of any work'' has got to be read as ''for''. That may give proper interpretation and that may reveal the intention of the Legislator that before entering into any contract, giving any right to any person to execute any work or a contract for supply of goods or materials, it should not be done in private if expenditure involved thereunder is not less than the one prescribed in the section, instead that has got to be done in the public auction in the sense, first inviting tenders for the contract and then proceed according to law. It is also well settled principle of law of interpretation of a statute that when the expression is to be interpreted and if there is ambiguity or vagueness, then, it has got to be read in context with the other provisions of the Act. Reading of S. 182 which deals with the general provisions relating to contracts and in particular, proviso (b) to S. 182 sub-sec. (4) renders support to this approach, Proviso(b) to S. 182, sub-sec. (4) reads as under :

"(b) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing and shall be sealed with the common seal of the corporation and shall specify,--

(i) the work to be done or the materials or goods be supplied, as the case may be;

(ii) the price to be paid for such work, material or goods, and

(iii) in the case of a contract for work, the time within which the work or specified portions thereof shall be completed."

In that proviso, it is very clearly mentioned that the very contract for execution of any work or supply of any materials or goods which may involve expenditure exceeding the amount fixed in that proviso shall be in writing and shall be sealed with the common seal of the corporation and shall specify the things mentioned as (i) to (iii) i.e. nature of the work to be done or material or goods to be supplied, the price to be paid for such work, the time within which the specified portions thereof shall be completed. So, in the sub-section, expression used is ''every contract for execution of work'' read in consonance with proviso 2 to sub-sec. (4) and in the light thereof, reading along with S. 182 proviso 2, leads me to come to the conclusion that expression ''or'' used in between ''any contract'' and the expression ''execution of any work'' is to be read as ''any contract for execution of any work or supply of materials or goods''.

12. Learned counsel for the petitioner submitted that ordinarily it is well settled principle of law that the omission of defects in the Act cannot be supplied by the Court and it is not within the jurisdiction of the Court to substitute any work or expression that is used in the Act, and he submitted, expression ''or'' referred to above should not be read as ''for''. In my opinion, there is no doubt that ordinarily, it is one of the well settled principle of law, the court should not omit

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or subtract anything from the language used by the Legislature and ordinarily substitution of one expression for the other should not be done, but it is also well settled that if the draft of the section, language of the section indicates a defective draftsmanship leading to absurdity or render the very object of the section nugatory, the Court has powers to greet and to read the expression properly. For, this, I find support from what has been stated in the Max well''s The interpretation of Statutes 12th Edn., at page 231. Maxwell observed :

"Sometimes where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act.

The Ecclesiastical Leases Act 1571 refers to teases made by colleges, deans and chapters, masters or guardians of hospitals, and any "person, vicar, or any other having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements, or other hereditaments." Wilberforce, J. said that it was quite clear that the word italicised was a mistake for ''of'' and proceeded to apply the Act on that assumption."

13. In the case of AIR 1950 81 (Privy Council) Lords Greene had been pleased to observe as under (para 5) :

"The power to alter qualification and change the order of rotation, if, as Art. 126 provides, it is to be exercised by ordinary resolution, must involve a departure from the provisions of Arts. 112, 121 and 122. Those articles are not "expressed to be "subject to Art. 126" nor are these powers in,Art. 126 expressed to be given "notwithstanding anything in Arts. 112, 121 and 122". Some such words must therefore be implied in one place or the other in order to remove the inconsistency. The omission to make such cross reference as may be required to reconcile two textually inconsistent provisions is a common defect of draftsmanship. There is thus no insuperable difficulty in reconciling Art. 109 with Art. 126 either by implying in the former some such opening words as "subject to Art, 126" or implying in the latter some such opening words as "notwithstanding anything contained in Art. 109." Their Lordships have further observed in paragraph 06 that:

"in order to give effective content to the opening words of Art. 126 it is necessary to make an appropriate implication as suggested above, either in 109 or 126."

