

W.P(MD)No.13133 of 2

**BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT**

**Dated : 21.06.2024**

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**CORAM:**

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.13133 of 2024**

**and**

**W.M.P.(MD)No.11636 of 2024**

M/s.SRM Hotels Private Limited,  
Represented by its Executive Director,  
D.Anthony Ashok Kumar.

... Petitioner

Vs.

- 1.The Principal Secretary to the Government of Tamil Nadu,  
Tourism, Culture and Religious Endowments  
(T2-2) Department, Fort St.George, Chennai.
- 2.The Tamil Nadu Tourism Development  
Corporation Limited,  
Represented by its Managing Director,  
Tamil Nadu Tourism Complex,  
No.2, Walajah Road, Chennai – 600 002.
- 3.The District Collector,  
Tiruchirappalli District,  
At Thiruchirappali.
- 4.The Regional Manager (Central),  
Tamil Nadu Tourism Development Corporation Limited,  
Hotel Tamil Nadu,  
Tiruchirappalli – 620 001.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the rejection letter No.9926/T2-2/2014-25 of the 1<sup>st</sup> respondent dated



12.06.2024 and quash the same and consequently direct the first respondent to pass appropriate order to renew the lease in respect of the property comprised in T.S.Nos.35/1 and 30/4 of Kottapattu Village, Trichy District in favour of the petitioner.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel,  
For Mr.Charles Kamalesh M.Appaji.

For Respondents : Mr.Veerakathiravan,  
Additional Advocate General  
Assisted by Mr.K.Balasubramani,  
Special Government Pleader for R1, R3 & R4.

Mr.Veerakathiravan,  
Additional Advocate General  
Assisted by Mr.C.Lakshmanan for R2.

### **ORDER**

The writ petitioner is an incorporated private limited company engaged in hotel business. When the Government of Tamil Nadu invited applications for setting up star and budget accommodation to house delegates attending the 8<sup>th</sup> World Tamil Conference at Thanjavur in January 1995, the petitioner was one of the applicants. The petitioner was chosen for developing the site comprised in T.S.Nos.35/1 and 36/1 Kottapattu Village. G.O.(Ms)No.150 Information and Tourism Department dated 10.06.1994 was issued calling upon the Managing Director, Tamil Nadu Tourism Development Corporation Limited to enter into an agreement with the petitioner and hand over the site.



Pursuant thereto, lease deed dated 29.03.1996 was entered into between the parties.

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2. After the petitioner was given possession of the aforesaid site, they built a four star hotel. The annual lease amount was fixed at Rs.3,85,275/-. It was revisable once in three years. It was to be fixed at 7% of the market value. The lease period was 30 years. Clause 4(c), (d) and (e) of the agreement read as follows:-

*"(c) The lessee shall not be entitled to claim renewal of the lease after the expiration of the lease period stipulated in this lease deed. However, if the government of Tamil Nadu directs the lessor to renew the lease beyond the period of 30 years, the lessor shall abide by it subject to lease amount to be stipulated by the Government, if agreeable to the lessee.*

*(d) After the expiration of the lease the lessee shall surrender possession of the demised premises together with all immovables including superstructure that now exist and also to be constructed by them for the purpose of upgrading to star hotel.*

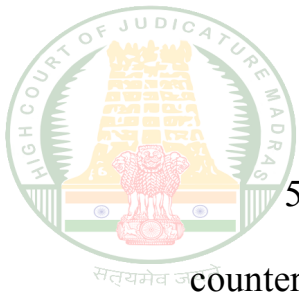
*(e) The lessee shall claim no title to the superstructure already put up and to be put up by him or claim any compensation at the time of surrendering possession after the expiration of the lease."*



The lease period ended on 13.06.2024. During the currency of the lease period, dispute arose as regards the quantum of lease amount. It was subject matter of W.P.(MD)Nos.12709 and 14498 of 2022. It is presently pending adjudication before the jurisdictional civil court.

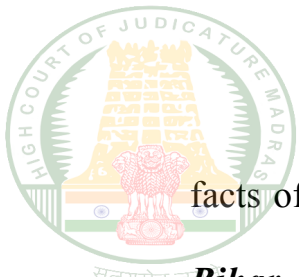
3.The petitioner submitted representation dated 13.05.2024 seeking renewal of the lease on fresh terms. They also filed O.S No.380 of 2024 seeking mandatory injunction directing the government to consider the said representation. The first respondent vide Letter No.9926/T2-2/2014-25 dated 12.06.2024 rejected the request. Challenging the same, this writ petition came to be filed.

4.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. His core submission was that the petitioner's legitimate expectation has been infringed and hence the impugned communication should be set aside. He relied on quite a few rulings of the Hon'ble Supreme Court as well as that of English Courts. He called upon this Court to direct the government to pass an appropriate order for renewal of lease.



