

(2004) 08 CAL CK 0039

Calcutta High Court

Case No: M.A.T. No. 2149 of 2004 and CAN 5539 of 2004

Nand Kishor Sonkar

APPELLANT

Vs

Howrah Municipal Corporation
and Others

RESPONDENT

Date of Decision: Aug. 25, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 41, 46
- Employees Provident Fund (Amendment) Act, 1960 - Section 16
- Howrah Municipal Corporation Act, 1980 - Section 21, 22, 22(1), 23, 23(1)

Citation: (2005) 3 CHN 140

Hon'ble Judges: Tapan Kumar Dutt, J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: S.K. Kapoor, D. Mitra, P. Mukherjee and R. Mitra, for the Appellant; Bimal Chatterjee, D.P. Mukherjee, Smritikana Mukherjee, Debjit Mukherjee, Jayanta Mitra, A. Chatterjee, L.C. Bihani and N.C. Bihani, for the Respondent

Judgement

Asok Kumar Ganguly, J.

In this matter, parties have been heard at length and with the consent of the parties, we have treated this appeal on day's list and both the appeal and the stay application are decided by the following judgment:

2. This appeal is directed against an order dated May 20, 2004 passed by a learned Judge of the Writ Court dismissing the writ petition summarily without calling for any affidavit.

3. In fact, two writ petitions were filed. The first one was filed by the petitioner in the month of April, 2004 and is still pending. Both the writ petitions were filed in connection with disputes arising out of a tender notice issued by the Howrah Municipal Corporation (HMC) inviting tender for grant of parking fee licence by HMC in respect of I.C. Bose Road and also the road in front of Ashoka Hotel. An

advertisement was published in two Bengali dailies i.e. "Ganashakti" and "Aajkal" on January 14, 2004 inviting tenders for grant of licence in front of those roads for a period of three years. The annual reserve price was fixed at Rs. 30 lakhs.

4. Various tender conditions were stipulated by the HMC and of those conditions the one which is relevant for the present dispute is Condition No. 21, which says the successful bidder would have to deposit the offered amount within seven days from the date of receipt of the letter of acceptance.

5. It is not in dispute that pursuant to the said tender notice, two offers were received by HMC, one by the writ petitioner/appellant and the other by the respondent No. 6, Tandel Bagan Co-operative (hereinafter referred to as the "said Co-operative"). It is also not in dispute that the petitioner/appellant's offer was higher and the same was accepted by the Mayor-in-Council in a meeting held on March 12, 2004. The said decision of the Mayor-in-Council dated March 12, 2004 was communicated to the appellant on 02.04.2004 and he was directed to deposit the bid amount for the year 2004-05 within the scheduled time every year.

6. It appears that after receiving the said letter of acceptance, the appellant approached this Court with a writ petition 19.04.2004, which is referred to previously as the first one, praying, inter alia, for proportionate reduction of licence fees in view of the proposed shifting of the wholesale vegetable market to any other area or alternative site. In fact, the cause of action for filing the first writ petition in the month of April, 2004 was that the petitioner/appellant came to know from an article published in the Ananda Bazar Patrika that the HMC decided to shift the wholesale vegetable market to a site on the Bombay Road. As such, a prayer was made in the writ petition to reduce the licence fee in view of the fact that as a result of such proposed shifting, the petitioner's volume of business would be substantially reduced. On such writ petition, being filed, a learned Judge of this Court directed the filing of affidavits and passed the following interim order :

"Without prejudice to the rights and contentions of the parties in the writ application and subject to the result of the writ application, time to deposit the sum of Rs. 41, 11, 111.11 is extended till April 30, 2004. In default of payment of the aforesaid sum within the aforesaid time period. Howrah Municipal Corporation is at liberty to take steps against the petitioner in accordance with law."

7. While passing the said order, the learned Judge recorded the submissions made on behalf of the learned Counsel for the HMC that there was no proposal to shift the HMC Fish Market.

8. The said writ petition is still pending.

9. The writ petitioner/appellant, however, could not make the payment of the entire money pursuant to the aforesaid tender by April 30, 2004 and on April 30, 2004, the writ petitioner/appellant made a prayer to the Mayor-in-Council, HMC praying for

paying the entire money of Rs. 41,11,000/- and odd in four monthly instalments. After the said letter was received by the authorities of the HMC, the Executive Engineer of the HMC informed the petitioner that the Mayor-in-Council at a meeting held on April 30, 2004 cancelled the allocation of the above site to the petitioner/appellant and he was asked to immediately vacate the site. The petitioner/appellant was informed that his earnest money stands forfeited and he was asked to deposit the proportionate car parking fees from April 7, 2003 to April 30, 2004.