The principle laid down by the Privy Council in the above noted case provides that, it is open to the Court to provide omissions or to make substitution to remove the common defects of draftsmanship in order to make the provision effective.

14. While dealing with the question of interpretation of S.2(4)(I), the expression "debt due before the date of commencement" of the Act of the Karnataka Agriculturists Debt Relief Act, (Act No. 11 of 1970), their Lordships of the

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Supreme Court in the case of State Bank of Travancore Vs. Mohammed Mohammed Khan, had been pleased to observe at para 18 as under:

"The plain language of the clause if interpreted so plainly, will frustrate rather than further the object of the Act. Relief to agricultural debtors, who have suffered the oppression of private money-lenders, has to he the guiding star which must illumine and inform the interpretation of the beneficent provisions of the Act. When clause (1) speaks of a debt due "before the commencement" of the Act to a banking company,- it does undoubtedly mean what it says, namely, that the debt must have been due to a banking company before the commencement of the Act. But it means something more that the debt must also be due to a banking company at the commencement of the Act. We quite sec that we are reading into the clause the word "at" which is not there because, whereas it speaks of a debt due "before" the commencement of the Act, we are reading the clause as relating to a debt which was due "at" and "before" the commencement of the Act to any banking company. We would have normally hesitated "to fashion the clause by so restructuring it but we see no escape from that course, since that is the only rational manner by which we can give meaning and content to it, so as to further the object of the Act,"

The above observations of their Lordships of the Supreme Court leads me to hold that in a case where the plain language of a provision if it is so interpreted plainly, has the effect of frustrating the object of the Act and there is no way out except by restructuring (he provision, then, it is open to the Court to do that.

15. In the case of S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, Sabyasachi Mukherji J., as he then was, has been pleased to observe as under (para 87) :

"It has been observed that statutory provisions must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of a statutory provisions produces a manifestly absurd and unjust result, the Court might modify the language used by the legislature or even do some violence to it so as to achieve the obvious intention of the legislature and produce rational construction and just results."

It supports my opinion that a plain and literal, interpretation leads to manifestly absurd or unjust result, it is within the scope of the powers and jurisdiction of the Court to modify the language used by the Legislature.

16. In the case of Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, their Lordships of the Supreme Court have been pleased to observe as under :

"It is no doubt true that the Court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the Court should construe it in a harmonious way to

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make it meaningful."

Their Lordships of the Supreme Court, in this connection, made a reference to the following observations of Lord Denning L.J.. and has quoted as under (at pp. 1067-68 of AIR):

"In Scaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 at p. 164, Lord Denning L.J. said :

When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written word so as Co give ''force and life'' to the intention of the legislature.....A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven but he can and should iron out the creases."

This rule of construction is quoted with approval by this Court in the case of M. Pentiah and Others Vs. Muddala Veeramallappa and Others, and in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others,

Reading of these cases, no doubt, in my view, shows that the plain reading of the language used in the section by the draftsmen leads to absurdity or it really frustrates the object of the provision, then, in order to give harmonious interpretation a workable interpretation to the provision, it is open to the Court to modify the language used in the context of the provisions of the Act and as such the first ''or'' that has been used in S. 183 may be read as ''for''. The language will be, at least seven days before entering into any contract for execution of any worker supply of any material or goods which involve an expenditure exceeding Rs. l0,000/-, the Commissioner shall give notice by advertisement inviting tenders for such contract. The expression ''or'' italicised will have to be read as expression ''for''. Now, looking to the language of this section, S, 183 applies to the cases where a contract for execution of any work or a contract for supply of any materials or goods is to be entered into and in that, execution of work under the contract or the goods supplied thereunder involve an expenditure exceeding Rs. 10,000/-, then, the Commissioner has to follow the procedure laid down under S. 183. But, where the matter does not relate to any contract for execution of any work or supply of materials, this Section may not apply. Learned counsel for the petitioner submitted, the work here means any work or duty to be performed. The use of expression ''execution of any work'' and then, another ingredient that, execution of that work must involve an expenditure exceeding Rs. 10.000/-, involvement of the expenditure in that work is a test to consider whether the section applies. In the present case, the tenders have been called for, for transferring right to collect the fee at slaughter house with respect to animals taken for slaughtering. Now, the right to collect that fee no doubt vests in the Corporation. Then, that right to collect is to

