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Madras High Court

Case No: Writ Petition No: 17417 of 2011

Jayabalan		APPELLANT
	Vs	
The Commissioner Commune Panchayat and The Chairman Commune Panchaya		RESPONDENT

Date of Decision: Aug. 8, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: S. Packiaraj, for the Appellant; D. Sreenivasan, Govt. Pleader R-1 and R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

Heard Mr. S. Packiaraj learned Counsel appearing for the Petitioner and Mr. D. Sreenivasan learned Government Pleader (Pondicherry) appearing for the Respondents 1 and 2. Petitioner has challenged the impugned proceedings passed by the 1st Respondent in Ko. No: 16/2007-08-VA.BAL/ THI.KO.PA dated 19.07.2011 wherein the Respondents have taken a decision to take over the possession of shops, which was given on public auction, after the expiry of the period of lease which stood extended upto 30.06.2011 and seeking to quash the same and for a consequential direction to renew the lease period based on Petitioner''s representation dated 27.06.2005.

2. The case of the Petitioner is that he got the shop No: 13 (10 x 8= 80 sq. ft.) at Commune Panchayat "Vanigavalagam" in the year 2008-2009 and was running a

photo shop under the name and style of " Sri Kumaran Photos ". There are 7 shops in existence in that complex and such shops were occupied by the Bank, ATM, Library and other persons for the past 10 years. In a public auction, Petitioner paid a sum of Rs. 9,200/-per year on 01.04.2008 and thereafter, on 23.03.2009 the Respondents sent an intimation memo stating that if the Petitioner wanted to extend the lease period, he has to pay 10% extra amount out of the earlier lease amount. Thereafter, for the year 2009-2010, Petitioner received an intimation on 09.03.2010 and the Respondent renewed the lease before 18.03.2010 and thereafter, he paid the sum of Rs. 10,879/-. It is his claim that the period of lease granted for the second time was over on 3103.2011 but the Respondents sent a notice on 23.03.2011. Due to election, the lease period was extended for another three months and he was called upon to pay three months lease amount with 10% extra amount and accordingly, he paid the same on 23.03.2011 itself and the said three months extended period of lease also expired on 20.06.2011.

3. According to the Petitioner, as per the Rules he made a request on 27.06.2011 to renew the lease period for another one year for getting 10% extra amount along with earlier lease deeds. As the "Sanipeiyerchi" season started in Thirunallar, Petitioner''s request was accepted and a resolution was passed by the 2nd Respondent and thereafter, the Respondent issued the pamphlets by advertising that the shops and toilets will be given for lease in public auction. In that notice the Respondent had mentioned that except the Commune Panchayat Vanigavillagam other items will be given for lease on public auction. As the 2nd Respondent''s period was over on 13.07.2011, the 1st Respondent, without considering his requests, has now issued the impugned notice on 19.07.2011 - which was served on him on 21.07.2011, asking him to vacate the shop and hand over the same to the Panchayat on or before 29.07.2011. But the other 6 shops occupied by the other persons were not disturbed and they are given lease for more than 10 years and they were not given any notice. So, according to the Petitioner the act of the Respondents is illegal and violation of the principles of natural justice.

4. The 1st Respondent has filed the counter and interalia stated that the Petitioner was a successful bidder of Shop No: 13, during the auction conducted on 01.04.2008 for the period 2008-2009. The lease has been extended periodically by 10% increase in the lease amount. Now, the three years period has come to an end after which No. extension has been given as per the guidelines. There are 17 shops owned by Commune Panchayat. Twelve shops has been allocated to Govt. / Co-operative Societies / Banks, as per G.O. Ms. No: 230/93/LAD dated 27.01.1993, the licence for shops should be allotted to Co-operative Societies / Public Sector Undertakings and other Government agencies without conducting public auction. They have to pay license fee as fixed by the Revenue Department. As per the guidelines, there are Reservation for the following Special Categories:

a.	Scheduled Caste / Scheduled Tribe	15%
b.	Physically handicapped -	5%
c.	Freedom Fighters -	15%
d.	Women -	5%
e.	Pensioners retired from the service of The UnionTerritoryPondicherry	5%
f.	Ex-service man -	5%