10. On April 30, 2004, the Secretary of the said Society was informed that the Members, Mayor-in-Council in the said meeting held on April 30, 2004 had decided to allot place for car parking in favour of the said society and the said society was requested to deposit the car parking fees quoted by it within 7 days.

11. In the meantime, it appears even though prayer for instalments was not granted in favour of the petitioner/appellant, but, the authorities of the HMC allowed the said society to deposit a sum of Rs. 13 lakhs by way of instalments inasmuch as Rs. 13 lakhs is 173rd of the licence fees offered by the said society. The said payment by instalments was accepted by the HMC on or about 15th May, 2004 and immediately thereafter, on May 17, 2004, temporary possession certificate was issued by the HMC in favour of the said society.

12. The second writ petition, challenging the actions of HMC in accepting the offer of the society by granting instalment and rejecting the same prayer of the writ petitioner, was filed on or about 17th May and dismissed by the learned Judge summarily on 20th May.

13. Thereafter, on June 22, 2004 the second instalment of Rs. 13 lakhs was paid by the said society and was accepted by the HMC. This appeal was filed on 5th July, 2004. Thereafter, on July 7, 2004 the third and last instalment of Rs. 13 lakhs was paid by the said society and accepted by the HMC and ultimately on July 8, 2004, the possession certificate was issued by the HMC in favour of the said society.

14. In view of the aforesaid facts, the learned Counsel for the petitioner/ appellant submitted that even though the prayer for instalment made on behalf of the petitioner/appellant was turned down by the HMC, the same was granted by the HMC in favour of the said society. This, according to the learned Counsel for the petitioner/appellant, is wholly unreasonable and arbitrary and HMC as a "State" cannot do it. It is one of the main grounds of attack. The other submissions of the learned Counsel was that to make the appellant's challenge in this appeal infructuous, the authorities of the HMC went on accepting the subsequent payments of instalments from the said society and also granted it the possession certificate.

15. The learned Counsel appearing on behalf of the HMC submitted that there is no substance in the grievance of the writ petitioner/appellant. The first writ petition,

which was filed by the writ petitioner/appellant and is still pending contains his grievance to the extent that in view of the proposed shifting of the vegetable market from the existing place he was praying for a reduction of the offered amount.

16. The learned Counsel further submitted when the writ petitioner/ appellant came to this Court with the aforesaid prayer, the learned Judge instead of granting the prayer for proportionate reduction of licence fees, passed an order upon the writ petitioner to pay the entire licence fees by April 30, 2004 and made it clear that in the event, such payment is not made within the aforesaid period, the HMC was at liberty to take steps in accordance with law.

17. Admittedly, the writ petitioner/appellant did not pay any amount towards payment of the licence fees within April 30, 2004 and, as such, the HMC had no other option but to cancel its previous acceptance of offer of the writ petitioner/ appellant and accept the offer of the said society, which was the second highest.

18. The learned Counsel for the HMC also urged that the order of the High Court dated April 19, 2004 is binding on both HMC and the petitioner/appellant and under the said order, the writ petitioner/appellant does not have any right inasmuch as it failed to pay the licence fees within the period mentioned in the said order. Thereafter, whatever steps had been taken by the HMC in dealing with the said society cannot be assailed by the writ petitioner/appellant. In fact, the writ petitioner/appellant does not have any locus to make any grievance in respect of the said action of the HMC.

19. It may be noted that the learned Counsel for the HMC did not advance any argument that any favourable treatment was shown to the said society on the ground that it is a co-operative society. In fact, such submission was not made by the learned Counsel for the HMC either orally nor was it the stand of the HMC in the affidavit filed by it.

20. The learned Counsel for the said society, on the other hand, submitted that the action of the HMC must be judged in the context of the order passed by the learned Judge on the first writ petition. The learned Counsel relied on a letter of the said society dated February 12, 2004 written to the Mayor-in-Council stating therein that it being a co-operative society should be granted some weightage, which is admissible to such societies in cases of tenders.

