

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.07.2016
Delivered on : 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

W.P.No.10554 of 2015
and
M.P.Nos.1 & 2 of 2015
and
W.M.P.No.3842 of 2016

M.Selvam ... Petitioner

Vs.

1.The Coimbatore City,
Municipal Corporation,
represented by its Commissioner,
Victoria Town Hall,
Coimbatore - 641 001.

2.Kaliappan @ S.B.Suresh ... Respondents
(R2 is suo motu impleaded vide order dated 17.08.2015 in
W.P.Nos.10553 & 10554/2015)

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the tender called for collection of fees for the period of 2015 to 2018 as notified through the News Daily dated 10.03.2015 and the subsequent confirmation of tender to an undisclosed person for a sum of Rs.51,03,000/- and quash the same and subsequently direct the respondent to re-tender the collection of fees for the period of 2015 to 2018.

For Petitioner : Mr.S.S.Rajesh

For Respondents : Mr.S.Saravanan (R1)
Mr.G.Ashokpathy
for M/s.Pass Associates (R2)

O R D E R

The above Writ Petition has been filed by the petitioner to issue certiorarified mandamus to call for the records pertaining to the tender called for collection of fees for the period 2015 to 2018 as notified through the News Daily dated 10.03.2015 and the subsequent confirmation of tender to an

undisclosed person for a sum of Rs.51,03,000/- and to quash the same and subsequently, direct the respondent to re-tender the collection of fees for the period of 2015 to 2018.

2.It is the case of the petitioner that the 1st respondent called for tender for collection of fees for Mettupalayam Road Anna Daily Vegetable Market for the period of 2015-2018 vide notification published in News Daily on 10.03.2015. The petitioner intended to participate in the said auction and took a Demand Draft dated 27.01.2015 for a sum of Rs.5,75,000/- and approached the 1st respondent seeking for registration of his name. The Assistant Commissioner, West Zone of Coimbatore City Municipal Corporation, who was in-charge of receiving the deposit amount from the intending auctioneers/tenderers for participating in the auction, had stated that Mettupalayam Road Anna Daily Vegetable Market and D.B.Road parking space have been kept in abeyance and the 1st respondent has not chosen to receive the amount and register the petitioner's name to participate in the tender for Mettupalayam Road Anna Daily Vegetable Market. However, the petitioner received message stating that the respondent had received the deposit amount from three persons including the 2nd respondent at 8.00 p.m. on 12.03.2015. On the next day, the petitioner submitted a petition along with other tenderers before the Mayor and the Commissioner of Coimbatore City Municipal Corporation and the Officials assured them that a fresh notification and publication would be issued inviting tenders and the amount if any collected by the respondent officials would not be entertained and no auction would be held on 13.03.2015 with regard to the granting of license for Mettupalayam Road Anna Daily Vegetable Market.

3.According to the petitioner, a fresh notification inviting tender for D.B. Road Car parking fee collection was published in one Tamil Daily issue of 'Malai Malar' dated 27.03.2015 and another publication in one issue of 'Daily Thanthi' dated 28.03.2015. However, no fresh tender was called for in respect of Mettupalayam Road Anna Daily Vegetable Market fee collection. The petitioner came to understand that the collection of fee for the Vegetable market was awarded to one member of the Sangam for a value of Rs.51,03,000/-. According to the petitioner, since the entire process of accepting the tender had happened in a suspicious manner, denying and depriving the rights of all the people, who wanted to participate in the tender, is erroneous. Further, according to the petitioner, the tender process is in violation of the rules mandated under the Coimbatore Corporation Act. The tender process was not transparent and has been hurriedly done without properly allowing the participants to submit their bid. In these circumstances, the petitioner has filed the above Writ Petition.

4.The brief case of the 1st respondent is as follows:

(i)According to the 1st respondent, on 12.03.2015, one G.A.Vahab had paid the fees and obtained three online computer receipts at 3.18 p.m., 3.19 p.m. and 3.20 p.m., one S.Shanmugaraj got three online computer receipts at 3.21 p.m. and 3.22 p.m. and the 2nd respondent got three online computer receipts at 3.42 p.m., 3.43 p.m. and 3.44 p.m. for grant of licence for collection of amount at Anna Vegetable Market. Further, besides the above three persons, totally 19 members have registered their names to participate in the auction for some other items, which includes toilets and other markets. Further, the 1st respondent had stated that on 12.03.2015, the petitioner was not present to pay the required fee and register himself in terms of the conditions as stated in the auction notice. Without being present on 12.03.2015, the petitioner is making false statement stating that there is a violation in tender process as well as it was not transparent.

