



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2018

CORAM :

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THE HONOURABLE MR. JUSTICE M.S.RAMESHWrit Petition (MD) No.5714 of 2018andW.M.P (MD) Nos.5604,5605 and 7325 of 2018

P.Vanumamalai,
Director & Managing Trustee,
Thiruppan Alwar Cultural and
Social Development Trust,
Registration No.1526/12,
77/61A, South Street,
Thalaikulam,
Karanthaneri Post,
Nanguneri Taluk,
Tirunelveli - 627 152

... Petitioner

Vs.

1.The Commissioner (in charge),
Tirunelveli Municipal Corporation,
Corporation Office,
S.N.High Road,
Tirunelveli 1.

2.The Assistant Commissioner,
Palaymkottai Zonal Office,
Tirunelveli Municipal Corporation,
Tiruvandram Road,
Palayamkottai,
Tirunelveli District.

3.R.Arulappan

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned Tender cum Auction issued by he 1st respondent in his proceedings Na.Ka.No./A1/3773/2017 dated 09/02/2018 published in Daily Thinathanthi on 10/02/2018 and quash the same as illegal and further direct the 1st respondent to call for a fresh Tender Cum Auction for the work of license to collect fixed amount in Palay Mahatma Gandhi Market Pay & Use Toilets (including up keeping sanitation) with preference to Non-Governmental organisations within



For Petitioner

: Mr.D.Nallathambi

For Respondents 1&2

: Mr.Aayiram K.Selvakumar

For 3rd Respondent

: Mr.G.Prabhu Rajadurai

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ORDER

The challenge in the present writ petition is to an auction notification dated 09.02.2018 issued by the first respondent Corporation for the licence to collect fees in Palay Mahatma Gandhi Market Pay and Use Toilets.

2.The tender cum auction was fixed on 28.02.2018 and when the petitioner herein had attempted to purchase tender schedule from the office of the second respondent on payment of cash of Rs.110/-, the officials of the respondent Corporation had refused to issue tender schedule to the petitioner. Consequently, the petitioner gave representations on 27.02.2018, 02.03.2018 and 09.03.2018 to the respondents herein. Since no action was taken on the representations, the present writ petition has been filed.

3.According to the learned counsel for the petitioner, the respondent Municipality had earlier called for a tender cum auction on 29.12.2015 for the same purpose, which came to be cancelled, as there were no bidders. In the earlier auction notification, some of the conditions imposed therein came to be omitted in the impugned auction and as such, he attributes *mala fides* on the part of the respondents for having omitted certain conditions in order to accommodate the persons of their choice.

4.Learned counsel for the petitioner further submitted that for the work of collecting fees for the pay and use toilets and for upkeep of the sanitation, prior experience and technical expertise is required and since the third respondent who is the successful bidder does not possess such pre-qualifications, the entire tender process is vitiated. It is his further submission that when he had attempted to purchase the tender documents, he was denied of the same by the respondent Corporation and therefore, he had given three representations complaining of such denial of the tender schedule.

5.The third limb of submission of the petitioner is that though the auction was held on 28.02.2018 and the third respondent was declared as the highest bidder, he has neither deposited the bid amount nor work order issued in his favour till date and therefore, no prejudice would be caused if the tender process is set aside and fresh auction is conducted.



6.The learned Standing Counsel for the respondents 1 and 2 on the other hand submitted that the petitioner herein had never approached the second respondent for the purchase of the tender schedule and that it is false to state that he had given representations on 27.02.2018 and 02.03.2018. On the other hand, the respondents had received only one representation on 09.03.2018. Since the tender process was already over and that the petitioner had not purchased the tender document, he is not entitled to maintain the writ petition.

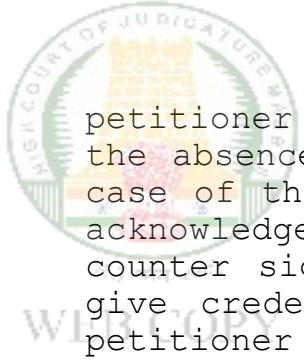
7.Learned counsel appearing for the third respondent/successful bidder submitted that there is no illegality or infirmity in the entire tender process. According to the learned counsel, the petitioner herein has not come to the Court with clean hands since he had not produced any documents in support of his claim that he had objected to the tender process. The learned counsel further submitted that the third respondent who had validly participated in the auction has been declared as highest bidder and as soon as the Council confirms the work order, he was required to deposit the entire bid amount within 24 hours as per the tender conditions.

