

IN THE HIGH COURT OF JUDICATE AT MADRAS

DATED: 30.08.2011

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P.No.17700 of 2011

Business Leader
rep. by its Sole Proprietor,
G.Renganathan,
No.1-D, Ess Pee Kay
Apartments,
No.9, Dhanammal Street,
Chetpet, Chennai 600 031.

... Petitioner

vs.

1. The Chennai Metropolitan
Development Authority,
rep. by the Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
2. The Chennai Metropolitan
Development Authority,
rep. by the Superintending Engineer - II,
Construction Wing, Tower - II,
Chennai 600 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to forbear the respondents from terminating the contract viz. Collection of vehicle parking fee from vehicle parked at parking space including parking space available in double level basement in Chennai Mofussil Bus Terminus at Koyambedu, Chennai 600 107 pending finalization of the tender process as per the tender notice dated 22.11.2010.

For Petitioner : Mr.R.Thiagarajan,
Senior Counsel
for Mr.M.Dhandapani

For Respondents : Mr.A.Navaneetha Krishnan,
Advocate General
for Mr.N.Sampath

O R D E R

By consent of the learned counsel for the parties, the writ petition itself is taken up for final disposal.

2. Praying to forbear the respondents from terminating the contract viz. Collection of vehicle parking fee from vehicles parked at parking space including parking space available in double level basement in Chennai Mofussil Bus Terminus at Koyambedu, Chennai 600 107 pending finalization of the tender process as per the tender notice dated 22.11.2010, the petitioner has come up with the present writ petition.

3. Facts of the case as put forth in the affidavit would run thus :

(i) The petitioner is a licensee for collection of vehicle parking fee from the vehicles parked at parking space including parking space available in double level basement in CMBT Koyambedu, Chennai 600 107, viz., Mofussil Bus Terminus. The petitioner has been collecting the fee for the past nine years and the period of lease was periodically extended by the respondents. The petitioner's period of lease came to an end on 31.05.2011, but, due to the litigation initiated at the instance of another contractor by name PCLT, the new tender could not be finalised. In the new tender, the petitioner has participated. Under the said circumstances, the period of lease was extended in favour of the petitioner till 31.07.2011 or till the disposal of the writ petition filed by the PCLT by communication dated 20.05.2011 of the 1st respondent.

(ii) The 2nd respondent had issued a tender notice dated 22.11.2010 calling for bidders to grant license for collection of vehicle parking fee from vehicles parked at parking space including parking space available in double level basement in CMBT, Koyambedu, Chennai 600 107. The said tender is a two cover system, wherein the tenderers are required to submit their qualification requirement in one cover viz., technical bid and the financial bid viz., price quoted in the other cover. The last date for submission of tender was stipulated as 10.12.2010. Six persons including the petitioner have submitted the tender document to the 2nd respondent authority. Out of the six persons, the 2nd respondent, after verifying the technical bid had called for three persons, viz., Kumutha Travels, PCLT and the petitioner, by a communication dated 25.01.2010 for a meeting to open the price bid on 28.01.2010 in the presence of the tender committee members. Subsequently, the tender was postponed due to administrative reasons, for which necessary communication has been sent to the petitioner and other tenderers.

(iii) The petitioner has reliable knowledge that PCLT who was awarded previous works by the CMDA in respect of the same nature and scope of work, has defaulted in payments on several occasions which resulted in the 2nd respondent issuing notice and Bank Guarantee furnished by him has also been invoked. In fact, PCLT has approached this court on several occasions and failed to comply with the orders in W.P.No.24606 of 2007 dated 23.07.2002 resulting in the 2nd respondent invoking the Bank Guarantee furnished by the PCLT to the extent of Rs.60 lakhs on 24.08.2007. Thereafter, notwithstanding the invoking of the Bank Guarantee, PCLT has not paid the remaining instalments resulting in a notice dated 02.11.2009 being issued as against PCLT calling upon him to pay arrears, failing which further action would be initiated. The PCLT has filed C.S.No.1184 of 2009 as against the above notice dated 02.11.2009 and the same is pending as on date.

