

OFFICE OF THE COMMISSIONER OF MUNICIPAL ADMINISTRATION,
CHEPAUK, CHENNAI - 600 005

ROC.No.17188/99/R3

Dated : 11.3.99

C I R C U L A R

Sub: LEASE - Annual lease in respect of
Municipalities - Rules not adhered
to - Instructions Issued.

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This is the time when Municipal Councils are finalising the annual leases/licences of Municipal properties and the licence of right to collect the fees, etc. Lot of representations are being received indicating flouting of statutory provisions and executive instructions, violation of lease conditions, delay in confirming the leases, etc. The leasing of Municipal properties is a routine exercise done by the local bodies for quite a long time and there should be no confusion in adhering to the procedures and the formalities. However, the following instructions are issued for strict adherence:-

- i) After getting lease/licence conditions approved by the Council, wide publicity shall be given while calling for bids during public auction-cum-tender. Invariably information shall be published in one of the local leading dailies and the lease/licence conditions and other required particulars shall be printed/cyclostyled and got ready in advance.
- ii) In the notification, the authority competent to accept the offer for lease/licence, the date, time, venue of auction/tender, the amount of security deposit/E.M.D. to be paid, the details of solvency to be produced and other specific conditions, which have necessarily to be made known to the intending bidders shall be given in the notification itself. The details of leases/licences offered for bid shall also be indicated in specific terms.
- iii) In a recent case, while approving the lease/licence conditions, the Municipal Council had incorporated an additional condition to the effect that the intending bidders shall remit the security deposit and produce solvency for the required amount, 2 days in advance of the date of auction. This condition, which is an important one has not been indicated in the

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Newspaper. The intending bidders came to bid on the auction date only to be rejected quoting the new condition. The protests of the bidders that they did not know the new condition were also rejected, stating that the notification in the paper indicates that the intending bidders 'can have further details from the Municipal office'. Such surprises only reduce the competition resulting in substantial loss of revenue. Motive will also be attributed for including the additional condition without suitably informing the public in advance as to favour a few. Hence, the notification should contain whatever specific information is required for completion of formalities and participation in the public auction-cum-tender.

- iv) Specific instructions have been issued in Government letter No.872/MAIV/94-2, dated 28.1.94 that Municipal properties/licence for right to collect shall be leased out by adopting auction-cum-tender procedure.
- v) Separate E.M.D./security deposit shall be insisted for bidders, who intend to participate in both public auction and tenders.
- vi) The right to collect the fees is only a licence annually decided, and it cannot be renewed by enhancing the licence amount. This may be clearly made known to the licencees.
- vii) Lot of cases are pending in Courts at lower level, inspite of specific direction by the High Court that the right to collect fees, charges cannot be extended even for a day after the expiry of licence period. A copy of the judgement in the case of Madurai Corporation has already been communicated in this office lr.K.Dis.3995/97/R3 dated 28.2.97 and the cases pending in the lower Courts in this regard shall be got disposed off, quoting the High Court judgement as early as possible.
- viii) Incidentally, certain Municipal Councils have also resolved to renew the right in the case of cable T.V., in Bus stands, pay and use toilets, market fees, etc. and refusal by the Executives always leads to litigations. Though, ultimately the cases end in favour of 'refusal to renew', the time lost in between creates lot of administrative problems, financial loss, etc. The Municipal Commissioners should themselves be sure about the difference between the licence and the lease and also the cases, which cannot be renewed enhancing the licence amount and inform the Councils accordingly.

- ix) Once the public auction-cum-tender process is completed, the subject should be placed before the Council immediately after the time allowed for offering higher amount than that offered during public auction-cum-tender duly paying the amount and fulfilling the conditions specified in the lease conditions approved by the Council.
- x) If the last date for offering higher bid seeking re-auction/retender falls on a holiday, the next working day will be the last date by which the offer can be accepted. In some lease conditions, the period by which the re-auction can be solicited is mentioned as 24 hours, 48 hours, etc. This condition should be very specific, so that it does not create confusion among the bidders.
- xi) When sufficient time is given and auction-cum-tender conducted, the re-auction-cum-tender can be fixed allowing shorter duration depending on the time available for the expiry of the current lease/licence. As a minimum time of 10 days is required for the office to get the formalities completed, it is always better to complete the auction-cum-tender process, approval of council, confirming the highest bid before 20th March every year. Immediately after the time prescribed for soliciting re-auction-cum-tender is over, the subject shall be prepared with the comparative statements, etc. for placing before the Council.
- xii) When an ordinary meeting could not be convened for any reason, urgent meetings shall be convened and the issues decided well in advance. Instances have come to the notice of this office, where even in respect of leases conducted in early February, the confirmation notice has not yet been served on the highest bidder duly approved by the Council. Such delay will lead to unnecessary complications. As soon as the decision is taken by the Council, the highest bidder shall be informed to complete the formalities like execution of agreements, production of additional security, if any, required and for fulfilment of other conditions, that may be necessary.

