



2023:KER:54773

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945

WP(C) NO. 2028 OF 2015

PETITIONER:

KASHYAP SAIGAL, AGED 27 YEARS,

BY ADV SRI.R.DIVAKARAN

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.
- 2 GREATER COCHIN DEVELOPMENT AUTHORITY (GCDA),
KADAVANTHRA, COCHIN-682020,
REPRESENTED BY ITS SECRETARY.

BY ADVS.
SRI.C.A.MAJEED,
SRI.JAYAPRAKASH,
SRI.M.K.THANKAPPAN,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

The petitioner says that he is in possession of a 'Kiosk' owned by the Greater Cochin Development Authority (GCDA); and that it was allotted to him for a period of one year in the year 2014, taking note of the physical condition and lack of any other source of livelihood.

2. The petitioner asserts that, even though the licence granted expired in the year 2015, he has been continuing to operate the 'Kiosk', but without being granted a renewed licence; and therefore, that he has preferred Ext.P9 representation before the 2nd respondent. He alleges that this has not been considered until now and prays that same be directed to be taken up by the 2nd respondent and disposed of; and that, until such time, he be allowed to continue to conduct the 'Kiosk' as per Ext.P6, the



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earlier order of allotment.

3. Sri.R.Divakaran - learned counsel for the petitioner, explained that, apart from the fact that his client is a physically handicapped person, he also belongs to a scheduled caste; and therefore, that his entitlement to continue the 'Kiosk' is constitutionally protected. He thus reiteratingly prayed that the reliefs sought for in this writ petition be granted.

4. Sri.M.K.Thankappan - learned Standing Counsel appearing for the GCDA, on the other hand, submitted that the petitioner cannot continue to occupy the 'Kiosk' indefinitely and *ad infinitum*, merely because of his physical inability or being part of a particular community. He submitted that the GCDA intends to auction the 'Kiosk' as per law and as required by the mandate of the Statutory Scheme; and that petitioner can take part in the same, pursuant



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to which he can be granted the licence, if he is found eligible. He added that the petitioner's physical condition; that the factum of his belonging to the Scheduled Caste community and that he had been operating the 'Kiosk' for a long period of time will be kept in mind by the Authority of the GCDA, while finally allotting it.

5. I am without doubt that the afore submissions of Sri.M.K.Thankappan would allay the apprehensions of the petitioner.

6. As rightly argued by Sri.M.K.Thakappan, no person can - whatever be his credentials or attributes - seek to remain in possession of a commercial enterprise under the GCDA *ad infinitum*. The said Authority is expected to conduct its affairs as per law and to abide by tendering processes with respect to the allotment of its stalls and 'Kiosks'.



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In the afore circumstances, I order this writ petition in the following manner:

(a) I leave liberty to the 2nd respondent to conduct necessary tendering processes with respect to the 'Kiosk' in question, in which the petitioner will also be allowed to participate, subject to all other requirements in law being satisfied.

(b) I, however, clarify that, until such time as the tendering processes are over and the new agreement finalized, the petitioner will be allowed to continue to operate the 'Kiosk' on the same terms as he is presently doing.

(c) I also direct the competent Authority of the GCDA to afford all empathy and necessary preference to the petitioner, as is legally available, taking note of his condition and the fact that he has been continuing the 'Kiosk' for



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the last several years, during the tendering processes.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv



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APPENDIX OF WP(C) 2028/2015

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF CERTIFICATE TO THIS EFFECT ISSUED FROM THE LAKSHMI HOSPITAL, ERNAKULAM DATED 07-07-1986.
- EXHIBIT P2 THE TRUE COPY OF THE MEDICAL REPORT DATED 05-02-1987.
- EXHIBIT P3 THE TRUE COPY OF THE CERTIFICATE ISSUED FROM THE SPECIALISTS HOSPITAL, ERNAKULAM.
- EXHIBIT P4 THE TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE TAHSILDAR, KANAYANNUR TALUK DATED 26-12-2006.
- EXHIBIT P5 A TRUE COPY OF M.SC.DEGREE CERTIFICATE DATED 07-10-2009.
- EXHIBIT P6 THE ALLOTMENT WAS FOR A PERIOD OF 1 YEAR FROM 21.01.2014. A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.01.2014.
- EXHIBIT P7 A PAPER CUTTING OF THE NEWS AND PICTURE PUBLISHED BY THE NEWS PAPER DECCAN CHRONICLE DATED 07-08-2012.
- EXHIBIT P8 A TRUE COPY OF THE CIRCULAR NO.14680/DB 2/10 DATED 12-04-2010.
- EXHIBIT P9 A TRUE COPY OF THE REPRESENTATION DATED 05-01-2015.
- EXHIBIT P10 THE TRUE COPY OF THE DEMAND DRAFT FOR RS.8300/- IS FROM THE STATE BANK OF PANAMPILLY NAGAR BRANCH IN FAOUR OF THE 2ND RESPONDENT.



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- EXHIBIT P11 THE TRUE COPY OF THE LETTER ON 28.10.2017 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P12 THE TRUE COPY OF THE DEMAND DRAT FOR RS.5500/- IN FAVOUR OF THE 2ND RESPONDENT ON 06.12.2018.
- EXHIBIT P13 THE TRUE COPY OF THE COVERING LETTER DATED 06.12.2018.
- EXHIBIT P14 THE TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 13/7/2023
- EXHIBIT P15 THE TRUE COPY OF THE LICENSE ISSUED BY THE COCHIN CORPORATION TO THE PETITIONER FOR THE PERIOD OF 1/4/2023 TO 31/3/2028
- EXHIBIT P16 THE TRUE COPY OF THE LICENSE ISSUED BY THE COMMISSIONERATE OF FOOD AND SAFETY FOR THE PERIOD OF 23/9/2021 TO 22/9/2026
- EXHIBIT P17 THE TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE GST DATED 1/7/2017

RESPONDENT EXHIBITS

- EXHIBIT R2 (A) A PHOTOSTAT COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P. (C)NO.17775/2006.
- EXHIBIT R2 (B) TRUE COPY OF THE AGREEMENT DATED 30-01-2014 EXECUTED BETWEEN THE EXECUTIVE COMMITTEE OF GCDA AND PETITIONER
- EXHIBIT R2 (C) TRUE COPY OF THE RESOLUTION NO. 332/2013-14 DATED 10-02-2014 OF THE EXECUTIVE COMMITTEE OF GCDA



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- EXHIBIT R2 (D) TRUE COPY OF THE NOTICE NO.
433/ESTATE/B1/2014/GCDA DATED 26-12-
2014 ISSUED BY GCDA
- EXHIBIT R2 (E) TRUE COPY OF THE GOVT. ORDER NO. LSGD-
1A3/126/2016-LSGD DATED 9-12-2016
- EXHIBIT R2 (F) TRUE COPY OF THE LETTER DATED 19-01-
2017 ISSUED BY THE GCDA
- EXHIBIT R2 (G) TRUE COPY OF THE MEMO OF CHARGES DATED
7-12-2016 AND STATEMENT OF ALLEGATION
- EXHIBIT R2 (H) TRUE COPY OF THE STATEMENT DATED 04-
01-2017 SUBMITTED BY SMT. A.E DIVYA
VIJAYAN