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he transferred, which cannot be stated to be an execution of work involving an expenditure. Learned counsel for the petitioner also submitted that this right which is being auctioned and confirmed is involving no expenditure and in such case, there is no doubt that the S. 183 may not be applicable. If the section does not apply, there is no question of sanction of the standing committee being coming in the way of Commissioner''s accepting or rejecting, the bids. Section 176, in my opinion, may be said to be applicable particularly in view of the language used therein, which relates to the lease or licences or concessions of right of fishing, right of g(SIC)g, right of collecting or taking fruit and the like. The earlier expressions used prior to the expression ''and the like'' are illustrative and this latter expression ''and the like'' will gather meaning from the earlier expression. So, the right to collect fees can be taken to be covered by the expression ''and the like'' and the provisions of S.176. in my opinion, may be said to be applied and the Commissioner under S. 64, has got the power to collect or sale or auction that right.

17. Under S. 176 of the Act, the Commissioner has been conferred power to dispose of by sale or exchange any movable property of the Corporation, the value of which does not exceed Rs. 2,000/- in each instance. He may also grant for a term not exceeding twelve months a lease of corporation immovable property or a lease or concession of any right of fishing or grazing and taking fruits and the like. As per first proviso it is provided that the lease shall be subject to the condition that the grantee shall not erect any permanent structure on the demised premises. Second proviso to S. 176 further provides that every such disposal, made under S. 176 as well as lease or concession made or granted by the Commissioner shall be reported to the standing committee within 15 days. Sub-section (2) of S. 176 further provides that in case of sale or exchange of immovable property, the value of which does not exceed five thousand rupees in each instance or grant for any term not exceeding three years a lease of any corporation immovable property or concession of any such right as mentioned in sub-sec. (1). In that cast it can be clone by the Commissioner with the sanction of the committee. Any lease sale or disposal of corporation immovable property not covered by sub-sees. (1) and (2) can be disposed of by the Commissioner, but with the sanction of the Corporation. Subsection (4) provides that sanction may be granted either generally or for any specific class of cases or for any particular case. A perusal of S. 176 thus indicates that so far as the lease or patta of the right for fishing, grazing or of gathering and taking fruits or the like, i.e., which may also include patta or lease for realisation of the fee, such as gate fee at the slaughter house can be granted, if it is for one year and the Commissioner is empowered to grant the same, but after the granting thereof, the Commissioner is required to report the same to the standing committee within 15 days. In cases where such a lease or grant is for 3 years, then he can do with the sanction of the standing committee and if the lease is for a period for more than five years, it can be done with the sanction of the government. In what form the sanction shall be granted is a

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different matter. The sanction may be granted either generally empowering him to grant lease of specific nature etc., or may be for specific class of cases. When the power is given to the Commissioner to grant lease of such rights, whether it should be granted by private transaction or by calling for the tenders, it is open to the Commissioner in such cases to call for the tenders and when it is open to him to either grant it by private transactions or by calling tenders. Ordinarily when bounties are to be granted or some rights are to be conferred, no person should be denied of the opportunity. The mode of auction is adopted by calling tenders and the bids. But it is not always necessary that the highest bidder should be given the tender in such a case for bidding. The circumstances including the interest of the public and the Corporation of whose property the lease is to be granted, it has been open to the Commissioner to grant lease by inviting tenders, the Commissioner when he had power to grant lease after inviting tenders, he could have issued notification notifying invitation of tenders and fixing the date for offer thereof and he could provide the mode in which the auction proceedings could go on. He had got power reserved, the right to accept or to reject either highest tender or any other tender, keeping in view the best interest of the Corporation. In the present case a perusal of Annexure-B shows that vide, cl. (2) thereof, it has very clearly been provided that the Commissioner of the Corporation is empowered to reject or to accept highest bid or any other bid. Under notification Annexure-B and E, it has been provided as under :--

"The Commissioner of the Corporation is empowered to reject or accept without assigning any reason Chada Dharkasth or any other Dharkasth."

