

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 27571 of 2016

&

W.M.P. Nos. 23753 to 23755 of 2016

M. Vasanthi

..Petitioner

Vs.

1. Ministry of Defence,
rep. by Secretary,
104, South Block,
New Delhi,
Pin 110 011.
2. The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount,
Chennai.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Tender Notice dated 28.07.2016 with No. STM/REV/IV/2257 published in Dinakaran dated 29.07.2016 and quash the same and direct the respondent to fix the EMD amount after obtaining concurrence of the 1st respondent.

For Petitioner :: Mr.S.M. Murali Dharan

O R D E R

This writ petition is filed challenging the Tender Notice issued by the 2nd respondent dated 28.07.2016 with No. STM/REV/IV/2257 published in Dinakaran dated 29.07.2016, quash the same and direct the 2nd respondent to fix the EMD amount after obtaining concurrence of the 1st respondent.

2. According to the petitioner, she is the licence holder in respect of cattle shandy held every Friday at Old Trunk Road at Pallavaram from 2012 and by virtue of licence issued to her, she has been collecting itinerant vendor's fee from the vendors, who set up shops in the open market area and also parking fees from the vehicles parked in the shandy. The grant of licence is by way of calling for tenders and the petitioner was the successful tenderer for the year 2012 for maintenance of market area, collection of itinerant Vendor Fee and Parking Fee in the Friday Weekly Market held in the lands under the control of the 2nd respondent. The period of licence was for a period of 2 years. Though the licence period came to an end in the year 2014, according to the petitioner, her licence period was extended by 2 years. Subsequent to that, the petitioner spent huge sums of money for clearing dumped garbage, sewage water, etc, in the shandy, as these facilities were not available. While things stood so, suddenly, the impugned tender notification has been published by the 2nd respondent, in a Tamil Daily, namely, "Dinakaran", on 29.07.2016, calling for sealed tenders for maintenance of market area, collection of itinerant vendor fee and parking fees on every Friday for a period of two years, fixing 10th August, 2016 as the date for opening the tenders. The said notification is under challenge in this writ petition.

3. Mr.S.M. Murali Dharan, learned counsel for the petitioner would submit that eventhough, by virtue of auction conducted in 2012, licence was granted to the petitioner for 2 years, subsequently, on expiry of the period of licence, it was extended by 2 years. According to the learned counsel, with an intention to deprive the petitioner from participating in the tender process, the 2nd respondent has, deliberately, enhanced the Earnest Money Deposit amount in the present tender notification and fixed it as Rs.5 lakhs to help some other parties. There is no guideline, rule or procedure followed for fixing Earnest Money Deposit and Solvency amounts. Hence, according to the learned counsel for the petitioner, the impugned notification is liable to be quashed.

4. A perusal of the records would show that the petitioner was granted licence to collect itinerant vendor's fee from the vendors, who set up shops in the open market area, during the weekly cattle shandy held every Friday at Old Trunk Road, Pallavaram and also parking fees from the vehicles parked in the shandy. Though the petitioner claims that, right from the year 2012, she has been collecting the said amounts, after the expiry of the licence period in the year 2012, she was granted extension, for a further period of 2 years only orally and there was no extension order given by the 2nd respondent. A close perusal of the affidavit, especially, paragraph No.3, would

disclose that in 2014 itself, after the expiry of the licence period of the petitioner, the 2nd respondent had issued a tender notification calling for tenders for collection of the aforesaid amounts. However, the petitioner, alleging that without following the due process, the said tender notice was issued, filed O.S.No. 15 of 2014 before the District Munsif Court at Alandur and the said suit is still pending. Therefore, it is clear that the contention of the petitioner that after expiry of the licence period in 2014, she was granted extension of licence is false. It also becomes evident that whenever the 2nd respondent makes an attempt to conduct auction, the petitioner is in the habit of challenging the same, either by filing a suit before the Civil Court, as in the earlier occasion, or by filing a writ petition before this Court, as has been done now. Such an attitude, on the part of the petitioner, has to be deprecated and condemned. Having got the licence, the petitioner wants to continue as a licensee, forever, somehow by hook or crook, depriving the chances of other eligible persons from getting the licence. Therefore, the writ petition is liable to be dismissed.

5. The petitioner has also questioned the rationale behind the fixing of Earnest Money Deposit and Solvency Amounts stating that they have been deliberately inflated, only in order to see that she is not able to participate in the proposed auction. It is only a contract and it is open to the authority, who calls for bids, to fix the Earnest Money Deposit, according to his discretion and a participant, has no right, to question the same. Only those persons, who pay the amount, would be eligible to participate in the auction and the choice, whether to participate in the auction, by tendering the Earnest Money Deposit or not, is purely left to the discretion of the petitioner and there is no compulsion, whatsoever, on the petitioner, that she has to participate in the auction. Therefore, the challenge made by the petitioner to the tender notice issued by the 2nd respondent fails and the writ petition is dismissed.

6. The 2nd respondent is directed to conduct the auction as notified in the tender notice and on declaration of the successful bidder, the petitioner shall vacate and hand over to the successful bidder, failing which the 2nd respondent shall use police force to evict the petitioner.

7. As far as the challenge made by the petitioner, to the earlier tender notification, issued in the year 2014, before the District Munsif Court, Alandur, by way of O.S. No. 15 of 2014 is concerned, practically speaking, the said suit has become infructuous. Since the period of licence is for 2 years, the said period is already over and a new tender notification has also been issued. Even otherwise, the suit is liable to be struck off under Article 227 of the Constitution of India. In

any event, the suit has become infructuous and by this order, the suit in O.S. No. 15 of 2014, pending on the file of District Munsif Court, Alandur, stands dismissed. No costs. Connected W.M.Ps are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. Ministry of Defence,
rep. by Secretary,
104, South Block,
New Delhi,
Pin 110 011.
 2. The Chief Executive Officer,
Cantonment Board,
St. Thomas Mount,
Chennai. W.P. No. 27571 of 2016
 3. The District Munsif Court,
Alandur.
- +1 cc to M/s.S.M.Murali, advocate,sr.45337.

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