21. The learned Counsel submitted that a co-operative society is entitled to be treated separately. As such, the decision to grant instalments to the Cooperative Society is not discriminatory in nature. The learned Counsel further submitted that there is no embargo on grant of instalments under the tender conditions. In the absence of any embargo, the instalments were granted by the authorities of the HMC on a valid basis. The learned Counsel submitted that a co-operative society is entitled to special benefit in view of the provisions of Section 60(3) of the West Bengal Co-operative Societies Act and Rule 97 of the West Bengal Co-operative

Societies Rules. The learned Counsel also relied on the provisions of Articles 41 and 46 of the Directive Principles under the Constitution and contended that those Directive Principles of the State Policy can be followed by the HMC, which is a State and the same has been done in the instant case.

22. These are the rival contentions of the parties.

23. In the instant case, after appellant's Counsel completed his submission, when the learned Counsel for the HMC started his submissions and he had confessed that the affidavit used by his client does not adequately reflect the position on the records and, as such HMC wanted to file a further affidavit. Similarly, a prayer was made by the learned Counsel for the said society. But, this Court, however, did not grant the parties liberty to use further affidavit in the midst of hearing. However, the Court allowed the learned Counsel for the HMC the liberty to rely on the relevant records of the case, provided copies of the records are given to the other side. Pursuant thereto, records were brought before the Court and the copies of the records were given by the learned Counsel for the HMC to the contesting parties.

24. From the records which have been disclosed in this proceeding, it does not appear that in the eligibility conditions for participating in the tender there was any indication that a co-operative society would be given any weightage. In fact, when initially the decision was taken by the authorities of HMC, the bid of the petitioner was accepted presumably because of his higher bid. At that stage, the idea of allowing the payment of bid money by instalment also did not surface and the petitioner was asked to pay the entire money within scheduled time by the HMC by the communication dated 02.04.04. The scheduled time is the time as per Clause 21 of the terms and conditions of granting licence fee for car parking zone. The relevant Clause 21 is set out below:

"21. The Terms of Payment shall be as under:

a) Successful bidder should deposit the offered amount within 7(seven) days from the date of receiving acceptance letter.

b) For next two(2) years annual license fee shall be deposited in advance for the next month."

26. It is true that the writ petitioner appellant did not pay the bid money within seven days from 02.04.04; nor did it approach the authorities of HMC with any prayer for extending the time or for instalment. He came to High Court on 19.04.04 with a writ petition and with a different case, as noted above. The High Court, while giving directions for filing of affidavit, extended the period of time upto 30.04.04 for the writ petitioner to pay. Before the High Court, the altered stand orally taken on behalf of the writ petitioner/appellant was for a prayer for instalment. But the stand on behalf of HMC was that it was opposed to any such prayer and no such opportunity shall be given to any successful tenderer. Though this does not appear

from the order of the High Court dated 19.04.04, but the aforesaid stand of HMC before the High Court on 19.04.04, is recorded clearly in the letter of the petitioner's lawyer dated 14.05.04 and was disclosed before us in the stay petition, which was heard along with the appeal. In the affidavit used by HMC to the stay petition, in paragraph 19, it was stated that "On the other hand on behalf of the Howrah Municipal Corporation, the prayer of grant of instalment by the writ petitioner was opposed."

26. In the records produced before us, it appears that one Sri Kundu in its note dated 14.05.2004 pointed out that Mayor, on the basis of a letter of the Cooperative Society dated 11.05.04, ordered acceptance of 1/3rd fees from the Cooperative Society while the prayer of the highest bidder (the petitioner) for instalment payment from made on 30.04.04 was ignored. Then reference was made to the advocate's letter sent on behalf of the writ petitioner raising the said grievance and the matter was put up by Kundu to the higher authority for a clear order on the question of accepting instalment payment from the society.

27. In view of the said note of Kundu the matter was put up before the Commissioner and the Commissioner in his note dated 14.5.04, said that the Mayor's order dated 13.5.04 is clear. Considering the fact that the second bidder is a co-operative society, Mayor directed acceptance of its offer to pay by instalment. So the Commissioner opined that after the order of the Mayor, matter cannot be reconsidered. Then, Sri Kundu passed an order to accept the instalment payment from the said society and payment was accepted. That is the undisputed fact situation, which appears from the records of HMC produced before this Court. Now from those facts various questions emerge.