If the highest bidder does not comply with the notice and fails to fulfil the conditions or fails to execute the agreement in time, immediate action shall be taken to cancel the provisional confirmation and forfeit the deposit paid by the highest bidder and to conduct re-auction-cum-tender duly informing him of his liability for any loss, that may occur due to re-auction.

- xiii) In no case, the lease/licence should be handed over possession without getting agreement duly executed and checking solvency and deposit.
- xiv) While conducting auction, the persons who have any outstanding dues to the Municipalities should not be allowed to participate.
- xv) For conducting auction-cum-tender, in sensitive issues, wherever the Commissioner feels that adequate police protection is necessary he should inform the local police to provide protection to avoid unnecessary problems. On auction dates, invariably, the Commissioner should be present and conduct the auction. To ensure transparency, he should also inform the Chairman and Councillors about the proposed auction time and date.
- xvi) Once the lease is confirmed, no partnership shall be allowed as this invariably leads to sub-lease or subletting the Municipal properties.
- xvii) While placing the subject before the Council, the Municipal Commissioner should ensure that there is no loss to the Municipality. Wherever the bids are either higher than the last year's bid amount or higher than average of last 3 years income on the particular lease item, there is no objection for confirming the highest bid. Otherwise, invariably reauction-cum-tender shall be suggested and reasons for lower offer shall be probed. If there is any unhealthy combination in offering bids, suitable steps shall be taken to prevent such combination in the interest of Municipal finance.
- xviii) The lease/licence shall be handed over possession to the new lessee/licencee in time. Wherever the Executive Authority feels that there is likely to be a problem in taking over the possession from old lessee/licencee he should take adequate precautionary measures to prevent such happenings including filing of caveat in local courts.
- xiv) The side open spaces including open spaces under stair cases in Commercial Complexes shall be kept as such for free public use and they shall not be let out in public auction.

Instructions have been issued in this office Circular No.8703/99/R2 dated 18.2.99 that no name transfers shall be entertained during the tenure of lease/licence including those from legal heirs and these instructions shall be strictly followed.

P R O F O R M A

NAME OF THE MUNICIPALITY :

Sl. No.	Lease item	Lease amount for 1998-99	Highest bid for 1999-2000
(1)	(2)	(3)	(4)

Date of auction	Resolution Number & date	Problems if any	Remarks
(5)	(6)	(7)	(8)

Joseph Inyang
12/18/98
FOR COMMISSIONER OF
MUNICIPAL ADMINISTRATION.

JOM
12/18/98

All the Municipal Commissioners and Commissioners of Corporations should review the existing lease conditions (Both general and special) with reference to above guidelines and if necessary suitably amend them with the approval of the Council and execute agreements of leases with the lessees before handing over the possession of properties.

All the Municipal Commissioners are requested to ensure that the above guidelines are scrupulously followed and that the leases/licences are renewed/auctioned in a prompt and more transparent manner without giving room for any complaints.

A report indicating the lease items, last year's highest bid, current year's bid, problem if any, shall be sent on or before 5.4.99 in the enclosed proforma.

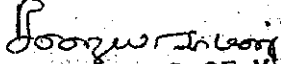
The receipt of this circular shall be acknowledged by return of post.

Sd/- SANWAT RAM,
COMMISSIONER OF MUNICIPAL
ADMINISTRATION.

To

All the Municipal Commissioners,
thro' the Chairpersons
Regional Directors of Municipal Administration.
Copy to: All the Corporation Commissioners,
thro' the Mayors.

/Forwarded By Order/


for COMMISSIONER OF MUNICIPAL
ADMINISTRATION.

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12.5.99