

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No.35331 of 2014 (N)

PETITIONER:

P.SURESH, AGED 42 YEARS,
S/O.LATE P.K.NAIR, BHARATH BEEDI COMPOUND,
THALIPARAMBA, KASARAGOD, PIN-671121

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENTS:

1. THE TRAVANCORE DEVASWOM BOARD,
NANDANCODE, THIRUVANANTHAPURAM, PIN-695003,
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
TRAVANCORE DEVASWOM BOARD, NANDANCODE,
THIRUVANANTHAPURAM, PIN-695003.
3. THE COMMISSIONER FOR TRAVANCORE DEVASWOM BOARD,
NANDANCODE,
THIRUVANANTHAPURAM, PIN-695003.
4. THE EXECUTIVE OFFICER,
TRAVANCORE DEVASWOM BOARD, SABARIMALA,
PATHANAMTHITTA DISTRICT, PIN-689713.

BY SRI.KRISHNA MENON, SC, TRAVANCORE DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE NOTIFICATION ISSUED BY THE 3rd RESPONDENT VIDE ROC No.53/14/Saba DTD.11.9.2014.
- EXT.P2 : COPY OF THE SCHEDULE OF ITEMS FOR E-TENDER PUBLISHED BY THE 1st RESPONDENT.
- EXT.P3 : COPY OF THE GENERAL AND SPECIAL CONDITION OF TENDER PUBLISHED BY THE 1st RESPONDENT.
- EXT.P4 : COPY OF THE JUDGMENT IN W.P.(C)No.26862 OF 2014 OF THIS HON'BLE COURT DTD.12.11.2014.
- EXT.P5 : COPY OF THE NEWS ITEM APPEARED IN MATHRUBHUMI DAILY DTD.18.12.2014.
- EXT.P6 : COPY OF THE NEWS ITEM APPEARED IN KERALA KAUMUDHI DAILY DTD.18.12.2014.

RESPONDENTS' ANNEXURES:-

- ANNEXURE-A COPY OF THE REPRESENTATION DTD.30.11.2014.
- ANNEXURE-B COPY OF THE REPORT OF THE ASSISTANT ENGINEER.
- ANNEXURE-C COPY OF THE REPORT OF THE EXECUTIVE OFFICER.
- ANNEXURE-D COPY OF THE ORDER OF THE BOARD.

True copy

P.A to Judge

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

W.P.(C).No.35331 of 2014

Dated this the 26th day of February, 2015

JUDGMENT

Anil K. Narendran, J.

This Writ Petition is filed by one P.Suresh, a devotee of Lord Ayyappa. According to the petitioner, he used to visit Sabarimala every year. His grievance in this Writ Petition is relating to allotment of shop No.17 in Malikappuram Building at Sabarimala Sannidhanam, without following any procedure known to law. Therefore, he is seeking a writ of mandamus commanding the respondents not to allot any shop room or stall to anyone in Sabarimala Sannidhanam and Pampa without following the procedure for e-tender and other procedural formalities. He is also seeking a writ of mandamus commanding the respondents to forthwith cancel the allotment of shop No.17 in Malikappuram Building at Sabarimala Sannidhanam, since the allotment was without following any procedure known to law.

2. By order dated 8.1.2015, this Court had directed the learned Standing Counsel for the Travancore Devaswom Board to

get instructions with reference to the averments in the writ petition and as to whether the shop in question has been allotted to anyone, if so, the full name and address of the person to whom it was allotted and the procedure followed before such allotment was made, etc.

3. Pursuant to the said order, a statement dated 10.1.2015 has been filed on behalf of the respondents, stating that the Board had invited e-tender to auction the right to conduct stalls, hotels, etc., at Sabarimala Sannidhanam, Pampa, etc., during the festival season of 1190 ME. One of the items tendered as Sl.No.46 in Ext.P2 tender notice was the right to conduct a bookstall in a room measuring 10.1 x 6.05 meters on the south-eastern side of Malikappuram temple at Sabarimala Sannidhanam, in the cellar of Donor House No.7. Going by the tender notification, the successful bidder of the said bookstall can utilise Shop No.17 in the shopping complex at Malikappuram, as godown, free of cost, on condition that no business shall be permitted in the said shop room for any reason whatsoever.

4. Going by the averments in the statement filed on behalf of the respondents, one Sri.Mohammed Suneer, Venice Enterprises, Vellakkinar, Alappuzha, was the successful bidder for Sl.No.46, who bid it for an amount of ₹27,35,000/-. The said Suneer had thereupon submitted Annexure-A representation dated 30.11.2014 before the President of the Travancore Devaswom Board, requesting that he should be permitted to effect sales from Shop No.17 as well, and that he is ready and willing to pay an additional amount of ₹2,65,000/- for that purpose. Based on Annexure-A representation, the President of the Travancore Devaswom Board called for the views of the Executive Officer of the Board at Sabarimala, the fourth respondent herein, who in turn called for a report from the Assistant Engineer, Section-I Sabarimala Development Project. Accordingly, the Assistant Engineer submitted Annexure-B report dated 2.12.2014 before the fourth respondent, reporting that if there is no legal hurdles, the said Suneer can be permitted to use Shop No.17 for selling CDs and cassettes after collecting a sum of ₹12,10,000/- for the said Shop, with the approval of the Board. The fourth respondent thereupon submitted Annexure-C report dated 2.12.2014

to the Commissioner of Travancore Devaswom Board, for taking necessary action based on Annexure-B report of the Assistant Engineer concerned.