Since the Petitioner does not fit into any of the category of para 4, the three year period came to an end on 31.03.2011. Due to the election for Pondicherry Union Territory Assembly, the Model Code of Conduct was in force from 01.03.2011 and therefore, the period was extended until 30.06.2011 for a period of three months. Now the auction has been fixed on 29.07.2011 and notice dated 19.07.2011 has been widely circulated in that locality. The Petitioner, in the meantime, has file this writ petition without furnishing correct details. It is further submitted that the auction is to be conducted for all the 5 shops, which does not come under the categories stated in the paragraph and the other four shop keepers (licensee) has not approached this Hon''ble Court or any other forum. Therefore, they prayed for dismissal of the writ petition.

5. The learned Counsel for the Petitioner submits that the impugned communication has been issued by the Respondents without looking into the grievance expressed by the Petitioner in his representation dated 27.06.2011 and hence, it is contrary to the Rules and Guidelines in existence and, therefore, the action of the Respondents directing the Petitioner to hand over the vacant possession to Panchayat cannot be sustained as it will prejudice and cause undue hardship to the Petitioner.

6. On the other hand, the learned Government Pleader (Pondicherry) would strenuously contend that as per G.O. Ms. No: 230/93/LAD dated 27.01.1993, out of the 17 shops owned by Commune Panchayat, 12 shops have been allotted to Government / Co-operative Societies / Banks / Public Sector Undertakings and further there are special categories and that the Petitioner had kept the shop for himself for three years which was over on 31.03.2011 itself. He would also state that in lieu of intervening election, Petitioner was given extension of lease for a period of three months and under those circumstances, the Petitioner''s licence cannot be allowed by renewing the lease and it is always open to him to apply and compete in the public auction. But, he has not chosen to do. Admittedly, the Petitioner was given a shop viz. Shop No: 13, in public auction on 01.04.2008 for the period 2008-2009. The lease has been extended periodically by 10% increase in the least amount. The lease period came to an end on 31.03.2011. Thereafter, because of the intervening elections for the Puducherry Union Territory Assembly, the period of lease was extended upto 30.06.2011 for a period of three months. For the future period, the Respondents have taken a decision to go for a public auction and passed

the impugned proceedings in Ko. No: 16/2007-08/t/gp1/jp/bfh/ghdated 19.07.2011 explaining the reasons for taking such an action and directed the Petitioner to hand over the possession of the shop and it was also informed that public auction for the shop will be held on 29.07.2011.

7. It is cardinal principle that public properties are to be used by the authorities in such a way that it fetches higher revenue so as to be used for the development of the institution as a whole. It is for the authorities to decide as to what would be rent / lease to be collected. As per the guidelines, the license for shops should be allotted to Co-operative Societies, Public Sector Undertakings and other Government Agencies without conducting public auction and they have to pay license fee as fixed by the Revenue Department. There are Reservation for the Special Categories namely Scheduled Caste / Scheduled Tribe - 15%; Physically handicapped - 5%; Freedom Fighters - 15%; Women - 5%; Pensioners retired from the service of The Union Territory of Pondicherry - 5% and Ex-service man - 5%. Therefore, out of the 17 shops, 12 shops have been allocated to Government, Public Sector Undertakings and Banks and for the remaining shops it was decided to go in for Public Auction. It is also the stand of the Respondents that the Petitioner does not fit into any of the category stated above and, hence, he has approached this Court challenging the proposed auction complaining that renewal of lease should be granted in his favour.

