



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.09.2018
CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P.(MD)Nos.7062 and 15227 of 2018
and
W.M.P(MD)Nos.6751 and 13763 of 2018

K.Ramesh

... Petitioner in both petitions

Vs.

1.The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai.

2.The District Collector,
Trichy District, Trichy.

3.S.Kannanoor Town Panchayath,
rep. by its Executive Officer,
Trichy District.

4.The Special Officer,
S.Kannanoor Town Panchayath,
Trichy District.

5.E.T.Seenivasan ...Respondents in W.P(MD)No.7062 of 2018 &
...Respondents 1 to 5 in W.P(MD)No.15227 of 2018

6.N.Kumaran
Executive Officer,
S.Kannanoor Town Panchayat,
Trichy District. ... 6th respondent in W.P(MD)No.15227 of 2018

Prayer in W.P(MD)No.7062 of 2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the third respondent to conduct re-auction for license to collect toll fee in the weekly market of S.Kannanoor Town Panchayat and in the Goat Market situated in Survey No.252 of S.Kannanoor Town Panchayat, Trichy District.

Prayer in W.P(MD)No.15227 of 2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the third respondent in Na.Ka.No.33/2018 A1 dated 20.04.2018, quash the same.



In both the writ petitions;

For Petitioner : Mr.R.Subramanian
For Respondents : Mr.C.M.Mari Chelliah Prabhu
Addl. Govt. Pleader
(for R1 and R2)
Mr.A.Thiagarajan (for R3)
Mr.M.Saravanakumar (for R4)
Mr.Veerakathiravan
Senior Counsel for
Mrs.K.Hemakarthiskeyan (for R5)

COMMON ORDER

Both the writ petitions are filed by the same petitioner in regard to the award of contract to the fifth respondent to collect Toll Fee in weekly market and goat market and therefore, the same are taken up together for common disposal as under.

2.The third respondent herein has issued notification dated 12.01.2018 inviting public to participate in tender-cum-auction for the year 2018-2019 in respect of several items mentioned in the schedule I, II and III. The petitioner participated in the auction in respect of 3rd item in schedule I i.e, license to collect the Toll Fee in weekly market and goat market in S.No.252.

3.On 06.03.2018, the petitioner appears to have deposited an amount of Rs.15,00,000/- and participated in the auction. However, the fifth respondent was ultimately declared as successful bidder for his bid amount of Rs.9,99,999/-. Since the fifth respondent was the highest bidder, his auction was eventually confirmed by the third respondent.

4.According to the petitioner, as per clause-11 of the tender document, the successful bidder has to pay the entire amount within 24 hours from the date of confirmation of auction. But according to the petitioner, the fifth respondent had not paid the bid amount within 24 hours as stipulated and therefore, as per tender conditions, the auction was deemed to have lapsed and the third respondent ought to have conducted re-auction in terms of tender conditions. In the said circumstances, the petitioner is before this Court seeking issuance of a Writ of Mandamus for re-auction in W.P(MD)No.7062 of 2018 and in respect of the other writ petition challenging the order of the third respondent dated 20.04.2018 confirming the auction in favour of the fifth respondent.

5.The learned counsel appearing for the petitioner would contend that the third respondent had unduly favoured the fifth respondent with the contract, despite the fact that the fifth respondent had not complied with the tender condition, particularly, clause 11 of the tender. The entire amount was paid after much



delay and therefore, the tender condition had been flouted by the fifth respondent and in which event, the third respondent ought to have cancelled the auction and ought to have conducted re-auction. According to the learned counsel, the grant of tender to the fifth respondent in the circumstances of the case is illegal and tainted with mala fide.

6. When the first writ petition was filed in W.P(MD)No.7062 of 2018, the same was entertained by this Court and interim injunction was granted by a learned Single Judge of this Court. Later, the said injunction was vacated at the instance of the fifth respondent and thereupon writ appeals were filed in W.A(MD)Nos.743 and 744 of 2018 and the Hon'ble Division Bench of this Court, after adverting to the submission, passed the following orders:-

"10. Admittedly, these Writ Appeals are filed against the interim order of the Writ Court vacating the injunction already granted. Needless to say that the merits and contentions raised by both parties in the Writ Petition are yet to be considered and decided by the Writ Court in the main Writ Petition, based on the respective pleadings of the parties. Thus, We are of the view that when the Writ Court is yet to consider and decide the main Writ Petition, all the contentions raised by the respective parties before us, can be raised before the Writ Court, so that a finality would reach in the Writ Petition at the earliest. Since the learned counsel for the fifth respondent contended that in view of the interim orders granted, he is not in a position to collect the toll, We are of the view that the main Writ Petition can be taken by the Writ Court at the earliest and dispose the same on merits in accordance with law.

11. Accordingly, without expressing any view on the merits and contentions raised by either side, these Writ Appeals are disposed of by requesting the Writ Court to take up the main Writ Petition itself for final disposal and dispose the same on merits and in accordance with law preferably on or before 23.07.2018. Till a final order is passed in the Writ Petition, both the parties are directed to maintain status-quo as on today. The Registry is directed to list the Writ Petition before the Writ Court on 11.07.2018. No costs. Consequently, connected Miscellaneous Petitions are closed."