(iv) The petitioner reliably learnt that the PCLT who was already a contractor for the Toilet Maintenance of the Koyambedu Vegetable Market Complex, is liable to pay more than Rs.10 lakhs and as such, he is a defaulter in the said contract also. Under the said circumstances, the petitioner filed W.P.No.2926 of 2011 to declare the default as ineligible to participate in the tender and subsequently withdrew the same and got himself impleaded in the writ petition filed by PCLT, viz., W.P.No.3573 of 2011.

(v) In the meanwhile, due to sudden change of circumstances, the respondents have now decided to favour the other bidder who is a defaulter, viz., PCLT. In order to award tender to him and with a view to eliminate the petitioner from the bid, the respondent Department issued notice dated 11.07.2011 and again, another communication dated 12.07.2011 to the effect that the department has received complaints from the public to the effect that the petitioner is collecting excess parking charges and certain vehicles are parked outside the parking area. As far as the vehicles which are parked outside the area is concerned, the petitioner is not responsible for such parking and the petitioner has not collected any amount from them. It is always open to the respondents to seize such vehicles, if it comes to their knowledge.

(vi) As regards the fact that the respondents have received complaints from general public, the petitioner would state that at the instance of the defaulter and with the connivance of the officials of the respondents, the notice dated 11.07.2011 seems to have been issued. Normally, if a vehicle is parked for 5 hours, the charge would be Rs.3/- and if it extends beyond 5 hours, the petitioner is entitled to collect another Rs.3/- as stipulated by the respondent Department. Some of the general public without knowing this procedure by parking the vehicle on the previous date would insist that they would not pay the extra money, when they come to take back their vehicles on the next day. It is only at such

circumstances, they would be informed to pay extra charges.

(vii) In the instant case, the officials of the respondent Department have created forged documents as if some of the general public gave complaints with a view to terminate the contract of the petitioner. On receipt of the said show cause notice, the petitioner gave a complaint to the concerned police authorities who have conducted a detailed enquiry and gave a final report. As per the final report of the Koyambedu Police Station, on the enquiry conducted by them, it has come to their knowledge that the alleged persons have not given any complaints and they have not signed in any statements, as alleged by the respondents. Even some of the addresses are forged as indicated in the final report. The petitioner has submitted a detailed reply along with the final report of the police authorities on 20.07.2011. According to the petitioner, if an independent authority is appointed as an Enquiry Officer to enquire with regard to the show cause notice and the alleged statements relied by the respondents, the truth would come out. By the illegal action on the part of the respondents, who have gone to the extent of creating the forged documents, the petitioner is able to come to the conclusion that he would not be permitted to continue to carry on the business beyond 31.07.2011. Being left with no other alternative remedy, the petitioner is before this court with the present writ petition.

4. Respondents/CMDA have filed counter affidavit, wherein, it is stated as follows :

(i) It is important to note that the prayer sought for by the petitioner is by suppressing the material fact that the extension of the contract granted in favour of the petitioner itself expired on 31.07.2011 automatically and therefore, there is no necessity for any termination of the contract by the respondent authorities on the expiry of 31.07.2011. The petitioner is bound to vacate the premises and therefore, he is not entitled to have any right for collection of parking fee from the vehicles in the respondent's premises. However, an impression has been created by the petitioner that the contract is still valid and the respondent authorities are taking steps to terminate the contract. By suppressing such material fact and misleading this court, the petitioner has obtained an order of interim injunction dated 28.07.2011 and hence, the same is liable to be vacated with immediate effect.

(ii) The Chennai Mofussil Bus Terminus at Koyambedu has started functioning from 18.11.2002. The Government of Tamil Nadu, by their order in G.O.Ms.No.208, H & UD (UD-III) Department, dated 20.08.2002 have entrusted the maintenance work of CMBT to CMDA after strictly following tender procedures and there will not be a single agency for the terminus. Therefore, the respondents have called for the tender for collection of parking fee for two wheelers/car, etc. through

Newspaper Publication on 06.09.2002. The upset price for the tender was fixed at Rs.25 lakhs.

