



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 24206 of 2018

and

W.M.P. (MD) Nos. 21891 and 21892 of 2018

S. Selvaraj

... Petitioner

-vs-

1. The Secretary to the Government,
Department of Local Administration and Water Supply,
Fort. St. George,
Chennai.
2. The Regional Director of Municipal Administration,
Office of the Regional Director of Municipal Administration,
Nearby Kodimarathumoolai,
Thanjavur.
3. The District Collector,
Office of the District Collector,
Thanjavur.
4. The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Thanjavur District.
5. B. Krishnasamy ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned resolution passed by the Fourth Respondent in Resolution No. 173 dated 02.05.2017 and the impugned order issued by the Fourth Respondent in his proceedings in Na. Ka. No. 4026/2017/A7 dated 02.05.2017 and quash the same and consequently direct the First to Fourth Respondents to conduct fresh auction by adhering to the provisions of Tamil Nadu Transparency in Tenders Act, 1998, based on the Petitioner representation dated 20.09.2018.



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For Petitioner : Mr. G. Thalaimutharasu
For Respondents : Mr. K. Chellapandian,
Additional Advocate General
Assisted by N. Shanmugaselvam,
Additional Government Pleader
(for R1 & R3)

Mr. M. Rajarajan (for R4)

Mr. G. Karnan (for R5)

O R D E R

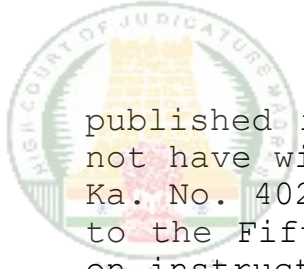
(Order of the Court was made by P.D. AUDIKESAVALU, J.)

The Petitioner, who is a former Councilor of Kumbakonam Municipality, has filed this Public Interest Litigation challenging the resolution No. 173 dated 02.05.2017 passed by the Fourth Respondent, viz., Kumbakonam Municipality awarding contract of licence to maintain and collect the charges for the use of the dormitory building in Ward No. 40 of Mahamagam Tank under the Heritage City Development Scheme to the Fifth Respondent pursuant to the tender notification dated 26.04.2017 and for consequential direction to conduct fresh auction by adhering to the provisions of Tamil Nadu Transparency in Tenders Act, 1998.

2. The main grievance of the Petitioner is that the Fourth Respondent had not given wide publicity of the tender to ensure effective participation of all intending tenderers and in particular, it is pointed out that the publication of the tender in the "Thina Boomi" daily newspaper on 26.04.2017, did not have wide circulation. Reliance in this regard has been placed on Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998, read with Rule 11 of the Tamil Nadu Transparency in Tender Rules, 2000.

3. Heard Mr. G. Thalaimutharasu, Learned Counsel appearing on behalf of the Petitioner and Mr. K. Chellapandian, Learned Additional Advocate General assisted by Mr. N. Shanmugaselvam, Learned Additional Government Pleader appearing on behalf of the First to Third Respondents, Mr. M. Rajarajan, Learned Counsel appearing on behalf of the Fourth Respondent and Mr. G. Karnan, Learned Counsel appearing on behalf of the Fifth Respondent and perused the materials placed on record apart from the pleadings of the parties.

4. The Commissioner, Kumbakonam Municipality, who is the Fourth Respondent in this Writ Petition appeared before this Court on 14.12.2018 along with records pursuant to the direction issued by this Court on 07.12.2018. It was submitted by the Fourth Respondent that having regard to the fact that the tender notice has been



published in the "Thina Boomi" daily newspaper on 26.04.2017, does not have wide circulation, it has been decided by proceedings in Na. Ka. No. 4026/2017/A7 dated 14.12.2018, to cancel the licence granted to the Fifth Respondent. Learned Counsel for the Fourth Respondent, on instructions, further submitted that a decision has been taken to call for fresh tender for the aforesaid licence of the dormitory building by publishing a public notice inviting tender in the "Thina Thanthi" daily newspaper having wide circulation in the entire Thanjavur District. The Fifth Respondent accepting the cancellation of that licence, has filed an affidavit dated 18.12.2018, has expressed his readiness to vacate from the premises.

5. In this backdrop, Learned Counsel appearing for the respective parties, in order to balance the equities, have agreed for issuing the following directions:-

(i) The award of contract for licence pursuant to the notice of tender said to have been published in "Thina Boomi" daily newspaper on 26.04.2017 shall stand set aside.

(ii) Fresh notification for the grant of licence to maintain and collect the charges for the use of the dormitory building shall be issued fixing the upset price for an amount which shall not be less than what has been agreed by the Fifth Respondent in the contract which has been cancelled.

(iii) The notification of the aforesaid tender shall be published on 07.01.2019 in the Thanjavur Edition of "Thina Thanthi" daily newspaper circulating in Kumbakonam Town in Thanjavur District.

(iv) It shall be ensured that all legal requirements including compliance of the relevant provisions of Tamil Nadu Transparency in Tenders Act, 1998, and the Tamil Nadu Transparency in Tender Rules, 2000, framed thereunder are scrupulously followed.

(v) After receipt of bids for the tender, within the specified time limit, the same shall be opened for evaluation in the presence of all bidders at the specified time and the public auction shall be conducted only amongst the qualified tenderers on the specified date and the entire proceedings shall be videographed.

(vi) The approval of the concerned authorities shall be obtained before handing over the premises to the successful bidder.

(vii) The Fifth Respondent shall be entitled to participate in the fresh tender and till the contract is awarded to the successful bidder in pursuance of that fresh tender, he shall be permitted to continue to carry out maintenance of the dormitory building and remit to the Fourth Respondent, the amount collected towards charges from the users, after deducting the amount that he is entitled under the cancelled licence. In the event of the Fifth Respondent not



being the successful bidder in the fresh tender, he shall forthwith vacate from the premises along with all his furniture and accessories so as to hand over the vacant premises to the successful bidder.

(viii) The action taken report shall be filed by the Fourth Respondent with copies of relevant documents before the Registrar (Judicial) of this Court by 28.02.2019.

6. In the result, the Writ Petition shall stand disposed of with the aforesaid directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RECORDS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Secretary to the Government,
Department of Local Administration and Water Supply,
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Thanjavur.
4. The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Thanjavur District.

COPY TO

The Registrar (Judicial)
Madurai Bench Of Madras High Court, Madurai

- 1 CC TO Mr.G.THALAIMUTHARASU , ADVOCATE IN SR No.10159.
- + 1 CC TO Mr.M.RAJARAJAN , ADVOCATE IN SR No. 101347.

SJT