

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.Nos.3494, 3766 and 3767 of 2003 & W.P.No.14996 of 2003

W.A.No.3494, 3766 & 3767 of 2003

Tamilselvan ..Appellant in W.A.No.3494 of 2003.

S.Mutharasu ..Appellant in W.A.No.3766 of 2003.

Nagappan ..Appellant in W.A.No.3767 of 2003.

Vs.

Metropolitan Transport Corporation,
Rep. by its Managing Director,
Pallavan Illam,
Anna Salai,
Chennai - 600 002.1st respondent in all the Writ Appeals.

M.Muthamilselvam ..2nd respondent in W.A.No.3494/ 2003
(R.2 impleaded as per order of Court
dt. 18.3.2004 and made in WAMP.1907/04)

W.P.No.14996 of 2003

1. S.Murugesan
2. S.Karunanidhi
3. T.Tamil Selvan
4. M.Sadique
5. J.Padmaraj
6. P.Kadal Dhana Sekaran
7. R.Thirumalai
8. Janarthan Singh
9. S.Arasu
10. S.Muthuraju
11. G.Sampath
12. S.Anthony
13. Mrs.Kasthuri Bai

..Petitioners.

Vs.

1. Metro Transport Corporation (Chennai) Ltd.,
rep. by its Managing Director,
Pallavan Illam, Anna Salai,
Chennai - 600 002.
2. The Deputy Manager,
Traffic and Transportation (Engg-General),
Pallavan Illam,
Anna Salai,
Chennai - 600 002.
3. M.Vijayalakshmi
4. Muthamilselvam ..Respondents.
(R.3 & R.4 impleaded as per the order of
this Court dt. 15.10.2003 in WPMP.Nos.25155
& 26900/93).

PRAYER: Writ Appeal filed against the order of the learned
Single Judge dated 08.10.2003, passed in
W.P.No.16619 of 2003, as stated therein.
(W.A.No.3494 of 2003)

Writ Appeal filed against the common order of
the learned single Judge dated 10.10.2003,
passed in W.P.Nos.16540 & 16538 of 2003, as
stated therein. (W.A.Nos.3766 & 3767 of 2003)

Writ Petition filed under Article 226 of the
Constitution of India for the issuance of a
writ of mandamus forbearing the respondents
from considering or accepting the tender
relating to Item No.7 in the Notification of
tender dated 3.5.03 published in the Chennai
edition of Tamil Paper "Dinapoomi".

Mr.V.K.Muthusamy Senior Counsel
For Mr.V.Kathiravan :: For Appellants in all the Writ Appeals
& for Petitioners in the Writ Petition
1st Respondent in WA.3494/03

Mr.L.G.Saha Devan :: For the sole Respondent in the W.As.
3766 & 3767/03.
& For Respondents 1&2 in the W.P.

Mr.S.V.Jayaraman, Senior Counsel
For Mr.P.N.Peruvazhuthi
:: For 2nd respondent in W.A.3494/2003
& for 4th respondent in W.P.14996/2003

Mr.Devendran :: For respondent -3 in W.P.14996/2003

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

1. Heard learned counsel for the parties and perused the records.

2. The appellants and writ petitioners in W.P.No.14996 of 2003 were licence holders to run the bunk shops in the bus depots of the Metropolitan Transport Corporation (Chennai) Ltd. Subsequently, tender notification was published on 03.05.2003 calling for applications to run the bunk shops in the Metro Transport Depots, which was opened on 25.03.2003, and the successful bidders have been given licences to run the bunk shops. Hence, by order dated 30.05.2003, the appellants were asked to vacate the premises.

3. The appellants challenged the said order by filing writ petitions, and those writ petitions were dismissed by this Court. Writ Petition No.16619 of 2003 filed by the appellant in W.A.No.3494 of 2003 was dismissed on 08.10.2003 and W.P.Nos.16538 and 16540 of 2003 filed by the appellants in W.A.Nos. 3767 and 3766 of 2003, respectively were dismissed on 10.10.2003. Against those dismissal orders the present writ appeals are filed. The present Writ Petition in W.P.No.14996 of 2003 is filed by some of the erstwhile licencees, and as the question involved in the writ appeals and the writ petition are one and the same, they are being disposed of by this common judgment.

