(2007) 11 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No''s. 21056 and 22620 of 2007 and M.P. No''s. 1, 1, 2 and 3 of 2007

K.P.S. Elango APPELLANT

Vs

The District Collector, The Assistant Director, Rural Development, The Commissioner, Panchayat Union and K. Chinnappan RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Tamil Nadu Panchayats (Lease and Licensing of Fishery Rights in Water Sources Vested and Regulated by Village Panchayats and Panchayat Union Councils) Rules, 1999 — Rule 11

Citation : (2008) 14 VST 323 : (2008) WritLR 159

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : L.S.M. Hasan Fizal, Government Advocate for RR1 and 2, K. Elango, Special Government Pleader for R3 and J. Ravi, for R4, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—In both these writ petitions, the petitioner as well as the respondents are one and the same and relief sought for as well

as the grounds are identical, hence, they are disposed of by this common order.

2. The case of the petitioner is as follows:

The petitioner has. participated in the auction conducted by the third respondent herein pursuant to tender notification dated 11.07.2086 for

rearing finger lings and fishing right in S. Papparapatti Lake, Attayampatti Taluk, Salem District and offered the highest amount of Rs. 4,55,008/-

and the auction was confirmed in his favour. In the tender notification dated 11.07.2086 issued by the third respondent, it is mentioned that the licence renewable every year on enhancement of 10% amount for a further period of five years, which clause was incorporated taking into

consideration of the reality that the person, who is successful has to rear finger lings, which normally take one year, thereafter only, it gradually

ready for harvest. While so, the third respondent issued notices dated 12.12.2006 and 30.03.2007 calling upon the petitioner to pay a sum of Rs.

4,05,520/- towards balance bid amount., sales tax @ 12% and surcharge for which the petitioner has sent a reply letter dated 30.03.2007 stating

that as per Third Schedule Part B Entry 26 (i) of the Tamil Nadu General Sales Tax Act, 1959, fish is exempted from the purview of sales tax, but

without considering the same or renewing the licence, the third respondent has issued fresh tender notification dated 11.06.2007 calling for fresh

tender in respect of the said Papparapatti lake, which was challenged in WP No. 21056 of 2007. WP No. 22620 of 2007 has been filed praying

for a, Writ of Mandamus directing the third respondent to renew the lease in terms of condition No. l of Auction Notice dated 11.07.2006 in

favour of the petitioner.

3. The learned Counsel appearing for the petitioner reiterated the contents of the affidavits filed in support of the writ petitions and submitted that

third respondent called upon the petitioner to pay sales tax @ 12% and surcharge @ 20% for the licence period, which is contrary to Third

Schedule Part B Entry 26 (i) of the Tamil Nadu General Sales Tax Act, 1959 in which fish is exempted from the purview of sales tax, hence, the

petitioner is not liable to pay the amounts demanded under the said heading by the respondents, however, the third respondent insisted him to pay

the said amount, hence, the petitioner was constrained to file WP No. 22601 of 2007, which was allowed by this Court on 27.08.2007 setting

aside the proceedings of the third respondent dated 12.12.2006 to the extent it levies sales tax at 12% and surcharge at 20%. It is further stated

by the learned Counsel for the petitioner that the third respondent, without waiting for the disposal of WP No. 22601 of 20(27 or renewing the

licence has issued fresh tender notification dated 11.06.2007 and prayed for allowing of both the writ petitions.

4. On the above contention, this Court heard, the learned Special Government Pleader appearing for the third respondent, who submitted that the

period of licence granted to the petitioner was one year, which expired on 30.06.2007; that though there is a clause for renewal upto a period of

five years, discretion was given to the respondents to renew every year provided the licencee pays 10% over and above the previous year licence

amount with sales tax and surcharge, whereas, in this case, as per the tender conditions, the petitioner was directed to pay 25% of the tender

amount on or before 24.08.2006 which was paid by him, but the balance 75% of the amount i.e., Rs. 4,05,520/- payable on or before

04.12.2006 was not paid within the stipulated period, but he paid only a sum of Rs. 3,40,000/- that too on instalments as mentioned below:

i) 29.12.2006 Rs. 1,00,000/-

ii) 14.02.2007 Rs. 85,000/-

iii) 21.02.2007 Rs. 15,000/-

iv) 23.03.2007 Rs. 50,000/-

v) 29.03.2007 Rs. 83,000/-

vi) 17.06.2007 Rs. 7,000/-

Rs. 3,40,000/-

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5. It is further stated by the learned Special Government Pleader that the above said payments belatedly made by the petitioner show that he failed

to comply with the conditions of licence contemplated in the tender notification dated 11.07.2006. In any event, the petitioner is not entitled for

renewal since, the licence period was confined only for one year from 01.07.2006 to 30.06.2007 and the same also expired. Taking into

consideration of the above said facts the third respondent Panchayat has resolved to go for fresh auction and the tender notification dated

11.06.2007 was rightly issued. It is further stated by the learned Special Government Pleader for the third respondent that since no persons have

come forward to participate in the auction pursuant to the notification dated 11.06.2007, which is impugned in WP No. 21056 of 2007, the third

respondent has issued another tender notification dated 21.06.2007 fixing the auction date as 26.07.200,7 in which 18 persons have participated

and the highest amount offered by the fourth respondent i.e., Rs. 5,40,000/- was accepted by the third respondent, however, in view of the interim

order granted by this Court restraining the respondents, the same was not confirmed. Pointing out the above said facts, the learned Special

Government Pleader prayed for dismissal of the writ petitions.

