

IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 5<sup>TH</sup> DAY OF DECEMBER, 2000

BEFORE

THE HON'BLE MR. JUSTICE CHANDRASHEKARAIHAH

WP.NO.30207/1996(BCC)

BETWEEN:

Dazzal Acquatic Club,  
No.166, III Main Road,  
7<sup>th</sup> Cross, Chamarajpet,  
BANGALORE - 560 018  
Represented by its  
Secretary Sri G.R.Balaraj.

Petitioners

(By Sri.Krishnappa, Adv.)

AND:

1. The Commissioner,  
Bangalore Mahanagara Palike,  
BANGALORE.

2. The executive Engineer,  
(Project), Bangalore  
Mahanagara Palike,  
BANGALORE.

3. The Secretary,  
Department of Bangalore  
Urban Development  
Government of Karnataka,

Vidhana Soudha,  
BANGALORE.

4. P.M.Swimming centre,  
N.S.Palya, Bannerughatta  
Road, Bangalore.

**Respondents**

(By Sri.K.N.Puttegowda, G.A. for R.3,  
Sri.Giridhar, Adv. for R.4.)

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This writ petition is filed under articles 226 and 227 of the Constitution of India, praying to quash vide Ann.N in so far as it relates to Jayanagar Swimming Pool the order by R3 direct the R.1 to lease out the Jayanagar SwimmingPool for a period of five years in favour of the R4, herein vide letter dated 1.1.96.

This writ petition coming on for Hearing this day, the Court made the following:

O R D E R

The petitioner in this writ petition has sought for quashing of Annexure-M, under which the Government has accorded sanction to lease the swimming pool, situated at Jayanagar for the period of 5 years and also for a direction to the respondents to lease out the said swimming pool in favour of the petitioner.

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2. The facts in this case are: The petitioner was permitted to use the swimming pool at Jayanagar for the purpose of conducting coaching in swimming to the persons of his choice for some years. Somewhere in the year 1992, the petitioner gave several representations to the Corporation to lease out the swimming pool to him. The representations are dated 3.1.1996 and 20.10.1996. On these representations, the Corporation has not taken any steps to lease the swimming pool in favour of the petitioner. The Corporation pursuant to the government Order dt.28.8.1996 leased the Jayanagar Swimming Pool in favour of the 4<sup>th</sup> respondent at the rate of Rs.20,000/- per year for the period of 5 years. This action is under challenge by the petitioner in this writ petition.

3. Sri. Krishnappa, learned advocate for the petitioner submits that the Corporation had not

followed any procedure before granting the lease of swimming pool in favour of 4<sup>th</sup> respondent and further submits that when there are applications more than once seeking for lease, the Corporation should have considered all the applications together on merit and thereafter, should have passed an appropriate order selecting one on the basis of merit for the purpose of lease of the swimming pool. It is submitted that in the instant case, no such steps have been taken by the corporation. According to the petitioner, these facts clearly show that the Corporation has leased this property ignoring the application of the petitioner only with a view to help the respondent No.4. It is nextly contended that the Corporation has ignored the procedure laid down under the Karnataka Municipal Corporation Act (hereinafter referred as Act.) before leasing the swimming pool in favour of the 4<sup>th</sup> respondent.

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4. Sri.K.N.Puttegowda, learned Counsel appearing for the Government and the Corporation submits that the Corporation in the first instance rejected the request of the petitioner to lease the swimming pool in his favour, as the public is opposing any such lease in favour of any private person. Hence, it is submitted that the petitioner cannot have any grievance in so far as non-consideration of his representation seeking lease of the swimming pool. Nextly, he submits that the representation dated 20.10.96 given by the petitioner for leasing of the swimming pool has been rejected by the Corporation, since by that time, the swimming pool has already been leased in favour of the 4<sup>th</sup> respondent, after obtaining the sanction of the state Government.

5. Admittedly, on the representation of the petitioner dated 3.1.96 no Order has been passed by the Corporation, as there was an oposition by

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the public. If that is so, as on the date when the Government accorded approval, both the applications of the petitioner and respondent No.4 were pending consideration before the Corporation.