28. The first question, which strikes this Court is whether on the failure of the highest bidder to pay at a time the entire amount of bid money by 30.4.04 and when he is praying to pay by instalment, the HMC was right in cancelling that prayer and allow the society to pay by instalment. The next question is even if HMC considers the next highest offer of the society, can it consider that offer on a basis different from the one on which the offer of the highest bidder to pay the bid money was turned down?

29. In this context, the decision of the Mayor-in-Council taken on 30.04.2004 is very crucial.

30. On 30.04.2004, the Mayor-in-Council (hereinafter called M-I-C) decided (a) to cancel the highest offer made by the petitioner/appellant as he failed to pay the entire money by 30.04.2004 in terms of the order of the Hon"ble High Court; (b) to forfeit the earnest money of the petitioner/appellant; (c) petitioner/ appellant was asked to pay the proportionate amount of car parking fees according to his offer for the period between 07.04.2004 and 30.04.2004. In so far as the Society is concerned in the said resolution of M-I-C, it decided (a) the society was to deposit within 7 days

its offer of Rs. 39,00,791/-.

31. There was no whisper in the order of M-I-C of granting any instalment in favour of the society, as it is a co-operative society. In this context, the provisions of the Howrah Municipal Corporation Act, 1980 (HMCA) is relevant.

32. Section 21 of HMCA provides that the Municipal Government of Howrah shall vest in the Corporation. Section 22 of HMCA indicates the powers and functions of the M-I-C. Section 22 is set out below:

"22. Powers and functions of the Mayor-in-Council.--(1) Subject to the provisions of this Act and the rules and the regulations made thereunder, the executive power of the Corporation shall be exercised by the Mayor-in-Council.

(2) All executive actions of the Mayor-in-Council shall be expressed to be taken in the name of the Corporation."

33. The M-I-C is collectively responsible to the Corporation; vide Section 6(5) of HMCA. The M-I-C consists of Mayor, Deputy Mayor and other members, not exceeding five, vide Section 6(1) of HMCA.

34. In this case, the decision of the M-I-C dated 30.04.2004, was altered at several stages and a rather sordid state of affairs were disclosed from the records of HMC--

(a) Pursuant to the decision of the M-I-C, a letter dated 30.04.2004 was sent to the said society by the Executive Engineer of HMC. The letter requests the society to deposit the car parking fees quoted by it, obviously the entire amount of 39 lakhs within seven days, i.e. by 07.05.2004. This is consistent with the decision of M-I-C.

(b) But, the date 07.05.2004 has been struck out and altered to 13.05.2004 in hand and in initialled by one Mr. Kundu.

(c) How can Mr. Kundu alter the decision of the M-I-C and under which authority has not been explained by the Counsel of HMC either in its affidavit or from the record. Nor is there any explanation when was the date altered, initially or later on, and why by an officer different from the one who issued the letter? In fact, no such authority can exist in Mr. Kundu, just an officer of HMC, to alter the decision of M-I-C which is statutorily authorized to exercise the executive power of HMC (section 22(1) of HMCA).

(d) The story does not end there. The peon of HMC has put it on record that with the letter of HMC dated 30.04.2004, he went to the office of the said society on two occasions, i.e. 30.04.2004 and 04.05.2004, but, the Secretary of the said society refused to accept that letter on both the occasions. That is the statement of the peon, which was brought on record in view of the order of the Commissioner.

(e) From the record it appears that a note was given by Mr. Kundu on 04.04. 2004 that the said society refused to receive HMC's letter and Mr. Kundu also

recommended consideration by HMC of the prayer of the petitioner/appellant to pay by instalment.

(f) It is only after the note and recommendation of Mr. Kundu that the Commissioner wanted the report in writing from the peon about refusal by the said society to accept HMC's letter and that is how the note of the peon was brought on record.

(g) Till 5.5.04, the said society did not appear anywhere on the scene.

(h) From the letter dated 11.5.04 written by the said society to the Mayor, HMC, it appears that on 6.5.04 the society came to know of the letter of HMC dated 30.4.04. In that letter the said society prayed for instalments for the first time and on that letter, the Mayor allowed the said prayer permitting the said society to deposit one third of its bid money by 15.5.04.

35. Now the question is can the Mayor alter the decision of the M-I-C, as has been done in this case. The answer lies in the statutory provisions of HMCA.

