

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. No.7168 of 2015

and

M.P.Nos.1 and 2 of 2015

D.Kumar ... Petitioner

vs.

1. The Executive Officer,
Sholinghur Selection Grade Town Panchayat,
Sholinghur, Vellore District.

2. The President,
Sholinghur Selection Grade Town Panchayat,
Sholinghur, Vellore District.

3. P.Subramani
S/O.Late Ponnusamy
Old.NO.70/New.NO.51/1
Thenvanniyar Street
Sholingur, vellore District ... Respondents
(R3 is impleaded as per order of this
Court dt:05.11.2015 passed in M.P.No.3 of 2015)

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus, calling for the records of the respondents relating to the retender and reauction notification in Na.Ka.No.66/2015 dated 02.03.2015 and quash the same as illegal in respect of item No.7 and consequently, direct the respondents to proceed further as per that Original Tender in Na.Ka.No.66/2015 dated 09.02.2015.

For Petitioner : Mr.S.Shivakumar,
for M/s.K.M.Vijayan Associates
For R1 and R2 : Mr.R.Vijayakumar,
Additional Government Pleader
For R3 : Mr.M.V.Muralidharan

ORDER

Before going into the issues involved in the writ petition, the factual narration of the back ground leading to the case is very much required.

2. A Tender Notification was issued on 09.02.2015. Among other licenses to be issued, one is meant for collection of maintenance charges for using a public toilets. It is a tender-cum-auction. Admittedly, the petitioner is the highest tenderer for a sum of Rs.3,33,000/-. In the auction, the highest bid amount was Rs.1,92,000/-.

3. Unfortunately, the petitioner's tender could not be accepted as one of the Councillor is said to have barged into the office of the respondents and tore the relevant papers. Two complaints have been given, one, at the instance of the petitioner and another, at the instance of the respondents. Both the complaints have been registered and investigation is pending.

4. The petitioner in the said complaint stated that he furnished a Demand Draft No.000238 dated 25.02.2015. Strangely, the auction was cancelled without even issuing a notice to the petitioner and without following the procedure and hurriedly, a re-tender-cum re-auction was called for by issuing Notification on 02.03.2015 dispensing with the mandatory 15 days' time. The re-tender was conducted on 13.03.2015. While it is the case of the petitioner that he has not participated, it is the case of the respondents that he did participate.

5. The records would show that the petitioner has participated in re-auction by producing the Demand Draft bearing No.890522 dated 25.02.2015. It is the case of the petitioner that this demand draft was given while participating in the open auction and the same has not been returned and that is the reason why it is dated 25.02.2015.

6. It is curious to note that the demand draft dated 25.2.2015 mentioned in the complaint which is said to have been torn by the councillor and which is also not given in favour of the petitioner, even according to the respondent, is again said to be presented by him in the re-auction.

7. In the re-auction, three persons participated. The petitioner has quoted Rs.3.33 lakhs. The other person, by name, Balakrishnan, is said to have paid Rs.1 lakh cash, though the tender conditions speak about the furnishing of Demand Draft. The successful bidder/3rd respondent herein, who is also

represented before this Court, is stated to have given the Demand Draft bearing No.890517 dated 25.02.2015. It was also said to have been used by another person, by name, Dhanapackiam, incidentally, she also took part in the subsequent auction though for other items. It is also curious to note that the successful bidder by name, Subramani, has not taken part in the first auction and the demand draft given by him also shows the date as 25.02.2015. Therefore, it is not known as to how he could produce certain demand draft which was actually produced earlier by Mrs.Dhanapackiam. Be that as it may. The said Subramani was declared as a successful bidder. Challenging the same, the present writ petition has been filed.

8. Placing reliance upon the above said facts, the learned counsel for the petitioner submitted that every thing smack of arbitrariness. The petitioner did not even take part in the subsequent auction. The entire amount deposited by him earlier has not been returned and one of the demand draft available while participating in the auction has been re-used, that too, without the knowledge of the petitioner, as he was not allowed to participate. It is further submitted that there is violation of the adequate number of days and in any case, he is ready and willing to deposit the amount of Rs.3.37 lakhs being the highest amount quoted by the successful bidder, by name, Subramani, even tomorrow and thus, a re-auction/re-tender may be called for as per the condition No.19 of the terms and conditions.

9. Per contra, the learned counsel for the official respondents as well as the successful bidder, submitted that the re-tender has been fixed considering the urgency involved. The petitioner did participate in the re-tender. Therefore, it is not open to him to contend to the contrary. The allegations made by the petitioner after perusing the records produced before this Court cannot be allowed to be raised. As a successful bidder has quoted Rs.3.37 lakhs, no interference required.

10. The facts narrated above speak for themselves. Though it has been stated that the re-tender has been fixed and conducted on the ground of inadequacy of price, it is curious to note that the very same upset price of Rs.50,000/- has been fixed for the first auction and thereafter for re-auction. Till now, no action has been taken against the Councillor who allegedly did the act except the FIR registered. But the person affected is only the petitioner, as but for the said act, his bid could have been confirmed.

