

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4771 & 4772 of 2015
&
M.P.Nos.1, 1, 2, 2 & 4 of 2015

W.P.No.4771 of 2015

M.Pandu

.. Petitioner

Vs.

1.The Commissioner
Dharmapuri Municipality,
Dharmapuri.

2.R.Joseph

3.N.Chandran

4.Surendhar

(R2 to R4 impleaded as per order
dt.26.3.15)

.. Respondents

W.P.No.4772 of 2015

N. Saravanan

.. Petitioner

vs

1. The Commissioner,
Dharmapuri Municipality,
Dharmapuri.

2. K.Nanchan

(R2 impleaded as per order dt.26.3.15)

.. Respondents

Prayer: Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records which culminated in issuing the impugned tender notification in Na.Ka.No.6147/2014/A3 dated 19.02.2015 on the file of the respondent, quash the same and consequently direct the respondent to award the contract in favour of the petitioner within a time limit to be specified by this Honourable Court in respect of item Nos.1,2 and 10 (in W.P.No.4771 of 2015) and Nos.3, 4, 5 and 6 (in W.P.No.4772 of 2015) of the tender notification issued vide Na.Ka.No.6147/2014/A3 dated 04.02.2015 which were opened on 18.02.2015.

For Petitioner in both WPs : Mr.R.Subramanian for
M/s.C.Prabakaran

For Respondents in both WPs : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader for R1
Mr.A.Jenasenan for R2 to R4
in W.P.No.4771 of 2015 & for
R2 in W.P.No.4772 of 2015

COMMON ORDER

Heard Mr.R.Subramaniam for M/s.C.Prabakaran, learned counsel for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the respondent and Mr.A.Jenasenan, learned counsel for the respondents 2 to 4 in W.P.No.4771/15 and R2 in W.P.No.4772/15.

2. The petitioner in both these writ petitions have challenged the tender notification dated 19.02.2015, by which, the respondent Municipality has brought forward for re-auction, few items which were formed part of the original tender notification. The relevant items are item Nos.1 to 6 and 10. At the time of the writ petitions were entertained, this Court granted an interim order. In the light of the stand taken by the petitioners that they have participated in the tender held on 04.02.2015 and they were highest bidders and they have remitted the amount on different dates and last of such remittance was made on 16.02.2015. Further, it was submitted that without accepting or rejecting their bids, the second tender notification was issued for the very same items with the same upset price and on the same conditions. Considering the said submissions, this Court has granted an interim order on 24.02.2015, granting interim stay in respect of items 1 to 6 and 10 in the impugned tender notification dated 19.02.2015.

3.The short question which falls for consideration whether the first respondent could have invited fresh tenders on 19.02.2015 in respect of the same items which were covered in the earlier tender notification dated 04.02.2015. It is not in dispute that the petitioners have participated in the tender invited on 04.02.2015 in respect of works in Items 1 to 6 and 10. The bids submitted by the petitioners along with the other bids were opened on 18.02.2015. The petitioners assert that they are the highest bidders for all the 7 items of the work. It is further stated that this assertion has not been denied in the counter affidavit of the first respondent. However, one important fact to be noted is that the petitioners have not remitted any amount nor any letter of confirmation was given in his favour. Learned counsel for the petitioners would submit that by virtue of Section of the Tamil Nadu Transparency in Tenders Act, 1998, the petitioners have got a vested right and he is entitled to know whether the tender is accepted or rejected.

4.Learned counsel for the private respondents by referring to the decision of the Hon'ble Supreme Court in MAA BINDA EXPRESS CARRIER AND ANOTHER V. NORTH-EAST FRONTIER RAILWAY AND OTHERS reported in (2014) 3 SCC 760, submitted that the Hon'ble Supreme Court has clearly held that the Bidders participating in the tender process cannot insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. It has been further pointed by the Hon'ble Supreme Court that award of contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. Further reference was made to the decision of the Hon'ble Supreme Court in UTTAR PRADESH AVAS EVAM VIKAS PARISHAD AND OTHERS V. OM PRAKASH SHARMA reported in (2013) 5 SCC 182.

5.Learned Special Government Pleader appearing for the respondent submitted that the reason for inviting second tender is to augment revenue for the respondent-Municipality, since toll fees has been increased and there is justification to invite fresh tenders. Further, by referring to offers which were received in respect of items 7 and 13 in the impugned tender notification, it is submitted that substantially higher amounts have been quoted in the re-auction. Therefore, it is submitted that the re-auction would be in the interest of the respondent-Municipality. It is submitted that so far as the bids submitted in the re-auction by the private respondents is concerned, it is yet to be opened, in view of the interim order granted by this Court.

