



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD) .No.10775 of 2018

and

W.M.P(MD) .No.9880 of 2018

Sampath

... Petitioner

Vs.

1.The Director of Municipal Administration,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The District Collector,
Trichy District, Trichy.

3.S.Kannanoor Town Panchayat,
Rep. By its Executive Officer,
Mannachanallur Taluk, Trichy District.

4.N.Kumaran
Executive Officer (In-charge)
S.Kannanoor Town Panchayat,
Mannachanallur Taluk,
Trichy District.

5.The Special Officer,
S.Kannanoor Town Panchayat,
Mannachanallur Taluk,
Trichy District.

6.C.Rengaraju

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 to 5 to conduct re-auction for Item No.1 in Schedule 1 of the Tender Notification of the respondents 3 and 5 dated 12.01.2018 in Na.Ka.No.33/2018/A1 for license to collect vehicle fee in the 3rd respondent Panchayat.

For Petitioner

: Mr.M.P.Senthil for
Mr.N.C.Ashok Kumar

For Respondents 1 to 3

: Mr.M.Rajarajan
Government Advocate

For Respondent 6

: Mr.G.Prabhu Rajadurai

O R D E R

This writ petition is filed for issuing of a writ of mandamus directing the respondents 1 to 5 to conduct re-auction for item No.1 in schedule 1 of the Tender Notification of the respondents 3 and 5, dated 12.01.2018, vide Na.Ka.No.33/2018/A1, regarding the licence to collect vehicle fee within the premises of the third respondent Panchayat.

2.The brief facts that are necessary for the purpose of disposal of this writ petition are as follows:

The third respondent has issued a Tender Notification, dated 12.01.2018, by proceedings in Na.Ka.No.33/2018/A1. The Tender Notification was in respect of several items and item No.1 is regarding the award of licence to collect vehicle fee within the premises of third respondent Town Panchayat. As per the Tender conditions, the successful bidder has to pay 1/3rd of the amount immediately after the auction and has to pay the entire balance within 24 hours upon confirmation of the auction.

3.The petitioner states that he was also very much interested in participating in the Tender. However, in view of the stringent condition that the Tenderer has to pay 1/3rd of the amount on the date of auction and the balance within 24 hours of confirmation, he could not participate in the Tender process.

4.The auction was fixed on 06.03.2018. The petitioner states that the sixth respondent participated in the Tender and his bid was Rs.1,66,66,666/-. Since the sixth respondent was the highest bidder, the auction was confirmed on the same date. It is further alleged that the sixth respondent started collecting vehicle fee by issuing receipts in his name immediately. The prime contention of the learned counsel appearing for the petitioner is that the sixth respondent was not directed to pay the entire money within 24 hours of the date on which auction was confirmed and he was given substantial time. It is admitted that the sixth respondent remitted a sum of Rs.86,55,555/- on the date of auction and that on 29.03.2018 a further sum of Rs.10,11,111/- was paid. Further the balance amount was paid after getting extension of time on 11.05.2018 and on 14.05.2018. Though, it is stated by the sixth respondent that the third respondent has passed some order extending the time for making payment, no order is produced. However, the sixth respondent in his counter has admitted that out of a sum of Rs.1,66,66,666/-, he had paid only a sum of Rs.86,55,555/- on the date of receipt of notice of confirmation. From the counter affidavit filed by the sixth respondent, it is seen that the auction was confirmed on the date of auction, namely 06.03.2018.

5.The main submission of the learned counsel for the petitioner is that the third respondent has shown some concession in favour of the sixth respondent, while awarding the contract. The



petitioner could not participate in the tender, in view of the stringent tender conditions with regard to the deposit of the entire bid amount upon confirmation of the bid. It is further stated that the respondents 3 and 4 have colluded with the sixth respondent. The fact that the sixth respondent was allowed to collect the vehicle fee even before the full amount was paid was pointed out by the learned counsel for the petitioner as the reason to support his plea of collusion.