5. On the basis of Annexure-B and Annexure-C reports, the Secretary of the Devaswom Board issued Annexure-D letter dated 4.12.2014 informing the third respondent that the Board has decided to permit the said Suneer to conduct business in Shop No.17 in Malikappuram Building which has already been allotted to him as a godown, after collecting a further sum of ₹12,10,000/-. It is stated in the said statement that there is no illegality or infirmity in the decision of the Board referred to above and that during the last festival season Shop No.17 had not been auctioned and was used as a godown for the bookstall. It is also stated in the said statement that, the said Suneer is no way related to any of the officers of the Board.

6. We heard the arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the Travancore Devaswom Board.

7. A perusal of Ext.P2 tender notice would make it abundantly clear that the right for conducting a bookstall in the cellar of Donor House No.7 was auctioned subject to the specific condition that Shop No.17 in Malikappuram Building can be used free of cost, for godown purposes. It was also specifically mentioned in Ext.P2 tender notice that no business shall be permitted in Room No.17 in Malikappuram building for any reason whatsoever. Annexure-B report of the Assistant Engineer concerned would show that Shop No.17 is having an area of 61.10 Sq.Meters (10.10 x 6.05 Meters). The upset price fixed for the shop room in the cellar of Donor House No.7 with the very same measurement was ₹38,53,000/-. Sl.No.49 in Ext.P2 tender notice was the right to conduct a cassette shop at Malikappuram under the steps leading to N.S.S.Hospital, after erecting a temporary shed measuring 3.9 x 3.6 meters. The upset price fixed for the said shop was ₹14,93,000/-. Therefore, if Shop No.17 in Malikappuram Building was included in Ext.P2 tender notice, with right to conduct business, even the upset price would have been much higher than ₹38,53,000/- fixed for the bookstall in the cellar of Donor House No.7.

8. The general/special conditions of the e-tender notified vide Ext.P2 are contained in Ext.P3. Going by Exts.P2 and P3 any allotment of shop/stall can be made only in terms of the general/special conditions contained therein. In Ext.P4 judgment a learned single Judge of this Court had even directed the Board to hold fresh negotiations with the tenderers who had offered only the minimum rate stipulated in the tender notice.

9. The specific allegation made in paragraph 5 of the Writ Petition is that, it was earlier decided not to allot Shop No.17 in Malikappuram building at Sabarimala Sannidhanam to anyone taking into consideration the inconvenience that may be caused to the pilgrims. In paragraph 6 of the Writ Petition the petitioner has contended that, going by Exts.P5 and P6 news items, Shop No.17 in Malikappuram building was allotted to one person who has already been allotted 3 shop rooms at Sabarimala Sannidhanam and that when shop No.17 was previously given on rent the Devaswom received ₹30,00,000/- as rent. The petitioner has also made a specific averment in the Writ Petition that the shop room in question is situated in a main centre through which the devotees frequently

commute and it was taking into account this fact, the tiffin stall and other items were removed from this area. The petitioner has also averred in the writ petition that the nearby room was auctioned for ₹27,00,000/-. Though by an order dated 8.1.2015 this Court had directed the learned Standing Counsel to get specific instruction with reference to the averments in the Writ Petition, the statement filed on behalf of the respondents on 12.1.2015 is silent as to the aforesaid specific allegations made in the Writ Petition.

10. Therefore the materials on record prima facie indicate that, if the shop room in question was put to auction with a right to conduct business, instead of allotting the same to the licensee of the bookstall, the said room would have fetched a much higher return. If the Board was of the opinion that, a room which was auctioned pursuant to Ext.P2 tender notice with certain conditions had to be auctioned without any such conditions, the Board should have conducted a re-auction in accordance with the general/special conditions in Exts.P2 and P3. In such circumstances, we find absolutely no justification on the part of the Board in allotting the room in question to the licensee of the bookstall, without following

the procedure contemplated in Exts.P2 and P3. Since the petitioner has not chosen to implead the allottee of shop No.17 in Malikappuram building in Sabarimala Sannidhanam, we decline the relief sought by the petitioner to cancel the allotment of the said shop room in his favour.

In the result, this writ petition is disposed of with a direction that hereafter the Travancore Devaswom Board shall not allot any shop or stall in Sabarimala Sannidhanam and Pampa to anyone without following the procedure for e-tender and other procedural formalities prescribed for that purpose.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

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