11. Therefore, prima facie, there is no material to subscribe the view that re-tender was conducted for inadequacy of price. It is no doubt true that when the decision is made

on irrelevant, extraneous consideration leading to arbitrariness, then, such inaction cannot be countenanced. Even in the re-tender, it is not known as to how Mr.Balakrishnan was allowed to take part by paying Rs.1 lakh cash. It is contrary to the tender conditions, though he has not become a successful bidder.

12. Similarly, there is no explanation for the demand draft used by the successful bidder Mr.Subramani, originally presented by Mrs.Dhanapackiam, who also incidentally took part in the auction in respect of two items. It is not known as to whether she has furnished two other demand drafts showing in her name in favour of the respondents. An explanation is sought to be given by the learned counsel for the respondents that the said Mrs.Dhanapackiam is none other than the wife of the successful bidder Subramani. However, this Court is not willing to dwell much into these facts.

13. It appears that all is not well. Now what the petitioner wants is to have a re-auction. He is also willing to comply with the condition No.19 by paying the amount of Rs.3.37 lakhs being the highest bid amount. Thus, there will not be any prejudice that would be caused to the respondents. Ultimately, the respondents are interested in getting the maximum revenue.

14. Accordingly, the writ petition stands disposed of by setting aside the order impugned insofar as Item No.7 is concerned and consequently, directing them to conduct a re-auction/re-tender, within a period of six weeks from the date of receipt of a copy of this order, on condition that the petitioner deposits a sum of Rs.3.37 lakhs, within a period of one week from the date of receipt of a copy of this order, failing which, the order passed by this Court would not come to the help of the petitioner and the proceedings of the respondents by calling for re-tender would follow by subsequent one would automatically revive. In re-tender/re-auction, both the petitioner and the successful bidder/3rd respondent herein are entitled to participate along with others.

15. Considering the facts and circumstances of the case, particularly, difficulties involved in conducting the auction, the respondents are directed to videograph the entire re-tender/re-auction in the presence of the local Tahsildar. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

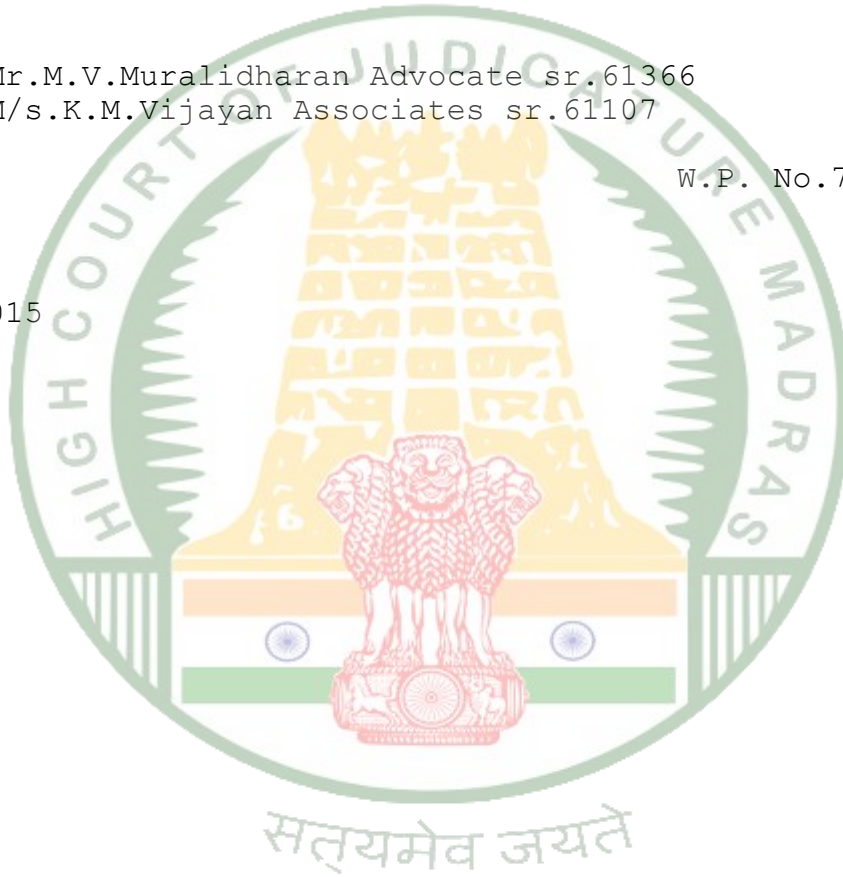
To

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2. The President,
Sholinghur Selection Grade Town Panchayat,
Sholinghur, Vellore District.

+1 cc to Mr.M.V.Muralidharan Advocate sr.61366
+1 cc to M/s.K.M.Vijayan Associates sr.61107

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