36. Section 23 of HMCA describes the power and functions of the Mayor. The relevant section in this context is Section 23(5) of HMCA. Section 23(5) of HMCA is set out:

"23(5). The Mayor may, if he is of opinion that immediate execution of any work (which ordinary requires the approval of the Corporation or the Mayor-in-Council) is necessary, direct the execution of such work:

Provided that the Mayor shall report forthwith to the Corporation or the Mayor-in-Council, as the case may be, the action taken under this sub-section and the reasons therefor."

37. A perusal of the section shows that the Mayor can, for immediate execution of a work in which the approval of the Corporation or M-I-C is necessary, direct execution of such work. But then the Mayor shall have to forthwith report to the Corporation or M-I-C, as the case may be the action taken under this sub-section and the reasons therefor.

38. This sub-section, in my judgment, cannot be applied to the present situation. This sub-section applies where the M-I-C has not passed any order and its order is required to be passed, but that will delay the work, the immediate execution of which is necessary. It is only in such a situation the Mayor can pass an order and then forthwith report the same with reasons for immediate action.

39. Here M-I-C has already taken the decision on 30.4.04 and its decision is holding the field. The Mayor, by virtue of his power u/s 23(5) of HMCA, cannot alter the decision of M-I-C in its vital aspects. This power has not been conferred on the Mayor either u/s 23(5) of HMCA or under any sub-section of Section 23. Even if it is assumed that the Mayor acted u/s 23(5) of HMCA, the Mayor did not forthwith

report its action to M-I-C, there is no evidence to that effect.

40. Section 23(1) of HMCA provides as follows:

"23(1). The Mayor shall exercise such powers and discharge such functions as are conferred on him by or under this Act."

41. It is clear from Section 23(1) that the Mayor is not a "free wheeler", he has to act within the four corners of the law, but he has failed to do so in this case by unilaterally altering the collective decision of the M-I-C. Thus, the Mayor unfortunately is acting contrary to the provisions of the very statute, i.e. HMCA, from which he derives his power. Thus, the order of the Mayor, in the facts of this case, is clearly without jurisdiction.

42. In the order of M-I-C dated 30.4.04 as noted above, no instalment was granted to the said society and it was directed to deposit the entire bid money by 7.5.04.

43. Without depositing any money by 7.5.04, the said society, as noted above, on 11.05.04 made a representation to the Mayor for depositing the money by instalments and the Mayor by his order dated 13.05.04 granted the said prayer by altering the decision of M-I-C with impunity.

44. It is thus clear that in the decision making process the Mayor acted in a totally illegal manner by completely disregarding the provisions of HMCA. The action of Mayor therefore, cannot be sustained in law.

45. Various decisions have been cited at the Bar. The learned Counsel for HMC relied on the decision in the case of [Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others](#), . The learned Counsel relied on para 7 at pages 804-805 of the report. There the learned Judges of the Hon"ble Supreme Court were summarising the principles relating to award of contract. Several leading cases of the Apex Court on the point were considered by the learned Judges. Considering all these decisions the principles were formulated as follows:

"But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness."

46. Here the decision of Mayor in accepting the offer of the said society by granting instalments and by refusing the same prayer made earlier by the appellant, is not only unfair and unreasonable, but the same is illegal, being contrary to the collective decision of M-I-C dated 30.04.04. Mayor has no power in law to do that. The other decision of a Single Bench of Calcutta High Court in the case of Gouranga Lal Chatterjee, reported in AIR 2003 Cal 44, also deals with the question of grant of tender by the State. Reliance was placed on paragraph 67 of the judgment at page

55 of the report. The learned Judge was pointing out the trend of judicial restraint in matters of interfering with the tendering process involving projects of national importance. That ratio has no application here which deals merely with question of collecting car parking fees. Even then in the said paragraph, it was pointed out that State must act within relevant, rational and non-discriminatory norms. Here the Mayor has failed to act within those norms. The action of the Mayor, being wholly without jurisdiction cannot be justified either under the rubric of "free play at the joints".

47. This Court fails to appreciate the applicability of the decision of the Supreme Court in the case of C.K. Achutan v. State of Kerala AIR 1959 SC 940 to the facts of present case. The interpretation of Article 14 as given in paragraph 8 of the judgment in C.K. Achutan has undergone a sea-change after the seven Judge Bench decision of the Supreme Court in the case of [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), . On such dynamic interpretation of Article 14, law has been laid down in [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), , on the State's obligation in matters of entering into contract with private parties and it was clearly laid down that State must act on rational, fair and just basis and cannot act contrary to any statute. Therefore, the entire judicial approach has changed. In the changed legal context after the Maneka decision, the principles in C.K. Achutan cannot apply to deal with the situation in this case.