4. The appellant in W.A.No.3494 of 2003 is the member of National Association Educated Self Employed Youth (NAESEY), an organisation founded to provide opportunities to the unemployed youth to find means of livelihood through self employment. The said organization approached various departments of the Government in 1976 and 1977 for the allotment of shops within the premises of their departments on lease for providing the same to its members to put up bunks to carry on petty trades to find means of substance. On their application the respondent-Metropolitan Transport Corporation (Chennai) Ltd. allotted some spaces at various places in their complexes in Chennai and surrounding areas on various dates from 1977 to 1980. The appellant in W.A.No.3494 of 2003 was allotted a space measuring 40 sq. ft. (8x5) to put up a bunk on one of the Metropolitan Bus stand. He put up a bunk in the space allotted to him raising loan from NAESEY Co-operative Thrift and Credit Society Ltd., and started carrying on the petty trade in vending Coffee, Tea, Aerated Waters, Snacks, etc. Initially the rent was fixed as Rs.1/- per sq.ft. and subsequently the respondent - Transport Corporation increased the rent from time to time. It is alleged that the appellant was paying the same and there was no arrears. It is also alleged that the income from the bunk stall is the only livelihood for the appellant's family. The respondent - Transport Corporation subsequently invited tenders in the newspapers on 03.05.2003 calling for the applications for the grant of tea shops in the Metropolitan Transport Depots. The last

date for making a tender was fixed as 22.05.2003, and the tender was to be finalised on 23.05.2003 at 3.30 pm. It is alleged that for the past 25 years the appellant in W.A.No.3494 of 2003 and his family members are living from and out of the income from the bunk shop allotted to him. Hence, he challenged the aforesaid tender notification. It is alleged that the action of the respondent-Transport Corporation in calling for tender to lease out the bunk shops is arbitrary, and against the doctrine of legitimate expectation. The appellant was in possession and enjoyment of the premises for about 25 years and was paying the rents fixed regularly without arrears. Hence, the impugned order passed by the respondent-transport corporation dated 04.06.2003 directing the appellant to hand over vacant possession of the premises is unjust, unfair, unreasonable and deserves to be quashed. The impugned order is alleged to be violative of Articles 14, 19 and 22 of the Constitution.

5. It appears that the appellants did not chose to participate in the tender process. Hence, the respondents have contended that they have no right to question the validity of the tender, and it is also contended by the respondents that the appellants have no vested right to carry on the business as they are only licencees.

6. In W.A.No.212 of 2004 (Geethammal Vs. Metropolitan Transport Corporation, rep. by its Managing Director) dated 20.02.2004 a Division Bench of this Court observed:-

"As it is, the petitioner had no right, once the petitioner did not chose to challenge the tender proceedings successfully or as the case may be her licence was not renewed. In that view, the petitioner would be left with no right. The learned single Judge has taken a correct view of the matter. Learned counsel, however, says that the petitioner will be thrown again into unemployment and that the Corporation has allotted certain other shops to such persons who have approached the Corporation. We only express that the petitioner would be free to make a representation to the Corporation and the Corporation shall consider that representation on its own merits."

7. In the above decision also the facts were that the appellant had been granted the shop under the 20 Point Programme for unemployed youth. Thereafter, the Metropolitan Transport Corporation decided to invite fresh tenders for allotment of the shops in the Bus Stands, but the appellant therein never participated in the tender proceedings nor offered any bid. Hence, the Division Bench held that the appellant had no right to question the proceedings as she had not chosen to challenge the tender proceedings. The aforesaid view of the Division bench in W.A.No.212 of 2004 is binding on us, and we respectfully agree with it.

8. Moreover, a perusal of the Lease Deed dated 10.02.1999 between the Metropolitan Transport Corporation (Chennai Division - II) and the appellant in W.A.No.3494 of 2003 shows that the lease was for a period of 11 months from 10.02.1999 to 09.1.2000

and in the event of the second party-appellant in W.A.No.3494 of 2003 intending to vacate the land portion it shall give three months notice to the first party - Metropolitan Transport Corporation and vice-versa. The second party- appellant had an option to get the lease deed renewed only if the first party - Metropolitan Transport Corporation agreed to this, vide para-11 of the agreement which states

Para-11: The second party shall have an option to renew the lease if the first party agrees on such terms and conditions, as might be agreed to, at that time between the parties for a period of 11 months with an increase of Rs.2.50 per sq.ft. for every renewal."