(iii) The tender for collection of parking fee at CMBT becomes the subject matter of the writ petition before this court and there were interim orders. So, it becomes necessary for the 2nd respondent to do the work on their own by engaging men at their disposal from 01.04.2003 to 31.12.2004. Ultimately, the writ petition was withdrawn as dismissed. The Work Order was issued to the petitioner on 01.01.2005 for a period of one year from the date of the order. The petitioner has continued his license for this work till 31.05.2011.

(iv) After a detailed study of parking requirements for the public at CMBT, the respondents have constructed Double Level Basement structure for vehicle parking space and decided to go for a fresh tender for augmentation of revenue. The cost of construction for Double level basement structure was approximately Rs.17 crores. Therefore, the expectation of the respondents would be on a revised rate. In this regard, a detailed study report was submitted by M/s.PTCS Ltd., Chennai-78 and based on the report, the 1st respondent has constituted a Committee to go into the details of various aspects with regard to flow of vehicles, hours of parking and the rates to be fixed for the fresh tender. As per the rates fixed by the committee, the anticipated revenue would be Rs.2.08 crores.

(v) The procedure for evaluation of the tender was recommended at two stages. One is pre-qualification and the second one is price bid. The tenders were called for through Newspaper on 22.11.2010. About six tenderers participated in the tender process. The Technical Bid was opened on 10.12.2010. Out of six tenderers, three were prima facie qualified; but, before finalizing the financial bid, there was a dispute over the qualification of one of the tenderers and due to the interim orders in the writ petition, the tender could not be finalized.

(vi) The licence given to the petitioner for collection of parking fee expired on 31.05.2011. Since there was a delay in finalizing the tender, the petitioner was requested to continue the work till 31.07.2011 or till the disposal of the writ petition, whichever is earlier. During this period, there were complaints from the public that the petitioner is charging more than the rates fixed by the respondents for parking fee at CMBT. Therefore, the respondents have decided to collect the parking fee for two wheelers, cars, etc. by themselves from 01.08.2011 as the period given to the petitioner expired on 31.07.2011.

(vii) According to the respondents, when a matter pertaining to a claim or demand of an earlier tender has become the subject matter of a suit before this court in C.S.No.1184 of 2009, no person

shall claim the disqualification based on such claim or demand. Therefore, the petitioner's averments with regard to disqualification of another tenderer cannot be brought into the subject matter of this writ petition till the court decides upon the issue. Therefore, the petitioner's plea on this ground is totally false and incorrect. Hence, the petitioner cannot claim any relief based on the averments made against the third party, who is not a party to the writ petitions.

5. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner would strenuously contend that the petitioner has got the right of lease for the past 9 years from 14.11.2002 with acceptable terms and conditions and the said lease has been periodically extended and it came to an end on 31.05.2011 and due to the litigation initiated at the instance of another Contractor, by name, PCLT, the new tender could not be finalised. Therefore, the respondents extended the lease in favour of the petitioner till 31.07.2011 or till the disposal of the cases pending before this court, whichever is earlier, as per their communication dated 20.05.2011. He would argue that since the litigations initiated by the other Contractor are not over and as the respondents have not taken any steps to adjudicate the matter, the petitioner has got the right to continue the lease till the litigations are over, as per the conditions stipulated.

5a. It is his further contention that even during the period of lease, the respondents have started to invite tender and stipulated the last date for submission of tender as 10.12.2010. The petitioner and two other tenderers, namely, Kumutha Travels and PCLT have been technically qualified among the six tenderers who participated in the tender process and by a communication dated 25.01.2011, the 2nd respondent called upon the technically qualified three tenderers for a meeting to open the price bid on 28.01.2011 in the presence of the Tender Committee members. However, the tender was postponed due to administrative reasons. Therefore, according to the learned Senior Counsel, in the given circumstances, there is no other option for the respondents except to allow the petitioner to continue with the lease. In support of his case, the learned Senior Counsel has relied on the following Supreme Court decisions:

(i) AIR 2007 Supreme Court 2361 (State Bank of India & another vs. Mula Sahakari Sakhar Karkhana Ltd.)