6. Sri.Giridhar, learned Counsel appearing for respondent No.4 submits that the Corporation in fact considering the merit and the qualification of the 4<sup>th</sup> respondent, the leasehold rights in respect of swimming pool has been granted in favour of 4<sup>th</sup> respondent. ~~Therefore,~~ <sup>Hence,</sup> there is no illegality whatsoever in the matter of grant of lease by the Corporation in its favour.

7. In order to ~~ascertain~~ <sup>Consider</sup> the rival contentions urged by the parties, I called upon the learned Counsel appearing for the corporation to produce the records relating to the lease of this premises in favour of respondent No.4.

Pursuant to the said direction, learned Counsel has produced the records before me.

8. After going through the records produced by the learned Counsel for the Corporation, I am satisfied that the Corporation has thrown all the law into the wind and has granted the lease in favour of respondent No.4. Sub-section(2) of Section 176 of the Karnataka Corporation Act is the relevant section which is to be followed in so far as the lease for a period of 5 years. The said Section reads as follows:

"With the sanction of the standing committee the Commissioner may dispose of by sale or exchange any corporation movable property the value of which does not exceed five thousand rupees in each instance, or grant for any term not exceeding three years a lease of any corporation immovable property

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or a lease or concession of any such right as aforesaid."

9. By reading of Sub-section(2) of Section 176 of the Act, it is clear that the corporation may dispose of the property belonging to the corporation ~~is~~ either by sale or by exchange, if the value does not exceed Rs.5,000/- or lease the property for any term not exceeding 3 years with the sanction of the standing committee. Sub-section 176 (6) (iii) of the Act provides that no immoveable property shall be disposed of by sale or by transfer except by previous sanction of the Government. From this, it is clear, the Commissioner before leasing this property is required to obtain the sanction of the standing committee, and the previous sanction of the Government before taking any steps to lease the property beyond 5 years.

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10. Section 183 of the Act reads as follows:

"Invitation of tenders:-

1) At least seven days before entering into any contract or the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding (ten thousand) rupees, the Commissioner shall give notice by advertisement inviting tenders for such contract.

Provided that such advertisement shall be published only in such newspapers having such circulation as may be prescribed:

Provided further that the standing committee may, at the instance of the Commissioner and for reasons which shall be

recorded in its proceedings, authorise the Commissioner to enter into a contract without inviting tenders.

2) On receipt of the tenders made in pursuance of the notice given under sub-section 182, accept any tender which appears to him, upon a view of all the circumstances, to be the most advantageous, but he shall not reject all the tenders without the sanction of the standing committee."

11. Rule 7 of the Karnataka Municipal Rules, <sup>✓</sup>  
of 1987 reads as follows:

"Invitation to tenders:-

The advertisement inviting tenders for contracts shall be published only in such newspapers having the circulation of not less than five thousand copies per day."

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12. By reading of section 183 read with Rule referred to above, it is clear that the Corporation must give wide publicity and call for the tenders before entering into any contract. In the instant case, the Corporation has leased the swimming pool in favour of the 4th respondent for the period of 5 years without calling for any tenders and without giving wide publicity. Sri. Puttegowda, learned Counsel for the Corporation submits that Section 183 does not cover the lease and therefore, it has no application. By reading of Section 183 of the Act, it is clear that it is applicable in respect of any contract, which will involve any ~~incident~~<sup>expenditure</sup>, exceeding Rs.1000/-. In the instant case, no such steps were taken by the Corporation. Therefore, the very entrustment of the lease to the 4<sup>th</sup> respondent is contrary to the Section 176 and 183 of the Act.