6.After considering the submissions of the learned counsels appearing on either side and carefully perusing the materials placed on record, this Court would point out that the purpose of inviting tenders by the respondent-Municipality is to get the best possible offer for augmenting the revenue of the Municipality. Therefore, while inviting tenders, the consideration which prevails with the respondent-Municipality is purely a commercial consideration. Merely because the respondent is a Municipality it does not mean the properties of the Municipality have to be handed over or given away at thrown away price. The best possible price has to be achieved so as to ensure that the financial interest of the Municipality is protected which ultimately protects public interest.

7.In the light of the above, this Court is of the view apart from technicalities, it has been ensured that the highest revenue is obtained by the respondent-Municipality. Admittedly, the petitioner has made an offer, but no amount has been deposited by him except the Earnest Money Deposit which has been deposited by all the tenderers. Therefore, this Court is of the view that the following order would meet the ends of justice and such course is agreeable to all parties.

8.In the result, the writ petition is disposed of by directing the respondent to open the bids offered by the private respondents herein and all other persons in respect of items 1 to 6 and 10, in the tender notification, dated 19.02.2015, those offers shall be opened in the presence of the writ petitioners and in the presence of the persons who have offered those bids. On opening such bids, if it is found that the persons, private respondents and others have offered higher amounts than offered by the writ petitioners, pursuant to the first tender dated 04.02.2015, the writ petitioners should be granted an opportunity to offer a highest amount than the bid submitted by the private respondents and others, pursuant to the impugned tender notification. If the offer given by the writ petitioners is highest and in the interest of the Municipality, the Municipality is entitled to confirm the offer. However, if the Municipality is of the view that the further revenue is capable of being earned, if a fresh tender is invited then the highest offer given by the writ petitioners, pursuant to the above direction shall be the upset price and a third notification shall be issued. The above direction shall be complied with within a period of two weeks from the date of receipt of a copy of this order.

9. The writ petitions are disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar
Dated:1.4.15

True Copy

Sub Assistant Registrar

To

The Commissioner
Dharmapuri Municipality,
Dharmapuri.

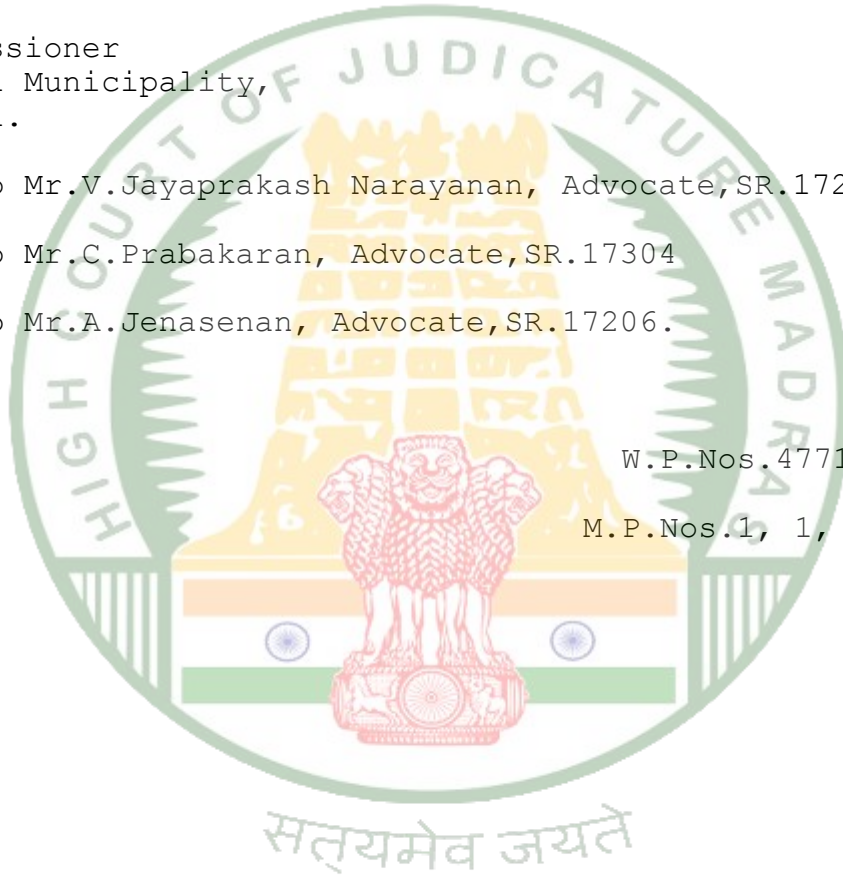
+2 cc's to Mr.V.Jayaprakash Narayanan, Advocate,SR.17293

+3 cc's to Mr.C.Prabakaran, Advocate,SR.17304

+2 cc's to Mr.A.Jenasenan, Advocate,SR.17206.

ksj (co)
krd 1/4

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