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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition (MD) No.22012 of 2015

and M.P(MD)No.1 of 2015

R.Sreedharan

... Petitioner

Vs.

1.Killiyoor Town Panchayat,
Tholayavattom P.O,
Kanyakumari District, Pin 629 157,
represented by its Executive Officer.

2.V.Rajaretnam,
President,
Tholayavattom P.O,
Kanyakumari District Pin 629 157

3.Davidson,
Former Clerk of Killiyoor Town Panchayat,
Tholayavattom P.O, Kanyakumari District
Pin 629 157
at present working in Reetapuram Town Panchayat,
Palapallam P.O., Kanyakumari District.

4.C.Reghu

5.M.Paulraj

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent pertaining to its order in communication in Na.Ka.No.314/2015 dated 10.09.2015 on its file and subsequent order in Na.ka.no.369/2015 dated 16.10.2015 on its file quash the same directing the 1st respondent to get executed all the six works stated in its tender notice in Na.Ka.No.165/2015/A1 dated 20.05.2015 for the lowest tender amounts for the same quoted in the tenders opened on 19.6.2015 as stated by the 3rd respondent in his tabular statement dated 24.08.2015.

For Petitioner

: Mr.K.N.Thampi

ORDER

(Order of the Court was made by **V.RAMASUBRAMANIAN, J.**)

The petitioner who is the elected Vice President of the Killiyoor Town Panchayat has come up with the above writ petition challenging the rejection of his request for the annulment of a cancellation of a tender.



2. Heard Mr.K.N.Thampi, learned counsel for the petitioner.

3. The Killiyoor Town Panchayat published a tender notice on 20.05.2015 calling for tenders for six items of works. The tenders were opened on 19.06.2015. It appears that the lowest tender for each work was accepted by the first respondent.

4. According to the petitioner, the elected President of the Panchayat who is the second respondent herein and the former clerk of the Town Panchayat who is the third respondent herein wanted to profiteer out of the tender, by corrupt methods. Finding that the quotes made by the lowest tenderer were so low that their greed will not be satisfied by accepting the tender, the respondents 2 and 3 conspired together and cancelled the tender. The cancellation was brought up before the panchayat in a meeting. There was acrimony in the meeting as some members opposed the cancellation. Stating that a unanimous resolution has been passed despite stiff opposition from some members, the tender was cancelled.

5. The petitioner thereafter, sent a representation to the Chief Minister Grievance Cell. It was forwarded to the Executive Officer of the Town Panchayat. The Executive Officer, appears to have given a reply to the Assistant Director of Town Panchayat on the petition sent by the petitioner to the Chief Minister Grievance Cell to the effect that the cancellation of tender was passed unanimously by the Town Panchayat due to allegations of malpractices. It is against the said reply given by the Executive Officer to the petitioner in response to his complaint lodged with the Chief Minister Grievance Cell, that he has come up with the above writ petition.

6. At the outset, it should be pointed out that the petitioner has not come up with a challenge to the very resolution passed by the Town Panchayat. As against the resolution passed by the Town Panchayat, the Tamil Nadu District Municipalities Act, 1920 which applies to the case of a Town Panchayat provides a remedy. But the petitioner instead of choosing that remedy gave a representation to the Chief Minister Grievance Cell. On the reply given by the Executive Officer to the said petition, the petitioner has come up with the above writ petition. In other words, the basic fact is that the resolution passed by the Town Panchayat is not under challenge but a reply given by the Executive Officer justified informing the petitioner of the justification for cancellation of tender is what is under challenge.

7. However, it is stated by Mr.K.N.Thampi, learned counsel for the petitioner that there was no resolution at all. According to the petitioner, there was no resolution passed at the meeting and that the reply which is impugned in the writ petition contains false information. If this is so, the petitioner can always take up the matter with the Director of Municipality or the competent authority. The matter can be looked at another angle also. If there was no resolution cancelling the tender, then there is no cancellation at



all. If there is no cancellation at all, the petitioner has no cause of action to complain.

8.It is contended by Mr.K.N.Thampi, learned counsel for the petitioner that the Tamil Nadu Transparency in Tenders Act, 1998 lists out certain contingencies only upon the happening of which the tender can be cancelled.

9.He relies upon Section 12 of the Act. Section 12(1) states that if the price quoted by a tenderer is higher by a percentage as may be prescribed over the schedule of rates or prevailing market rate, the authority shall reject the tender. Sub Section (2) of Section 12 states that the tender Accepting Authority may reject all the tenders for reasons such as changes in the scope of procurement, new technologies or substantial design changes, lack of anticipated financial resources, Court orders, accidents or calamities and other unforeseen circumstances.

10.But it must be remembered that the right of a tender Accepting Authority to reject a tender does not arise out of the Tamil Nadu Transparency in Tenders Act, 1998. The Act codifies the law relating to floating of tenders, acceptance of tenders and rejection of tenders.

11.The entire law is not stipulated in an exhaustive manner. The law of tender is fundamentally governed by the law of contracts. Therefore, the right of a tender floating authority to accept or reject a tender does not arise only out of the Tamil Nadu Transparency in Tenders Act, 1998 but arises out of the general law of contracts.

12.Moreover, none of the persons who quoted the lowest rate in the tender whose rights may to some extent be stated to have been infringed by the cancellation of the tender have come up with any writ petition challenging the cancellation of tender.

13.Even in cases where the L1 challenges the cancellation of the tender, this Court has repeatedly held that merely because some one happens to be L1, he does not get a right either to challenge the cancellation of tender or to seek a mandamus compelling the acceptance of the tender. If L1 himself does not have a right to challenge the cancellation of tender, it is not known as to how the Vice President of Town Panchayat gets a right to challenge the cancellation of tender. Therefore, the writ petition deserves to be dismissed.

14.However, according to Mr.K.N.Thampi, learned counsel for the petitioner, the very cancellation was motivated by corrupt practices. Therefore, even if L1 does not have any right, the petitioner would certainly have a right, as an elected representative who is interested in fighting corruption.

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15.But the remedy of the petitioner is not in this forum. An elected representative whose cause is defeated by a democratic



process, in the meeting of the elected council, cannot take the public interest litigation route to achieve what he could not achieve by virtue of being a minority in the meeting of the council. Moreover, if corruption is the only issue, he must lodge a complaint with the Directorate of Vigilance and Anti Corruption and pursue the same as against the officials responsible for it. He cannot choose to come and challenge the cancellation of the tender, which if accepted, would result in a benefit enuring to the lowest tenderer when he is not before us. Therefore, the writ petition is dismissed. It is open to the petitioner to make a complaint to the Directorate of Vigilance and Anticorruption and take up the cause. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(Per.Admn.)

/True Copy/

Sub Assistant Registrar

To

The Executive Officer, Killiyoor Town Panchayat,
Tholayavattom P.O, Kanyakumari District- 629 157.

+1cc to Mr.K.N.Thampi, Advocate Sr.No.70629

Akm/22.12.2015/ 4p- 3c/NGM/SS/SAR-I

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