Dharkasth no doubt means an application in the ordinary term. Here it may not mean simple application, read in the context of Annexure-A, it may mean Dharkasth or Saval or Bid. Annexure-A provides that public desirous of participating may deposit Rs. 5,000/- in respect of each item with the officer conducting the auction, on the date ot auction and obtain the right of bidding (chadasaval).

18. On a reading of the two documents together I am of the opinion that here under clause (2) the power to reject or to accept without assigning reasons have been reserved by the Commissioner and it is provided that he can without assigning the reason reject either highest bid or any other bid or others. Learned Counsel for the petitioner has mentioned earlier has laid great emphasis on the expression ''successful bidder'' in the auction used in clause (2). wherein it has been provided that the successful bidder in auction shall immediately after conclusion of the auction shall deposit in the office an amount equivalent to 3 months bid amount as security deposal for due performance of the contract.

19. Laying emphasis on the expression ''successful bidder'', the learned Counsel submitted that when he is required to deposit an amount equivalent to 3 months bid amount as security, after the conclusion of the auction. When the expression ''successful'' has been used, it means his bid has been accepted. I find myself unable to agree with the contention of the learned Counsel for the petitioner. The

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first reason for the same is that auction proceeding shall not be deemed to have been concluded until the happening of certain event i.e., confirmation by the Corporation Council. The expression -- Immediately after the conclusion of the auction does not indicate acceptance of the bid of highest bidder, only after acceptance of the bidder and thereafter deposit by that bidder. Here what is required is that amongst the bidders who is successful prima facie in the light of clause (1), all other shall be entitled to withdraw their earnest deposit, clearly indicate that amongst the bidders who succeeds for that right in the sense that no other bidders is coming to compete him and as his bid is highest, then the auction is concluded in the sense that no other bid comes and bid in his favour is infact knocked down and such a bidder can be said to be successful bidder. Such a bidder is required to make the security deposit to the tune of the amount of 3 months''s bid amount.

20. Successful bidder in this case does not connote the idea of a bidder whose bid has been accepted by the Commissioner. Further reason for my taking this view is that when Commissioner has to consider the question of accepting or rejecting the bid, the question of the bona fides of a bidder may arise and clause (2) which requires the deposit of the amount as mentioned therein as security deposit, if it is done, may be a circumstance to indicate the bona fides and genuineness of the bidder who may be the highest or otherwise if it is not required to deposit and the Commissioner! accepts and thereafter requires him, the process may fail. When Commissioner accepts the bid the person who has been the highest bidder, but for some oblique motives, he runs away, then again in that case, loss may have to be suffered by the Corporation. So far considering the case of that highest bidder or of any other bidders, the clause provides, when the person who has succeeded in the bidding, becomes the highest bidder -- subject to acceptance by the Commissioner, and such a bidder has been described as| successful bidder, is required to deposit the amount equal to 3 months bid amount as security deposit.

21. On this premises when I proceed, there appears no doubt in taking the view that the successful bidder for the purpose of clause (2) is one whose bid is the highest and not whose bid is accepted. The bid having been placed before the Commissioner, Commissioner continues to be empowered to accept or to reject the same, in view of the provisions of law as well as the terms of the notice of auction. No doubt arbitrary action is negation of rule of law and doctrine of equality. Any action taken by public authority devoid of any reason and per se appearing to be arbitrary no doubt said to be illegal and ultra vires. Arbitrary action is always said to be negation of doctrine of the Rule of law and equality as well. Thus considering, I am of the opinion that though power is reserved with the Commissioner under the law as well as the terms of the notification to reject the bid highest or otherwise, it is always got to be done on some rational basis, having nexus with the interest of the public and Corporation.