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5. The first respondent whose order is under challenge has not filed any counter affidavit even though this Court specifically gave him an opportunity. The learned Additional Advocate General submitted that the counter affidavit filed by the Tamil Nadu Tourism Development Corporation Limited in WP(MD)No.12986 of 2024 can be taken as the stand of the government in the present case. His contention was that the lease period having admittedly expired, the petitioner has no right to remain in the property. The petitioner has not been paying rent at 7% of the market value. The lease amount fixed way back in the year 2000 is being paid. When the administration determined the correct quantum of lease rent in the year 2018, the petitioner entangled the government in litigation. The conduct of the petitioner is such that they are not entitled to invoke the principle of legitimate expectation. This doctrine has no application when the terms of the agreement are unambiguous and clear. When the petitioner made a similar request in the year 2010, it was rejected outright. If the petitioner felt aggrieved, they should have mounted a challenge then and there. After deliberately choosing to keep quiet, the petitioner submitted representation for renewal literally at the last minute. The learned Additional Advocate General reiterated all the averments set out in the counter affidavit filed by TTDC in the other writ petition. He also submitted that the case-laws relied on by the learned Senior Counsel for the petitioner are not applicable to the



facts of the present case. Relying on *Ram Pravesh Singh & ors v. State of Bihar, (2006) 8 SCC 381*, he pressed for dismissal of this writ petition.

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6.I carefully considered the rival contentions and went through the materials on record. The petitioner was inducted as lessee in June 1994. They were given vacant site to build a Star Hotel to accommodate the delegates attending the World Tamil Conference. The lease agreement dated 29.03.1996 no doubt states that the lease period would expire on 13.06.2024. Clause 4(c) of the agreement is to the effect that the petitioner is not entitled to claim renewal of the lease. But if the Government of Tamil Nadu were to direct renewal of lease, the petitioner was obliged to comply with the same. Of course, this was subject to there being consensus ad idem in respect of the lease amount. The aforesaid clause employs expressions such as “not entitled” and “claim”. This can only mean that while the petitioner is not entitled to demand renewal as a matter of right, they are at liberty to approach the government for renewal. Admittedly, the Government has a central role in the matter.

7.The petitioner's request was rejected by the impugned letter in the following terms :

“3.The Government after careful consideration have decided to reject your request for renewal of lease period for



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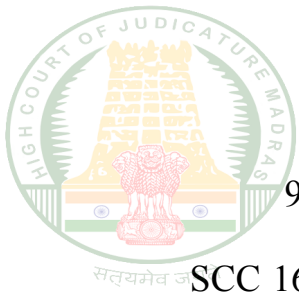


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further period of 20 years and you are requested to handover the said property as per the terms and conditions of the lease agreement to Regional Manager (C), Tamil Nadu Tourism Development Corporation, Tiruchirappalli immediately.”

The only question that calls for consideration is whether the manner in which the petitioner's request was dealt with can be said to be in order. This raises a fundamental issue if in the process the petitioner's legitimate expectation was dashed.

8.The concept of legitimate expectation gained entry into administrative law fifty five years ago (*Schmidt v. Secretary of State for Home Affairs, [(1969) 2 Ch. 149]*). It is now an established ground of judicial review (*Union of India vs. Hindustan Development Corporation AIR 1994 SC 988*). In *Ram Pravesh Singh & ors v. State of Bihar, (2006) 8 SCC 381*, it was held that legitimate expectation ranks below the doctrine of promissory estoppel but above the principle of fairness. There are two aspects to legitimate expectation, substantive and procedural. It has been held that one's legitimate expectation can be said to have been breached when the decision making body deviates from a set standard or established practice as held in *Rajeev Suri vs. DDA (2022) 11 SCC 1*.



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9.The concept is still evolving. In *Anoop Baranwal v. UOI* (2023) 6 SCC 161, it was observed that the society has a legitimate expectation to be governed by proper constitutional governance. Good governance is a constitutional expectation. Officials have to conduct themselves reasonably and discharge their functions responsibly. This is an aspect of good governance. When a reasonable request is made, it has to be properly considered. That one's reasonable request will receive proper consideration can definitely be one's legitimate expectation.

