

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE H.T.NARENDRA PRASAD

WRIT PETITION Nos.44760-44762 OF 2017 (GM-RES-PIL) DATED:04-07-2019

SRI.V.R. BEEDU S/ O LATE B.R. BEEDU AND OTHERS VS. THE STATE OF KARNATAKA AND OTHERS

ORDER

CHIEF JUSTICE

Heard the learned senior counsel for the petitioners \*\*\*\* and learned senior counsel for the third respondent and learned Additional Government Advocate for the first and second respondents.

2. The issue raised in this PIL concerns Sri.Kanteerava Stadium, which admittedly is the property of the first respondent de, State of Karnataka.The first to seventeenth petitioners s are all former National and International Athletes and are working as athletics coach and Eighteenth to fiftieth petitioners are National and International level athletes.

3. These writ petitions in the nature of PIL are filed to\* invite the attention of the Court to the agreement Swayn dated 22nd May 2014 2014 executed by the Director, Department of Youth Empowerment and Sports in favour of the third respondent, which is a private limited company. Under the said agreement, a licence was granted to the third respondent, which is a private club to use the said How stadium.

4. The objection in brief raised to the said agreement is that apart from the fact that the Director had no power to execute such an agreeen authorizing the third respondent to use the stadium, such an important public stadium could not have been entrusted to the third respondent by executing a licence agreement without following a fair and transparent process.It is pointed out in the agreement that the term was only till the conclusion of the FIFA under 17 World Cup to be organized in India in the year 2017.The contention is that even after the term expired, the third respondent continued to possess the stadium.

5. Our attention is invited to the letter dated 11 th August 2017 issued by the Secretary of the Stadium Management Committee and Director, Department of Youth Empowerment and Sports to the Chief Executive Officer of the third respondent by which a permission was granted to the third respondent to utilize the stadium as a home venue for all National and AFC competition football matches from 11th August 2017 to 31st May 2018.

6. In the objections filed by the State Government, it is contended that the stadium is maintained by the Management Committee consisting of the Hon'ble Minister of Youth Empowerment and Sports and five other officers. It is contended that the licence agreement dated 22nd May 2014 has expired.

7. The third respondent has filed the objections and additional objections setting out the efforts made by the third respondent for developing the stadium and the amount spent by the said respondent on the said work. The photographs have also been annexed. It is contended that the athletics and other activities on the stadium were not obstructed by the third respondent. The various allegations made by the petitioners have been denied in the additional objections filed by the third respondent.

8. It is not in dispute that the stadium is a public property. The stadium has various facilities to enable the members of the public to play various games. There are facilities for athletics also. As far as the law relating to public property is concerned, the same is very well settled.

9. We may make useful reference to the decision of the Apex Court in the case of *Akhil Bhartiya Upphokta Pre Congress -v-State of Madhya Pradesh and others* [2011] 5 SCC 29 wherein the Apex Court has held that the Government has to act as a trustee of a public property and that the public property can be parted with or transferred only by following a fair and transparent process. It is held that the fair and transparent process can be achieved by having a rational policy of allotment. Paragraphs 65 to 68 of the said decision read thus:

65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit license etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise.

In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

68. The allotment of land by the State or its agencies/instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favoritism and/or \*\*\*\*\* nepotism or with a view to nurture the vote bank for future is constitutionally impermissible. "

(underlines supplied)

10. In the present case, apart from the contention that the Director had no authority to execute the agreement, the stand taken in the objections filed by the State is very strange. The stand is that a Committee of Management of the Stadium headed by the Hon'ble Minister was appointed to manage the stadium consists of Government officers and the Municipal Commissioner. We fail to understand what legal authority the Committee possessed to take a decision to enter into an agreement with the third respondent. Admittedly, a fair and transparent process was not followed before entering into an agreement. Public notice was not given and applications were not invited from other organizations. Though the stand of the third respondent that it has spent huge amounts for developing the stadium, even assuming that it is true, it is besides the point as no other entity was allowed to compete with the third respondent. If the State had followed fair and transparent process, some other entity could have done better than what the third respondent has done.

11. Now, it is an admitted position that the licence agreement has come to an end.

In fact, a letter dated 21st April 2017 was addressed by the third respondent to the Additional Chief Secretary of the Government, in which it is accepted that the agreement would come to an end on 31st May 2017. By the said letter, extension was sought by the third respondent. Though the agreement expired on 31st May 2017, on 11th August 2017, the Secretary of the Stadium Management Committee allowed the third respondent to utilize the stadium as a home venue for National and AFC competition Football matches for a long period from 11th August 2017 to 31st May 2018. Here again for a period of eight months, the stadium was

allowed to be used by the third respondent without following a fair and transparent process. Moreover, the terms and conditions on which the third respondent was allowed to use the stadium for such a long period of eight months have not been set out. It is not clear as to what is the authority of the Secretary of the Stadium Managing Committee to allow the third respondent to use the stadium for a long period of eight months without fixing any terms and conditions.

12. The learned Additional Government Advocate has tendered the letter dated 3rd July 2019 addressed by the Secretary of the Youth Empowerment and Sport Department, in which an assurance has been given that hereinafter the stadium will be allowed to be used by the third parties only after following a fair and transparent process. We accept the said assurance given by the State.

13. Though there is no need to grant relief now as the agreement between the State Government and the third respondent has come to an end, surely the State Government will have to hold an enquiry about the manner in which the public property was allowed to be used by the third respondent by execution of the agreement dated 22nd May 2014 and thereafter by granting permission dated 11th August 2017.

14. At this stage, we may make a reference to the decision of the Apex Court in the case of *Krishan Lal Gera -v- State of Haryana and others* wherein the Apex Court has observed that creating a sports ground and encouraging the sports is a part of the human resource development which is the function of the State Government. The Apex Court held that no part of the stadium/ground can be allowed to be run by a private entrepreneur. The State Government will have to frame a proper policy for utilization of the said stadium by the third parties so that members of the public are able to have the benefit of the stadium and modern facilities created therein.

15. As observed by the Apex Court in the case of *Akhil Bharatiya Upphokta Congress (supra)*, we are not suggesting that only an auction should be conducted by the State Government. However, after framing a rational policy, the procedure as contemplated by the decision of the Apex Court in paragraph-67 of the said decision must be followed by the State Government. 16. Accordingly, we dispose of the petitions by passing the following order:

a) We direct the appropriate authority of the State Government to hold an enquiry which third We relating to the manner in respondent was granted a licence dated 22nd May 2014 and the manner in which the third respondent was allowed to use the stadium for the period between the 11th August 2017 and 31 st May 2018. The State Government shall go into the legality of both the actions and initiate an action in accordance with law;

b) The Inquiry shall be held by the State Government in the light of the law laid by this court in this judgment;

c) Needless to add that the State Government shall initiate action against those who have indulged in the illegality by allowing the third respondent to use the stadium without following a fair and transparent process;

d) Though we are disposing of these \*\* petitions, the disposed of petitions shall be listed on 14th October 2019 for reporting compliance with these directions;

e) We accept the assurance given by the State GO that the possession of the stadium or any part thereof shall not be parted with or shall not be encumbered without following a fair and transparent process;

f) We direct the State Government to frame a policy dealing with the stadium and its usage in the context of the law laid down by the Apex Court. Even the compliance of this direction shall be reported to the Court;