

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No.7454 of 2017
and W.M.P.No.8138 of 2017

K.Poovendran

... Petitioner

Vs.

1. The Assistant Director,
Town Panchayats,
Salem, Salem District.

2. The Executive Officer,
P.N.Patty Selection Grade Town Panchayat,
Mettur Dam-2,
Salem District.

... Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue an order, direction or writ, more particularly writ in the nature of writ of mandamus, directing the respondents to issue an order of license for collection of Entry Fees/Toll for Heavy Vehicles to transport Fly Ash from Mettur Thermal Power Project in pursuant to the auction held on 02.03.2017 at second respondent Town Panchayat for the period from 01.04.2017 to 31.03.2018 forthwith.

For Petitioner : M/s.M.R.Jothimanian

For Respondent : Mr.S.Diwakar,
Special Government Pleader (For R1)
Mr.O.R.Maheswaran,
Government Advocate (For R2)

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ORDER

Heard M/s.M.R.Jothimanian, learned counsel appearing for the petitioner, Mr.S.Diwakar, Government Pleader appearing for the first respondent and Mr.O.R.Maheswaran Government Advocate appearing for the second respondent .

2.The petitioner who is a successful tenderer has come forward to file this writ petition seeking a direction to the respondents to issue an order of license for the collection of Entry Fees/Toll for Heavy Vehicles to transport Fly Ash from Mettur Thermal Power Project.

3.The auction was held on 02.03.2017. The petitioner was the highest tenderer for a sum of Rs.5,55,555/-. However, the tender amount quoted by the petitioner was found to be lower than the amount confirmed for the earlier year. It was also found to be lower than the average amount for the previous three proceeding year, which is Rs.13,37,411/-.

4.Accordingly, though the petitioner has deposited the said amount it was decided that the respondents themselves would collect the fees for sometime and then make an assessment thereafter.

5.Learned Counsel appearing for the petitioner submits that the fact that the petitioner has quoted highest amount is not disputed and the amount paid by him has been received. Therefore he should be issued with the license. He further submits that as per the newspaper report, the cement factories are not procuring and therefore there is less traffic of vehicle carrying Fly Ash.

6.The learned Counsel appearing for the respondents would submit that the amount quoted by the petitioner is grossly disproportionate and therefore, it has been decided to collect the Toll fees from the Heavy Vehicles by the respondents themselves and thereafter, take a decision.

7.A tender is nothing but an invitation. A tenderer merely makes an offer and until and unless the same has been accepted, there will not be a concluded contract. When there is no concluded contract, no right vest in a person seeking license. The tender condition itself says that a decision has to be taken on a tender. Such a decision has been taken by not confirming the tender but to collect the fees by the respondents themselves. The power to judicial review of such an action is very limited, perhaps the Court can go into the arbitrariness of an action. This Court does not find any arbitrariness in the action of the respondents. Admittedly the amount quoted by the petitioner is the amount 1/3rd of one for the average amount fetched for the last three years. Therefore, such a decision taken cannot be termed as arbitrary. The submission made on the decision of the Cement Industries also cannot be a ground, since there is no material to substantiate it at this stage. Further, the learned counsel for the petitioner submits that the tender process has been adopted earlier and this the last one. This

submission also cannot be a ground to question the decision of the respondents which is based on economic consideration. Since the respondents are sole authorities, it is for them to take a decision. The petitioner does not have a vested right to insist for license merely because he has quoted a sum of Rs.5,55,555/- as against the lesser amount quoted by others. It is also not as if the respondents have confirmed the tender in favour of the third party rather they decided to do by themselves for sometime. Such an action cannot be termed as arbitrary. In view of the decision taken by the respondents, they are hereby directed to repay the amount deposited by the petitioner within a period of two weeks from the date of receipt of a copy of this order.

8.The writ petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Director,
Town Panchayats,
Salem, Salem District.
2. The Executive Officer,
P.N.Patty Selection Grade Town Panchayat,
Mettur Dam-2,
Salem District.

+1 cc to R.M.R. Jothimanian , Advocate, sr 20530
+1 cc to The Government Pleader, sr 20842

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