(ii)In the auction held on 13.03.2015, the 2nd respondent was declared as the highest bidder and the highest bid was approved by the Mayor on 27.03.2015. The Assistant Commissioner has not stated that the auction for grant of licence to the Mettupalayam Road Anna Daily Vegetable Market was kept in abeyance. The Demand Draft drawn by the petitioner was obtained even prior to the date of notification and it might have been drawn for some other purpose. When the Assistant Commissioner was in-charge of receiving the deposit, there could not be an occasion for the petitioner to deposit the amount with the 1st respondent. Hence, the 1st respondent had no occasion to refuse to receive the deposit. According to the 1st respondent, this alone would falsify the case of the petitioner.

(iii)There was no malpractice or irregularity with regard to the conduct of the auction. Re-tender will be called if any participant pays 5% more than the highest bidder within 24 hours. The petitioner did not pay 5% more than the highest bid within 24 hours. Hence, there is no scope for re-tender. No assurance was given that fresh tender notification would be issued. An auction was conducted by the Corporation on 13.03.2015 by following all the procedures. Without paying the tender deposit and registering the name, the website could not be opened. The auction was conducted by the Corporation in accordance with the rules and regulations as contemplated under the law. On 10.03.2015, the Corporation had issued a paper publication notifying about the auction, wherein the Corporation had clearly expressed that the person, who wants to participate in the auction have to register their names along with the deposit as well as the EMD at least by 04.00 p.m. on or before 12.03.2015 as the date for auction was fixed by the Corporation on 13.03.2015. The auction was conducted in a transparent manner. The petitioner having failed to

participate in the tender, cannot now make baseless allegations. The 2nd respondent, licensee is collecting the toll.

5.The brief case of the 2nd respondent is as follows:

The 2nd respondent has stated that pursuant to the paper publication dated 10.03.2015, he paid the requisite deposits and obtained three online computer receipts at 3.42 p.m., 3.43 p.m. and 3.44 p.m. for participating in the auction, which was proposed to be held for the collection of of toll and fee. On the date of auction on 13.03.2015, he was present along with one Vahab, Shanmugaraj, who also participated in the auction. Since the 2nd respondent's quotation was the highest one, he was declared as the highest bidder and the same was approved on 27.03.2015 and an order was issued on 31.03.2015 by the Assistant Commissioner, wherein he was directed to pay the entire Auction Amount, Deposits, Professional Tax, Tax Deducted at Source, Service Tax in respect of the licence for collection of toll at the Market. Accordingly, the 2nd respondent paid a sum of Rs.61,51,315/-. The petitioner has never paid the requisite fee for registration so as to participate in the auction. Even otherwise, as per the terms and conditions of the tender, a person who is interested in re-auction, should make an application within 24 hours from the time of auction. The petitioner has not made any application within 24 hours. The computer system generated receipts would show that the 2nd respondent has paid the registration fee well within time. In these circumstances, the 2nd respondent prayed for dismissal of the Writ Petition.

6.Heard Mr.S.S.Rajesh, learned counsel appearing for the petitioner, Mr.S.Saravanan, learned counsel appearing for the 1st respondent and Mr.G.Ashokpathy, learned counsel for the 2nd respondent.

7.There is no dispute that the 1st respondent published a tender notification for collection of fee for Mettupalayam Road Anna Daily Vegetable Market on 10.03.2015. As per the tender notification, the participants should submit their application along with the required amount in the Corporation Cash counter by way of Demand Draft/Cash and subsequently, registration process will be done in the Corporation Computer Section. After registration, a cover containing E-Id/E-password will be issued to each participants. Using the E-password, the participants have to generate their personal password by themselves online. However, the participants should not disclose their password to other participants as well as to the Corporation employees. The participants, who had remitted the required amount and received E-Id on the 1st day, are alone allowed to participate in the E-auction. They can place the E-tender cover in the tender box within the specified time and the cover should contain E-Id. The covers

submitted by the persons, who do not have registration/user ID are not accepted. At the specified time, the E-auction will be conducted through online and the participants have to participate in the auction through online by using their password. In the computer screen, they can view the overall maximum amount quoted, however, the participant's name will not be displayed. The participants can also place their quotation through online.