"17. The document in question is a commercial document. It does not on its face contain any ambiguity. The High Court itself said that ex facie the document appears to be a contract of indemnity. Surrounding circumstances are relevant for construction of a document only if any ambiguity exists therein and not otherwise.

18. The said document, in our opinion constitutes a document of indemnity and not a document of guarantee as is clear from the fact that by reason thereof, the appellant was to indemnify the co-operative society against all losses, claims, damages, actions and costs which may be suffered by it. The document does not contain the usual words found in a bank guarantee furnished by a Bank as, for example, "unequivocal condition", "the co-operative society would be entitled to claim the damages without any delay or demur" or the guarantee was "unconditional and absolute" as was held by the High Court.

(ii) AIR 2008 Supreme Court 241 (Parayya Allayya Hittalamani vs. Parayya Gurulingayya Poojari & others)

"18. The nature of the document also plays an important part for construction thereof. The suit filed by the parties, inter alia involved the question of interpretation of the said consent decree. Parties adduced evidences, inter alia, in regard to the nature of poojas and offerings made to the priest in their individual capacity. The dispute between the parties related to right of worship upon inheritance thereof from their predecessor. Their rights in regard to offer poojas in the temple are itself not in dispute. In a case of this nature where a consent decree does not refer to the entire disputes between the parties and some vagueness remained, the factual background as also the manner in which existence of rights have been claimed by the parties would be relevant. The consent decree, appears to be meant to be operative for a limited period viz. 1956 and 1961.

Section 92 of the Evidence Act in a situation of this nature, in our opinion, cannot be said to be attracted."

6. On the other hand, Mr.A.Navaneetha Krishnan, learned Advocate General appearing for the respondents/CMDA would submit that the petitioner has no legal right to continue with the lease after 31.07.2011 as per the communication dated 20.05.2011, since it was only an extension with a condition that the contract would be terminated on 31.07.2011 or till the disposal of the Hon'ble High Court case, whichever was earlier. Therefore, a reading of the conditions itself would clearly show that the extended period of lease was only till 31.07.2011 and thereafter, no legal right is available to the petitioner to continue. Moreover, there is no enforceable agreement or contract and further the pendency of the litigation initiated by the other Contractor cannot be taken advantage by the petitioner to continue the lease. He would submit that the respondents are ready to take up the work even during the

pendency of the litigation. Therefore, no equitable relief can be granted to the petitioner.

6a. In support of his stand, the learned Advocate General has relied on the following :

(i) a Supreme Court decision reported in (1981) 2 SCC 205 in the case of State of Tamil Nadu vs. M/s.Hind Stone and others

"13. ... No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application."

(ii) a decision of this court reported in 2008 (3) CTC 675 in the case of ION Exchange Waterleau Ltd. vs. The Commissioner, Madurai Municipal Corporation

"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."

7. Heard the learned counsel for the parties and perused the records and relevant orders.

8. A circumspection of the facts would reveal that the Chennai Metropolitan Development Authority (in short 'CMDA'), a body under the Housing and Urban Development Department, in order to alleviate the existing traffic problems as well as unmanageable situations prevailing in the existing Terminals in Esplanade, Basin Bridge, Broadway and MUC grounds, was permitted to construct Chennai Mofussil Bus Terminus (in short 'CMBT') at the periphery of the city along Jawaharlal Nehru Salai (Inner Ring Road) at Koyambedu at a cost of Rs.102.50 crores. Accordingly, CMDA raised funds for this project from HUDCO and TUFIDCO. After the construction of CMBT at Koyambedu, the respondent/CMDA took a decision to maintain the same. In this regard, it issued Work Order to the petitioner by means of a communication dated 14.11.2002 in Lr.No.S.E.II/C.W./D.E/F.1197/2000, for the work of "Collection of Vehicles Parking fee from the vehicles parked in CMBT Project at Koyambedu" on lease for a period of one full year's bid amount of Rs.32,25,000/- at 29% above the Departmental rates, subject to the following conditions :

"(i) At the time of tendering, you have furnished the E.M.D. Of Rs.25,000/- (Rupees Twenty Five thousand only) in the shape of Demand Draft). As per Tender Notice Condition 2b, the E.M.D. paid by you will be retained and shall not carry any interest for this contract. The E.M.D. will be returned to the lessee on the expiry of 3 months after the completion of the lease period.

