

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02/04/2018
Delivered on	06/04/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.5936 of 2018 &
W.M.P.Nos.7314 & 7338 of 2018

A.Rajasekar

.. Petitioner

Vs.

1.The Commissioner,
Chidambaram Municipality,
Chidambaram, Cuddalore District.

2.Mr.R.Jegatheesan,
Commissioner,
Chidambaram Municipality,
Chidambaram,
Cuddalore District.

3.S.Anbalagan

.. 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 records in connection with the resolution passed by the first respondent in ந.ம.தி.எண்.819, dated 30.01.2018 and quash the same in so far as Item No.18 of public auction cum tender notification issued by the first respondent in ந.க.எண்.3494/2017/அ1, dated 21.11.2017 and consequently direct the first respondent issue fresh notification for re-auction to Item No.18 of the above mentioned public auction cum tender Notification within the period stipulated by this Court.

For Petitioner : Mrs.Hema Sampath, Senior Counsel
For Mr.N.Sathish Babu

For Respondents : Mr.V.Shanmugasundar
Special Government Pleader for R1 & R2

Mr.P.Srinivas for R3

ORDER

Heard Mrs.Hema Sampath, learned Senior Counsel, representing Mr.N.Sathish Babu, learned counsel for the petitioner; Mr.V.Shanmugasundar, learned Special Government Pleader for the first and second respondents and Mr.P.Srinivas, learned counsel for the third respondent and perused the records.

2. The petitioner challenges the auction notification of the first respondent dated 21.11.2017 and the resolution dated 30.01.2018 and for consequential direction to the first respondent to conduct re-auction for Item No.18 in the above tender notification.

3. The case of the petitioner is that the first respondent issued a notification in Dinathanthi Tamil Daily on 09.12.2017 calling for public auction cum tender notification for the period 2018-2021 for several items. The

petitioner approached the first respondent to receive tender schedule in Item No.18 and he was informed that public auction cum tender notification for Item No.18 could not be conducted as per schedule and a re-auction notification would be issued. Believing his words, he did not submit tender documents, but the second respondent by misusing his official capacity has confirmed the tender for Item No.18 in favour of the third respondent.

4. The challenges is made on two grounds. Firstly, that the petitioner was prevented from participating in the auction by misrepresentation by the second respondent and as per the notification, the tenderers, who are willing to participate in the tender cum auction are required to deposit the Demand Drafts on or before 27.12.2017 at about 4.00 p.m. However, contrary to the tender condition, the tender document of the third respondent was accepted on 28.12.2017.

5. In the counter filed by the first respondent, the allegations made by the petitioner have been denied and it is stated that as per the tender cum auction conditions, the participants in the auction process were required to deposit the Demand Drafts on 27.12.2017 and obtain acknowledgment and only those who have acknowledgments would be allowed to participate in the auction on 28.12.2017. However, the participants in the tender process have

the option of either depositing the Demand Drafts the previous day or drop their bid into the tender box along with the Demand Drafts before 11.00 a.m. on 28.12.2017. According to the respondents, this condition was included in the tender process only to ensure no cartel is formed to cause financial loss to the Municipality.

6. It is further stated that as per the tender conditions, an auction was conducted on 28.12.2017, but none participated in the auction for Item No.18 and thereafter, the tender covers were opened. The tender submitted by the third respondent for Item No.18 for Rs.25,00,000/- was accepted. The average lease amount for previous three years was Rs.18,78,365/- and the lease amount for the previous year was Rs.19,70,719/-, so the bid amount of the third respondent of Rs.25,00,000/- was accepted and a Resolution was passed on 30.01.2018. In the counter, it is further stated that the petitioner was present when the tender box was sealed and it was opened after the public auction and he has also signed in the tender process.

7. In reply the reply filed by the petitioner, the petitioner has reiterated the averments made in the affidavit.

8. The learned Senior Counsel appearing for the petitioner submitted that the conditions incorporated in the tender documents are very clear and even though there are two methods have been stated in the tender-cum-auction notification, the tender amount and solvency amount have to be submitted in the office of the first respondent before 4.00 p.m. on 27.12.2017 and the persons, who have paid the amount on 27.12.2017 would be permitted to participate in the auction held on 28.12.2017. The learned Senior Counsel further submitted that the petitioner is ready to pay 10% more than the bid amount to bring it for re-auction.

9. The learned counsel for the respondents submitted that since 1994 all the Municipalities in Tamil Nadu have been adopting two methods of calling for tender cum auction, only to avoid forming of cartel. According to the respondent, the tender conditions are very clear and there is no ambiguity and the tender has been conducted in terms of the conditions and prayed for dismissal of the Writ Petition.

10. Though a cursory look at the notification dated 21.11.2017 appears to support the case of the petitioner, but from the careful perusal of the notification, it is evident that there is no ambiguity and the participants in the

auction were directed to deposit the caution deposit amount by way of Demand Drafts and the bank guarantee on 27.12.2017 till 4.00 p.m. and the participants in the tender process were permitted to drop their bid into the tender box along with Demand Drafts till 11.00 a.m. on 28.12.2017.

11. It is not in dispute that the third respondent has submitted tender documents on 28.12.2017 before 11.00 a.m. along with the Demand Draft and the required documents. So, the contention of the petitioner that the third respondent has submitted the tender documents beyond the time has to be rejected. Perusal of the documents annexed in the typed-set, reveal that the petitioner was present when the auction conducted on 28.12.2017 for the Item No.18 and he has also signed in the documents. The tender conditions stipulate that on deposit of a Demand Draft a minimum amount of 10% more than the bid amount within 48 hours of the auction, a re-auction can be sought for. Admittedly, the petitioner has not complied the condition for re-auction. Further, no materials have been produced by the petitioner to establish that there was misrepresentation by the second respondent and thereby he was prevented from participating the auction process.

12. In the light of the above fact, I do not find any merit in the Writ

Petition. Accordingly, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

06/04/2018

Speaking Order / Non Speaking Order

Index : Yes / No.

Internet : Yes / No.

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K.KALYANASUNDARAM, J.

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To

1.The Commissioner,
Chidambaram Municipality,
Chidambaram, Cuddalore District.

2.Mr.R.Jegatheesan,
Commissioner,
Chidambaram Municipality,
Chidambaram,
Cuddalore District.



Pre-Delivery Order made in
W.P.No.5936 of 2018 &
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06/04/2018