8. In the case on hand, on 12.03.2015, the collection counter was closed as per the auction conditions at 4.00 p.m. In the affidavit filed in support of the Writ Petition, the petitioner has stated that the 1st respondent had received the deposit amount from three persons viz., G.A.Vahab, S.Shanmugaraj and Kaliappan @ S.B.Suresh. However, the 1st respondent as well as the 2nd respondent has stated that the 2nd respondent got three online computer receipts generated at 3.42 p.m., 3.43 p.m. and 3.44 p.m. on 12.03.2015. Similarly, G.A.Vahab had paid the fees and obtained three online computer receipts at 3.18 p.m., 3.19 p.m. and 3.20 p.m. on 12.03.2015. S.Shanmugaraj also got three online computer receipts on 12.03.2015 at 3.21 p.m. and 3.22 p.m. for grant of licence for collection at Anna Vegetable Market. The 1st respondent has stated that besides the three persons, totally 19 members have registered their names to participate in the auction for some other items, which includes toilets and other markets. The 1st respondent has specifically stated that the petitioner was not present to pay the required fee on 12.03.2015 and register himself in terms of the conditions as stated in the auction notice.

9. Had the petitioner paid the required fee and got himself registered on 12.03.2015, he would have produced the online computer receipts issued to him as were issued to the 2nd respondent and to other participants. When the publication was issued on 10.03.2015, the petitioner was having a Demand Draft dated 27.01.2015. When the tender itself was issued on 10.03.2015, the petitioner has not explained the reasons for having a Demand Draft dated 27.01.2015. The case of the petitioner that the 1st respondent received deposit amount from the 2nd respondent at 8.00 p.m. on 12.03.2015, was falsified by the production of the online receipts issued by the 2nd respondent on 12.03.2015 at 3.42 p.m., 3.43 p.m. and 3.44 p.m.

10. In the auction held on 13.03.2015 since the 2nd respondent was the highest bidder, he was declared as the highest bidder for a sum of Rs.51,03,000/-. Even after declaring the 2nd respondent as the successful bidder, the petitioner had an opportunity to apply for re-tender, if he was willing to pay 5% more than the highest bid amount within 24 hours. Even that was not done by the petitioner and he did not apply for re-tender and agreed to pay 5% more than highest

bid within the stipulated 24 hours. When there is no evidence produced on the side of the petitioner to prove that he was present on 12.03.2015 and offered to pay the requisite deposits, the contention raised by the petitioner cannot be accepted. After declaring the 2nd respondent as the highest bidder, the same was approved on 27.03.2015. Consequently, the 2nd respondent was issued with an order dated 31.03.2015 by the Assistant Commissioner, West Zone, Corporation of Coimbatore wherein he was directed to pay the entire auction amount together with Deposits, Professional Tax, Tax Deducted at Source, Service Tax, etc. Accordingly, the 2nd respondent paid Rs.61,51,315/- in respect of licence for collection of toll. After complying with the requisite formalities, the 2nd respondent was permitted to collect toll and fee from 01.04.2015.

11. Since the petitioner had failed to substantiate the averments stated in the affidavit filed in support of the petition, I am of the considered view that the 1st respondent had conducted the tender in accordance with the rules and regulations as contemplated under the law and there is no irregularity in the tender process.

12. In these circumstances, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Coimbatore City,
Municipal Corporation,
Victoria Town Hall,
Coimbatore - 641 001.

+1cc to Mr.M/s.Pass Associates, Advocate, S.R.No.43266
+2cc's to Mr.S.S.Rajesh, Advocate, S.R.No.43137
+1cc to Mr.S.Saravanan, Advocate, S.R.No.43478

W.P.No.10554 of 2015 and
M.P.Nos.1 & 2 of 2015 and
W.M.P.No.3842 of 2016

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