10.In *Hindustan Development Corporation* case (1993) 3 SCC 499, it was observed that the legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. In *Ram Pravesh Singh & ors v. State of Bihar, (2006) 8 SCC 381*, it was held that the term “established practice” refers to a regular, consistent, predictable and certain conduct, process or activity of the decision making authority. The decisions holding the field do not however limit the factors that can give rise to legitimate expectation. A water body can be fed by more than one inlet. Likewise, legitimate expectation can also spring from a reasonable person's understanding of normative scheme of things. The applicant is entitled to presume that the authority will conduct himself in a fair manner. And if the





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authority is unfair in his dealing, there is certainly a breach of one's legitimate expectation. There is nothing strange about this conclusion. When in the hierarchy of values, legitimate expectation is placed above fairness, certainly, the unfair response of the official can be the foundation for laying a claim based on breach of legitimate expectation.

11.This issue can be approached from another perspective. The question whether a person can have legitimate expectation that he will be treated in a certain manner if he did not possess prior knowledge was first dealt by the *High Court of Australia* in *Minister of State for Immigration and Ethnic Affairs v. Teoh (1995) 183 CLR 273*. The view of the majority was that knowledge is not a pre-requisite. This was termed as comical by McHugh J in his dissent. Calling colleague judges names is not unique to our culture. Through the 2000s the English courts accepted the view of the majority (vide *R (Rashid) v. Secretary of State for the Home Department (2005) EWCA 744*). The courts held that even though the particular claimant did not know of the relevant policies, this did not prevent a legitimate expectation arising; the relevant expectation was one that the authority would apply its policies unless there were good reasons for deviating from the relevant policy on the facts of the case. This conclusion can be justified only on the basis that expectation of fair treatment does not require prior



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knowledge of past practice. If something is to be as it ought to be, and the outcome is not in accord with the normative standard, then, the applicant can assail the order on the ground of breach of legitimate expectation that fair procedure was not adopted.

12.The petitioner had invested Rs.60.00 crores for constructing the hotel. When the project was started in the year 1994, the land was not a commercial hub at all. The transport services were not adequate. The overall infrastructure was not sufficient to generate good revenue. The situation changed with the inauguration of International Airport at Trichy. In the meanwhile, covid pandemic struck the nation. The hotel comprises 62 executive rooms, 3 suite rooms, 8 halls and 3 restaurants, a gym and swimming pool. The petitioner has raised loans to the tune of Rs.80.00 crores. As many as 500 persons are in employment. The petitioner's specific stand is that unless the lease is renewed for twenty more years, the investments made by them could not be made good. The petitioner therefore sought renewal. In fact, the petitioner made a request way back in the year 2010 for outright purchase. That was rejected. But now the petitioner's prayer is for renewal for twenty more years. This is a case of public – private partnership. The object of the government should be to encourage entrepreneurship and business. A broad and benevolent approach is called



for in such cases without compromising on the revenue interest of the government.

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13.The petitioner justifiably entertained belief that they would be called for negotiation. The Secretary to the Government was obliged to invite the petitioner and hold discussion to resolve the issue. The aim of the government should be to get the best returns on the land and the building. Of course, the learned Additional Advocate General would claim that TTDC would run the Hotel henceforth. This is like handing over Kaziranga Sanctuary to a provincial zoo keeper. I am reminded of a Tamil film “Kumki”. An elephant that used to be taken for temple festivals for show purposes was masqueraded as a trained elephant to confront and chase away a wild elephant. Of course, Manickam, the elephant rose to the occasion but lost its life in the process. Even a die hard optimist will not repose trust in TTDC to run a Four Star Hotel. My conscience assures me that I am not being uncharitable or harsh towards TTDC. In the very nature of things, hospitality industry demands courteous treatment from the staff manning the institutions. Customers would insist on quick response to their needs. Government staff and government institutions are ill-suited for such functions. That is why, there is disinvestment and outsourcing. Certain businesses should be run only by the private players. This wisdom dawned

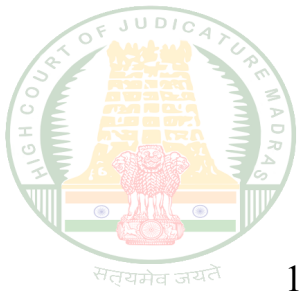


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on the government in the year 1991. Even in railways, the catering services have been privatized. Taking into account all these developments, the petitioner rightly thought that they would be taken into confidence before any decision is taken. Consultation with the affected individual lies at the heart of legitimate expectation. In this case, without involving the petitioner at all, the impugned order came to be passed. It is virtually non-speaking. It merely parrot like reiterates the covenant in the contract. That is not what the first respondent was supposed to do.