6. The learned Counsel, appearing for the fourth respondent in both the writ petitions submitted that admittedly the fourth respondent has offered

the highest amount of Rs. 5,40,000/- in the auction took place 26.07.2007 and the said amount was also accepted by the respondents 1 to 3,

however, confirmation was not made since this Court granted interim order on 20.06.2007 and prayed for dismissal of the writ petitions.

7. This Court carefully considered the argument of the counsel for both sides and perused the records. Rule 11 of the Tamil Nadu Panchayat

(Lease and Licensing of Fishery Rights in Water Sources Vested and Regulated by Village Panchayat and Panchayat Union Council) Rules, 1999

runs as follows:

Rule 11. Lease of fishery rights: The lease of fishery rights in the water sources vested in the Village Panchayats or the Panchayat Union Council

shall be given after conducting public auction by the respective Village Panchayats or Panchayat Union Council as the case may be. Such lease

shall be for a period of five years. Lease amount shall be raised every year at the rate of 10 per cent over the lease amount of the previous year.

Upset lease amount shall be fixed by the Village Panchayat and the Panchayat Union Council concerned in consultation with the Inspector of

Fisheries of the respective area.

8. The entire text of Rule 11 makes it clear that the local body is entitled to enhance the lease amount every year and the five years mentioned

therein permit the authorities to grant maximum period of lease. Once lease is granted for one year after compliance of necessary formalities, which

is one of the essential conditions of tender, it cannot be altered by the parties after entering into the arena.

9. The remedy under Article 226 of the Constitution of India will not be available to enforce a contract qua contract. The High Court in its

extraordinary jurisdiction normally cannot entertain a petition filed against a commercial contract except in cases where the authorities arbitrarily

exercising their discretion for giving contracts at their sweet will and pleasure or there is violation of terms and conditions laid down in the tender

notice or act unreasonably or contrary to the public interest or adopt unfair or secret procedures etc., Indeed, the powers of High Court can be

invoked for enforcement of Fundamental Rights or other legal rights, but will not apply to mere contractual rights.

10. The Honourable Supreme Court in the below mentioned decisions laid down various principles in respect of commercial transaction:

i) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, wherein it was held in Para No. 35 as follows:

35. It is therefore, obvious that both having regard to the constitutional mandate of Article, 14 as also the judicially evolved rule of administrative

law, the first respondent was not entitled to act arbitrarily in accepting the tender of the fourth respondent, but was bound to conform to the

standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered II class hotel or

restaurant and having at least 5 years'' experience as such should be eligible to tender.

...Admittedly, the standard or norm was reasonable and nondiscriminatory and once such a standard or norm for running a II class restaurant

should be awarded, was laid down, the 1st respondent was not entitled to depart from it and to award the contract to the 4th respondent, who did

not satisfy the condition of eligibility prescribed by the standard or norm. If there was no acceptable tender from a person who satisfied a condition

of eligibility, the 1st respondent could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it

could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of the 4th respondent. When the 1st respondent

entertained the tender of the 4th respondent even though they did not have 5 years'' experience of running a II class restaurant or hotel, but who

were otherwise competent to run such a restaurant and they might also have competed with the 4th respondent for obtaining the contract, but they

were precluded from doing so by the condition of eligibility requiring five years'' experience. The action of the 1st respondent in accepting the

tenderï¿½oiL the 4th respondent, even though they did not satisfy the prescribed condition of eligibility was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of the 4th

respondent was, in the circumstances invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law

inhibiting arbitrary action.

ii) M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, wherein in Para-12, it was held thus:

12. ...The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena, it is like changing

the rules of the game after it had began and therefore, if the Government or the Municipal Corporation was free to alter the conditions, fresh

process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is

justified because by reason of deletion of a particular condition the wider net will be permissible and a larger participation of more attractive bids

could be offered....

11. It is clear from the above said decisions that the High Court shall not adopt any generous and casual approach in applying the right to livelihood

under Article 21 of the Constitution of India to a case involving contractual dispute. In this case, the petitioner, having agreed to the terms and

conditions of the notification and consciously participated in the auction and his bid was also confirmed is estopped from seeking any relief contrary

to the tender notification. The tender conditions cannot be altered after the parties entered into the arena.

12. One other factor adverse to the petitioner is that the petitioner was directed by the third respondent to pay 75% of the tender amount within

the time stipulated, but he failed to pay the same in one lump sum, instead, he remitted part of the amount that too on six instalments as stated

above, which is contrary to the conditions stipulated in the tender notification dated 11.07.2006. The other reasons that the petitioner has

challenged the levy of sales tax and surcharge before this Court and the same was allowed by this Court on 27.08.2007 are no way useful to the

case of the petitioner.

13. WP No. 21056 of 2007 was filed challenging the notification dated 11.06.2007, which was recalled and another notification dated

21.06.2007 was issued, thereafter, fresh auction was also conducted on 26.07.2007, hence, WP No. 21056 of 2007 became infructuous and

liable to be dismissed on that ground also.

14. In view of the above discussion made and the fact that the petitioner failed to comply with the conditions mentioned in the tender notification

dated 11.07.2005, besides that the period of licence already expired and that the impugned notification dated 11.06.2007 was cancelled and fresh

tender notification dated 21.06.2007 was issued by the third respondent in which the fourth respondent has offered the highest amount, this Court

is of the view that both the writ petitions are liable to be dismissed and accordingly, they are dismissed. No costs. Consequently, connected

miscellaneous petitions are closed.