8. Since the legal principles are well settled that as per the Government Orders and the guidelines the authorities have a right to go in for a Public Auction to augment the income of the Panchayat, the power of judicial review available to this Court is very limited. In this context it

would be pertinent to refer to the following decision of the Hon''ble Supreme Court reported in

(i) Tata Cellular Vs. Union of India, , wherein it is held as follows:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be No. question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or

political in nature or issues of social policy; thus they are not essentially justice able and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

73. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court''s ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

(ii) a decision of this Court reported in Ion Exchange Waterleau Ltd. Vs. The Commissioner, Madurai Municipal Corporations, , wherein it is held as under:

19. Needless to say, it is a settled principle that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The Courts are always hesitant to interfere with the administrative policy decision and in rarest of rare occasions, if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts can interfere or otherwise the Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the decision in Tata Cellular case, the Constitution Bench of the Supreme Court has authoritatively held that the principle of judicial review in the matter of contract would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism.

However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State and the power to refuse the lowest or any other tender is always available to the Government. The right to choose cannot be considered to be an arbitrary power. of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down. In a commercial transaction, the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, provided the tender conditions permit such a relaxation. Even when some defect is found in the decision-making process, the Court has to necessarily exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion and is satisfied that overwhelming public interest requires interference, the Court should interfere. Otherwise, the larger public interest will prevail upon the

individual''s interest.

(iii) yet another decision of this Court reported in 2011 CIJ 93 in the case of P. Ramadas v. Materials Management Division, ONGC, wherein it is held as under:

15. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. When the power of judicial review is invoked in matters relating to tenders or award of contracts, it has to be checked whether choice or decision is made lawfully and the decision is sound. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration of error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. Therefore, restraint under judicial review is always limited to this Court and it has to be invoked rarely and hesitantly under Article 226 of the Constitution of India.

17. The terms of the contract are not open to judicial scrutiny, the same being in the realm of contract. The Courts are always hesitant to interfere with the administrative policy decision and in rarest of rare occasions, if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts can interfere or otherwise the Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State and the power to refuse the lowest or any other tender is always available to the Government. The right to choose cannot be considered to be an arbitrary power. of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down. In a commercial transaction, the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, provided the tender conditions permit such a relaxation. Even when some defect is found in the decision making process, the Court has to necessarily exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion and is satisfied that overwhelming public interest requires interference, the Court should interfere. Otherwise, the larger public interest will prevail upon the individual''s interest.

9. From the above decisions, it is clear that the power of judicial review in matters of contractual transactions, particularly in tender process, is very limited. The Courts are always hesitant to interfere with the administrative policy decision and in rarest of rare occasions, if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts can interfere. In the absence of any arbitrariness or mala fide exercise of power, the power to interfere in such matters are not available to this Court and

therefore, the challenge made by the Petitioner in respect of the decision arrived at by the Respondent to take over possession of the shop and proceed to conduct a public auction for the shop in question cannot call for any scrutiny by this Court under Article 226 of the Constitution of India and it should be exercised with great caution and in furtherance of public interest and not merely on the making out of legal points.

10. On a perusal of the entire records, it is seen that the action contemplated by the Respondent would give a clear impression to this Court that they have proceeded to go on for a public auction in the manner as provided after handing over of possession of the shop by the Petitioner and as per the guidelines and it is in No. way contrary to the settled principles. Therefore, there is No. warranting circumstances to interfere with the decision of the Respondent and the impugned proceedings of the first Respondent is perfectly valid and it cannot be said to be illegal or arbitrary.

11. At this juncture, Mr. S.Packiaraj, learned Counsel for the Petitioner would submit that in view of the fact that public auction was conducted and the successful bidder has not deposited the bid amount till date, which means that auction process was not completed and fresh auction may be conducted, then the Petitioner may be permitted to participate in the public auction as could be decided by the Respondent for fresh auction if any, as the Petitioner has moved this Court without any participation in the earlier tender process.

12. Considering the above submissions, it is needless to say that it is for the authorities concerned to decide as to whether fresh auction has to be conducted or not and in the event of any fresh auction, it is always open to the Petitioner to participate in the same.

13. With the above observation, the writ petition is dismissed. No. costs. Consequently, connected M.P. No. 1 of 2011 is closed.