48. The other decision in [West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others](#), , also does not support the case of HMC here. The tender in Patel Engineering involved "international competitive bidding which postulates keen competition and high efficiency" (Para 24, Page 467 of the report). So the factual situation is different. Even then the Apex Court observed that the bid conditions cannot be relaxed unless it is provided for in the conditions themselves, otherwise the relaxation in favour of one bidder would "impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies" (Para 24, Page 467 of the report).

49. The aforesaid observations apply to the orders passed by the Mayor in allowing the said society to deposit tender money in violation of Clause 21 of the tender condition and also by instalment whereas ignoring a similar earlier prayer by the highest bidder, the appellant. Apart from that the order of Mayor is clearly inconsistent with and contrary to the provisions of HMCA as noted above.

50. The learned Counsel for HMC urged that the petitioner has no locus standi to complain of the subsequent acts of HMC after it failed to deposit the entire bid money in terms of the High Court's order dated 19.4.2004.

51. The traditional rigours on the concept of locus standi have been substantially watered down by the Apex Court in a series of judgments especially in the field of public law proceedings. This judicial trend which started with the Constitution Bench

decision of the Apex Court in Fertilizer Corporation Kamgar Union's, case AIR 1981 SC 344, was further developed and continued in the subsequent Constitution Bench judgment in [S.P. Gupta Vs. President of India and Others](#), and in various other cases. Relaxed rule of locus is accepted in our constitutional jurisprudence.

52. Today the concept of locus in public law proceedings are decided on facts and in the interest of justice and not on any pre-conceived archaic rule of Anglo-Saxon vintage. The argument on the locus of the appellant, as raised by the learned Counsel of HMC, would have had a semblance of relevance, if HMC had stuck to the decision of M-I-C dated 30.04.2004. But, that is not the situation here. The Mayor at his sweet will and with impunity went on changing the collective decisions of M-I-C to which he was a party and in a manner, which is unjust, unfair and cannot take place in "the clean world of law".

53. Therefore, when unfair treatment in violation of Article 14 is the complain, the Court cannot tell the complainant off "at the gates" rather it is the Court's duty to examine the grievance and reach a finding on merits. This is the role, which today Courts, especially dealing with public law proceedings, are expected to discharge rather than remain a mute spectator to injustice and unfairness indulged in by the State or its agencies.

54. The learned Counsel for the said society cited various judgments.

55. The first decision on which reliance was placed was the famous decision in the case of [A.R. Antulay Vs. R.S. Nayak and Another](#) . Reliance was placed on para 27 of the said judgment and at page 1544 of the report. Reliance was placed on the said paragraph only for the purpose of contending that even a wrong decision can operate as res judicata between the parties. By placing reliance on the said judgment, the learned Counsel for the said society wanted to emphasize that the appellant is bound by the order of the learned Trial Judge dated 19th April, 2004 passed in the first writ petition. It may be noted that the said order is an interim order. Assuming the said order binds the appellant, and which in effect it does, that does not validate or justify the subsequent illegal acts of the Mayor in entertaining the offer of the said society to pay the bid money on a different basis. In other words by entertaining the offer of the said society on a different basis viz. by granting instalment which is contrary to Tender Condition No. 21, the Mayor was seeking to change the "rules of the game". This is not permissible. Even if the order dated 19.4.2004 binds the appellant that does not permit the Mayor to act arbitrarily and contrary to the provisions of HMCA as he has done in this case.

56. Reliance was also placed on the decision of the Supreme Court in 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](#) . Reference was particularly made to paragraph 14 of the judgment and the learned Counsel drew the attention of this Court where the learned Judges have held that except for some other

consideration, which render it reasonable, and in public interest, the Government cannot give contract or sell or lease out its property to anyone other than the highest bidder. While explaining those reasonable considerations it was observed in the said paragraph of the judgment that giving effect to directive principles may be one of such considerations for carrying out a welfare scheme for the benefit of a group.