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13. From the records produced by the learned Counsel for the Corporation, I find, this swimming pool has been leased in favour of the 4<sup>th</sup> respondent, on the basis of the Government Order dt.28.8.96, copy of which is produced at Annexure-M. In the Annexure-M, there is a reference to the Report of the Commissioner dated 1.1.96. In the preamble of the Government Order, it is stated that the Corporation requested the State Government to lease the swimming pool for the period of 30 years in favour of 4<sup>th</sup> respondent. From the Report, I find, the Commissioner has not requested the State Government to accord approval, and on the other hand he has only explained the state of affairs in so far as the matter relating to the leasing of the swimming pool. In the report, it is stated that in so far as the leasing of the swimming pool at Basavanagudi and the Swimming Pool at Sadashiva Nagar, the Standing Committee accorded sanction to lease. Whereas, in the

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instant case, there is no sanction by the Standing Committee to lease this swimming pool in favour of the 4<sup>th</sup> respondent. Therefore, in the absence of any sanction by the standing Committee and also in the absence of any specific request made by the Commissioner for according approval for ~~the~~ leasing this property in favour of the 4<sup>th</sup> respondent, the State Government was not right in according approval to lease this swimming pool in favour of the 4<sup>th</sup> respondent.

14. From the statement of objections filed by the Corporation and also from the records, I find, on the request made by the 4<sup>th</sup> respondent, the then Administrator, who is in charge of the affairs of the Corporation passed an Order rejecting his request and decided to call for the tenders. When once there is already a decision by the Corporation to call for a tender, it is not known what made the State Government to accord approval to lease this swimming pool in

favour of the 4<sup>th</sup> respondent. From the records, I find, there is a letter from one M.L.A. to the then Chief Minister along with the letter of the 4<sup>th</sup> respondent for a direction to the Administrator to lease the swimming pool in question in favour of the 4<sup>th</sup> respondent. On that letter, the Under Secretary to the Government written a letter to the Commissioner stating that the letter given by the M.L.A. to the Chief Minister has been forwarded to consider the matter in accordance with law and submit a report. This letter written by the Under secretary has been made use of by the 4<sup>th</sup> respondent in order to secure the Order from the State government, which is impugned in this writ petition. Therefore, the Annexure-M is liable to be quashed.

15. The period of lease is for five years. Sri.Giridhar, learned Counsel for the 4<sup>th</sup> respondent submitted that he has taken possession

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of the swimming pool on 5.11.96, though there is some mistake in mentioning the date in the statement of objections. If that is so, the period of lease will come to an end by 5.11.2001. Since the remaining period of lease is only of about 11 months, he requested this Court to permit him to enjoy the lease hold rights for the remaining period. Sri.Krishnappa, learned Counsel appearing for the petitioner at the time of arguments submitted that if the lease has been ~~made~~<sup>given</sup> in his favour, he is ready and willing to pay rent Rs.50,000/- per year. Taking this fact into consideration, I asked the learned counsel for the 4<sup>th</sup> respondent whether he is willing to pay the rent at the rate of Rs.50,000/- per year from the date of taking possession of the swimming pool till expiry of lease period. After consulting the 4<sup>th</sup> respondent, the learned Counsel submitted that he is willing to pay the rent at the rate of Rs.50,000/- as suggested by the Court provided he is permitted to enjoy the lease hold

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rights till the expiry of lease. Though the grant of lease in favour of 4<sup>th</sup> respondent is arbitrary, ~~since~~ taking into consideration, the remaining period is only 11 months, I feel, it is just and necessary to permit the 4<sup>th</sup> respondent to enjoy the lease hold rights upto the period of expiry of lease provided, he pays all arrears of rent at the rate of Rs.50,000/- from the date of lease till now after adjusting the amount already paid within six months from today. The rent from the date of this order is to be paid at the above said rate till the expiry of the lease.

16. In view of the finding recorded by me above, the Corporation is hereby directed in future to call for the tenders before leasing the swimming pool.

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17. In the result, I pass the following order.

a) Writ Petition is disposed of in the following terms.

b) The 4<sup>th</sup> respondent is permitted to enjoy the lease hold rights upto the period of 5 years as per the lease deed subject to the payment of rent as observed in the body of the order.

c) The Corporation is directed to follow the procedure in the light of the observations made above, if it takes a decision to entrust the maintenance and management of the swimming pool to a private person in future.

**Sd/- JUDGE**

KVS.