14.It is not as if licenses and leases are not renewed in the absence of specific clauses. The following is the summary of a Kenyan Court's decision in *Republic vs. National Land Commission and Two ors ex parte Ravindra Ratilal Taylor (2022) KEELC 3 (KLR)* :

- *a former holder of a government leasehold title, who has complied with the terms of the lease, holds a legitimate expectation that the lease will be renewed to them;*
- *despite there not being any explicit provisions regarding the renewal of leases of developed plots, such plots need to be renewed to their previous leaseholders unless the leaseholders have breached a fundamental term of the lease or are no longer interested in the lease;*
- *exercise of the duty to renew a lease is an administrative function which is accompanied by the obligation to act in a fair, just and proportionate manner, and it would be fair, just and equitable to renew the lease in favour of the incumbent holder of the lease.*



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15. In *Attorney General of Hong Kong v. Ng Yuen Shiu (1983) 2 AC 629*, the only question raised by the Respondent in the Appeal was whether he was entitled to have a fair inquiry under common law, before a removal order was made against him. Without expressing any opinion on violation of principles of natural justice, the right of hearing of the Respondent in the peculiar facts of the case was adjudicated upon. It was held that the Respondent had a 'legitimate expectation' of being accorded a hearing before an order of removal was passed (cited in *Kerala State Beverages (M and M) Corporation v. P.P.Suresh, (2019) 9 SCC 710*).

16. The learned Senior Counsel appearing for the petitioner relied on the decision reported in *McInnes v. Onslow-Fane and another (1976 M. No. 6063)*. It was held therein as follows :

*“It was common ground between Mr. Beloff and Mr. Moses that the point before me was the subject of no direct authority: although expulsion from clubs and other bodies is the subject of an ample range of authorities, the refusal of applications for membership is much less richly endowed. It was also accepted that the point is of considerable general importance. There are many bodies which, though not established or operating under the authority of statute, exercise control, often on a national scale, over many activities which are important to many people, both as*



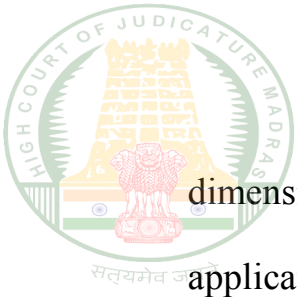
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*providing a means of livelihood and for other reasons. Sometimes that control is "exercised, as by board, by means of a system of granting or refusing licenses, and sometimes it is operated by means of accepting or rejecting applications for membership. One particular aspect of this is membership of a trade union, without which it is impossible to obtain many important forms of work. In such cases it is plainly important, both to the body and the applicant, for them to know whether, before the application is rejected the applicant is entitled to prior notice of any case against granting him a license or admitting him to membership, and whether he is entitled to oral hearing."*

17. There is yet another approach to the issue. In Administrative Law by Mark Elliott, Jason N.E. Varuhas OXFORD Fifth Edition, there is a reference to the doctrine of benevolent exercise of powers. After referring to ***Rowland v. Environment Agency (2003) EWCA Civ 1885***, it was commented that while agencies cannot be required to do the legally impossible, they can be required - by court order if necessary - to exercise their powers benevolently, so as to respect, as far as is legally possible, the legitimate expectations they engendered. The general principle is that the decision maker should in frustrating the individual's expectations act as benevolently as is necessary to meet the fair balance requirement in the individual cases. From this academic discussion, one can deduce yet another



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dimension. In transactions involving the economic interests of the applicant/licensee/lessee, the officials are expected to act as benevolently as possible. The authority may not be able to fulfil the substantive expectations of the applicant. But at least, there could be consultation and hearing so that the possibility of amelioration could be considered. In this case, the petitioner was given a short shrift. The petitioner was not invited for a discussion. The contentions set out in the petitioner's renewal application were not considered. The petitioner was not at all associated with the decision making process. It is quite possible that the authority is not in a position to accede to the petitioner's request as such. The petitioner should have been given an opportunity to demonstrate that they and not TTDC are better equipped to run the hotel. The petitioner should have been given an opportunity to address the concerns pertaining to the revenue interest of the government. None of these options were explored. The first respondent appears to have approached the issue with a closed mind. I am, therefore, constrained to hold that procedurally, the petitioner's legitimate expectation was not met. The content of the substantive expectation is left open for the present.

18.For the foregoing reasons, the impugned order is set aside. The matter is remitted to the file of the first respondent. The first respondent will



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grant personal hearing to the petitioner, consider all their contentions and pass a speaking order on merits and in accordance with law.

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19.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

**21.06.2024**

Internet : Yes/No  
Index : Yes/No  
NCC : Yes/No  
SKM

Issue order copy today (21.06.2024)

**To:**

- 1.The Principal Secretary to the Government of Tamil Nadu,  
Tourism, Culture and Religious Endowments  
(T2-2) Department, Fort St.George, Chennai.
- 2.The Tamil Nadu Tourism Development  
Corporation Limited,  
Represented by its Managing Director,  
Tamil Nadu Tourism Complex,  
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**G.R.SWAMINATHAN, J.**

SKM

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