IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.7457 of 2018 &
W.M.P.Nos.9282 & 9283 of 2018

A.Jailabdeen .. Petitioner

Vs.

1.The Commissioner and Special Officer of
Coimbatore City Municipal Corporation,
Coimbatore.

2.The Assistant Commissioner (West Zone),
Coimbatore City Municipal Corporation,
Coimbatore.

3.Mr.Karthik .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records ending with the publication dated 14.03.2018 of Dinamalar (Coimbatore Edition) of the first and second respondents in respect of M.G.R.Wholesale Vegetable Market situated at Mettupalayam Road, Coimbatore listed as Item No.5 and quash the same and direct the respondents 1 and 2 to conduct re-auction for the same in accordance with law.

For Petitioner : Mr.S.D.S.Phillip
For Respondents: Mr.K.Mahesh
Standing Counsel for R1 and R2
No appearance for R3

O R D E R

Heard Mr.S.D.S.Phillip, learned counsel for the petitioner; Mr.K.Mahesh, learned Standing Counsel for the respondents 1 and 2 and perused the materials available on record. Despite service, the third respondent has not chosen to appear and contest the petition.

2. The erstwhile licensee of M.G.R.Wholesale Vegetable Market, Coimbatore, has filed this Writ Petition, challenging the auction notice issued by the first respondent, dated 14.03.2018.

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3. The brief facts of the case are that the license issued in favour of the petitioner expired on 31.03.2018. The first notification dated 16.02.2018 was cancelled due to administrative reasons. Pursuant to the second notification dated 28.02.2018 for conducting e-auction and sealed tender, the petitioner and the third respondent submitted tender documents and they quoted Rs.91,00,000/- and Rs.90,50,000/- respectively. The offer was not accepted due to the reason that amount was low and in the third auction notification dated 14.03.2018, the petitioner quoted Rs.1,20,00,000/- and the offer of the third respondent Rs.1,20,00,100/- was accepted and he was declared as a successful bidder.

4. The impugned notification has been challenged mainly on the ground that no sufficient publicity has been given and the time gap was very low. The attempt of the petitioner to participate in e-auction failed due to technical reasons and the minimum bid amount was wrongly mentioned as Rs.12,85,000/- instead of Rs.1,28,50,000/-.

5. In the counter filed by the first respondent, it has been stated that on 20.03.2018, there was no e-auction application and the tender was opened in the presence of the writ petitioner and other two participants, viz., K.Shankar and the third respondent. In the presence of all participants, the third respondent was declared as highest bidder and their signatures have been obtained. As per the tender documents, if any participant wants to conduct re-auction, they have to give a written request within 24 hours from the date of auction, but no such request came from the petitioner and prayed for dismissal of the Writ Petition.

6. It seems the writ petitioner was declared as successful bidder for 2017-18 and his offer was Rs.1,22,00,000/-, indisputably the period ended on 31.03.2018. And in the third auction held on 20.03.2018, the tender documents were opened in the presence of the petitioner and the highest amount of Rs.1,20,00,100/- quoted by the third respondent was accepted and declared as successful bidder. It is not disputed as per the tender condition, re-auction can be sought for within a period of 24 hours, but the petitioner failed to avail the opportunity.

7. As stated supra, the third auction was conducted on 20.03.2018 and it is the continuation of the earlier notification dated 16.02.2018. It is well settled position that after having participated in the tender process, participants have no legal right to challenge the tender notification. Further, he has not shown any prejudice caused to him in the tender process. It is pertinent to note that from 01.04.2018, the third respondent is collecting the license fee.

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8. It has been consistently held by the Hon'ble Supreme Court that the Courts ordinarily should exercise judicial restraint while dealing with the challenge made to the selection of the bidder. Recently, the Hon'ble Apex Court in 2018 (5) SCCC 462 [MUNICIPAL CORPN., UJJAIN v. BVG INDIA LTD.], has held as follows:-

> "63. As aforementioned, unless the Court concludes that the decision-making process or the decision taken by the authority bristles with mala fides, arbitrariness, or perversity, or that the authority has intended to favour someone, the constitutional court will not interfere with the decision-making process or the decision."

9. Keeping in mind the principles laid down in the above decision and the facts of the case, I find no merit in the Writ Petition. In the result, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

r n s

To

1.The Commissioner and Special Officer of
Coimbatore City Municipal Corporation,
Coimbatore.

2.The Assistant Commissioner (West Zone),
Coimbatore City Municipal Corporation,
Coimbatore.

+2cc to Mr.S.D.S.Philip, Advocate SR.No.42432

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GN(16/07/2018)

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