8.I have given careful consideration to the submissions made by the respective counsels.

9.The main grievance of the petitioner seems to be that he was not given a tender schedule though he had offered to buy one by paying cash since the auction notification enables the petitioner to make a cash payment of Rs.110/- for purchasing the tender schedule. The factual aspect that he was not given with tender schedule by the second respondent is denied by the respondents 1 and 2 as well as the third respondent. The consequent complaints alleged to have been given by the petitioner on 27.02.2018 and 02.03.2018 is also denied by the official respondents.

10.Today, this Court had perused the original file and it is seen that one complaint dated 09.03.2018 alone was found in the file.

11.It is the specific case of the standing counsel for the official respondents that the representations dated 27.02.2018 and 02.03.2018 have been manipulated for the purpose of establishing a cause of action before this Court and that the true fact is that the objections came to be made by the petitioner only through his representation dated 09.03.2018. Admittedly, there is no acknowledgement for the representations alleged to have been made by the petitioner on 27.02.2018 and 02.03.2018. If the petitioner was really aggrieved against the non issuance of tender schedule to him on 27.02.2018, he could have sent one such representation through a registered post to prove his *bona fides*. Incidentally, the rubber stamp of the respondent municipality found in the representations dated 27.02.2018 and 02.03.2018 is claimed to be manipulated by the



petitioner himself since such a seal will not amount to receipt in the absence of a counter signature in the same. It is the specific case of the standing counsel for the official respondents that all acknowledgements of representations are made by them with a seal and counter signature of the receiving clerk. As such, I am unable to give credence to the submissions of the learned counsel for the petitioner that the petitioner had made representations on 27.02.2018 and 02.03.2018.

12.The second submission of the learned counsel for the petitioner that some of the conditions have been omitted in the impugned auction proceedings which were found in the earlier auction notification dated 29.12.2015 also does not deserve consideration for the following reasons:-

First of all, the said submission is not backed by any regulation or rules mandating the respondents to stipulate conditions with regard to the technical know-how and expertise for the work of cleaning toilets and upkeeping sanitation. Learned Standing Counsel for the official respondents 1 and 2 at this juncture submitted that the tender called for the year 2015 was for old toilets in the same area and the present impugned tender was for the newly constructed toilets for the first time. In the absence of any regulation which mandates the respondents 1 and 2 to impose such condition for a work of this nature, there cannot be any justification for the submission made by the learned counsel for the petitioner. It would not be out of context to mention here that the learned counsel for the third respondent had raised a specific plea that the petitioner himself does not possess such technical expertise or prior experience and that the third respondent has prior experience and expertise in handling the work of this nature.

13.As such, it can only be concluded that the petitioner has failed to prove that he had attempted to purchase the tender schedule which was allegedly denied and that he had raised his objections through his representations dated 27.02.2018 and 02.03.2018. Consequently, it requires to be held that the petitioner had not participated in the tender process by procuring the tender schedule and as such, he may not be competent to challenge the tender process through this writ petition.

14.Before parting with the order, it would be appropriate to observe that in order to avoid claims of this nature where allegations are made that the tender schedule is denied to the proposed participants, it would be appropriate that the regulations are amended to ensure that even tenders of low work value be conducted through e-tender/e-auction with provisions to download tender schedules from the web-sites and the concerned statutory bodies/authorities as well as the submissions of the tender bid, through their web-sites. This Court only hopes that good sense prevails and in order to have a fair and transparent tender process, this observation is given effect to at the earliest.



15. In the result, I do not find any merits in the writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, W.M.P (MD) Nos. 5604, 5605 and 7325 of 2018 are closed.

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Sd/-

Assistant Registrar (T & P)

/True Copy/

Sub Assistant Registrar

+1cc to Mr. D. NALLATHAMBI, Advocate in SR.No. 60824

sms

SB/KKR/SAR3/28.05.2018/5P/2C

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and
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