57. From the facts it is clear that it is not a case of carrying out any welfare scheme on the part of HMC while holding an auction for giving out Parking Fees Licence. At no stage of the matter starting from issuance of public notice right up to the order of the M-I-C dated 30.04.2004, HMC ever proceeded on the basis that will give any weightage to a co-operative society. The co-operative society might have written a letter dated 20.02.04 to the authorities of HMC for getting it a weightage as a co-operative society, but the authorities of HMC never proceeded on that basis. Therefore, the aforesaid observation in Kasturi Lal is of no assistance in the facts of this case.

58. The other decision, on which reliance was placed by the learned Counsel for the said society viz. in the case of [Mohmedalli and Others Vs. Union of India \(UOI\) and Another](#), was concerned with totally different matters. In the case of *Mohamedali the Employees' Provident Funds Act, 1952* was challenged as violative of Article 14. But the learned Judges held that it does not suffer from the vice of discrimination because the Act applies to all establishments except those mentioned in Section 16. Section 16 as amended by Act 46 of 1960 exempted establishments registered under *Co-operative Societies' Act* which stand on a different footing. There can be no dispute with those propositions. But in the facts of this case the said society was not treated on a different footing under the tender condition. If the tender conditions did not treat the said society on a different footing, those conditions cannot be altered subsequently and also unilaterally at the instance of the Mayor after offers were invited and accepted under different tender conditions. This being the factual position, the decision in *Mohamedali* does not lend any assistance to the case of the society. As already noted above by treating the co-operative society on a different basis the tender conditions cannot be changed as that would amount to changing the "rules of the game". That would be wholly unfair and unreasonable.

59. The other decision relied on by the learned Counsel of the said society was rendered in the case of [Ram and Shyam Company Vs. State of Haryana and Others](#), Reliance was placed on paragraph 15, page 281-82 of the report where reference was made to the decision of the Supreme Court in the case of [Nand Kishore Saraf Vs. State of Rajasthan and Another](#), . But the facts in *Nand Kishore* were totally different. In *Nand Kishore*, in the tender rules, Rule 59 provides for relaxation of any provision of the rules in the interest of mineral development and the better working of the mines. In view of the said rule, which permits relaxation of the acceptance of the tender of a co-operative of labourers who work in the mines, was approved by

the Apex Court. Here there is no such rule of relaxation. Apart from that there is no evidence that the said society is a co-operative society of workers. Such relaxation in favour of a co-operative society does not appear from the collective decision of M-I-C. The Mayor on his own cannot change such a decision and grant relaxation when the same is one of the tender conditions. So ratio in Ram and Shyam is of no assistance here.

60. For the reasons aforesaid this Court cannot uphold the order of the Mayor dated 13.05.04 in allowing the said society to deposit 1/3rd of its bid money by 15th of May, 2004 and then giving it the Possession Certificate to collect the parking fees. The initial order of Mayor dated 13.05.04, which is contrary to tender conditions, contrary to the collective decision of M-I-C and thus contrary to Section 23 of HMCA, being bad in law, is quashed. As such all subsequent acts of HMC in accepting further instalments from the said society and granting a possession certificate to the said society are also bad in law.

61. The HMC is directed to conduct a fresh tender for allotment of the licence for collection of parking fees. For that HMC is to issue notice forthwith and the entire process should be completed on or before 30th of September, 2004. In the meantime, the said society may continue on ad hoc basis, even though its appointment is set aside, as otherwise the HMC may find some administrative inconvenience in collecting the parking fees. But one thing is made clear that the said society cannot continue to collect parking fees on the basis of its previous appointment beyond 30th of September, 2004. The amount which has been paid by the said society is to be refunded to the said society by the HMC after deducting the proportionate amount in accordance with its offer for the period it continued and will continue up to 30th September, 2004 to collect the parking fees. It is also made clear that in the said fresh tender both the appellant and the said society will be entitled to participate.

62. With this direction the appeal is allowed to the extent indicated above. The order of the Mayor dated 13.05.04 and all subsequent orders accepting the instalment payments by the said Society are set aside. The order of the learned Judge dated 20th April, 2004 is also set aside.

63. There will be no order as to costs.

Tapan Kumar Dutt, J.

I agree.

Later :

64. After the judgment was delivered, learned Counsel appearing for respondent No. 6 prays for stay of operation of the judgment. The said prayer is considered and rejected.

65. Learned Counsel for the parties may be entitled to note down the gist of the operative part of the judgment and may communicate the same to the respondent authority.