6. Though, it is not pleaded with precision in the affidavit filed in support of the petition, the learned counsel for the petitioner submitted that the award of Tender by showing some concession in favour of the sixth respondent is arbitrary and amounts to discrimination and the award of contract is, therefore, opposed to Article 14 of Constitution of India. It is further stated by the learned counsel for the petitioner that a concession cannot be shown in the middle and the entire auction is therefore vitiated for this reason. It is the specific contention of the petitioner that the petitioner would have participated, if it had been stated in the tender condition that such relaxation will be shown.

7. It is in the present context, when this Court wanted the petitioner to show his bonafide in filing the writ petition as he has not participated in the Tender, learned counsel appearing for the petitioner submitted that the petitioner is also ready to deposit a sum of Rs.1,68,00,000/- for the same licence, in case, if licence is granted to the petitioner for a period of one year. Since the learned counsel appearing for the sixth respondent had raised a doubt about the bonafides of the petitioner, this Court, during the previous hearing, directed the petitioner to produce a demand draft for a sum equivalent to 50% of his offer. Accordingly, learned counsel for the petitioner today produced a demand draft for a sum of Rs.84,00,000/-, representing 50% of his offer. From the conduct of the petitioner, this Court is unable to suspect the bonafides of the petitioner to approach this Court.

8. Learned counsel appearing for the sixth respondent relied upon a judgment of learned single Judge of the Delhi High Court, in Poorvanchal Caterers and Anor. Vs. Indian Railway Catering And others reported in 2005 (2) CTLJ 385 Delhi, wherein it has been held as follows:

"25. Moreover, in Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd and Another the Supreme Court observed :

"The law relating to award of contract by the State and public sector corporations was reviewed in Air India Ltd. v. Cochin International Airport Ltd. and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender



the respondent No. 1 cannot be faulted and we are not inclined to exercise our discretion under Article 226. These peculiar facts were that respondent No. 3 had paid the entire money in respect of Train Nos. 9045-46 and 9047-48 (Tapti-Ganga Express) but the contract could not be handed over to respondent No. 3 in view of the status quo order passed by the Orissa High Court which was extended from time to time (though the same has now been vacated by the Supreme Court on 14.12.2005)."

9. Learned counsel for the sixth respondent further relied upon the judgment of the Honourable Supreme Court in the case of Master Marine Services (P) Ltd., Vs. Metcalfe & Hodgkinson (P) Ltd. And another reported in (2005) 6 Supreme Court Cases 138 that were relied upon by the Delhi High Court in the earlier judgment.

10. Learned counsel for the petitioner however, relying upon a judgment of the Honourable Supreme Court in Ramana Dayaram Shetty Vs. The International Airport Authority of India and others reported in AIR 1979 SUPREME COURT 1628 submitted that an objection on the question of locus standi was rejected on the ground that the writ petition is maintainable by a person who was denied equal opportunity. In this case also, the petitioner's complaint is that if the petitioner also aware of such relaxation of an important condition, he could have participated and became a successful bidder. Since the petitioner was precluded from submitting a Tender because of condition, a fair opportunity is denied to him and therefore, a reauction will be in the interest of justice.

11. Learned counsel appearing for the petitioner further relied upon an unreported decision of a learned single Judge of this Court in M/s. MSPL Gases Limited, represented by senior manager vs. M/s. Steel Authority of India Limited through its Executive Director (Operations) and others (W.P. Nos. 6425 and 6426 of 2008 dated 31.07.2008) wherein the judgment of the Honourable Supreme Court in the case of Ramana Dayaram Shetty Vs. The International Airport Authority of India and others was relied upon and the principles stated by Honourable Supreme Court regarding locus standi in similar circumstances is reiterated.

12. Sum and substance, the law settled by the Honourable Supreme Court in contractual matters is that, the Court is not expected to interfere with the decision of Executive unless the decision making process is found to be illegal or irregular. If there is a scope for permitting the third or fourth respondents to relax the Tender condition, this Court would not interfere with the process of Tender. It is settled that the state and the instrumentalities of the state have to be fair and treat equally all. It is true that even when the decision making process is found to be defective, the Court may not exercise its discretionary power under Article 226, unless such interference is required in public



interest. In other words, merely because a valid point is raised in a petition, like this the court may not rest its decision solely on that keeping in mind the over riding public interest.