(ii) As per Tender Notice condition-3, you are requested to remit the entire sum i.e. one full years' bid amount of Rs.32,25,000/- (Rupees Thirty Two Lakhs Twenty Five Thousand only) in one lumpsum, by means of Crossed Demand Draft (drawn in favour of E.E, Division I, C.W., CMDA, Chennai-8) within seven working days from the date of Work Order i.e. (14.11.2002).

(iii) As per Tender Notice Condition-5, you are requested to furnish the recent passport size photo and proof for Nativity and Residence (such a Certificate from Tahsildar and Ration Card/Identity Card issued by the Election Commissioner/Permanent Account Number by Income Tax Department) to the S.E., CWC II, CMDA for signing the Agreement.

(iv) As per Tender Notice Condition-8, you are requested to furnish the Certificate of I.T.C.C. from the appropriate Income Tax Authority and S.T.C.C. obtained from the Commercial Taxes Department.

(v) You are requested to attend t/o within seven working days from the date of this work order with all the above particulars for executing the agreement in a non-judicial stamp paper to a value of Rs.20/-.

If you fail to attend t/o and sign the agreement within the time prescribed, you are hereby informed that the E.M.D. remitted by you will be forfeited by CMDA as per rules. "

8a. Thereafter, the said lease was extended time and again and ultimately came to an end by 31.05.2011. While so, the other tenderer PCLT, i.e. Proddatur Cuddapah Lorry Transport, filed a Writ Petition in W.P.No.4166 of 2011 for a mandamus to forbear the respondents from proceeding with the finalization of the tender in respect of the Tender Notice and got an interim order. PCLT also filed another Writ Petition in W.P.No.3573 of 2011 challenging two Notices issued by CMDA, dated 03.02.2011 and 07.02.2011 in respect of the very same Tender and for a consequential direction to the petitioner herein to take part in the opening of the price bid, and got an interim order. It is also seen that one more Writ Petition was filed by PCLT challenging the proceedings of the CMDA dated 14.02.2011 and interim stay was granted. The above writ petitions are pending disposal before this court till date.

9. While so, the respondents, vide Letter No.SE-II/CW/DB/F5738/2006 dated 20.05.2011, referring to the proceedings namely, (i) Agreement, dated 22.10.2010, (ii) their letter dated 03.05.2011 and (iii) their order dated 19.05.2011, inter alia took a decision and communicated to the petitioner as reiterated below :

"In continuation of this office reference 2nd cited, it is informed that the licence for "Collection of vehicle parking fee from vehicles parked at parking space including parking space available in Double Level Basement in CMBT, Koyambedu, Chennai-107" is extended for a further

period of two months i.e. from 01.06.2011 to 31.07.2011 for a lease value of Rs.10,92,710/- (Rupees Ten lakhs ninety two thousand seven hundred and ten only) with the condition that the contract will be terminated on 31.07.2011 or till the disposal of Hon'ble High Court case whichever is earlier.

This order is also subject to following terms and conditions:

(i) You are requested to remit a sum of Rs.24,760/- towards TCS (Tax Collection at Source) under Section 206c of Income Tax Act.

(ii) You are requested to remit the lease amount of Rs.10,92,710/- along with Income Tax of Rs.24,760/- totalling to Rs.11,17,470 on or before 31.05.2011 failing which the work order is liable to be cancelled. However, at the time of termination of the contract as stipulated above, the amount payable by you to CMDA till the date of termination will be calculated on pro-rata basis and the balance amount if any will be refunded to you.

(iii) The terms and conditions stipulated in the existing agreement will hold good for the extended period also.

You are requested to remit the above licence amount immediately, in one lumpsum on receipt of this letter by means of a crossed Demand Draft from a scheduled bank payable at Chennai in favour of the Member Secretary, CMDA, Chennai-8.