7. Per contra, the learned counsel appearing for the third respondent would submit that before confirmation is given to the fifth respondent, the petitioner appears to have approached this Court and the writ petition was entertained and thereafter, no further action was taken by the third respondent.

8. According to the counter affidavit filed on behalf of the third respondent, he submitted that the fifth respondent was willing to pay the entire bid amount once the confirmation was issued, but



in view of the pendency of the litigation before this Court and the interim order was passed, the confirmation could not be given immediately. Subsequently, on 20.04.2018, the interim order was vacated and the entire bid amount had been paid by the fifth respondent and therefore, an order was passed on 20.04.2018 confirming the contract. The said order is the subject matter of challenge in W.P(MD)No.15227 of 2018. Therefore, the third respondent would submit that there was no violation of the tender conditions and in any event, admittedly, the fifth respondent is the highest bidder and therefore, the award of contract in his favour was in public interest.

9. On behalf of the fifth respondent, a detailed counter affidavit has been filed. In paragraph 4 of the said counter affidavit, the entire facts has been narrated in detail in regard to the stand of the fifth respondent, which reads as follows:-

"4.....on 06.03.2018, I have participated in the auction conducted for the license to collect fees in weekly market and goat market and in the auction, I was declared as successful bidder as I have quoted a highest amount of Rs.90,90,911/-, whereas the petitioner herein has quoted a sum of Rs.90,00,200/-. It is pertinent to note that the previous year license fee for the weekly market was a sum of Rs.44,21,025/- and I have quoted double times than the previous license amount. I submit that as per clause No.11 of the Tender condition, 1/3rd of the bid amount has to be paid immediately on the date of auction and the remaining amount has to be paid within 24 hours from the date of receipt of notice of confirmation and accordingly on 06.03.2018, I have paid a sum of Rs.42,00,000/- through Demand Drafts. I am yet to receive the notice of confirmation. I submit that the weekly market would be conducted only on Friday and Saturday of every week and my license period would start from the month of April 2018 effectively from 06.04.18 i.e., first Friday of April. I submit that on 27.03.18, I have paid another sum of Rs.18,90,911/- and total amount of Rs.60,90,911/-. As per clause 12 of the tender condition the remaining amount has to be paid within 24 hours from the date of receipt of notice intimating the confirmation of auction to me. I am yet to receive the said notice of confirmation and hence I have not paid the remaining amount. However, I have taken demand drafts for the balance amount of Rs.30,00,000/- on 04.04.2018 itself in D.D.Nos.360928, 360929, 360931 and 360932 drawn at Indian Overseas Bank, Trichy. I submit that though I have waited for confirmation order of license from the third respondent, but I was not given confirmation order and on enquiry, I came to know that the petitioner has filed a writ petition in W.P(MD)No.7062/2018 and the petitioner was obtained an order of injunction from this Hon'ble Court and due to pendency of writ petition, I was not given confirmation order."



10.Mr.Veerakathiravan, learned Senior Counsel appearing for the fifth respondent would submit that the condition as stipulated in the tender document has been complied with and the entire amount could not be paid within 24 hours after the fifth respondent was declared as successful bidder in the absence of confirmation of the tender. This fact has also been highlighted by the third respondent. Once the confirmation was given on 20.04.2018, the entire balance amount had been paid and therefore, the objection raised on behalf of the petitioner is without factual or legal basis and the same is unfounded. According to the learned Senior Counsel, the entire writ petition lacks bona fide as well as merits and substance and liable to be rejected.

11.This Court has considered the rival submission of the counsel appearing for the parties.

12.From the materials and pleadings as disclosed in the writ petition, it could be seen that the petitioner is attempting to make out mountain out of a mole hill. Admittedly, even according to the petitioner, the fifth respondent is the highest bidder and the grant of tender to the fifth respondent was in public interest as more revenue was being generated from awarding the contract in favour of the fifth respondent.

13.The petitioner being unsuccessful bidder cannot be allowed to object to the grant of tender to the fifth respondent on the basis of invalid ground and flimsy averments. From the facts as disclosed in the counter affidavit filed on behalf of the respondents, it is very clear that the fifth respondent had duly complied with the conditions once the confirmation of auction was effected by the third respondent. The fact of the matter was that the entire amount had been paid by the fifth respondent without undue delay. Such being the case, this Court is unable to appreciate as to the basis of the writ petitioner's writ petition in assailing the action of the third respondent in granting the contract in favour of the fifth respondent.

14.For the above said reasons, this Court is in agreement with the submission made on behalf of the respondents that the writ petitions completely lack merits and substance and the same are liable to be dismissed. Hence, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

1.The Director of Municipal Administration,
Ezhilagam, Chepauk,
Chennai.

2.The District Collector,
Trichy District, Trichy.

+1CC to Mrs.K.Hemakarthikeyan, Advocate, SR.No.84257

+1CC to Mr.M.Saravanakumar, Advocate, SR.No.84127

+1CC to Mr.M.Saravanan, Advocate, SR.No. 83927

W.P. (MD) Nos.7062 and 15227 of 2018
and

W.M.P (MD) Nos.6751 and 13763 of 2018
12.09.2018.

SKN

ES/PM/SAR 1/27.10.2018/6P/6C