9. Thus, the appellant did not have a right to continue in possession for ever.

10. Apart from that, there was an arbitration agreement in paragraph 21 of the lease deed, which states

Para-21: In the event of any question, dispute or difference arising out of the agreement between the parties with regard to the interpretation of any conditions of this Agreement, the decision of the Managing Director, shall be final and binding on the parties."

Hence, the appellant has got an alternative remedy of going for arbitration and the writ petition should not have been entertained.

11. The properties in question belongs to the Metropolitan Transport Corporation. The appellants and the writ petitioners cannot claim a right to continue in possession of the same forever. The Metropolitan Transport Corporation obviously wants to earn more income from the said properties, and hence it put up the same for tender. If the appellants and the writ petitioners in the above writ petition wanted a fresh grant, they should have participated in the tender process, but they did not do so. Hence, they cannot claim any right to continue.

12. The persons who have succeeded in the tender process have filed impleadment applications and have appeared through their counsel. The tenders were finalised in favour of these persons seeking impleadment.

13. A Division Bench of this Court in Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Board Engineers' Association, 2005(1) TLNJ 101 in W.A.No.1081 of 2004 dated 28.01.2005 held that the High Court should not interfere in policy decisions and administrative matters. The said Division Bench relied on the several rulings of the Supreme Court and hence we are repeating the same.

14. For instance, in Tata Cellular Vs. Union of India, AIR 1996 SC 11 the Supreme Court observed that the modern trend points to judicial restraint in administrative action and the Court does not sit as a court of appeal over administrative decisions as it does not have the expertise in such matters.

15. Similarly, in Union of India Vs. International Trading Company, 2003 (5) SCC 437 the Supreme Court following its own decisions in G.P.Mahajan Vs. Jalgaon Municipal Council, AIR 1994 SC 988 held that the Courts are kept out of the lush field of administrative policy except where the policy is inconsistent with the express or implied provision of a statute or where a decision is wholly arbitrary.

16. As Prof.H.W.R.Wade points out in his 'Administrative Law', there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The Court cannot interfere in such matters.

17. In Netaji Bag and Others Vs. State of West Bengal and Others, 2000 (8) SCC 262 (vide para-20) the Supreme Court observed

"the court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or wiser or more scientific or logical".

The Court can only interfere where the Wednesbury principle applies. In our opinion it does not apply in these cases. Hence we cannot interfere.

18. In the present cases, the newly impleaded respondents were the highest bidders in the tender held on 23.05.2003, while the writ appellants and the writ petitioners in the present Writ Petition No.14996 of 2003 did not even participate in the same. Hence they cannot claim any right. The lease agreements of the appellants in the present writ appeals and the writ petitioners in W.P.No.14996 of 2003 automatically expired and they were not extended. We agree that in the circumstances the doctrine of legitimate expectation has got no application nor is there any estoppel. In our opinion, the appellants and the writ petitioners in W.P.No.14996 of 2003 have neither any contractual nor statutory right of renewal of their leases. The newly impleaded respondents being the highest bidders in the tender process have the right to carry on their businesses.

19. In result, all the writ appeals and the pending Writ Petition No.14996 of 2003 are dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Sm

To

1. The Managing Director,
Metropolitan Transport Corporation
Pallavan Illam, Anna Salai,
Chennai - 600 002.
 2. The Deputy Manager,
Traffic and Transportation (Engg-General),
Pallavan Illam,
Anna Salai,
Chennai - 600 002.
- + 1 CC to Mr.Veera kathiravan, Advocate SR NO 9382
+ 1 CC to Mr.L.G.Sahadevan, Advocate SR NO 9369
+ 1 CC to Mr.Peruvazhuthi, Advocate SR NO 9333
+ 1 CC to Govt. Pleader SR NO 9309

W.A.Nos.3494, 3766 &
3767 of 2003 and
W.P.No.14996 of 2003.
28..02..2005.

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