You are also requested to furnish a non-judicial stamp paper for a value of Rs.20/- for executing an Agreement."

Based on the said decision of the respondents, the petitioner was allowed to continue collection of parking fee from the vehicles, as indicated above.

10. Now, the challenge made by the petitioner is that in view of the non-adjudication of the pending cases before this court and as the respondents have not taken any steps to adjudicate the proceedings, whether his claim for the right to continue the lease beyond 31.07.2011 has to be examined in the light of the above proceedings. No doubt, the petitioner has got the right of lease from 2002 and it has been continued up to 31.05.2011 and therefore, due to the above circumstances, the said lease was extended for a period of two (2) months from 01.06.2011 to 31.07.2011 with the

condition that the contract would be terminated on 31.07.2011 or till the disposal of the case before this court, whichever was earlier.

11. It is argued by the learned Senior Counsel for the petitioner that the position in this case has to be interpreted with regard to the existence of the rights of the parties and the nature of the document, namely, the Contract Agreement, taking into account the extension order as the factual background. It is also contended that the document in question is a commercial document and it does not on its face contain any ambiguity and ex facie the document is a contract of indemnity. Surrounding circumstances are relevant for construction of a document only if any ambiguity exists therein and not otherwise. Certain reliance is placed on the documents and the contents in the said document, namely, order of communication dated 20.05.2011 and the condition mentioned therein is to be interpreted, as the pendency of the writ petition will be taken as the earlier and not the date fixed on 31.07.2011.

12. Legal principles on the question of interpretation of a particular document are well settled. A plain reading of a document as a whole and the intention conveyed therein are the matters to be taken into account. In the absence of any ambiguity, obscurity, or inconsistency in the conditions mentioned therein, the true meaning of a provision of a law has to be determined on the basis of what it provides by its clear language with due regard to the scheme of law. Based on the basic principle of construction of a particular document and on considering the rights of the parties and the background circumstances, unequivocally it could be construed that the termination of the contract of the petitioner shall be on 31.07.2011 and thereafter, he is not entitled to continue.

13. When the respondents are the authority of the State, and the Government is a guardian of the finances of the State and its bodies, it is expected to protect the financial interest of the authority and the power to refuse or extend or terminate the lease is always available to them. A reading of the conditions prescribed would clearly indicate that the contract will be terminated on 31.07.2011 or till the disposal of the cases pending before this court, whichever is earlier. Therefore, in the absence of disposal of the cases pending before this court, the contract has to be terminated on 31.07.2011 and the petitioner cannot have any legal right beyond 31.07.2011. Hence, the claim of the petitioner in this writ petition cannot be granted.

14. While holding so, in the instant case, as regards the tender process, even though it was started on 10.12.2010 and had reached certain stages thereafter, it could not be concluded, as the other tenderer namely, PCLT has approached this court by way of different writ petitions and obtained interim stay of the proceedings.

15. It is true that in a contractual transaction, power of judicial review is very limited, but in the given circumstances, the consistent stand of the petitioner is that though the respondents have approached this court by filing counter affidavit, with a view to vacate the interim stay granted by this court on 28.07.2011 within a period of one week's time from the date of issuance of the order, which gives an impression to this court that they are taking sides with the other tenderer viz., PCLT. But, the very fact that the respondents have not chosen to file any counter affidavit or vacate stay petition against the order dated 22.02.2011 in M.P.No.2 of 2011 in W.P.No.4166 of 2011 filed by PCLT, substantiates the above said averment.

16. It is stated by the respondents that out of six tenderers, three were prima facie qualified. But, it is the contention of the petitioner that the petitioner as well as another tenderer by name Kumudha Travels alone are qualified and PCLT has been disqualified by the respondents themselves which necessitated the said tenderer to approach this court in W.P.No.4166 of 2011. Even though the said tenderer namely, PCLT has approached this court by filing a suit in C.S.No.1184 of 2009 and obtained an interim order, neither a counter affidavit nor a written statement is filed by the Department in the said suit till date. Therefore, the present attempt on the part of the respondents is nothing but to eliminate the petitioner from the tender process.