22. Keeping these principles in view, when I examine Annexure-G, by which the

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petitioner''s bid had been cancelled, I do not find that any error of law or of jurisdiction has been committed by the Commissioner of the Corporation in rejecting the same, nor can be action of rejecting the petitioner''s highest bid of Rs. 18,000/- be considered to be in violation of either Article 14 or otherwise, because rejection is based on reason. The reason that has been mentioned is as under:--

"The Commissioner of Mysore City Corporation has not confirmed the highest bid as the same is less than the bid for the previous year."

23. In the previous year the highest hid that had been offered was the one that had been offered by the present petitioner himself and that was for Rs. 24,000/- per mensum. But the bid for the current year had been less by 25 per cent of that amount i.e., the present highest bid had been for Rs. 18.000/-, that it was less by Rs. 6,000/- per mensum. When on this ground the Commissioner rejected the petitioner''s highest bid, it was within his right to do so and it is an action based on reasoning under Article 226 of the Constitution. This Court is not sitting in appeal from the order of the authority concerned. When the auction is not vitiated either by error of law or jurisdiction or the like, there is no ground to interfere with this order and to quash the same and when Commissioner considered that bid to be insufficient from the point of interest of the Corporation, keeping in view the quantum of amount offered in the previous bid, it was open to the Commissioner to take fresh steps for offering the lease or patta or contract of the right to collect gate fee and he instead of entering into a private transaction, in all fairness, it appears to be that, he issued fresh notice and notification for holding auction.

24. Thus considered in my view that notification that had been issued by opposite party No. 2, fixing fresh auction, all these rights i.e. right to collect the gate fee of the slaughter house on 24-3-1994, does not suffer from any error of law or jurisdiction. It was open to the Commissioner to do that. On account of the filing of the writ petition the auction had been stayed. I am informed so far no auction had taken place for the time being. I have informed by Counsel for OPs that the Corporation authorities are themselves collecting the gate fee. It is open to the opposite parties to either collect the gate fee themselves or to proceed with the fresh auction, as the Commissioner deems fit or he may as is authorised, grant lease.

25. As regard the question of maintainability of the petitioner''s petition, on the ground that the petitioner had made highest offer or highest bid, Smt. Geetha Davi. as I have mentioned earlier submitted that mere offering of the highest bid did not confer any right to the petitioner, which can be said to be an enforceable right by a writ of mandamus and so the petition for the second relief is also not maintainable. In my view this submission of Smt. Geetha Devi has got much substance. Notification calling the tenders is an imitation to the persons who want to have that grant or right, may come and make offer by making bids. Now when the bid is made, the person who wants to have those rights granted or

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lease granted makes an offer that he wants to have those rights on the basis of his offer, such as right to collect the gate fe''e. Until the bid or offer is accepted in accordance with law of the terms of the notification and take the form of a contract or agreement, the highest bid does not confer any enforceable right and particularly in cases where the seller or the person offering for bidding right or properly or for auction reserves a right in himself to accept or not to accept highest or any other bid. In those cases until acceptance is shown or given, the stage of agreement does not arise nor contract does come into picture and when the contract has not come into picture, it cannot be said that any enforceable right has accrued in favour of the bidder or that any duty has been cast on the opposite site, which has got to be enforced by issuing a Writ of mandamus. When I so take the view, I find support from the decision of the Allahabad High Court in the case of Lakhmi Chand Vs. The Collector, Agra and Others, In that case the Hon''ble M. N. Shukla, J., as he then was has been pleased to laid down the law as unde''r.

26. In paragraph 5, his Lordship observes'' referring to Article 226 firstly, that the right to maintain the petitioner under Article 226 postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally uncreated.

27. His Lordship further raises a question and observes (Para 6 of AIR), --

"The question therefore, which arises is whether the petitioner had acquired any legal right by virtue of which he could force the Collector to grant an approval to this bid and execute a Patta in his favour. The reply must be in the negative. The terms and conditions of the auction were admittedly embodied in the notice of auction annexed as Annexure-CA 2 to the counter affidavit of the District Magistrate, Paragraph-9 of that document clearly authorises the District Magistrate to decline to grant a lease in favour of the highest bidder and attached finality to his decision in this regard. It is therefore, evident that unless the Collector approves of and accept the highest bid, such bidder does not acquire any legal right to have the Patta."