13. In this case, as pointed out earlier, the petitioner has come forward with the petition, offered and is ready to pay his offer viz., Rs.1,68,00,000/-. The endeavour of the petitioner also serves public interest as he suggests that the auction may commence at this amount and the parties may be permitted to bid from Rs.1,68,00,000/-, so that the respondents 3 and 4 may not have any grievance. The counsel appearing for the respondents 3 and 4 submitted that on previous occasions, the successful bidders, after participating in the Tender, have failed to deposit the money and that in several cases the bid amount could not be recovered even after proceeding under the Land Revenue Act. However, such difficulty does not arise here, if the Tender conditions would be strictly adhered to. The learned counsel appearing for the sixth respondent further submitted that the petitioner can be permitted to bid, only if he is qualified as per the Tender conditions. The petitioners have no objection. The petitioner's counsel further submitted that the petitioner is prepared. Therefore considering the over all circumstances, this court is inclined to pass the following order.

14.i) The auction that was held on 06.03.2018 pursuant to the Notification dated 12.01.2018 in Na.Ka.No.33/2018/A1 insofar as item No.1 is set aside subject to the successful re-auction for the same item by a fresh Tender Notification on the same terms and conditions to be issued by the third respondent Panchayat within 10 days from the date of receipt of a copy of this order.

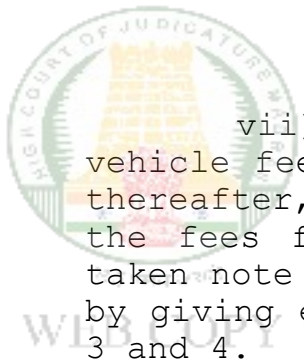
ii) In the interest of Corporation, for the re-auction for item No.1, the upset price for item No.1 in the schedule for the Tender Notification, dated 12.01.2018, shall be fixed at Rs.1,68,00,000/-.

iii) The Tender Notification should be on the same terms and conditions as to the eligibility and as to the payment of the Tender amount.

iv) If there is no bidder to bid, the petitioner should be declared as the successful bidder for the amount of Rs.1,68,00,000/-. The petitioner has paid a sum of Rs.84,00,000/- today by way of demand draft drawn in favour of third respondent and the counsel appearing for the respondents 3 and 4 has acknowledged the receipt of the same. The remaining amount will be paid on the date of confirmation.

v) In case, the petitioner is unable to participate in the Tender or bid for the amount mentioned above, the respondents 3 and 4 are at liberty to appropriate any portion of amount to compensate any loss on account of re-tender, from the amount given by the petitioner today by way of demand draft.

vi) Since the petitioner as well as the sixth respondent have already deposited substantial amount, they need not pay any security deposit/earnest money deposit.



vii) It is stated that the sixth respondent was collecting vehicle fee pursuant to the auction that was held on 06.03.2018 and thereafter, the local body itself has made arrangements to collect the fees from the vehicle. If any shortage of period it will be taken note for the purpose of reducing the amount proportionately or by giving extension of time which ever is convenient to respondents 3 and 4.

15. With the above direction the writ petition is disposed of. Consequently, connected miscellaneous petition is closed, No Costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Director of Municipal Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
2. The District Collector,
Trichy District, Trichy.
3. S. Kannanoor Town Panchayat,
Rep. By its Executive Officer,
Mannachanallur Taluk,
Trichy District.

+1cc to M/S.N.C.Ashok Kumar, Advocate SR.No. 69294
+1cc to Special Government Pleader, SR.No. 69397
+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 69307

W.P (MD) .No.10775 of 2018
and
W.M.P (MD) .No.9880 of 2018
21.06.2018

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JM/RSK/SAR 3/25.06.2018/7P/7C