17. In the counter filed by the respondents, it is stated that the procedure for evaluation of the tender was recommended at two stages. One is pre-qualification bid and the second is price-bid. The tenders were called for through newspaper on 22.11.2010. The Technical bid was opened on 10.12.2010 and because of the pendency of the writ petitions filed by PCLT, viz., (i) W.P.No.28267 of 2010, which is for a mandamus to follow the Fair and Transparent procedure regarding finalization of tender in respect of the very same subject matter; (ii) W.P.No.3573 of 2011, challenging the two notices dated 03.02.2011 and 07.02.2011 and (iii) W.P.No.4166 of 2011, challenging the impugned order dated 14.02.2011 issued by CMDA and the interim orders passed therein, the respondents could not conclude the tender process and proceed to award the tender to any person among the three namely, the petitioner, PCLT and Kumudha Travels. In this context, it is significant to note that the respondents have not chosen either to file counter or Vacate Stay Petitions in the above writ petitions for conclusion of the tender process, whereas, in the case of the petitioner i.e., the case on hand, they filed a counter and vacate stay petition within a week's time from the date of interim order. This attitude and approach of the respondents is a clear indication of discrimination among the parties to the writ petitions and also that they have not taken any steps to adjudicate the matter at least by filing Vacate Stay Petition wherever there is an interim order and see that there is a conclusion of the tender proceedings in order

to come out of the complex situation created by the parties in those proceedings.

18. In the above stated legal position, the learned Advocate General has taken a stand that even in a case if there is no conclusion of the proceedings due to the pendency of litigations and interim orders granted therein, CMDA is ready to take up the collection of the parking fee on their own. In the counter, the respondents have stated that after a detailed study of parking requirements for the public at CMBT, they have constructed Double level basement structure for vehicle parking space at the cost of Rs.17 crores approximately and therefore, the expectation of the respondents would be on a revised rate.

19. In the absence of any adverse remarks against the petitioner for the past nine years, his claim for continuance though not de jure, in the given facts and circumstances, when no palpable and practicable steps are shown to this court either by way of documentary proof or any preparation of the conclusion of the parking fee in a large project like CMBT by CMDA, this court could not understand how the CMDA can go ahead with the collection of parking fee, since any authority or the Contractor requires man power and other maintenance of that area with proper control. It is also not placed on record any preparedness for that by them except the submission by the learned Advocate General.

20. In the light of the settled proposition, the conditions stipulated would clearly indicate that the petitioner does not have any legal right to continue beyond 31.07.2011. However, considering the peculiar facts and circumstances of this case, as the petitioner is one of the successful persons in the technical bid and also taking note of the fact that the respondents have not taken any steps to vacate the interim order/adjudicate the pending matters filed by the PCLT, this court, while exercising the power under Article 226 of the Constitution of India as well as equitable jurisdiction and considering the principles of justice, equity and good conscience, is inclined to pass the following order:

(i) the respondents are directed to permit the petitioner to continue to operate the lease on the conditions stipulated by them till any orders are passed by this court in W.P.No.28267 of 2010, W.P.No.3573 of 2011 and W.P.No.4166 of 2011 or till the finalisation of the tender process, whichever is earlier.

(ii) as a consequence of clause (i) as above, the petitioner is directed to discharge his liability towards the payment of lease amount from 01.08.2011 onwards on the terms and conditions as prescribed by the letter of communication dated 20.05.2011 till further orders are

passed by the CMDA and thereafter, the petitioner shall accept the terms and conditions to be prescribed by the respondents and continue to pay the same till the finalisation of the tender process.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected M.P.Nos.1 to 3 of 2011 are closed.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

abe

To :

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
2. The Superintending Engineer - II,
Chennai Metropolitan Development Authority,
Construction Wing, Tower - II,
Chennai 600 008.

1 cc to Mr.N.Sampath, Advocate, Sr.No.54161

1 cc to Mr.M.Dhandapani, Advocate, Sr.No.54256

order in
W.P.No.17700 of 2011

UG {CO}
TP/5.9.2011.

सत्यमेव जयते

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