His Lordship further observed (Para 6 of AIR). -

"Where licences are granted by holding auctions the parties are bound by the terms and conditions of the auction. The petitioner and other bidders participated in auction without demur and with full knowledge of the commitments which the bids involved. The conditions governing the auction were in the nature of an invitation to those who where interested in the sale of fisheries rights to make their offers. The bids given in the diction were offers made by the prospective vendors to the Collector and the parties could not resile from such conditions. It is only after the Collector accepts and approves of the highest bid that the question of executing a lease within one week thereof arises as provided in para 10 of the terms and conditions. Until such approval or acceptance by the Collector is accorded and the formal agreement executed on behalf of the

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Collector, the sale is not binding on him. Admittedly no such approval has been given by the Collector and no formal agreement was executed. Consequently no rights have been created in favour of the petitioner on the basis of the bid offered by him. The petitioner''s so called highest bid at the auction having not culminated into a binding contract between the parties, the petitioner has no enforceable right to challenge the settlement made by the Collector in favour of the respondent No. 2."

28. Similar view has also been taken in the case of State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, In paragraph 3 of the judgment their Lordships have been pleased to observe. -

"It appears to us that the High Court had clearly misdirected itself. The conditions of auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under. Condition No. 10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and was subject to ratification by the competent authority, namely, the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say, not to accept the highest bid but even to prefer a tender other than the highest bidder, the High Court was clearly in error in holding that the Government could not refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition No. 10 does not so restrict the power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect it may lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation, may not be a sufficient justification for the refusal to accept the highest bid. It cannot he disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has the power 10 accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time, .it must follow that a change or revision of policy subsequent to the provisional acceptance of the bid but before its final acceptance is a sound enough reason for the Government''s refusal to accept the highest bid at an auction."

Similar view has been expressed by the Supreme Court in many other cases. In paragraph-9 of the decision of the Supreme Court, in the case of Union of India and others Vs. Hindustan Development Corpn. and others, it has been observed. -

"Consequently the Government had the right to either accept or reject the lowest

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offer but that of course, if done on a policy, should be on some rational and reasonable grounds".

29. Thereafter their Lordships made a reference to the famous case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, as well as to the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and after having made reference to those cases their Lordships has been pleased to laid down that it is open to the Government to accept or reject the bids, but that must be guided and controlled by reasons and public interest and it should not be an arbitrary action. In the present case, as I have mentioned earlier, the highest bid in respect of contract to grant the right to collect the gale fee on the slaughter house, with reference to the animals provided for slaughtering, made by the petitioner, for the sum of Rs. 18,000/-per annum has been rejected by the Commissioner, keeping in view the interest of the Corporation and at least financial interest of the Corporation and as the financial interest, of the Corporation could provide a rational basis for rejecting the same, keeping in view the earlier years bid, which was made by none else but by the petitioner himself. There is neither jurisdictional error nor arbitrariness in the act of respondent No. 2 in rejecting the petitioner''s bid and in calling for the fresh tenders and auction.

30. Thus in my view, firstly the petitioner''s highest bid did not confer any light to file the petition, as it did not culminate in to the form of an enforceable contract. Secondly, his bid had been cancelled by the Commissioner having exercised the power vested in him and has been rejected on a rational basis. So in my opinion the action of the Commissioner either in rejecting the petitioner''s highest bid as well as in issuing the fresh notification does not suffer from any error of law or of jurisdiction nor from any arbitrations nor from the breach of the principles of constitutional law or other law and as such the petition appears to be devoid of merits and it must be dismissed.

The writ petition is being dismissed herewith.

Before parting with this case, I must express my appreciation for fairness with which counsel for parties, present the case of parties respectively as well as the assistance rendered by Smt. Geetha Devi, by placing the relevant and latest case law.

31. Petitions dismissed.

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